



Department for Communities and Local Government

25 July 2012

Mr S Chadwick
Signet Planning
The Hamlet
Hornbeam Park
Harrogate
HG2 8RE

Our Ref: APP/C1055/A/11/2161815
Your Ref: SWC/SN/HG0852

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY DERBY HOSPITALS NHS FOUNDATION TRUST – DERBY ROYAL
INFIRMARY, LONDON ROAD, DERBY, DE1 2QY:
APPLICATION REF: DER/11/10/01429/PRI**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Phillip J G Ware BSc DipTP MRTPI, who held a public local inquiry between 7 and 9 February 2012 into your client's appeal against a failure by Derby City Council (the Council) to give notice within the prescribed period of a decision on an application for outline planning permission for a mixed use regeneration scheme (known as the Nightingale Quarter) comprising a convenience goods store, residential (including extra care), offices, café/restaurant/public house with related car parking, access and open space at Derby Royal Infirmary, London Road, Derby, DE1 2QY in accordance with application number DER/11/10/01429/PRI, dated 23 November 2011.
2. In pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, the appeal was recovered for the Secretary of State's determination on 21 October 2011 because it involves a proposal for residential development of over 150 units on a site of more than 5 ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The application for costs (IR1) made by your client at the Inquiry is the subject of a separate decision letter, also being issued today by the Secretary of State.

Matters arising following the close of the Inquiry

5. The National Planning Policy Framework ('the Framework') was published after the close of the Inquiry and replaced a wide range of Planning Policy Statements to which reference had been made in written evidence and at the Inquiry. The Secretary of State notes (IR2) that the main parties were consulted on the implications of this for their respective cases and that their responses are reflected in the Inspector's report. He also notes that the Wilmslow (Number 3) Ltd Partnership made representations on the Framework which were treated in a similar manner.

Policy considerations

6. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. As stated in paragraph 12 of the Framework, that document does not change the statutory status of the development plan as a starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused, unless other material considerations indicate otherwise.
7. In this case, the development plan includes the East Midlands Regional Plan and saved policies in the Derby City Local Plan Review (2006) (LP). The Secretary of State considers that the development plan policies most relevant to the appeal are those referred to by the Inspector at IR20-22 and 95-96. For the reasons set out in IR94 the Secretary of State agrees with the Inspector that the LP can be afforded full statutory weight; and for the reasons in IR97 that the Core Strategy carries very little weight. The Secretary of State has also had regard to the draft *City Centre Eastern Fringes Action Area Plan* but, for the reasons given at IR23, he agrees with the Inspector that it carries little weight.
8. The Secretary of State considers that the revocation of Regional Strategies has come a step closer following the enactment of the Localism Act on 15 November 2011. However, until such time as the East Midlands Regional Plan is formally revoked by Order, he has attributed limited weight to the proposed revocation in determining this appeal.
9. In addition to the Framework, other material considerations which the Secretary of State has taken into account include Circular 11/1995: *Use of Conditions in Planning Permission*; and the *Community Infrastructure Levy (CIL) Regulations 2010 and 2011*.

Main Issues

Retail

10. For the reasons given at IR99, the Secretary of State agrees with the Inspector's conclusion at IR100 that the one substantial element of the development which would not conform to the LP site allocation is the proposed supermarket, as retail is not included in the range of uses considered acceptable. He notes that the Council has accepted the principle of the retail led development, the only argument being the location of the proposed supermarket in heritage terms (IR101). He also notes that the agreed position is that the retail floorspace is the key element of the scheme which makes the whole development viable, and cross-subsidises the regeneration of the rest of the site (IR118).
11. The Secretary of State has, like the Inspector, considered the retail element of the proposal in the light of the Framework. For the reasons set out in IR103-106, he agrees with the Inspector that preference can be given to the edge of centre appeal site (IR106) and, for the reasons in IR107-116, he agrees that there is no persuasive evidence that the appeal proposal would be likely to undermine the vitality and viability of the city centre, in-centre trade/ turnover, or trade in the wider area (IR116). Like the Inspector, the Secretary of State considers that the sequential and impact assessment in the light of the Framework provides a sound basis for concluding that the supermarket element is acceptable (IR117).

Design and layout

12. For the reasons given in IR119-124, the Secretary of State agrees with the Inspector that the scale of the development is acceptable, and accords with LP policies GD4 (design and the urban environment), H13 (general criteria for housing redevelopment) and E23 (design); and would provide the potential for high quality design and a good standard of amenity in line with one of the Core Planning Principles in the Framework (IR125).

Housing

13. For the reasons set out in IR126-134, the Secretary of State agrees with the Inspector's conclusion at IR135 that the proposal is in accordance with site specific LP policy LE6. He also agrees that it accords with policy H13, which sets out general criteria for residential development, and does not conflict with policy H11 dealing with affordable housing. He further agrees that the proposal would: deliver a sustainable, inclusive and mixed community in line with the Framework; provide a sufficient quantity of mixed housing to take account of need and demand; and offer choice in a city centre fringe location (IR135).

Sustainable economic growth

14. The Secretary of State agrees with the Inspector (IR138) that, in line with paragraphs 17-19 of the Framework, the proposal would lead to the replacement of outdated buildings with a modern mixed use community and encourage economic growth whilst protecting the environment. He also agrees that it would regenerate a large brownfield site, and provide employment, and that this would be in line with local and national policy to promote sustainable economic growth and jobs (IR138).

Sustainable transport choices and highway matters

15. For the reasons given in IR139-144, the Secretary of State agrees with the Inspector that the site is located in a highly accessible position close to the city centre which would encourage the use of a range of non-car modes of transport, and that there would be no highway problems caused by the proposal (IR145).

The effect on heritage assets

16. For the reasons given in IR147-151, the Secretary of State agrees with the Inspector that Devonshire House is a Heritage Asset in Framework terms, although its significance is limited due to the unexceptional quality of the building as originally constructed, the alterations which have since been undertaken, and the loss of much of its original context (IR168 and 184).
17. The Secretary of State considers that the retention of a Locally Listed building should normally be sought. However, he notes that in this case there is no persuasive evidence of any demand for the reuse of the building, and that there would be a number of structural issues which would tend to suppress demand still further (IR169). For the reasons set out in IR152-160, he agrees with the Inspector that on its own the refurbishment of the building would not be viable, and that the only evidence before the Inquiry was that the overall scheme would not be able to cross subsidise another unviable element (IR169). He notes that the appellant has explored a range of other options, and that all have been found wanting. In particular, he agrees with the Inspector that the Option 1 alternative advocated by one of the Council's witnesses would be seriously problematic. He agrees that all reasonable alternatives to demolition have been considered and found to be unrealistic (IR170 and 184).
18. For the reasons set out in IR171-183, the Secretary of State agrees with the Inspector that the setting of the Hartington Street Conservation Area and Wilderslowe House would be enhanced by the proposal, and that the setting of Liversage's Almshouses and the Florence Nightingale statue would be largely unaffected or even slightly enhanced (IR185). He notes that the effect on other Heritage Assets is not in dispute and that in a number of instances the development would lead to a significant enhancement (IR186).
19. The Secretary of State therefore agrees with the Inspector's conclusion at IR187 that the appellant has provided a comprehensive description of the significance of the heritage assets and the contribution of their setting to that significance; and that the effect of the proposals on the setting of those assets has been assessed. He agrees with the Inspector that the proposal complies with LP policies E18 and E19; and that it complies with paragraph 135 of the Framework, and other policies therein, in that the balanced judgement weighing the loss of Devonshire House against the benefits to other heritage assets is strongly in favour of the proposal (IR187).

Conditions and obligations

20. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions as set out at IR189-202. He is satisfied that the proposed conditions are reasonable, necessary and comply with Circular 11/95. He also agrees with the Inspector that the Planning Obligation (IR203-207) meets the statutory requirements including those set out in the CIL Regulations.

Overall Conclusions

21. The Secretary of State concludes that the only element of the proposal which is not in accordance with the development plan is the retail floorspace, as the site is not identified for that use. However, he considers that the application site is an appropriate edge of centre site for a main town centre use, that it is well connected to the town centre and that a suitable town centre site is not available. He also considers that the proposal would provide a substantial element of housing in a suitable location, with the provision of affordable housing addressed by the Planning Obligation, and provide an employment element. He considers that the development would encourage the effective use of an important previously developed site, which is currently largely disused, and that there is no suggestion of any other mix of development which would support the regeneration of the area. He concludes that the development would bring significant benefits which would substantially outweigh any harm which might be perceived related to the absence of a retail designation in the Local Plan, the effect on Heritage Assets, or any other matter.

Formal Decision

22. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for a mixed use regeneration scheme (known as the Nightingale Quarter) comprising a convenience goods store, residential (including extra care), offices, café/restaurant/public house with related car parking, access and open space, at land at Derby Royal Infirmary, London Road, Derby DE1 2QY, in accordance with application number DER/11/10/01429/PRI, dated 23 November 2011, subject to the conditions listed at Annex A of this letter.
23. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
24. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

25. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
26. A copy of this letter has been sent to the Council. A notification letter/e-mail has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

JEAN NOWAK

Authorised by Secretary of State to sign in that behalf

Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans:

3551-D19-0015 (Site Layout Masterplan Zone Plan)

3551-D19-0001 (Site Plan)

ITIM4017-GA-005 (Access Plan)

ITIM4017-GA-007 (Access Plan)

ITIM4017-GA-008 (Access Plan)

ITIM4017-GA-010 (Access Plan)

2. Details of the following matters (hereafter referred to as the reserved matters) shall be submitted to and approved in writing by the Local Planning Authority for each zone on approved zoning plan (No. 3351-D19-0015). Development in any zone shall not commence prior to the approval of the following works in each zone:

- a) Layout (including internal road layout)

- b) Appearance

- c) Landscaping

3. Application for the approval of the reserved matters for the first zone of development shall be submitted to the Local Planning Authority within three years from the date of this permission and the development of the first zone shall be begun either before the expiration of five years from the date of the permission, or within two years from the approval of the reserved matters, whichever is the later. Application for the approval of reserved matters for all other zones shall be submitted to the Local Planning Authority within ten years from the date of this permission and begun within two years from the last approval of reserved matters.

Pre-commencement – whole site

4. Before any development commences, a site-wide assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system and the results of the assessment shall be submitted to and approved in writing by the Local Planning Authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- (i) provide information about the design storm period and intensity, the method

employed to delay and control surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; and

- (ii) include a timetable for its implementation; and
 - (iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
5. The development shall be implemented in accordance with Section 3.2 of the amended Flood Risk Assessment (January 2011) and in accordance with details of how the scheme shall be maintained after completion, which shall have been submitted to and approved in writing by the Local Planning Authority before the development commences.
6. Prior to commencement of development, a site wide drainage and underground services Masterplan, to include details of depth and width of service runs, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such agreed details.
7. An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced before any development commences on the site. The written report shall be submitted to and approved in writing by the Local Planning Authority. The report of the findings must include:
- (i) a survey of the extent, scale and nature of contamination; and
 - (ii) an assessment of the potential risks to:
 - human health
 - property (existing or proposed) including buildings, pets, woodland and service lines and pipes
 - adjoining land
 - ground waters and surface waters
 - ecological systems
 - archaeological sites and ancient monuments; and
 - (iii) an appraisal of remedial options, and options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11 (or any subsequent policy/guidance).

8. A detailed remediation scheme (for all zones) to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be

submitted to and approved in writing by the Local Planning Authority before any development on the site is commenced. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

9. The approved remediation scheme must be carried out (on a zone by zone basis) in accordance with its terms prior to the commencement of any development other than that required to carry out remediation. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority.
10. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 7, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 8, which shall be submitted to and approved in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 9.
11. No development shall commence on the site until details of the proposed rationalisation of the controlled crossing points across London Road between Traffic Street and Midland Road, which could involve relocation, removal, replacement or refurbishment of the crossings, have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such agreed details.

Pre-commencement – each zone

12. Before development commences on any zone within the site, details of finished floor levels and ground levels as proposed for buildings and external spaces within that zone shall be submitted to and approved in writing by the Local Planning Authority and implemented in accordance with such agreed details.
13. During the period of construction works in each zone, all trees, hedgerows and other vegetation to be retained shall be protected in accordance with a Tree Protection Plan and Arboricultural Method Statement in accordance with BS:5837: 2005 ("Trees in relation to construction") (or any subsequent policy/guidance) and in accordance with the following requirements:
 - a) the date of the construction of such protection and of its completion shall be submitted to and approved in writing by the Local Planning Authority in writing before any site works commence; and
 - b) the agreed protection measures shall be implemented and retained in position at all times, with no use of or interference with the land contained within the

protection zone, until completion of construction works.

14. The trees to be felled in each zone shall be replaced in accordance with details of species, siting and size, which shall have been approved in writing by the Local Planning Authority within 3 months of the felling of the trees. The date of the felling shall be notified in writing to the Local Planning Authority and the replacement trees shall be planted during the first planting season or within 12 months, whichever is the sooner, following the felling of the trees.
15. Before development commences in Zones 1 or 2, a plan for the maintenance and management of retained trees and new tree planting and other retained vegetation along the north eastern boundary for benefit of biodiversity and public amenity, fronting London Road and Bradshaw Way, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with such agreed details.
16. Before development commences on any zone on the site, including any works of demolition, a Construction Method Statement for that zone shall be submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction of the development and include:
 - a) measures to control the emissions of dust and dirt during construction; and
 - b) a scheme to treat and remove suspended solids from surface water run-off during construction; and
 - c) details of any piling using penetrative methods, demonstrating that there would not be any resultant risk to ground water.
17. No development shall take place in any zone within the site, including demolition, until a Written Scheme of Investigation for historic building recording has been submitted to and approved in writing by the Local Planning Authority for that zone and until the on-site element of the scheme has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and
 - a) the programme and methodology of site investigation and recording; and
 - b) the programme for post investigation assessment; and
 - c) provision to be made for analysis of the site investigation and recording; and
 - d) provision to be made for publication and dissemination of the analysis and records of the site investigation; and
 - e) provision to be made for archive deposition of the analysis and records of the site investigation; and
 - f) nomination of a competent person or persons/organization to undertake the

works set out within the Written Scheme of Investigation.

18. No part of the development in any zone shall be occupied until the post-excavation reporting, dissemination and archive deposition of the historic building survey has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 17, to the written satisfaction of the Local Planning Authority. All historic building recording should be carried out by a suitably qualified and experienced buildings archaeologist.
19. Before the customer car park associated with the supermarket in Zone 1 is implemented, details of a Management Plan for the parking, including hours of permitted parking, scale of charges and hours of operation, shall be submitted to and approved in writing by the Local Planning Authority. The approved management plan shall be implemented in accordance with such agreed details.
20. The demolition of buildings and any development shall be carried out in accordance with the recommendations in the bat survey (June 2011) and compensatory roosting features shall be implemented prior to the occupation of any buildings, in accordance with details of their number, design and siting which shall be submitted to and agreed in writing by the Local Planning Authority before development commences in each zone.
21. The supermarket in Zone 1 shall be for the sale of no more than 20% net sales floorspace for non-food goods.
22. No development shall commence on the London Road linear park until details of the layout, phasing, landscaping and planting schedule have been submitted to and approved in writing by the Local Planning Authority and the external works shall be implemented in accordance with a timetable to be agreed in writing by the Local Planning Authority.
23. None of the dwellings in Zone 5 with vehicular access directly onto Osmaston Road shall be occupied until:
 - a) the proposed junction has been constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority; and
 - b) a 2.4m x 50m visibility splay has been provided to the north west of the residential access road. Within the visibility splay nothing shall be constructed or allowed to grow above 600mm above ground level.
24. The proposed residential and office development in Zones 2 and 3 which are to be served by vehicular access directly onto London Road shall not be occupied until the proposed junction has been improved/alterd in accordance with details to be submitted to and approved by the Local Planning Authority.
25. No land uses within the site shall be commenced until a Travel Plan covering all aspects of the intended means of travel to and from the development has been

submitted to and approved in writing by the Local Planning Authority. The agreed Travel Plan shall be implemented in accordance with such details.

26. The proposed supermarket shall not be used until:
 - a) the proposed traffic signal controlled junction on Osmaston Road as shown for indicative purposes only on Drg No ITM 4017-SK-005 has been constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The submitted details shall show how this new traffic signal controlled junction will be linked to the City's urban traffic control system; and
 - b) an appropriate level of cycle parking has been provided in accordance with details submitted to and approved in writing by the Local Planning Authority; and
 - c) servicing provision is made available for use in accordance with details submitted to and approved in writing by the Local Planning Authority.
27. Notwithstanding the provisions of the Town and County Planning (Use Classes) Amendment Order 2005 (or any subsequent amendment or replacement thereof), the A3 and A4 uses hereby permitted shall not be changed to A1 use.
28. Before works commence on any phase of development involving residential accommodation, details of mitigation measures to ensure that all sensitive receptors fronting onto Osmaston Road, London Road or Bradshaw Way, are not exposed to pollution levels exceeding National or European Air Quality Objectives shall be submitted to and agreed in writing by the Local Planning Authority. All agreed measures must be suitably validated and a relevant report of the validation undertaken shall be submitted to and approved in writing by the Local Planning Authority before that phase of the development is occupied.
29. A Landscape Management Plan, including maintenance responsibilities and management schedules for the London Road linear park, shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the first phase of the development fronting London Road. The details of the plan shall be implemented as approved.
30. Before any zone of the development hereby permitted is commenced, a scheme for generating a proportion of the predicted energy requirement of the development from on-site renewable sources in that zone shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before any buildings in that zone are occupied and thereafter be maintained so that it provides the required level of generation.

Continuing Obligation

31. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water from parking areas and hard standings susceptible to oil contamination shall be passed through an oil separator designed and constructed to have a capacity compatible with the site being drained. Roof water shall not pass through the interceptor. Continuing maintenance of the interceptor shall be provided in accordance with the manufacturer's instructions.

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.



Report to the Secretary of State for Communities and Local Government

by Phillip J G Ware BSc DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 31 May 2012

TOWN AND COUNTRY PLANNING ACT 1990

DERBY CITY COUNCIL

DERBY ROYAL INFIRMARY, LONDON ROAD, DERBY

APPEAL BY DERBY HOSPITALS N.H.S. FOUNDATION TRUST

Inquiry held on 7 – 9 February 2012

Derby Royal Infirmary, London Road, Derby DE1 2QY

File Ref: APP/C1055/A/11/2161815

File Ref: APP/C1055/A/11/2161815**Derby Royal Infirmary, London Road, Derby DE1 2QY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Derby Hospitals N.H.S. Foundation Trust against Derby City Council.
- The application Ref DER/11/10/01429/PRI is dated 23 November 2011.
- The development proposed is a mixed use regeneration scheme (known as the Nightingale Quarter) comprising a convenience goods store, residential (including extra care), offices, café/restaurant/public house with related car parking, access and open space.

Summary of Recommendation: That the appeal be allowed, and planning permission granted subject to conditions.

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Procedural matters

1. At the Inquiry an application for costs was made by Derby Hospitals N.H.S. Foundation Trust against Derby City Council. This application is the subject of a separate Report.
2. After the Inquiry closed the National Planning Policy Framework ('the Framework') was published and a wide range of Planning Policy Statements, to which reference had been made in written evidence and at the Inquiry, were withdrawn. The main parties were consulted on the implications of the Framework and their responses are woven into the reporting of their cases, and considered in the conclusions of this report. The Wilmslow (Number 3) Ltd Partnership (part of the Westfield Group) have also made representations on the Framework, which have been treated in a similar manner.

Reasons for recovery and the issue between the main parties

3. The appeal was recovered on 21 October 2011 as it involved proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities. The matters about which the Secretary of State wishes to be informed were set out in a letter dated 27 October 2011. In summary these were¹:
 - The extent to which the proposal would accord with the development plan.
 - The extent to which the development would be consistent with Planning Policy Statement 1 "*Delivering sustainable development*" (PPS1) and accompanying guidance, particularly related to sustainable development and sustainable communities, design principles, access needs and prematurity.
 - The extent to which the development would accord with Planning Policy Statement 3 "*Housing*" (PPS3) particularly related to the provision of high quality housing, mixed housing, a sufficient quantity of housing, housing in suitable locations, and a flexible and responsive supply of land.
 - The extent to which the development would accord with Planning Policy Statement 4 "*Planning for sustainable economic growth*" (PPS4).
 - The extent to which the development would accord with Planning Policy Statement 13 "*Transport*" (PPS13) particularly related to sustainable transport choices, accessibility, reducing the need to travel, and car parking provision.
 - Conditions and Obligations.
 - Other matters considered relevant.
4. The appeal is against the Council's failure to issue a decision. The appeal followed the deferral of the proposal by the Council, which was recommended for

¹ As set out before the publication of the Framework

approval by officers, in September 2011². After the appeal was lodged, the Council resolved that had it been in a position to do so, planning permission would have been refused for one reason. This was a heritage issue related to the loss of a Locally Listed building (Devonshire House) and the effect on the character and appearance of two nearby Conservation Areas³.

5. The Inquiry largely dealt with this heritage issue, as did all the Council's evidence and the bulk of the Appellant's evidence, in the light of Planning Policy Statement 5 "*Planning for the historic environment*", which was extant at the time. This report deals with both the reasons for recovery and the heritage issue.

The site and its surroundings

6. The site of the former Derbyshire Royal Infirmary is around 7 hectares in extent and is located just south of Derby city centre⁴. It faces across Bradshaw Way (part of the inner ring road) towards the new Westfield shopping centre, and also has frontages onto London Road and Osmaston Road⁵. There are existing vehicle accesses onto the site from London Road and Osmaston Road. Most of the buildings are now empty (including Devonshire House) following the construction of a new hospital elsewhere in Derby. There are some medical buildings to the south-east beyond the appeal site – a community hospital and a walk-in centre.
7. There is a significant change in land levels across the site. The fall from Osmaston Road towards London Road is estimated as being about 10 metres. The London Road frontage of the site is raised around 2 metres above the level of the road, above and behind a historic stone boundary wall which runs along the back edge of most of the pavement.
8. There has been a long history of development on the site, dating back to the late 19th century. The 1890s 'pepper-pot' towers which grace the ends of a number of the original ward blocks are of some architectural note, in particular those fronting London Road make a distinctive and welcome contribution to the streetscene. There are series of other buildings in an apparently random layout⁶, many of utilitarian design, which have been constructed over succeeding decades. In particular there is a tower block (Wilderslowe Tower) located towards the western end of the site, and an operating theatre block fronting London Road. The former dominates a wide area and the latter significantly impedes the view and appreciation of some of the 'pepper-pots'.
9. There are a number of individual trees and groups of trees protected by a Tree Preservation Order on the site⁷. These are largely close to the boundaries of the site and the most important in streetscape terms are located along the London Road frontage running round the corner into Bradshaw Way. These are very prominent features of the streetscene and serve to substantially screen much of

² CD 9

³ The Council subsequently confirmed that the only issue related to the effect on the Hartington Street Conservation Area. The authority subsequently considered there would not be any effect on the Railway Conservation Area.

⁴ Location plan APP 12 plan 3351 D19 0001

⁵ General land uses in the surrounding area shown at CD 35 page 9

⁶ APP 11 sheet 05

⁷ TPO no.542 on file

this end of the site (including Devonshire House) from the city centre in summer⁸.

10. There are a number of Heritage Assets on and close to the site⁹. On the site itself there are a number of buildings on the Council's Local List¹⁰, particularly including Devonshire House and the pepper-pot towers at the end of the ward blocks¹¹. Only part of Devonshire House is Locally Listed – more recent additions are excluded.
11. Off the site lie the Hartington Street and Railway Conservation Areas. Along the London Road boundary there is a statue of Queen Victoria, a statue of Florence Nightingale, and boundary walls and railings along the road – these are all Grade II Listed structures¹². Also Grade II Listed are Wilderslowe House, which fronts onto Osmaston Road (within the Hartington Conservation Area) and Liversage's Almshouses on the opposite side of London Road¹³.

The proposal

12. The application is in outline with only access and the scale to be determined at this stage, along with the principle of the development. The appearance, landscaping and layout of the scheme would be the subject of further applications to the Council.
13. The proposal envisages the demolition of almost all the buildings on the appeal site, the only significant exception being the retention of the more prominent pairs of pepper-pot towers. (Two small buildings adjacent to London Road at the south-east corner of the site would also be retained.)
14. The submitted Masterplan sets out an illustrative framework for the development and divides it into zones of intended land use¹⁴. At present permission is sought solely for the general scale of the uses within the zones, as well as the access arrangements. The main elements of the zones are as follows:
 - Zone 1. A supermarket on the corner of Bradshaw Way and London Road, with undercroft car parking and external parking and loading facilities. Access would be from Osmaston Road. There would also be some mixed A2/A3/A4 uses facing London Road.
 - Zone 2. Offices, mixed uses, with residential use on the upper floors. The pepper-pot towers would be retained and integrated into the new development. Access would be from London Road.
 - Zone 3. Smaller scale residential development, largely in the form of terraces, with access from London Road.

⁸ Summer and winter photographs at CD35 page 11 photos B and C

⁹ APP 11 plan 3551 D19 00014

¹⁰ CD 7

¹¹ APP 14 Landscape and Visual Impact Assessment provides photographs from a series of viewpoints - as replicated on the site visit - on and close to the site boundaries

¹² Extract from the Statutory List on file

¹³ Location and photographs of these features at CD 35 page 21

¹⁴ CD 35 page 41

- Zone 4. Extra care/sheltered accommodation with access from a side road leading off Osmaston Road.
 - Zone 5. Residential development with access off Osmaston Road.
15. The residential development would include an element of affordable housing, to be controlled by a Section 106 Obligation¹⁵.
16. The proposed buildings along London Road would be set back to the line of the pepper-pot towers so as to allow for a linear park and pedestrian route along the frontage. There would also be improvements to the setting of the statue of Queen Victoria.
17. The existing main entrance onto London Road would be retained, as would two existing accesses from Osmaston Road. There would be an additional vehicle access onto Osmaston Road to serve the supermarket.

Planning policy

18. The development plan includes the East Midlands Regional Plan and saved policies in the Derby City Local Plan Review (2006) (LP)¹⁶. The parties agree that due weight should be given to relevant LP policies, as no party has suggested significant conflict between the LP and the Framework.
19. Although Regional Plan policies were listed in the Council's Committee report, no party has suggested that any are relevant to this appeal.
20. LP policy R1 identifies the site as a regeneration priority location. More specifically, LP policy LE6 identifies the site as being suitable for a mix of uses – additional healthcare facilities, non-residential institutions, residential, leisure and business uses. Retail use is not in the list.
21. Given the Council's objection to the loss of Devonshire House and the effect on the Hartington Street Conservation Area (which adjoins the site), two LP policies are of particular significance. These are policies E18 and E19. The former provides that planning permission will not be granted for development which would be detrimental to the special character of conservation areas, including views into and out of them. The latter states that the conservation of Locally Listed buildings will be sought, by encouraging their retention, maintenance, appropriate use and restoration. Demolition will not normally be allowed, and applicants will be expected to demonstrate that all reasonable alternatives to demolition have been considered and found to be unrealistic.
22. There are a range of LP policies dealing with the matters raised by the Secretary of State. These include sustainability, housing, economic growth and transport¹⁷.
23. The site was included in the draft City Centre Eastern Fringes Action Area Plan¹⁸, on which consultations were undertaken in 2008. In that draft the entire hospital site was identified for housing development. However this Plan never progressed beyond that stage and both parties agreed that it carries little weight.

¹⁵ APP 2

¹⁶ Relevant policies listed in the Committee report CD 9

¹⁷ Listed at CD 9, policies at CD 1

¹⁸ CD 4

24. The Council's Local Development Framework Core Strategy is at a very early stage, having completed Options Consultation, with publication expected later in 2012. The parties agreed that this carries little weight, and no further reference was made to it.

The case for the Appellant

Matter in dispute between the main parties¹⁹

25. The only issue between the parties relates to the proposed loss of Devonshire House (Locally Listed), the effect on the Hartington Street Conservation Area and two Grade II Listed Buildings – Wilderslowe House and the Liversage's Almshouses.
26. It is common ground that the proposed superstore is necessary to make the overall development viable, and thereby deliver substantial regeneration benefits. The non-retail elements would only be made viable by optimising the commercial benefits flowing from a successful superstore – and the Devonshire House site has been identified as the optimum location. The Design and Access Statement Addendum²⁰ specifically addresses the location of the supermarket.
27. The quality of Devonshire House has been seriously compromised over the years, and it is a recently Locally Listed building of only average quality and significance. The Council stated that the original buildings were one of the earliest pavilion style hospitals²¹, but this is incorrect as it was a late and not very special example of this building form²². Devonshire House, which is now dominated by Wilderslowe Tower, does not relate to the strong axial elements which were the key to the original plan of the hospital. The local listing description²³ does not contain any assessment of why the building makes a positive contribution and the recommendation also fails to establish the significance of the building²⁴.
28. The Council accepts that, on its own, Devonshire House cannot be viably retained and reused, but the authority looks to the retail element of the development to provide subsidy. The Council did not put forward any viability evidence to counter the appellant's position that the overall development could not carry this additional burden, although the authority referred to the Colliers International Study²⁵. However this is a generalised report and does not deal specifically with Locally Listed properties like Devonshire House.
29. The Council maintained that the Building Reuse Study suggested that an efficient housing layout could be achieved by the retention of the façade of Devonshire House, and also by conversion within the existing fabric²⁶. That is an incorrect reading of the Study, which shows an efficient redevelopment layout on the site of Devonshire House, not within it or behind a facade.

¹⁹ In relation to the matters in dispute, the case given here is an edited version of the closing submissions at APP 16, as amended by subsequent submission on the Framework

²⁰ APP 14

²¹ LPA 4 Paragraph 2.3

²² APP 7 Paragraph 2.3

²³ CD 7

²⁴ APP 6 Appendix Q

²⁵ LPA 4 Paragraph 3.41 and CD 17A

²⁶ APP 14 Sections 3.31 and 3.32

30. Conversion to either residential or office use would be severely hampered by the structural walls within the building, which would harm the viability and attractiveness of a resulting development. In terms of commercial use a further problem would be the need to put air conditioning into the building, which would unacceptably reduce ceiling heights. There is currently an oversupply of student beds and the demand for nurses' accommodation has moved with the departure of the hospital. The Framework does not require the appellant to demonstrate viability, but the evidence presented clearly demonstrates that no viable use is possible.
31. Turning to the effect of the demolition of Devonshire House, the Council considers that there is a sweep of Victorian buildings running from Wilderslowe House, round Bradshaw Way, past Devonshire House to Liversage's Almshouses on London Road. Viewed from within the site, this sweep of buildings does not exist, and the view is dominated by Wilderslowe Tower, which severs any relationship between the buildings. Viewed from Bradshaw Way the view is dominated by the substantial and later additions to Devonshire House.
32. The Council's concern with the effect on the Hartington Conservation Area relates mainly to the setting of the villas on Osmaston Road. However that criticism is diminished as there is no up to date Appraisal for the Conservation Area against which to make an assessment²⁷. In any event, the changes in level across the appeal site means that there would be a significant improvement in the outlook from the eastern edge of the Conservation Area and the rear of the villas. The Council has not assessed the beneficial effect of the removal of the existing hospital buildings on the Conservation Area.
33. There are five Grade II Listed Buildings or structures in the vicinity whose settings the Council consider might be affected: Wildeslowe House, Liversage's Almshouses, the Queen Victoria statue, the Florence Nightingale statue and the London Road wall and railings. The setting of Wilderslowe House will be substantially enhanced by the removal of Wilderslowe Tower and the smaller buildings at its foot. There is a significant degree of separation between the Liversage's Almshouses and Devonshire House, due to the presence of the road, the change in level, the retaining wall on the Devonshire House side of the road, and the dense tree screen. The statue of Florence Nightingale and the wall and railings will be unaffected.
34. One of the Council's witnesses²⁸ focused on the idea of retaining Devonshire House and constructing the supermarket next to it. This was Option 1 in the Design and Access Statement Addendum²⁹ - it was common ground that the other options were unacceptable. However his personal preference for this option had not been discussed with other Members and was not the Council's formal position. The Council's other witness had not assessed this option on conservation or other grounds³⁰.

²⁷ LPA 4 Paragraph 3.12

²⁸ Cllr Carr

²⁹ APP 14

³⁰ Mr Robertson

35. Locating the supermarket further from the city centre, to enable the retention of Devonshire House, would make the development commercially unattractive³¹. The store needs to be in the optimum position on the site so as to be able to subsidise the other regeneration benefits. Option 1 would frustrate this.
36. There was no assessment by the Council of the visual effect of Option 1 on the retained Devonshire House or the pepper-pot towers. In fact the setting of both would be destroyed, and the original front elevation of Devonshire House would be facing directly towards the new supermarket – at close range. There would be an inappropriately solid elevation to London Road which would be seriously harmful to Devonshire House and the retained pepper pot towers, and the proximity of the supermarket in this revised location would be unacceptable.
37. The Framework provides that account should be taken of any assessment of the particular significance of any Heritage Asset which may be affected by a proposal. However the Council does not have any such detailed assessment. The Framework provides that a balanced judgement will be required having regard to the significance of the Heritage Asset. The Framework provides that, permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. In this case the scheme will deliver significant regeneration benefits and improve the setting and appreciation of a number of Designated Heritage Assets. In this context the loss of Devonshire House is not of such significance that planning permission should be refused.

Matters raised by the Secretary of State³²

Relationship with the development plan

38. The appellant notes that the Council strongly supports the regeneration of the former hospital site, as set out in LP policy R1. This was reflected in LP policy LE6, and in the draft City Centre Eastern Fringes Area Action Plan – albeit this was a housing led redevelopment. There is agreement that a total housing redevelopment would not be viable, and that the retail element is necessary to cross-subsidise the regeneration of the rest of the site. A preferred bidder for the retail element has been identified and specific interest has been shown in the extra care/sheltered development.
39. The proposal is agreed to comply with LP policy relating to more detailed site matters – including trees (policy E9), ecology (policy E5) and archaeology (policy E21). Conditions can address these issues.

Retail matters

40. Although the site is not identified for retail use in site specific LP policy L6, the inclusion of a retail element on the site is in accordance with LP policy S2 in relation to retail location criteria. The site is accepted by the Council as being edge-of-centre for the purposes of sequential assessment. The appellant's Retail

³¹ APP 7 & 8

³² In relation to the Secretary of State matters, the case is largely taken from the appellant's evidence at APP 3, as amended by subsequent submission on the Framework

Statement³³ and the Council officers' report³⁴ clearly demonstrate that the proposal complies with LP policy S2.

41. A written objection has been submitted on behalf of the Westfield Group. Contrary to the objection, the impact tables show a marked difference in impact between foodstores - both in monetary value and total turnover³⁵. The varying scale of the impact is mainly dictated by the level of bulk food shopping undertaken at each of the stores. The impact on the Sainsbury's foodstore in the city centre, which is of particular concern to Westfield, would be no greater than £2.3m because of the nature of the shopping which that store caters for. This is shown in the Householder Survey (part of the Retail Statement) and the Council's Retail Study³⁶ shows a large top up food shopping role. The objector's unsupported assertion of 40% impact is unrealistic, and the position of Sainsbury's would be safeguarded due to its central and convenient location.

Housing

42. Residential development is a specific use supported by site specific LP policy LE6. The proposal also complies with LP policies H13 (general criteria for residential development) and H11 (affordable housing). The proposal will achieve a high standard of urban form and layout, and a good living environment³⁷.
43. In relation to affordable housing, the provisions of the Section 106 Obligation³⁸ are for a viability assessment (including a ratchet mechanism relating to the value of the land when disposed of in phases) to be submitted to the Council, which will enable a level of affordable housing to be set for each phase³⁹. This agreed approach recognises the lack of viability of housing development without the relaxation of some of the Council's normal requirements. It would avoid the situation where only the retail development would take place⁴⁰.
44. Overall, the development would allow high quality housing to come forward in a well-designed way, providing a mix of market and affordable housing. The most recent housing land supply figures suggest that the city has a 5.2 year housing land supply, but with the current low level of starts and the likely increase in requirements, enabling housing development on a previously developed site should be supported. A sufficient quantity of housing would be provided to take account of need and demand, whilst offering improved choice in a city centre fringe location.

Sustainability and design

45. The presumption in favour of sustainable development is at the heart of the Framework, and the proposal is for the effective use of a brownfield site in an accessible location close to the city centre. The evolution of the design is clearly set out in the Masterplan and the related evidence, and has not been challenged. The development would result in social progress in terms of the removal of

³³ CD 39

³⁴ CD 9

³⁵ CD 39

³⁶ CD 20

³⁷ APP 10

³⁸ APP 2

³⁹ APP 3 Paragraph 3.49

⁴⁰ APP 3 Paragraph 3.49

substantial and outdated institutional buildings – which are particularly inefficient in terms of energy usage - and their replacement by a high quality mixed use community. The development would accord with the need for high and stable levels of economic growth whilst protecting the environment.

46. It is also of note that the appellants are committed to delivering the regeneration of the appeal site to allow funds to be reinvested in health facilities in Derby, particularly the adjacent community hospital.

Economic growth – business uses

47. The government's top priority, as illustrated by the Framework, the 'Plan for Growth' and the March 2011 Ministerial Statement⁴¹, is to promote sustainable economic growth and jobs. The appeal scheme would regenerate a large brownfield site to promote economic growth. It is common ground between the parties that the key objectives of national policy are met.

Highways matters and sustainable transport choices

48. These aspects are agreed with the Council in the Statement of Common Ground and are detailed in the appellant's Highways and Sustainability Statement⁴².

Conclusion

49. Overall the proposal complies with the Framework, which provides that the presumption in favour of sustainable development should be exercised so that development should be permitted unless the adverse effect of allowing a development would significantly and demonstrably outweigh the benefits⁴³. Any perceived harm arising from the loss of Devonshire House must be balanced against the significant benefits generated by the development.

The case for the Council⁴⁴

Matter in dispute between the main parties⁴⁵

50. The Council's objection is solely related to the consequences of the demolition of Devonshire House. One of the Core planning principles of the Framework states that planning should conserve heritage assets in a manner appropriate to their significance. The Framework sets out the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation.
51. LP policy E19 states that the Council will not normally approve proposals which involve the demolition of locally important buildings (such as Devonshire House) unless applicants demonstrate that all reasonable alternatives have been considered and found to be unrealistic. In this case this means that the appellant must demonstrate that an alternative site for the supermarket is unrealistic and also that the reuse of Devonshire House is unrealistic. It has not been

⁴¹ CD 32 and CD 31

⁴² APP 15

⁴³ CD 29 Paragraph 14

⁴⁴ The Council's closing submissions also set out the history of the consideration of the application by the Council

⁴⁵ In relation to the matter in dispute between the parties, the case given here is an edited version of the closing submissions at LPA 5, as amended by subsequent submission on the Framework

- demonstrated that Devonshire House cannot be converted to a viable and sustainable new use.
52. The Council accepts that the supermarket is a necessary part of a viable and deliverable mixed use scheme on the site. The issue is whether the appellant has demonstrated that there is no other realistic location for the supermarket which will deliver this mixed use scheme. If the appellant can demonstrate that the retention of Devonshire House is unrealistic then the Council would have no objection to its demolition in the interests of the wider regeneration benefits that would be delivered by the proposed development.
53. The application was accompanied by a Building Reuse Study (BRS)⁴⁶, which considered the reuse of Devonshire House for nurses' accommodation, residential and office uses. Various structural issues were raised by the appellant related to building depth, internal structural walls, structural chimneys and the need to meet the environmental criteria of the Building Regulations⁴⁷.
54. The conclusion of the BRS also referred to a façade retention scheme. However, as the Council confirmed in evidence, a façade retention scheme would not be acceptable to the authority and this matter will not be considered further.
55. In relation to reuse as nurses' accommodation the BRS concluded that it was likely that there would be enough accommodation elsewhere for the reduced demand. In addition, the provision of such accommodation is now subcontracted to the private sector which would seek modern studio accommodation. The local environment around Devonshire House was said to be sub-optimal.
56. But no analysis has been presented to demonstrate the level of need/provision at the new hospital. In addition, an environment which is not ideal could still be reasonable and realistic in policy terms.
57. In relation to residential and office conversion, the BRS concluded that the layout would be economically inefficient and not the most appealing. However, a statement that a development may be economically inefficient is not an unequivocal statement that retention is not reasonable or realistic.
58. The appellant produced figures to illustrate the viability gap if Devonshire House were converted to varying standards of residential and office use⁴⁸. These are not in dispute. However the appellant approached the issue on the basis that the refurbishment and reuse of Devonshire House must be viable on its own. But to comply with LP policy E19 the whole project must be analysed. Aside from unsupported comments⁴⁹ that the overall project could not support Devonshire House, this approach was not addressed. The District Valuer has never examined the supermarket development, and no open book viability assessment has been produced by the appellant.
59. Option 1 in the Design and Access Addendum⁵⁰ shows the retention of Devonshire House and the supermarket relocated towards the pepper-pot towers.

⁴⁶ Within APP 14

⁴⁷ APP 8 Appendix 1

⁴⁸ APP 8 Section 5 Appendices 2 - 4

⁴⁹ APP 9 Paragraph 1.19

⁵⁰ Within APP 14

The Addendum refers to the location as envisaged in the appeal scheme as the most suitable part of the site - but this is not the same as claiming it is the only suitable location. There was no evidence that supported the appellant's contention that the Option 1 location would be unattractive to operators. Despite the fact that Morrisons have been identified as the future supermarket operator they have not objected to the Option 1 location.

60. The appellant's evidence in relation to the effect of a supermarket located as shown in Option 1 was an over-reaction. It was said that this would visually destroy Devonshire House and the pepper-pot towers. But this disregards the fact that the appeal scheme would demolish Devonshire House (thus destroying it completely) and envisages a new building abutting the towers – in the same manner as the supermarket development would abut them in Option 1. Other detailed criticisms of the Option 1 location are insubstantial, especially as a high quality of design could be adopted.
61. Overall, it does not appear as though much consideration was given to the retention of Devonshire House, despite the fact that it was placed on the Local List in July 2010 following a lengthy consultation process. The loss of Devonshire House would be a disbenefit in its own right, but would also impact on the setting of Listed Buildings – Liversage's Almshouses and Wilderslowe House. It would impact on the Hartington Conservation Area and the sweep of Victorian Derby from London Road around to Osmaston Road. These are Designated Heritage Assets as defined in the Framework, which advises that substantial harm to such assets should be refused unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm. Significance can be harmed through development within the setting of the asset.
62. LP Policy E19 is the dominant local policy in this case. It requires the appellant to demonstrate that an exception should be made to the normal approach which is that the demolition of Locally Listed buildings will not be allowed. The appellant has failed to do this.

Matters raised by the Secretary of State⁵¹

Relationship with the development plan

63. The residential and office elements of the appeal scheme accord with the identification of the hospital site in LP policy LE6. Similarly, no objection is raised to the proposed food and drink uses, as LP policy S12 makes provision for these uses in edge of centre locations such as the appeal site.
64. Although a substantial amount of housing would be provided, the proposal does not conform to the draft Action Area Plan, which sought a residential led scheme. However the Council notes the appellant's argument that there is a retail need and that this would facilitate the regeneration of the remainder of the site, with no unacceptable impact on the city centre. Taking account of the regeneration benefits no objection is raised to the principle of a retail led scheme on the site.

⁵¹ In relation to Secretary of State matters, the case is largely taken from the Committee report at CD 9, which was confirmed at the Inquiry to represent the Council's case (aside from heritage matters), as amended by subsequent submission on the Framework

Retail matters

65. There would be no significant adverse impact arising from the retail element of the proposal and the site would comply with the sequential approach to site selection. It should also comply with LP policy S2 related to locational criteria.
66. The appellant's retail assessment⁵² is generally robust. It adopts a fairly standard approach, and first defines the primary catchment area, which concludes that 60% of the store's trade would come from people living within 5 minutes of the store. This is reasonable.
67. The site is clearly within a 300 metre walking distance of the Primary Shopping Area, although the presence of the intervening ring road is a barrier. However the Council is satisfied that there are a number of existing crossing points, and considers that pedestrians would not see this as an unsafe or difficult route. The inherent strength of the city centre and its visibility from the appeal site would add to the number of linked trips. For these reasons the Council is satisfied that the appeal site is edge of centre in sequential terms.
68. Potential sites which could be sequentially preferable have been considered. In relation to the Beckett Well area the Council accepts that there is too much uncertainty to make it a viable alternative. The former Mackworth College site on Normanton Road is within a Linear Centre, but the Council considers it is not capable of accommodating the necessary scale of development. The Allenton Market site primarily serves a different part of the city. Overall the Council is satisfied that there are no sequentially preferable sites.
69. In terms of impact on the city centre, the Council's report⁵³ concluded that there was little quantitative capacity for retail floorspace, but that there was substantial evidence that a number of stores in the city centre were overtrading. The report recommended that additional foodstore provision should be made in the central area to reduce the amount of convenience trade leakage from the city centre – which is currently at a high level as many of the city centre stores are aimed at basket shopping trips. In qualitative terms, although the position has improved in recent years, the Council regards the provision for main food shopping to be limited in the central area.
70. The appeal scheme is unlikely to have a significant impact on in-centre investment as, of the two potential sites (Becket Well and Allenton) the first has yet to receive planning permission and cannot be regarded as a commitment, and the second serves a different core area.
71. Most of the potential trade diversion would be from other large format stores in Derby, which household surveys show to be the main focus of food shopping in the city. This would particularly apply to Asda in Spondon and Sainsbury's at Manor Kingsway – but these are not offered any policy protection due to their location. The level of trade diversion from the city centre and district centres in the defined catchment should not exceed 10% and, in most cases, would be considerably lower than this. The impact on the city centre shopping area is expected to be around £4 – 5m, but this is unlikely to significantly undermine

⁵² CD 39

⁵³ CD 20

existing stores as the city centre is not anchored by convenience floorspace. There should be no overriding impact on the city centre's vitality and viability.

72. The Council has generally sought to resist retail development taking place south of the inner ring road, as this could have the effect of 'stretching' the city centre too far south - to the detriment of (i.e. undermining) shopping areas to the north. However there would be little direct trade diversion from the Cathedral Quarter, as this area serves a more niche market and has a service sector focus, although there could be an effect if the focus of shopping shifts southwards. However this would be mitigated by measures to manage the car parking at the appeal site so as to encourage linked trips to the city centre.
73. Both individually and taking the cumulative effects of recent permissions and schemes under construction, the Council raises no objection on retail policy grounds. The retail elements can properly be included in the scheme to make the whole scheme viable and deliver regeneration.

Sustainability and design

74. The built form would be constructed in a sustainable manner. The intention is to develop the site to a BREEAM Excellent standard for the commercial buildings, and to Code Level 3 for the residential element.
75. The location of the various commercial elements of the development close to the city centre would be acceptable in general sustainability terms.

Design and layout

76. The proposal is in outline, but the arrangement of the zones of different uses and the intended scale (which forms part of the current proposal) would be acceptable. The general scale of built form would be relatively low, and certainly lower than many of the existing buildings on the site. The scale would respect the historic context and the local distinctiveness of the area.
77. A large area of car parking would be provided in association with the supermarket, some of which is shown as an undercroft. However the visual effect of the parking could be mitigated by landscaping and the use of appropriate materials.
78. The existing tree cover makes a positive contribution to the site and the wider area. As shown on the Masterplan, 17 of the protected trees would be felled. Although the Council accepts that some felling is necessary, for example to enhance the setting of the Queen Victoria statue on London Road, the extent of tree loss elsewhere (especially along Osmaston Road) is regretted. However, given that the siting of buildings is not being considered at this stage, there may be scope to incorporate more of the protected trees at the detailed stage. On that basis, no objection is raised to the current proposal.
79. The development would largely be served by the existing hospital access points, aside from a new access for the supermarket. Subject to the details of the scheme, this is acceptable.
80. The details of the development would be the subject of subsequent consideration. The scheme could provide a high standard of design and layout, and accord with LP policies GD4, H13 and E23.

Housing

81. The principle of residential development on the site accords with LP policy LE6, although the amount of residential development is less than envisaged in the draft Action Area Plan. However this plan did not progress and it is further noted that the LP does not set a housing target for the site. The Council does not raise any objection to the principle of a retail led development on the site, and this has obvious implications for the amount of housing which can be provided.
82. The overall site is accessible and well served by public transport, and is suitable for housing. The location of the residential development on the site, illustrative at this stage, is generally away from the main roads and is satisfactory. The detailed scheme could deliver a sufficient quantity of high quality housing, including extra care/sheltered accommodation, in a suitable location.

Economic growth – business uses

83. In addition to the supermarket element, the scheme includes a significant amount of office floorspace. This accords with LP policy LE6, which identifies the site for a mix including business use.
84. There are a number of other undeveloped schemes with planning permission in the city centre, and another entrant into this market will increase the competition. However the site is allocated, in part, for office use and is in a very accessible and sustainable location. There is no justification for resisting this element of the proposal in favour of other developments in similar policy locations. This aspect of the proposal complies with LP policies LE6 and EP10.

Highways matters and sustainable transport choices

85. The highway impact has been modelled using the Derby Area Transport Model. The results show that for all but one of the traffic peaks the flows would fall in comparison with the historic levels when the hospital was in operation. The increased flow would be on Osmaston Road, due to the location of the supermarket access. However many of the trips are likely to be already on the road network in proximity to the appeal site. Saturday flows show the greatest net increase, but these would be spread through the day, and not just at peak times.
86. The site is well located in relation to bus routes and access to the railway station. The development is satisfactory in terms of accessibility.

The case for others who appeared at the Inquiry

87. Mr P Gibbons⁵⁴ is a Governor of the Royal Derbyshire Infirmary, but did not appear in that capacity. He supported the sheltered accommodation, which would be close to the Community Hospital. In terms of Devonshire House, he gave some historical and more recent background, and stated that the building appeared reasonably sound, should be retained and ideally be used for some public benefit. There are a number of instances where that approach has been successful, using grants to the voluntary sector. The proposed supermarket

⁵⁴ Written representation on file

could be located anywhere on the site, as most trips to such facilities are made by car, and the store would not be part of the shopping centre.

Written representations

88. Wilmslow (Number 3) Ltd Partnership (part of the Westfield Group) objected to the appeal on retail policy and impact grounds⁵⁵.
89. The two specific grounds of objection are that the site forms no part of the adopted retail strategy for Derby and that there would be a significant impact on the city centre Sainsbury's food store.
90. LP policy S1 sets out a retail hierarchy and LP policy S8 provides that some types of retailing are more appropriately located out of centre. Policy LE6 identifies the regeneration opportunity of the appeal site and envisages a scheme incorporating a range of uses, but not including retail. The Framework does not alter the legislative position, and this element of the proposal is contrary to the development plan.
91. Specific criticism was raised of the appellant's retail study, particularly the suggestion that only 8.6% of the turnover of the proposed store would be drawn from Sainsbury's in the city centre. Given the proximity of that store and the Westfield shopping centre it is not credible that this figure would be correct. City centre stores have to compete directly with out of centre stores which benefit from free parking, and with internet shopping. It is not unreasonable to assume as much as 40% trade diversion from the city centre Sainsbury's. That would be an unacceptable impact on a key city centre use, which would conflict with paragraph 27 of the Framework, which provides that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.
92. Other written representations⁵⁶ were lodged with the Council at the application stage. These related to the lack of need for the supermarket and preferences for an hotel or a swimming pool, the effect on the streetscene, access arrangements, and the loss of Devonshire House and Wilderslowe Tower.

⁵⁵ Representations amended by the subsequent submission on the Framework

⁵⁶ Summarised in the Council's Committee Report CD 9, full representations on file

Inspector's conclusions

[Numbers in square brackets denote source paragraphs]

93. The report will deal first with the matters about which the Secretary of State particularly wishes to be informed. The report will then deal with the issue between the main parties – related to heritage matters.

Policy position

94. The only relevant part of the development plan to which reference was made is the saved policies in the Derby City Local Plan Review (2006) (LP). No party has suggested that there is any degree of conflict between the relevant parts of the LP and the National Planning Policy Framework ('the Framework'), and the LP can therefore be accorded full statutory weight. (No reference was made to the East Midlands Regional Plan.) [18/19]
95. The LP (policy R1) identifies the Derbyshire Royal Infirmary site as a regeneration priority location. More specifically, LP policy LE6 identifies the site as being suitable for a mix of uses – additional healthcare facilities, non-residential institutions, residential use, leisure use and business use. Retail use is not in the list of suitable uses [20]. Subsequently the draft City Centre Eastern Fringes Action Area Plan was published for consultation. Although this carries very little weight, as it never progressed, it is notable that it identified the site for housing led regeneration [23]. The absence of a retail designation for the site in the LP will be addressed below.
96. In terms of the issue between the parties – the effect on heritage assets - LP policies E18 and E19 are of particular significance [21]. These deal with the protection of views into and out of conservation areas, and encourage the retention of Locally Listed buildings. There are a range of LP policies dealing with other matters, which will be dealt with in the appropriate section below.
97. The Council's Core Strategy is at a very early stage. It is the agreed position of the parties that it carries little weight, and this is accepted [24]. No reference has been made to any matters within the Core Strategy.

Matters raised by the Secretary of State

Compliance with the development plan

98. This section deals with the principle of the proposal in relation to the site specific land use designation in the Derby City Local Plan Review (LP). Compliance with other policies is dealt with in separate sections below.
99. The LP identifies the Derbyshire Royal Infirmary site as a regeneration priority location (LP policy R1). More specifically, LP policy LE6 and the Proposals Map identifies the site as being suitable for a mix of uses – additional healthcare facilities, non-residential institutions, residential use, leisure and business uses. As identified in the Statement of Common Ground the residential and office elements of the appeal scheme therefore accord with the identification of the site in the adopted development plan [20, 38]. The limited food and drink elements of the scheme are accepted by the Council, as LP policy S12 provides for such uses in edge of centre locations such as the appeal site [63].

100. The one substantial element of the development which would not conform to the LP site identification is the proposed supermarket, as retail is not included in the range of uses considered acceptable. In addition it does not conform to the concept of a residential led development contained in the draft Action Area Plan – however this never progressed beyond draft stage, and can be accorded very little weight [23].
101. The Council has accepted the principle of the retail led development as this would facilitate the regeneration of the remainder of the site with no unacceptable impact on the city centre [52, 63] - the only argument being the location of the proposed supermarket in heritage terms, as discussed above. However it is necessary to examine this element further in the light of the absence of a retail designation in the development plan and in relation to the written objection from the Westfield Group.
102. Although the LP includes a relevant retail location policy (S2) this predates the change in national policy brought about by the publication of Planning Policy Guidance 4 "*Planning for sustainable economic growth*" (since superseded) and, more significantly, the Framework. Parts of the LP policy, particularly that relating to need, no longer accord with national policy and therefore it is most useful to consider the retail element of the proposal in the light of the Framework.
103. The Framework provides that retail uses should be located in town centres where practical, then in edge of centre locations. The proposed supermarket is a city centre use which would not be located in the city centre and would not be in accordance with the development plan. For that reason the framework requires that a sequential test should be applied.
104. It is clear that the site is physically suitable for a supermarket (subject to the concerns about the precise location) and available for that use. Nor is there any suggestion that the supermarket would be unviable – indeed the supermarket is regarded as the element of the overall development which would cross-subsidise other parts [38, 64].
105. The supermarket would clearly be edge-of-centre in pure distance terms [67], as it would be located directly opposite the city centre. It is nevertheless important that city centre options have been thoroughly assessed before considering the appeal site. The Council has undertaken this exercise and there is no suggestion of any city centre site or other sequentially preferable site being available, let alone suitable or viable [40, 68].
106. Given the agreed lack of city centre sites, preference can be given to an edge of centre location such as the appeal site if it is well connected to the city centre. In this case the location of the proposed supermarket is only just beyond the defined city centre, but it is on the far side of the intervening ring road – which might be regarded as a disincentive to linked trips. However there are a number of existing pedestrian crossing points which appear to be well used at present and the authority considers that pedestrians would not see crossing the ring road to be unsafe or difficult [67]. There is no reason to disagree with that assessment. On balance my judgement is that the direct intervisibility of the city centre and the proposed supermarket, and the considerable attraction of both, would further encourage linked trips.

107. As the retail element would be outside the town centre and is not in accordance with an up-to-date local plan, paragraph 26 of the Framework requires that an impact assessment should be undertaken. This should include assessment of the impact on investment and on the vitality and viability of the centre.
108. There is no persuasive suggestion that there would be any significant impact on existing, committed and planned public and private investment in or on the edge of the city centre arising from the appeal proposal. The Westfield Group has expressed concern [91] at the effect on city centre development in impact terms, which may reasonably be assumed to encompass concern about future investment. This objection is dealt with below.
109. In qualitative terms, although the position has improved in recent years, the Council still regards the provision of main food shopping to be limited in the central area [66]. It is clear that the supermarket would increase consumer choice.
110. In quantitative terms, the Council's Retail and Leisure Study 2009 concluded that there was little capacity for retail floorspace, but noted that a number of city centre stores were overtrading. The report recommended that additional foodstore provision should be made in the central area to reduce the amount of trade leakage from the city centre – which is currently at a high level. This is because many of the city centre stores are aimed at basket shopping rather than a main food shop [38, 69].
111. The trade diversion to the proposed supermarket would mainly be from other large stores in the city, which are currently the main destination for food shopping trips. In particular two large stores are identified, but the Council has confirmed that these do not benefit from any particular policy protection [71].
112. The evidence is that level of trade diversion from the city centre and district centres resulting from the proposed food supermarket should not exceed 10% and, in most cases, would be considerably lower than this. The impact on the city centre shopping area is expected to be around £4 – 5m, but this is unlikely to significantly undermine existing stores, especially as the city centre is not anchored by convenience shopping. The evidence demonstrates that there should be no overriding impact on the city centre's vitality and viability [41, 71].
113. A written objection has been submitted on behalf of the Westfield Group, partly on the basis that the site is not identified for retail development, and partly on the basis that the appellant's impact figure (8.6%) on the turnover of the city centre Sainsbury's is too low. The objector suggests as much as 40% trade diversion from the city centre [91].
114. However the appellant's otherwise unchallenged impact tables show a significant difference in impact across a range of foodstores - both in monetary value and total turnover. The level of impact is mainly dictated by the amount of bulk food shopping undertaken at each of the stores. The persuasive evidence is that the effect on the Sainsbury's foodstore in the city centre would be no greater than £2.3m because of the large element of top up shopping catered for by the store - as demonstrated in the Householder Survey (part of the Retail Statement) and the Council's Retail Study. The objector's assertion of a 40% impact is unsupported by any evidence, and the detailed assessments by the Council and the appellant are preferred. There is no reason to suppose that

the position of Sainsbury's, which is in a central and convenient location, would be significantly undermined [41].

115. The Council has resisted retail expansion south of the ring road, as it could stretch the city centre too far south to the detriment of shopping areas to the north [72]. However the authority accepts that there would be little direct trade diversion from the Cathedral Quarter, as this has a service sector emphasis, although there could be some effect if the focus of shopping shifted generally southwards. However the Council accepts that this would be mitigated by measures to manage car parking at the appeal site to encourage linked trips to the city centre – this could be the subject of a condition [72].
116. It is inevitable that a new development such as the proposed supermarket would have some impact on existing turnover elsewhere, but to justify an objection to the proposal it is not sufficient to simply suggest that there will be an impact. There is no persuasive evidence of such a significant impact on turnover that it would be likely to undermine the vitality and viability of the city centre, or in-centre trade/turnover and trade in the wider area, arising from the appeal proposal.
117. The Framework recognises city centres as the heart of communities, and sets out policies to support their vitality and viability. The approach allows for the allocation of appropriate and well connected edge of centre sites for main town centre uses where suitable and viable central sites are not available. Although the appeal site is not allocated for retail use, and this conflict with the development plan cannot be ignored, sequential and impact assessment in the light of the Framework provides a sound basis for concluding that the supermarket element is acceptable.
118. The agreed position is that the retail floorspace is the key element of the scheme which makes the whole development viable. Housing redevelopment alone would not be viable, and the retail element is necessary to cross-subsidise the regeneration of the rest of this important and sustainable site.

Design and layout

119. The detailed design and layout of the proposal are reserved matters, although access (dealt with below under highway matters) and the scale of the development are for consideration at this stage. That said, the Masterplan proposals are of significance in that they illustrate the type of development which may be submitted at a later stage.
120. The Masterplan clearly takes account of the fall in levels across the site, and the need to address a number of key issues. These particularly include the importance of the London Road frontage, where a new pedestrian boulevard is shown, the need for varying scale to respect the change in levels, and the intention to retain the majority of the pepper-pot towers in a new setting. The need to improve pedestrian links across the site is accommodated within the illustrative proposals. The Council's position is that the arrangement of the different use zones and the intended scale would be acceptable, and there is no reason to disagree with that assessment [76].
121. The scale of the built form would be lower than most of the existing buildings on the site. It would respect the local distinctiveness of the area [76]. One issue

noted by the Council is the extent of the car parking for the supermarket, although some of this is indicated as an undercroft [77]. However, as noted by the authority, the effect of this could be mitigated by landscaping and the use of appropriate materials. The constructive use of the fall in levels could also reduce the visual effect of the car parking.

122. The existing tree cover makes an important contribution to the site and the wider area. The Masterplan illustrative proposals show 17 of the protected trees to be felled – out of 34 individual trees and 10 groups – largely in the centre of the site and along Osmaston Road. The Council's regret at the extent of this tree loss is appreciated, but (as the authority notes) there may be scope to retain a greater number when the detailed layout of the development is being considered. At this stage there is no reason to oppose the development on that basis [78].
123. The appeal site is in an edge of centre location, directly opposite an important part of the city centre. In broad locational terms, the site is in a sustainable position. The development would result in a benefit in terms of the removal of large and outdated institutional buildings – which are inefficient in terms of energy usage - and their replacement by a high quality mixed use community. The new buildings would be constructed in a sustainable manner and this could be the subject of a condition [74].
124. Reference was made in the Secretary of State's letter to the question of prematurity. The site was identified in the adopted LP as a regeneration priority, and a range of mixed uses was specified. Although the Council's Core Strategy still has some way to go, and other Local Development Framework documents are even further away, there is no suggestion that the current proposal would be prejudicial. In view of the identification of the site as a regeneration priority location, the Council is keen that development should proceed as swiftly as possible (whilst obviously maintaining its objection to elements of the current proposal).
125. The scale of the development, stemming from the approach in the Masterplan, is acceptable, and accords with LP policies GD4 (design and the urban environment), H13 (general criteria for housing redevelopment) and E23 (design). It would provide the potential for high quality design and a good standard of amenity in line with one of the Core Planning Principles in the Framework. Many matters would be considered at the detailed stage but, from the approach in the Masterplan, there is nothing to suggest that the scheme would not provide a high standard of design and layout.

Housing

126. The most recent housing land supply figures indicate that the city has a 5.2 year housing land supply, which meets the basic need for a five year supply set out in the Framework at paragraph 49, but may not meet additional requirements [44, 81/82]. In any event, with an agreed low level of starts and a potential increase in requirements, it is common ground that the principle of enabling housing development on a previously developed site is to be encouraged. Added to this general position is the specific identification of the site in the LP for housing development (amongst other uses).

127. Although the proposal is in outline, the intention is that the housing development would principally be located in Zones 3, 4, and 5. Other accommodation would be above the commercial space in Zone 2.
128. In Zone 3, in the central area of the site, the residential accommodation would be of a more traditional scale than the flats in Zone 2, and is anticipated to provide a mix of largely family accommodation. Zone 4 would incorporate extra care/sheltered accommodation. Zone 5 would provide terraced buildings and townhouses taking advantage of the elevated level of this part of the site.
129. Whilst the details of the housing proposal remain for further treatment, the scale of the housing development is acceptable and there is no reason to suppose that the detail of the development would be anything other than high quality. In any event, this is a matter over which the Council would have control at a later stage.
130. The quantity of housing is obviously less than if the entire site were development for residential use, as had been proposed by the Council at one stage in the abandoned draft Action Area Plan. The LP does not however set a target for the quantum of housing on the site and the reasons for the scheme being retail-led have been discussed above and are accepted. The current proposal could deliver a sufficient quantity of housing in what is clearly a suitable location.
131. The proposal would provide a mix of housing, including the extra care/sheltered accommodation in Zone 4. The approach to housing mix accords with paragraph 50 of the Framework, which provides that Councils should plan for a mix of housing, including size, type and tenure.
132. The question of affordable housing has been the subject of detailed discussions between the appellant and the District Valuer – appointed by the Council to advise on viability matters. The conclusion was an agreement that the residential development on its own was unviable even without any Section 106 contribution, and it is agreed that there should be a relaxation of the Council's normal requirements. There is no evidence to disagree with that assessment.
133. The provisions of the Section 106 Obligation are for a viability assessment (including a ratchet mechanism relating to the land value when disposed of in phases) to be submitted to the Council, which would enable a level of affordable housing to be set for each phase. This agreed approach encompasses a reasonable mechanism which will encourage the construction of the market housing whilst providing affordable housing when appropriate.
134. The approach towards affordable housing is in line with paragraph 50 of the Framework. This provides that, where affordable housing is needed as is uncontested in this case, this should generally be provided on the site. The approach taken by the authority recognises that account has to be taken of changing market conditions over time.
135. Overall, the proposal is in accordance with site specific LP policy LE6 and policy H13, which sets out general criteria for residential development. Nor does it conflict with policy H11 dealing with affordable housing. It would deliver a sustainable, inclusive and mixed community in line with the Framework. The

development would provide a sufficient quantity of mixed housing to take account of need and demand, and offer choice in a city centre fringe location.

Sustainable economic growth

136. In addition to the retail floorspace, the appeal proposal includes a significant amount of office floorspace. This accords with identification of the site in LP policy LE6, which identifies the site for a mix of uses - including business use. This is reflected in the Statement of Common Ground, which notes that the location is a sustainable one for mixed use development and is in easy walking distance of the city centre, local shops and facilities [48].
137. The Council has noted that there are other undeveloped commercial schemes with planning permission in the city [84]. However no objection to this element of the proposal was raised by the authority and, given the identification of the site in the development plan for a mixed use scheme including offices, there are no policy reasons for resisting the current proposal on the basis of any effect on similar developments in similar policy areas.
138. Overall, the proposal would lead to the replacement of outdated buildings which have outlived the function for which they were built, and their replacement with a modern mixed use community. The development would encourage economic growth whilst protecting the environment, in line with paragraphs 17/18/19 of the Framework. The scheme would regenerate a large brownfield site, stimulate economic growth and provide employment. This would be in line with local and national policy to promote sustainable economic growth and jobs.

Sustainable transport choices and highway matters

139. The site is well served by road, rail, bus and pedestrian/cycling facilities. These matters are agreed between the parties in the Statement of Common Ground.
140. There is a network of pedestrian routes around the city centre, as shown in the initial Design and Access Statement, which can be accessed from the site. One missing element in the existing network is an easy route across the hospital site from Osmaston Road to London Road, and this would be provided within the indicative proposal.
141. The main bus pick up and drop off stands lie within easy walking distance to the north, and a range of services pass the frontages of the site, as set out in the appellant's Highways and Sustainability Statement. The railway station is a short walk to the east. The Statement also illustrates the easy access to a range of educational, employment and retail facilities within easy reach of the site. The development would therefore be well placed in terms of accessibility and would minimise the need to travel in the light of paragraph 34 of the Framework [86].
142. Access is a matter for consideration at this stage. The site is currently served by six access points, three on London Road and three on Osmaston Road. These would be rationalised to a single access on London Road (in the location of the former A. & E. access) and four on London Road – including a new signal controlled supermarket junction. The capacity of each access was assessed and was agreed by both parties to be acceptable [48, 85].

143. In terms of traffic, the appellant undertook a Transport Assessment which was supplemented by the Council's Derby Area Transport Model – which is a city-wide traffic assignment model used to determine traffic flows [85]. In comparison with the historic flows (2008) when the hospital was in operation the general position would be a reduced level of traffic. The exception would be during Saturday peak hours, but many of the vehicles are likely to already be on the roads near the appeal site, and the Council has not suggested that the network would be unable to cope with the limited increase [85]. The parties agreed that the detailed implications for the junctions on the Ring Road would need to be monitored, and the removal of some on-street parking on Midland Road would need to be promoted.
144. The Council has confirmed that the car parking levels would be acceptable, subject to the implementation of a parking Management Plan for the supermarket. This could be the subject of a condition. The illustrative proposal complies with the parking standards set by the Council, as described in the Highways and Sustainability Statement, and is below the maximum permitted parking levels – which should encourage more use of sustainable transport modes. In any event, this is a matter which can be controlled by the Council at the detailed stage.
145. Overall, the site is located in a highly accessible position close to the city centre which would encourage the use of a range of non-car modes of transport. There would be no highway problems caused by the proposal.

The effect on Heritage Assets

146. The only issue between the main parties relates to the effect on various Heritage Assets. Specifically this relates to:

- The proposed demolition of Devonshire House (Locally Listed).
- The effect on the Hartington Street Conservation Area (including Wilderslowe House - Grade II Listed).
- The effect on the Liversage's Almshouses and the Florence Nightingale statue (Both Grade II Listed).

These will be dealt with in turn, followed by the consideration of the uncontested effect on other Heritage Assets.

Devonshire House – the quality of the building

147. Devonshire House, which is located on the corner of London Road and Bradshaw Way, would be demolished to make way for the proposed supermarket. Devonshire House was built in late nineteenth century as a nurses' home. A major feature of the building is the wide rectangular repetitive chimneys, which have not been altered. However the building has been much extended by a number of later additions, of varying heights and roof styles [27]. (These elements are not covered by the Local Listing.) No internal historic features of any note were referenced by any party, and none were seen on site.
148. Devonshire House was part of the original concept of the hospital, but does not relate to the linear elements which were at the core of the original plan [27]. The building faced into the centre of what was the hospital complex (although

the former central block has been lost), and not towards the main roads. The main entrance porch has been removed, and has been replaced by an entrance in another location, which does not relate to the historic layout of the hospital. The building, along with a wide area of the hospital site and beyond, is now dominated by the multi-storey Wilderslowe Tower [8, 27].

149. The relatively recent report which recommended the inclusion of the building on the Local List refers to the 'significant townscape value' of the building as part of the Derbyshire Royal Infirmary complex. It recommended inclusion on the Local List in relation to age, rarity and historic interest [10, 27]. However no further assessment of the merits of the building was undertaken. This absence of a proper identification and assessment of the significance of the building does not sit easily with paragraph 129 of the Framework, which advises that such an assessment should be taken into account when assessing proposals.
150. The changes and extensions to Devonshire House which have taken place have undoubtedly detracted from any importance the building once possessed either in its own right or in relation to the original layout of the hospital. Overall, the quality of the building has been seriously compromised over the years. In particular damage has been done by the loss of the original entrance porch facing the main hospital and by the addition of generally unsympathetic extensions. There is no evidence that the building has any rarity value, in fact the evidence is that it is a fairly late and common example of its kind [27].
151. Nevertheless, the building has some remaining visual interest and this, combined with its Locally Listed status, qualifies it to be regarded as a Heritage Asset in terms of policies in the Framework. The appellant submitted evidence with the application and with the appeal to support the view that the building has limited significance and makes little contribution to its setting, as required by paragraph 128 of the Framework. Aside from the Listing report, the Council has produced little by way of assessment of the importance of the building. The significance of this Heritage Asset and the value that it holds for this and future generations is accordingly limited.

Devonshire House – refurbishment options

152. At one point the Council seemed to be suggesting that the retention of the façade and rebuilding behind might be an option. There is no suggestion that such a scheme would be acceptable in heritage terms, especially as the characteristic chimneys, which stretch well behind the façade, would be lost. However this was clearly based on a misreading of the Building Reuse Study, and in any event this was not pursued by the Council [54].
153. Three potential uses have been considered by the parties if Devonshire House were to be retained – reuse as nurses' accommodation, residential and offices [30, 51, 53 – 55]. No other potential uses were suggested.
154. The appellant's Building Reuse Study states that it is likely that there is enough accommodation elsewhere for the reduced demand for nurses. In addition, with the departure of the hospital to a new site, the need has effectively moved elsewhere [30, 55]. This latter point seems, in the absence of any contrary evidence, to be logical. The Council criticised the absence of detailed analysis from the appellant to demonstrate the level of need/provision at the new

hospital site [55] – but equally the authority produced no evidence of demand for this or any other use for Devonshire House.

155. The appellant also stated that the provision of nurses' accommodation was now in the hands of the private sector - which would seek modern studio accommodation, and that the environment at Devonshire House was 'sub-optimal' [55]. However these are not persuasive arguments in the absence of supporting evidence.
156. As was seen on site, the conversion of Devonshire House to either residential or office use would be significantly hampered by the structural walls. These walls, some of which sit beneath the chimneys, result in wide corridors and relatively narrow rooms, which would lead to an inefficient and potentially unattractive layout. A further problem with office use would be that any air conditioning would reduce the ceiling heights to an unacceptable extent [30, 53]. Although none of these factors completely rule out the conversion of the building, in the absence of evidence of any demand, they render reuse unrealistic.

Devonshire House – refurbishment viability

157. The appellant produced figures to illustrate a substantial viability gap if Devonshire House were converted to varying standards of residential or office use. These figures were not disputed by the Council, and the authority accepted that the retention and conversion of Devonshire House on its own would be unviable [28, 58].
158. The Framework, at paragraph 131, states that account should be taken of the desirability of putting heritage assets to viable uses consistent with their conservation. Although the appellant is correct that the Framework does not require a demonstration of viability, the approach is clearly that account should be taken of consideration of the viability of alternative uses.
159. The Council's position is that the viability of the entire development should be analysed, and the authority looked to the retail element to provide subsidy for the retention of Devonshire House [58]. However, although the Council accepted that the remainder of the development already requires subsidy from the supermarket, the authority did not put forward any evidence to demonstrate that the supermarket could viably fund another element of the overall scheme. The Council's reliance on the Colliers International Study [28] to demonstrate the potential for conversion was of limited weight, as this is a generalised study and does not deal specifically with Locally Listed properties comparable to Devonshire House.
160. The evidence from the appellant was that the project could not support the retention of Devonshire House [28]. However this statement was not supported by detailed evidence and it was confirmed that the District Valuer (acting for the Council) had never examined the viability of the supermarket [58]. No open book viability assessment has been produced. Overall, the appellant's evidence that the development as a whole could not support the retention of Devonshire House was not fully supported, but it remains the only evidence available.

Devonshire House – ‘Option 1 alternative’

161. The appellant's Design and Access Addendum set out 5 options for alternative locations for the supermarket. Options 2 – 5 are accepted by both parties to be unacceptable for the reasons set out in the Addendum, and these need not be explored further as the reasons are compelling.
162. Option 1 shows the retention of Devonshire House and the location of the supermarket closer to the pepper-pot towers further along London Road [34]. These towers are a notable feature in the townscape, and their retention and enhancement is an important element of the scheme.
163. One of the Council's witnesses supported Option 1, on the basis that it would avoid the necessity of demolishing Devonshire House. However it was accepted at the Inquiry that this was a personal preference and not the Council's formal position. This position was weakened still further by the fact that the Council's other witness, the Conservation Officer, had not assessed Option 1 on conservation or any other grounds [34].
164. The appellant's robust evidence on Option 1 was that locating the supermarket further from the London Road/Bradshaw Way junction would be commercially unattractive. The store needs to be in the optimum position so as to subsidise the other regeneration benefits [35]. This analysis is convincing. In addition, if the supermarket were located further from the junction and from the city centre, this would tend to depress linked trips.
165. Furthermore, Option 1 shows the supermarket to be in very close proximity to the flank wall of Devonshire House – which was formerly the main elevation facing the hospital. Aside from the harmful implications for the setting of the retained building, this would lead to a very poor outlook from the windows in this elevation of Devonshire House [36].
166. The Option 1 location for the supermarket would result in a line of buildings in close proximity along London Road. This would be seriously harmful to the setting of the retained Devonshire House and the nearest pepper-pot tower [36].
167. Overall, although the Option 1 location would allow for the retention of Devonshire House, it brings with it a number of other problems. It does not represent the beneficial alternative envisaged by one of the Council's witnesses.

Devonshire House – conclusion

168. As discussed above, Devonshire House is clearly a Heritage Asset in Framework terms, although its significance is limited due to the unexceptional quality of the building as originally constructed, the alterations which have since been undertaken, and the loss of much of its original context.
169. Nonetheless, the retention, maintenance, appropriate use and restoration of a Locally Listed building should be sought (LP policy E19). In this case, there is no persuasive evidence of any demand for the reuse of the building, and there would be a number of structural issues which would tend to suppress demand still further. On its own, the refurbishment of the building would not be viable, and the only evidence before the Inquiry was that the overall scheme would not be able to cross subsidise another unviable element.

170. The appellant has explored a range of other options, and all have been found wanting. In particular, the Option 1 alternative advocated by one of the Council's witnesses would be seriously problematic. It is clear that all reasonable alternatives to demolition have been considered and found to be unrealistic, and the proposal complies with LP policy E19 and with the Framework.

Hartington Street Conservation Area and Wilderslowe House

171. The Hartington Conservation Area was designated in 1982 and a copy of its original designation has been produced. However, as the Council acknowledges, it is unfortunate that there is no up to date conservation area appraisal, which would have informed consideration of the proposal [32].
172. The Conservation Area is focused around Hartington Street on the far side of Osmaston Road. This area is characterised by three story terraced housing, and is very different in style from the villas along Osmaston Road. The Council's concern in relation to the Conservation Area relates to the setting of these villas, and in particular the fact that the supermarket service yard and access would be to the rear of the buildings [32, 60].
173. The Council makes a similar point in relation to the setting of Wilderslowe House, which is a two storey Grade II Listed villa in classical style. The Council states that, due to the fall in the land levels, the service yard and supermarket building would be dominant [32].
174. However the Council stated that the appeal site "occupies a raised terrace" above the hospital site, but in fact the situation is more complex than that. The fall in the land is considerable and uneven. This fall in level across the appeal site means that there could be a significant improvement in the outlook from the eastern edge of the Conservation Area and from the rear of Wilderslowe House. The proposed supermarket access and service area has the potential, as suggested in the illustrative plans, to be set into the slope of the land. The setting of the Conservation Area and the outlook from the rear of Wilderslowe House could be over the roof of the new building [32, 33]. These details remain for subsequent consideration by the Council.
175. The setting of a Heritage Asset may make a positive or negative contribution to the significance of the asset. In this case the Osmaston Road part of the Conservation Area is dominated by Wilderslowe Tower, the buildings at its foot, and the hospital buildings – as can be clearly appreciated by the photographs submitted by the Council. This negative element, and the consequent positive benefit arising from the removal of these structures, is a matter which weighs heavily in favour of the proposal, but was apparently not assessed by the authority.
176. The Council makes an additional point related to the setting of Wilderslowe House. It is stated that there is a clear appreciation of the Victorian architectural group which links the buildings to the west (such as Wilderslowe House) with the Liversage's Almshouses to the east. The loss of Devonshire house would, it is alleged, separate this sweep of assets into two distinct groups [31, 61]. However, after carefully looking at the position both from within the site and from Bradshaw Way, it is exceptionally difficult to identify this sweep of buildings. Even leaving aside the visual effect of Bradshaw Way itself – to which

the eye is almost inevitably drawn – any such sweep of Victorian buildings is substantially interrupted by the later additions to Devonshire House, by a separate single storey utilities building and by Wilderslowe Tower.

177. Overall, the benefit to both Designated Heritage Assets brought about by the removal of Wilderslowe Tower and other hospital buildings would be considerable. The proposal would have a positive effect on the setting of the Conservation Area and Wilderslowe House, and would therefore accord with LP policy E18. The proposal would enhance the setting of these assets, and would enhance their significance – this is a matter which weighs in favour of the development.

Liversage's Almshouses and the Florence Nightingale statue

178. Liversage's Almshouses are a group of two storey buildings, dating from 1836, on the eastern side of London Road. They are significantly smaller than many of the buildings along the road, and are set back from the frontage behind gardens and trees. The statue of Florence Nightingale, dating from 1914, is in a very visible location on the hospital side of London Road. It faces away from the hospital towards the Almshouses, and a surrounding stone wall largely provides a discrete setting for the statue [33].
179. Leaving aside the question of the sweep of buildings terminating at Liversage's Almshouses (which has been addressed above), the Council's position is that the height of the proposed buildings would be dominant and would impact on the setting of the Almshouses. The overall scale would be out of context [33, 61].
180. The detailing of the proposed supermarket is not for consideration at this stage. However in terms of its general height, it is reasonable to suppose that it would not be dissimilar to that of Devonshire House. Although this matter was explored at the Inquiry, the Council were unable to substantiate the concern that the scale of the new building would be out of context.
181. There is a significant degree of separation between the Liversage's Almshouses and the indicative site of the supermarket. Due to the presence of London Road, the amount of tree screening and the retaining wall on the west side of the road, Liversage's Almshouses and the hospital site are not readily appreciated together. To the extent that they are viewed together, the dominant effect of Wilderslowe Tower and various temporary buildings is apparent, and the removal of these buildings would enhance the setting of the Almshouses.
182. The Florence Nightingale statue stands in its own setting, facing away from the appeal site, and would not be materially affected by the proposal, aside from the removal of the inappropriate backdrop in the form of Wilderslowe Tower and the temporary buildings.
183. The proposal would not affect the setting of the Almshouses or the statue, aside from the limited enhancement brought about by the removal of inappropriate buildings on the appeal site.

Balance and conclusion on the effect on Heritage Assets

184. The only issue between the parties relates to the effect on various heritage assets. Devonshire House is clearly a Heritage Asset in Framework terms, although of limited significance. The retention of such buildings is normally sought, but it is clear that all reasonable alternatives to demolition have been considered and found to be unrealistic. The demolition can therefore be supported.
185. As described above the setting of the Hartington Street Conservation Area and Wilderslowe House would be enhanced by the proposal, whilst the setting of Liversage's Almshouses and the Florence Nightingale statue would be largely unaffected (or even slightly enhanced).
186. There are other heritage assets which would be affected by the development – and where there is no dispute between the parties. Most of the characteristic 'pepper-pot' towers at the ends of the original ward blocks would be retained and incorporated into the new development. The retention of these features, and the significant enhancement of their setting, is welcomed by all parties. The loss of the ward blocks themselves has not been the subject of any objection and is acceptable. The setting of the Grade II Listed statue of Queen Victoria, currently in an isolated position and not in clear view would be greatly enhanced by the proposal. The Grade II Listed wall and railings along the London Road frontage would be retained, and would be set against the proposed boulevard – which all parties agree would be a positive feature of the development.
187. The appellant has provided a comprehensive description of the significance of the heritage assets and the contribution of their setting to that significance. The effect of the proposals on the setting of those assets has been assessed. In local policy terms, the proposal complies with LP policies E18 and E19. It also complies with paragraph 135 of the Framework (and other policies therein) in that the balanced judgement weighing the loss of Devonshire House against the benefits to other heritage assets is strongly in favour of the proposal.

Conditions and obligation

Conditions

188. If it is concluded by the Secretary of State that planning permission should be granted, the conditions set out in Annex 1 to this report are recommended.
189. The conditions are closely based on those agreed between the Council and the appellant, and were not the subject of objection by any other party. Some minor amendments have been made to align them more closely with national policy. All are necessary and reasonable and meet the other tests in Circular 11/95 '*The use of conditions in planning permissions*'.
190. The development is likely to be undertaken in phases and accordingly, along with the standard conditions applicable to an outline proposal (Conditions 1 – 3), certain conditions relate to the whole site, whilst others need to be addressed for each zone. Given the scale of the overall development and its likely implementation by different parties in phases, it is appropriate to allow a longer time period for implementation (Condition 3).

191. To ensure the satisfactory disposal of surface water by means of a sustainable drainage system, details need to be submitted for approval (Condition 4), bearing in mind the need to avoid trees and vegetation (Condition 6). There is a continuing need for surface water from parking areas and hardstandings to be passed through an oil separator (Condition 31). The development should be undertaken in accordance with the amended Flood Risk Assessment so as to avoid the risk of flooding (Condition 5).
192. Given the history of the site, ground contamination is likely. Accordingly conditions are necessary to investigate and remediate any problems which may be encountered before or during the course of the development (Conditions 7 – 10).
193. For each zone, details of levels need to be submitted, especially bearing in mind the importance of the slope across the site (Condition 12).
194. At this stage it is uncertain which trees are to be removed, but those which are to remain need to be protected during building works (Condition 13). Any which are to be lost should be replaced, along with additional planting (Condition 14).
195. In the interest of the health of adjoining residents, a Construction Method Statement needs to be approved for each zone. Amongst other matters this needs to deal with dust, dirt and ground water pollution (Condition 16).
196. The development includes the demolition of buildings of some historic interest. Accordingly a scheme of investigation needs to be submitted and implemented (Conditions 17 and 18).
197. In relation to the proposed supermarket, it is important that a Car Parking Management Plan is submitted, so as to facilitate linked trips to the city centre (Condition 19). The sale of non-food goods should be restricted, to accord with the impact evidence justifying the retail element (Condition 21). For a similar reason the approved A3 and A4 uses should not be changed to additional Class A1 accommodation (Condition 27).
198. A Phase 1 Habitat Survey was undertaken in 2010 and did not show any areas as being important for nature conservation, although there is the potential for bat habitat. Accordingly details of compensatory roosting features need to be submitted and implemented. (Condition 20).
199. An important element of the proposed townscape would be the 'London Road linear park'. Details of this should be submitted for approval and implemented (Conditions 15 and 22), together with details of subsequent maintenance (Condition 29). The agreed condition related tree maintenance in this area only to Zone 1, but this should clearly also relate to Zone 2.
200. Various matters need approval and implementation in the interests of highway safety. In Zone 5, details of the junction onto Osmaston Road (Condition 23); in Zones 2 and 3, details of the alterations to the access onto London Road; in Zone 1 (the supermarket), details of the Osmaston Road junction, service arrangements and cycle parking (Condition 26). Before any development begins, details of the rationalisation of the controlled crossing points need to be approved, in order to provide safe routes for pedestrians and cyclists (Condition 11).

201. To encourage sustainable transport, a Travel Plan should be submitted for approval, and subsequently implemented (Condition 25). To minimise energy consumption, a scheme for generating a proportion of the predicted energy requirement should be submitted (Condition 30).
202. Given the fact that the site is bounded by major roads on three sides, details of pollution levels and remedial measures need to be submitted for approval, and subsequently implemented (Condition 28).

Planning Obligation

203. The Section 106 Obligation which has been submitted provides the mechanism for the assessment of a contribution to the Council. This is dealt with above in relation to housing matters.
204. It also deals with the provision and maintenance of public open space, and an education contribution. The justification is principally set out in the Council's Planning Obligations Supplementary Planning Document (SPD) (2008), which rests on policies in the adopted Local Plan.
205. The Obligation also provides a public realm contribution. This relates to the need to address the impact of the retail element on the city centre.
206. Finally, the highways contribution relates to the monitoring of the impact of the development, and a contribution to the promotion of a Traffic Regulation Order related to parking. This has been discussed above.
207. The provisions of the Obligation are accepted by the Council, and I have considered these in light of the statutory tests contained in Regulation 122 of the Community Infrastructure Levy Regulations and Circular 5/2005. The provisions fairly and reasonably relate to the development proposed, resting on a foundation of LP and SPD policy, and the Obligation passes the statutory tests.

The planning balance

208. In relation to the area of dispute between the parties, the effect on various Heritage Assets, the conclusion is that the demolition of the Locally Listed Devonshire House has been comprehensively justified and is acceptable – even before taking other matters into account. The Hartington Street Conservation Area and Wilderslowe House would be enhanced by the proposal, whilst the setting of Liversage's Almshouses and the Florence Nightingale statue would be largely unaffected (or even slightly enhanced). The effect on other Heritage Assets is not in dispute and in a number of instances the development would lead to a significant enhancement. The overall balance in relation to the effect on Heritage Assets is therefore strongly in favour of the development.
209. No objection has been raised by the Council in relation to any other issue. The site is a regeneration priority location, and there is no suggestion of any other mix of development which would support the regeneration of the area.
210. The only element of the proposal which is not in accordance with the development plan is the retail floorspace, as the site is not identified for that use. However both main parties agree that this is the use which can trigger the development as a whole. It has been comprehensively justified in retail policy terms, both in relation to local policy (in terms of the broad locational approach

if not specific site identification) and national policy. Although not allocated as such, the evidence (supported by the Council) clearly demonstrates that this is an appropriate edge of centre site for a main town centre use, which is well connected to the town centre and that a suitable town centre site is not available.

211. The proposal would provide a sustainable development, both in relation to its location close to the city centre and transport links, and in terms of the elements of layout and design envisaged in the Masterplan. It would provide a substantial element of housing in a suitable location, with the provision of affordable housing addressed by the Planning Obligation, and provide an employment element in a suitable location.
212. Overall, the development would encourage the effective use of an important previously developed site, which is currently largely disused, in a sustainable location close to the city centre. The Framework provides that permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. The proposed development would bring significant benefits which would substantially outweigh any harm which might be perceived related to the absence of a LP retail designation in the LP, or the effect on Heritage Assets, or any other matter.

Recommendation

213. It is recommended that the appeal be allowed and planning permission be granted subject to conditions.

P. J. G. Ware

Inspector

Annex A. Schedule of conditions.

Appeal Ref: APP/C1055/A/11/2161815

Derby Royal Infirmary, London Road, Derby DE1 2QY

1. The development hereby permitted shall be carried out in accordance with the following approved plans:

3551-D19-0015 (Site Layout Masterplan Zone Plan)

3551-D19-0001 (Site Plan)

ITIM4017-GA-005 (Access Plan)

ITIM4017-GA-007 (Access Plan)

ITIM4017-GA-008 (Access Plan)

ITIM4017-GA-010 (Access Plan)

2. Details of the following matters (hereafter referred to as the reserved matters) shall be submitted to and approved in writing by the Local Planning Authority for each zone on approved zoning plan (No. 3351-D19-0015). Development in any zone shall not commence prior to the approval of the following works in each zone:

a) Layout (including internal road layout)

b) Appearance

c) Landscaping

3. Application for the approval of the reserved matters for the first zone of development shall be submitted to the Local Planning Authority within three years from the date of this permission and the development of the first zone shall be begun either before the expiration of five years from the date of the permission, or within two years from the approval of the reserved matters, whichever is the later. Application for the approval of reserved matters for all other zones shall be submitted to the Local Planning Authority within ten years from the date of this permission and begun within two years from the last approval of reserved matters.

Pre-commencement – whole site

4. Before any development commences, a site-wide assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system and the results of the assessment shall be submitted to and approved in writing by the Local Planning Authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- (i) provide information about the design storm period and intensity, the method employed to delay and control surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; and
 - (ii) include a timetable for its implementation; and
 - (iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
5. The development shall be implemented in accordance with Section 3.2 of the amended Flood Risk Assessment (January 2011) and in accordance with details of how the scheme shall be maintained after completion, which shall have been submitted to and approved in writing by the Local Planning Authority before the development commences.
6. Prior to commencement of development, a site wide drainage and underground services Masterplan, to include details of depth and width of service runs, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such agreed details.
7. An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced before any development commences on the site. The written report shall be submitted to and approved in writing by the Local Planning Authority. The report of the findings must include:
 - (i) a survey of the extent, scale and nature of contamination; and
 - (ii) an assessment of the potential risks to:
 - human health
 - property (existing or proposed) including buildings, pets, woodland and service lines and pipes
 - adjoining land
 - ground waters and surface waters
 - ecological systems
 - archaeological sites and ancient monuments; and
 - (iii) an appraisal of remedial options, and options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's `Model Procedures for the Management of Land Contamination, CLR 11 (or any subsequent policy/guidance).

8. A detailed remediation scheme (for all zones) to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be

submitted to and approved in writing by the Local Planning Authority before any development on the site is commenced. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

9. The approved remediation scheme must be carried out (on a zone by zone basis) in accordance with its terms prior to the commencement of any development other than that required to carry out remediation. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority.
10. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 7, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 8, which shall be submitted to and approved in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 9.
11. No development shall commence on the site until details of the proposed rationalisation of the controlled crossing points across London Road between Traffic Street and Midland Road, which could involve relocation, removal, replacement or refurbishment of the crossings, have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such agreed details.

Pre-commencement – each zone

12. Before development commences on any zone within the site, details of finished floor levels and ground levels as proposed for buildings and external spaces within that zone shall be submitted to and approved in writing by the Local Planning Authority and implemented in accordance with such agreed details.
13. During the period of construction works in each zone, all trees, hedgerows and other vegetation to be retained shall be protected in accordance with a Tree Protection Plan and Arboricultural Method Statement in accordance with BS:5837: 2005 ("Trees in relation to construction") (or any subsequent policy/guidance) and in accordance with the following requirements:
 - a) the date of the construction of such protection and of its completion shall be submitted to and approved in writing by the Local Planning Authority in writing before any site works commence; and

- b) the agreed protection measures shall be implemented and retained in position at all times, with no use of or interference with the land contained within the protection zone, until completion of construction works.
14. The trees to be felled in each zone shall be replaced in accordance with details of species, siting and size, which shall have been approved in writing by the Local Planning Authority within 3 months of the felling of the trees. The date of the felling shall be notified in writing to the Local Planning Authority and the replacement trees shall be planted during the first planting season or within 12 months, whichever is the sooner, following the felling of the trees.
15. Before development commences in Zones 1 or 2, a plan for the maintenance and management of retained trees and new tree planting and other retained vegetation along the north eastern boundary for benefit of biodiversity and public amenity, fronting London Road and Bradshaw Way, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with such agreed details.
16. Before development commences on any zone on the site, including any works of demolition, a Construction Method Statement for that zone shall be submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction of the development and include:
- a) measures to control the emissions of dust and dirt during construction; and
 - b) a scheme to treat and remove suspended solids from surface water run-off during construction; and
 - c) details of any piling using penetrative methods, demonstrating that there would not be any resultant risk to ground water.
17. No development shall take place in any zone within the site, including demolition, until a Written Scheme of Investigation for historic building recording has been submitted to and approved in writing by the Local Planning Authority for that zone and until the on-site element of the scheme has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and
- a) the programme and methodology of site investigation and recording; and
 - b) the programme for post investigation assessment; and
 - c) provision to be made for analysis of the site investigation and recording; and
 - d) provision to be made for publication and dissemination of the analysis and records of the site investigation; and
 - e) provision to be made for archive deposition of the analysis and records of the site investigation; and

- f) nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 18. No part of the development in any zone shall be occupied until the post-excavation reporting, dissemination and archive deposition of the historic building survey has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 17, to the written satisfaction of the Local Planning Authority. All historic building recording should be carried out by a suitably qualified and experienced buildings archaeologist.
 - 19. Before the customer car park associated with the supermarket in Zone 1 is implemented, details of a Management Plan for the parking, including hours of permitted parking, scale of charges and hours of operation, shall be submitted to and approved in writing by the Local Planning Authority. The approved management plan shall be implemented in accordance with such agreed details.
 - 20. The demolition of buildings and any development shall be carried out in accordance with the recommendations in the bat survey (June 2011) and compensatory roosting features shall be implemented prior to the occupation of any buildings, in accordance with details of their number, design and siting which shall be submitted to and agreed in writing by the Local Planning Authority before development commences in each zone.
 - 21. The supermarket in Zone 1 shall be for the sale of no more than 20% net sales floorspace for non-food goods.
 - 22. No development shall commence on the London Road linear park until details of the layout, phasing, landscaping and planting schedule have been submitted to and approved in writing by the Local Planning Authority and the external works shall be implemented in accordance with a timetable to be agreed in writing by the Local Planning Authority.
 - 23. None of the dwellings in Zone 5 with vehicular access directly onto Osmaston Road shall be occupied until:
 - a) the proposed junction has been constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority; and
 - b) a 2.4m x 50m visibility splay has been provided to the north west of the residential access road. Within the visibility splay nothing shall be constructed or allowed to grow above 600mm above ground level.
 - 24. The proposed residential and office development in Zones 2 and 3 which are to be served by vehicular access directly onto London Road shall not be occupied until the proposed junction has been improved/altered in accordance with details to be submitted to and approved by the Local Planning Authority.
 - 25. No land uses within the site shall be commenced until a Travel Plan covering all aspects of the intended means of travel to and from the development has been

submitted to and approved in writing by the Local Planning Authority. The agreed Travel Plan shall be implemented in accordance with such details.

26. The proposed supermarket shall not be used until:
- a) the proposed traffic signal controlled junction on Osmaston Road as shown for indicative purposes only on Drg No ITM 4017-SK-005 has been constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The submitted details shall show how this new traffic signal controlled junction will be linked to the City's urban traffic control system; and
 - b) an appropriate level of cycle parking has been provided in accordance with details submitted to and approved in writing by the Local Planning Authority; and
 - c) servicing provision is made available for use in accordance with details submitted to and approved in writing by the Local Planning Authority.
27. Notwithstanding the provisions of the Town and County Planning (Use Classes) Amendment Order 2005 (or any subsequent amendment or replacement thereof), the A3 and A4 uses hereby permitted shall not be changed to A1 use.
28. Before works commence on any phase of development involving residential accommodation, details of mitigation measures to ensure that all sensitive receptors fronting onto Osmaston Road, London Road or Bradshaw Way, are not exposed to pollution levels exceeding National or European Air Quality Objectives shall be submitted to and agreed in writing by the Local Planning Authority. All agreed measures must be suitably validated and a relevant report of the validation undertaken shall be submitted to and approved in writing by the Local Planning Authority before that phase of the development is occupied.
29. A Landscape Management Plan, including maintenance responsibilities and management schedules for the London Road linear park, shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the first phase of the development fronting London Road. The details of the plan shall be implemented as approved.
30. Before any zone of the development hereby permitted is commenced, a scheme for generating a proportion of the predicted energy requirement of the development from on-site renewable sources in that zone shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before any buildings in that zone are occupied and thereafter be maintained so that it provides the required level of generation.

Continuing Obligation

31. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water from parking areas and hard standings susceptible to oil contamination shall be passed through an oil separator designed and constructed to have a capacity compatible with the site being drained. Roof water shall not pass through the interceptor. Continuing

maintenance of the interceptor shall be provided in accordance with the manufacturer's instructions.

APPEARANCES

FOR THE APPELLANT: Mr R Griffiths QC Instructed by Signet Planning	
Mr S Chadwick BSc Hons RICS	Managing Director, Signet Planning
Mr A Gardner BArch BA Arch(Hons) RIBA	Partner, DLG Architects
Mr A Walker Dip Arch (Dist) Grad Dip(cons)AA RIBA AABC	Conservation consultant
Mr C Potter Bsc Est Man MRICS	Senior Director, GVA

FOR THE LOCAL PLANNING AUTHORITY: Mr H Richards of Counsel Instructed by the Head of Legal Services	
Councillor M Carr	Littleover Ward Member, Vice Chair Planning Control Committee
Mr N Robertson MA(Hons), Dip EurUrbCons, IHBC	Conservation Officer

INTERESTED PERSONS:	
Mr P Gibbons	Resident of Alfreton

DOCUMENTS

		Inquiry document
Doc	1	List of persons present at the Inquiry
		Council's documents
LPA	1	Opening statement
LPA	2	Local Plan Review – central area inset
LPA	3	Proof of evidence of Councillor M Carr
LPA	4	Proof of evidence and Appendices of Mr N Robertson
LPA	5	Closing statement
		Appellant's documents
APP	1	Opening statement
APP	2	S106 Obligation dated 6 February 2012
APP	3	Proof of evidence of Mr S Chadwick
APP	4	Appendices to APP 3
APP	5	Mr A Walker
APP	6	Appendices to APP 5
APP	7	Rebuttal evidence of Mr A Walker
APP	8	Proof of evidence of Mr C Potter
APP	9	Rebuttal evidence of Mr C Potter
APP	10	Proof of evidence of Mr A Gardner
APP	11	Appendices A to APP 10
APP	12	Appendices B to APP 10

APP	13	Rebuttal evidence of Mr A Gardner
APP	14	Appendices to APP 13 (comprising Design and Access addendum; Building Reuse Study; Landscape and Visual Impact Assessment
APP	15	Highways and Sustainability Statement
APP	16	Closing statement
		Core documents - Derby City Council policy documents
CD	1	City of Derby Local Plan Review - Adopted January 2006 (extract)
CD	2	Derby Cityscape Masterplan (incorporating Area Development Brief for DRI Site) – January 2005
CD	3	City Centre Eastern Fringes Area Action Plan Preferred Options Document DPD - July
CD	4	2008 Derby Core Strategy Options Paper DPD – January 2010. 4a. Derby Housing Market Area
CD	5	Draft Derby City Centre Regeneration Framework – August 2011
CD	6	Planning Obligations SPD – December 2008
CD	7	City of Derby Local List – March 2011. Devonshire House and London Road
		Core documents - Committee Reports/Minutes
CD	8	Committee update report in relation to DRI application reference: DER/11/10/01429 – 21 April 2011
CD	9	Committee report in relation to DRI application reference: DER/11/10/01429 – 1 September 2011
CD	10	Minutes of Planning Control Committee Meeting – 1 September 2011
CD	11	Minutes of Planning Control Committee Meeting – 20 October 2011
CD	12	Committee Report in relation to DER/03/11/00246 Friar Gate Goods Yard – 20/10/11
		Core documents - Heritage Publications
CD	13	Health and Welfare Buildings Selection Guide - Heritage Protection Department, March 2007
CD	14	The Setting of Heritage Assets – English Heritage Guidance
CD	15	Understanding Place: Historic Area Assessments in a Planning and Development Context - English Heritage
CD	16	Understanding Place: The Conservation Area Designation, Appraisal and Management - English Heritage
CD	17	Good Practice Guide for Local Listing: Identifying and Managing Significant Local Heritage Assets – English Heritage, Draft for Consultation February 2011
CD	17A	Encouraging Investment in Industrial Heritage at Risk. Colliers International. 2011 (extract)
		Core documents - Retail Reports
CD	18	Underserved Markets: Retail and Regeneration (Department of Communities and Local Government, November 2007)

CD	19	Retail Led Regeneration Study by DTZ on behalf of BIC (2008)
CD	20	Derby Retail & Leisure Study by Roger Tym & Partners April 2009
		Core documents – Government policy
CD	21	PPS1: Delivering Sustainable Development
CD	22	PPS3: Housing
CD	23	PPS4: Planning for Sustainable Economic Growth
CD	24	PPS5: Planning for the Historic Environment
CD	25	PPS9: Biodiversity and Geological Conservation
CD	26	PPG13: Transport
CD	27	PPS22: Renewable Energy
CD	28	PPS25: Development and Flood Risk
CD	29	Draft National Planning Policy Framework
CD	30	The Plan for Growth, HM Treasury March 2011
CD	31	Ministerial Statement by Greg Clarke MP 23 March 2011
CD	32	'Planning for Growth' advice provided by the Planning Inspectorate for use by its Inspectors 31 March 2011
CD	33	Laying the Foundations: A Housing Strategy for England
		Core documents – Reports submitted with application
CD	34	PPS5 Statement April 2011
CD	35	Design and Access Statement November 2010
CD	36	Heritage Statement November 2010
CD	37	Bat Survey June 2011
CD	38	Flood Risk Assessment January 2011
CD	39	Retail Statement November 2010