

**Application Number:** 18/01304/REM

**Description** Reserved matters application for internal access, appearance, landscaping, layout and scale for 134 units, 75-100 sqm of A1 (retail use) for the provision of a local convenience store with access from Ortensia Drive and the land north of the site, with associated landscaping, infrastructure and ancillary works

**AT** Land North And West of Wavendon Business Park, Ortensia Drive, Milton Keynes, Wavendon Gate, MK17 8LX

**FOR** Abbey Development Ltd

**Target:** 12.04.2019

**Extension of Time:** Yes

**Ward:** Wavendon

**Parish:** Wavendon Parish  
Council

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## Update Paper

### 1.0 RECOMMENDATION

1.1 The recommendation remains to grant the application, with the following amendments to condition 7.

### 2.0 CONSIDERATIONS

2.1 Following the publication of the committee report, The Stables have sought legal advice on whether the Deed of Easement can be imposed as part of the planning process. Following the receipt of this legal opinion the Council obtained its own legal advice which states that while the Deed of Easement can be considered a material planning consideration, it could only be required by condition or obligation if it was necessary to make the application acceptable.

- 2.2 In light of that opinion, paragraph 5.45 of the officer's report is to be deleted and replaced with the following paragraphs:

5.45 In addition to these physical measures it has been requested by The Stables that the applicant consider entering into a Deed of Easement to address the potential for future noise complaints, and they believe that this can be dealt with via the planning process. The impact of noise is a material planning consideration in the determination of this application, however, it is the LPA's position that **the current mitigation measures proposed by the applicant mean that this application is acceptable in its current form.**

**The Council has received advice that a Deed of Easement can be a material planning consideration, and could be secured by condition where it is considered necessary to do so to make a development acceptable in planning terms. However, the application is considered acceptable in planning terms with the mitigation measures that have been agreed and will be put in place. These mitigation measures have gone beyond the requirements of the applicant's and the Council's acoustic consultant's recommendations and therefore it is not considered necessary to require the applicant to enter into a Deed of Easement as an additional mitigation measure. The applicant has indicated that it is not prepared to enter into such a Deed of Easement. A planning condition requiring the applicant to enter into a Deed of Easement can only be imposed if this is necessary to make the development acceptable. Such a condition is not considered necessary in this case, would not meet the six tests for conditions and would therefore be open to challenge. The development is acceptable in its current form and therefore there is no need for any further mitigation.**

### 3.0 CONDITIONS

- 3.1 It is recommended that condition 7 is reworded as follows, to provide clarity:

#### Parking Spaces Implementation

7. No dwelling or building hereby permitted shall be occupied until the parking spaces, shown on the approved site layout, serving that dwelling or building have been laid out and surfaced in accordance with the plans hereby approved. The parking spaces shall be retained thereafter and only be used for the parking of vehicles.

Reason: To ensure that sufficient parking is provided to meet the needs of the development in accordance with policies CT10 of Plan:MK (2019) and the Parking Standards SPD.

#### **4.0 ADDITIONAL REPRESENTATIONS**

##### Public Representations

- 4.1 Since the publication of the committee report further comments have been received from representatives of The Stables and other members of the public. A number of the public representations question why they have been notified about this application (for example, not recalling that they originally commented).
- 4.2 Most of material planning considerations raised have already been noted in the main report at A3.14, and are covered in the main consideration in the report and in this update paper. Additional material planning considerations are noted below:
- Suggest that the applicant should be required to enter into a Deed of Easement.

##### Late Submission by The Stables

- 4.3 In addition, The Stables has submitted a report by its acoustic consultants two days before committee. It has reviewed the noise assessments by the applicant and the Council's acoustic consultant's review of that noise assessment. The Stables' report considers that the noise assessment by the applicant and the Council's commissioned review of that report to be inadequate, and suggests that the Council has failed to consider the impact of noise from The Stables on the future occupiers. The acoustic consultant also considers that some of the conditions in the report are open to challenge.
- 4.4 The impact of noise has been fully considered in the officer's report and the conditions have been carefully considered to ensure enforceability, and the applicant has agreed to the imposition of these conditions. As above, it is the Council's position that requiring a Deed of Easement by condition would be open to challenge, and would be at far greater risk of challenge than the conditions securing the mitigation measures that have been agreed with the applicant during the course of the application.