THE POMPADOURS, EDENHALL ROAD, ROMFORD RM3 8DL

LONDON BOROUGH OF HAVERING

APPLICATION UNDER SECTION 73 TO AMEND CONDITION 2 OF FULL PLANNING PERMISSION REF. P1301.19

PLANNING STATEMENT

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Client

HILLDENE ESTATE LIMITED

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1.0 INTRODUCTION

1.1 This Statement has been prepared by NTA Planning on behalf of Hilldene Estates Limited (Applicant), the owner of the former Pompadours Public House, Edenhall Road, Romford RM3 8DL (the Site). The Site falls within the London Borough of Havering (the Council).

1.2 This Statement supports an application submitted pursuant to Section 73 of the Town and Country Planning Act 1990, seeking to vary Condition 2 of planning permission ref. P1301.19. The permission relates to the demolition of the former public house, known as The Pompadours, and the construction of 21 new dwellings.

1.3 Planning permission was granted by Havering Borough Council for the development on 10th February 2021.

1.4 All pre-commencement conditions and relevant pre-commencement obligations pursuant to the Section 106 Agreement have since been discharged. The Applicant has also submitted the necessary Community Infrastructure Levy (CIL) forms associated with the implementation of the planning permission and made the requisite payment demands. Furthermore, two buildings on the Site have been demolished, and the commencement of development pursuant to the 2021 permission within the permissible three-year period was subsequently confirmed through the grant of a Lawful Development Certificate (ref. E0009.24) by the Council on 26th April 2024.

1.5 A requirement of the approved development, is that 8 units of the overall 21 (38% by unit) shall be an affordable tenure in a mix of affordable rent and shared ownership) meeting the Council's policy requirement for 35% affordable housing. These units are indicated clearly on approved drawing PD-01 Rev G. However, since the original permission was granted, circumstances have changed, and the Applicant's latest financial viability assessment has demonstrated that the delivery of affordable housing is no longer viable. Further details of the assessment and the assumptions underpinning this conclusion are set out within the detailed Financial Viability Appraisal (FVA), prepared by DS2, submitted in support of this application and are summarised within this Statement.

1.6 Accordingly, this Section 73 application seeks to vary the existing planning permission to remove reference to the affordable housing provision on the approved plans, such that all 21 dwellings will be delivered as market housing.

1.7 Within the Decision Notice, affordable housing provision is currently labelled on the Location Plan and Proposed Site Layout Plan (ref. 4352-PD-01 Rev. G), which is listed as an approved planning drawing, controlled by Condition 2. The application therefore seeks approval of an amended Proposed Site Layout Plan removing reference to these affordable housing designations, together with a corresponding amendment to Condition 2, to specifically list the approved drawings. Whilst drawing 4352-PD-01 Rev G indicates the affordable housing units, the provision of affordable housing is legally secured through a S106 Agreement (Legal Ref: HAV021000) which will also need to be amended by way of a Deed of Variation.

1.8 The proposed variations relate solely to the tenure of the dwellings and the associated removal of the affordable housing requirement. No physical alterations are proposed to the approved development, including its design, scale or layout. The development will therefore continue to comprise 21 dwellings in accordance with the approved scheme.

1.9 This Planning Statement should be read alongside the following documents, which accompany the application:

DOCUMENT	AUTHOR	REFERENCE
Application Form	NTA Planning	PP-15352285
CIL Form	NTA Planning	PP-15352285
Financial Viability Appraisal	DS2	09.11.2026
2026 Location Plan and Proposed Site Layout Plan	BHD Architects	339-PD-01
2021 Approved Proposed Site Layout Plan	Haskins Designs	4352-PD-01 Rev. G

STRUCTURE OF THIS STATEMENT

1.10 Section 2 of this Statement provides a description of the Site and surrounding area.

1.11 Section 3 provides relevant planning history for the Site.

1.12 Section 4 provides a detailed description of the proposed development, the proposed variation to the planning permission as well as the planning strategy and justification for the Section 73 approach.

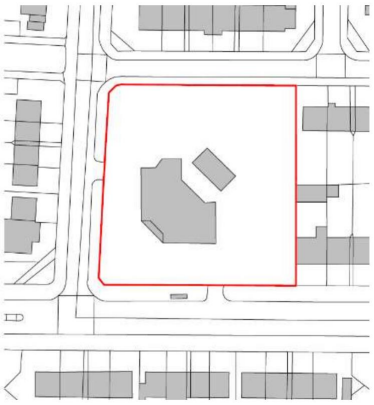
1.13 Section 5 sets out the relevant planning policy context, followed by our assessment of the development's viability against relevant policies and other material considerations in section 6.

1.14 This statement is concluded at Section 7.

2.0 DESCRIPTION OF THE SITE AND SURROUNDING AREA

APPLICATION SITE

2.1 The site is broadly rectangular in shape and amounts to 0.3 hectares. The site falls gently from north to south. It is bounded by Hilldene Avenue to the south, Edenhall Road to the west and Bridgwater Road to the north.



EXISTING SITE

2.2 The site is occupied by the Pompadours Public House (PH), a two-storey building. The site has been vacant for a prolonged period and its single storey rear extension and associated single storey outbuilding which sits behind the pub have been demolished (in 2024). There is an associated car park to the front and side of the building, on the corner of Hildene Avenue and Edenhall Road. The remainder of the site is grassland which once served as amenity space for the public house.



AERIAL VIEW OF EXISTING SITE

2.3 In association with the extant planning permission, the main pub building is due to be demolished. In the years during its vacancy, it has been the subject of sever trespass and vandalism and is now in a poor state of repair. Efforts have been made to secure the site, but the condition of the building and site remains very poor, with all windows now broken and graffiti throughout. The site has recently been secured with boundary hoarding to prevent further trespass and damage from occurring.



VIEW FROM EDENHALL ROAD (2008)



VIEW FROM EDENHALL ROAD (2021)

2.4 There are two access points, one from Hilldene Avenue and the other from Edenhall Road. There are some trees within the site, located on the south-east corner of the site. A bus stop is located outside of the application site to the south on Hilldene Avenue, brining passengers toward Harold Hill or Noak Hill. Despite the proximity of the bus stop, the site has a low PTAL of 2.

SURROUNDING AREA

2.5 To the north, west and east of the development site, the locality is primarily residential, principally comprising two storey terraced housing.

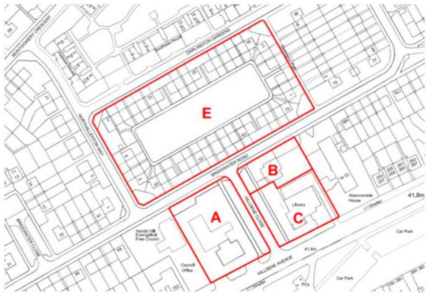




ADJACENT HOUSING HILLDENE AVENUE (SOUTH) AND BRIDGEWATER ROAD (NORTH)

2.6 Further to the east is the Harold Hill Minor District Centre which includes retail and other commercial units.

2.7 The locality has undergone some regeneration in recent years. The Harold Hill Regeneration comprised of four adjacent sites on Hilldene Avenue creating a mix of market and residential development. Planning permission was first granted for 100 units across the four sites.



HAROLD HILL REGENERATION SITES

2.8 The site closest to the pre-application site was Site A, for which a scheme of 12no. houses and 9no flats were approved in 2015 in a part-two, part three storey development. Construction commenced in 2015 and completed in 2016 (ref: P0819.14). Some images of this scheme are below. This is 0.2 miles to the east of the pre-application site. This development



2014 EXTRACT FROM DEISGN AND ACCESS STATEMENT



AS-BUILT SCHEME

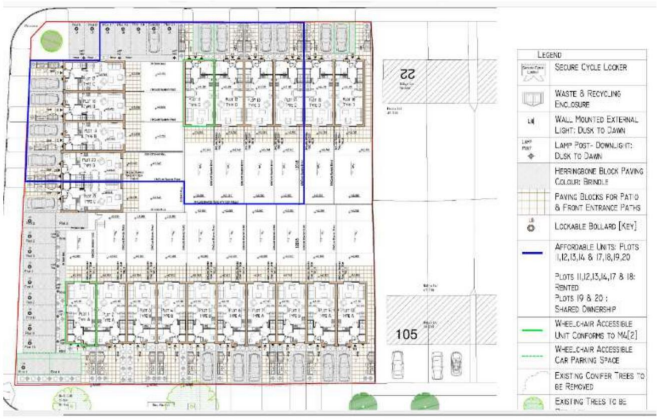
3.0 PLANNING HISTORY

3.1 The site has been the subject of several planning applications in recent years. The table below provides a detailed summary of the site's recent planning history:

REFERENCE	DESCRIPTION	DECISION
Applications for full planning permission		
P1754.14	Demolition of the existing pub "The Pompadours", and the construction of 25no. new residential units	Refused 20.7.15 Appeal Dismissed 24.6.16
P1859.17	The demolition of the existing Public House, "The Pompadours", and the construction of 21 new residential units.	Withdrawn June 2018
P1301.19	**Demolition of the existing public house "the Pompadours" and the construction of 21 new houses**	Approved 10.2.21
2021 Condition Activities		
N0051.23	Non-material amendment application to vary trigger point of Condition 27 relating to P1301.19	Approved 11.01.24
Q0267.23	Discharge of Conditions 5 and 30 relating to P1301.19	Approved 26.01.24
Q0267.23	Discharge of Condition 25 relating to P1301.19	Approved 29.01.24
Q0267.23	Deemed Discharge of 13, 19 and 20(A) relating to P1301.19	Approved/Deemed Discharged 30.01.24
Q0267.23	Discharge of Condition 10(A) relating to P1301.19	Approved 05.02.24
E0009.24	Lawful Development Certificate – Demolition of a building constitutes a material operation for the commencement of P1301.19.	LDC Issued 26.04.24
2021 S106 Obligations Activities		
S106 12.6 (A) relating to HAV021000	The Owner shall serve notice on the Council of the following dates and/or events (a) Implementation by way of the Notice of Implementation of Development Form	Notice sent 8.12.23
S106 Sch 4, Pt1 (1.1) relating to HAV021000	The Owner Covenants with the Council 1.1 not to Implement the Development until it has submitted to the Director and obtained written approval for the details of the location, type, size, mix and tenure for the Affordable Housing Units in accordance with this Deed and the Planning Permission such approval not to be unreasonably withheld or delayed	Approved 24.01.24

3.2 Following a number of previous unsuccessful planning applications, planning permission (ref. P1301.19) was eventually granted by Havering Council in February 2021. The approved development comprises 21 dwellings, with 36 associated car parking spaces and 38% affordable

housing provision on site (8 units). The permission was granted subject to a Section 106 legal agreement. The approved site layout plan is shown adjacent.



P1301.19 APPROVED SITE PLAN (AFFORDABLE MARKED BLUE)



CGI OF 2021 APPROVED DEVELOPMENT

3.3 Following the grant of planning permission, the developer submitted a number of applications to discharge all pre-commencement conditions attached to the permission.

3.4 During this period, the Applicant also fulfilled the relevant pre-commencement obligations of the Section 106 Agreement and submitted the necessary Community Infrastructure Levy (CIL) forms associated with the implementation of the permission.

3.5 Following the discharge of the pre-commencement conditions and completion of the relevant Section 106 and CIL requirements, demolition works commenced on the Site in early February 2024, involving the removal of the side extension and rear outbuilding to the rear of the main building. Details of these works were subsequently submitted to the Council, who then issued a Lawful Development Certificate (existing) in April 2024, confirming that a lawful material operation had taken place within the time limit imposed by the original planning permission.

4.0 THE PROPOSAL AND PLANNING STRATEGY

4.1 This application is submitted under Section 73 of the Town and Country Planning Act 1990 (TCPA), seeking a Minor Material Amendment to vary planning permission P1301.19. Specifically, the application seeks to vary condition 2 (approved drawings) so that any reference to affordable housing provision within the proposed site plan is removed, so that all 21 dwellings can be delivered as market housing.

4.2 The description of development is as follows:

"Application submitted under Section 73 to vary condition 2 of planning permission P1301.19, relating to the demolition of the existing public house "the Pompadours" and the construction of 21 new houses."

4.3 The provision of affordable housing is legally secured through a Section 106 Agreement (ref. HAV021000), which will need to be amended by way of a Deed of Variation to remove the relevant affordable housing obligations. The applicant is happy for such activities to occur in tandem with this application assessment.

4.4 In addition to the Section 106 Agreement, affordable housing is referenced on the planning permission through the approved Proposed Site Layout Plan (drawing ref. 4352-PD-01 Rev. G), which identifies the plots designated for affordable housing. It would be in appropriate for Affordable Housing to be reduced solely via a Deed of Variation whilst this drawing remains approved. Accordingly, this application seeks approval of an amended Proposed Site Layout Plan, removing the affordable housing designations, together with a corresponding amendment to Condition 2 to incorporate the revised drawing into the approved plans schedule.

4.5 The proposed amendments relate solely to the tenure of the dwellings and the associated removal of the affordable housing provision. No physical alterations are proposed to the approved development, including its design, scale or layout. The development will therefore continue to comprise 21 dwellings, in accordance with the approved scheme.

4.6 The justification for removing the affordable housing provision is set out in the accompanying Financial Viability Appraisal, prepared by DS2, the findings of which are also summarised in Section 7 of this Statement.

4.7 For the avoidance of doubt, and to ensure that the revised Proposed Site Layout Plan is formally approved by the Local Planning Authority, it is proposed that Condition 2 is varied to read as follows:

The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans below:
4352-PD-05 Rev A - Proposed rear elevations
4352-PD-02 Rev A - House Types A & B
Design and Access Statement, prepared by bhd architects, dated August 2019.
339-PD-01 - Site Location/Proposed site layout plan
4352-PD-06 Rev A - Cross section trhough site
4352-PD-03 Rev A - House Types C & D
4352-PD-04 Rev A - Proposed front elevations/street scene
4352-PD-07 Rev B - Proposed Landscape

Reason:- For the avoidance of doubt and to ensure that the development is carried out as approved. The Local Planning Authority consider it essential that the whole of the development is carried out and that no departure whatsoever is made from the details approved, since the development would not necessarily be acceptable if partly carried out or carried out differently in any degree from the details submitted and also accordance with policy DC61 of the Adopted Havering Council Development Plan Document (2008).

PLANNING STRATEGY

4.8 This section sets out why the proposed changes to the scheme can appropriately be assessed through an application made under Section 73 of the Town and Country Planning Act 1990 (TCPA). Section 73 of the TCPA relates to:

"…applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted."(73(1))

4.9 It legislation further establishes that, in determining such applications:

"…the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a)if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b)if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application."(73(2))

4.10 Section 73 therefore provides a mechanism through which existing planning conditions can be varied or removed, subject to the relevant statutory requirements and legal considerations governing the scope of such applications.

4.11 The principal effect of the application now submitted in respect of permission P1301.19 is to seek an amendment to an approved drawing. As the approved planning drawings are secured through Condition 2 of the existing permission, the proposed amendment relates directly to an existing planning condition and can therefore be considered through a Section 73 application.

4.12 The approved development description will not be conflicted with as a result of this application, should it be approved.

The Scope Allowed Under A Section 73 Application

4.13 Planning Practice Guidance (PPG) (2026) identifies a number of considerations relevant to the scope of Section 73 applications, including:

- Modifications to the planning permission cannot be fundamental or substantial (001 Ref ID: 17a-001-20140306)
- There is no statutory limit on the degree of change permissible to the conditions (013 Ref. ID: 17a013-20230726);
- The proposed amendments must only relate to the conditions (013 Ref. ID: 17a-013-20230726);
- The proposed amendments cannot relate to the operative part of the permission (013 Ref. ID: 17a013-20230726);

- The proposed amendments cannot be used to vary the time limit for implementation of the development;
- The proposed amendments cannot relate to the description of development (014 Ref ID: 17a-014- 20140306);
- The proposed amendments can only be used if there is a relevant condition in the permission listing the originally approved plans (018 Ref. ID: 17a-018-20230726).

Application of Planning Practice Guidance to proposals

4.14 Having identified the above considerations, the following paragraphs explain how the proposals set out in this application relate to each of these requirements.

Modifications to the planning permission cannot be fundamental or substantial:

4.15 In considering whether the proposed amendments constitute a fundamental or substantial alteration to the planning permission, regard must be had to the Court of Appeal judgment in *Test Valley Borough Council v Chala Fiske* [2024] EWCA Civ 1541, handed down on 10 December 2024. This judgment provides important clarification regarding the scope of Section 73 applications and the extent to which conditions may be varied.

4.16 The Court of Appeal clarified that Section 73 is not subject to a general restriction preventing conditions from making fundamental or substantial alterations to the development authorised by an existing planning permission. Rather, the critical consideration is whether the conditions imposed under the new Section 73 permission are consistent with the operative part of the original planning permission. Provided that this requirement is satisfied, Section 73 can be used to impose conditions which result in substantial changes to the previously approved scheme.

4.17 In this instance, the proposed amendments do not seek to alter the operative part of the original planning permission, which authorises the demolition of the existing public house and the construction of 21 new houses. The proposed changes relate to the approved drawings and the tenure of the dwellings, rather than the nature or description of the development itself. Accordingly, having regard to the clarification provided by the Court of Appeal in Fiske, the proposed amendments are not precluded from being considered through a Section 73 application on the basis that they constitute a fundamental or substantial alteration to the approved scheme.

There is no statutory limit on the degree of change permissible to the conditions:

4.18 The application seeks amendments to the existing planning conditions, principally Condition 2, which controls the approved drawings. The PPG confirms that there is no statutory limit on the degree of change that may be made to planning conditions through a Section 73 application. This is subject to the relevant statutory requirements and legal limitations governing the scope of such applications.

The proposed amendment must only relate to the conditions:

4.19 In brief, the proposed amendments to the approved scheme are as follows:

- Removal of the affordable housing designations from the approved Proposed Site Layout Plan.
- Delivery of all 21 dwellings as market housing, subject to the separate variation of the relevant Section 106 obligations.

4.20 To facilitate these changes, the Proposed Site Layout Plan is to be revised. Under the existing planning permission (ref. P1301.19), the approved drawing is controlled by Condition 2, which will therefore require amendment to incorporate the revised plan.

4.21 As the proposed amendment relates to a drawing referenced by an existing planning condition, it falls within the scope of matters that can be considered through a Section 73 application, as identified within the PPG.

The proposed amendment cannot relate to the operative part of the permission:

4.22 The operative part of the Decision Notice (ref. P1301.19) states:

> *"In pursuance of their powers as Local Planning Authority, the Council have considered your application and have decided to **GRANT PLANNING PERMISSION** for the following development :*
> ***Proposal: Demolition of the existing public house "the Pompadours" and the construction of 21 new houses."***

4.23 The proposed amendments do not seek to alter the development authorised by the operative part of the original permission. The demolition of the existing public house and the construction of 21 new houses would remain unchanged. The application therefore does not seek to amend the operative part of the permission.

The proposed amendment cannot be used to vary the time limit for implementation of development:

4.24 No amendment to the time limit for implementation of the development is proposed. Furthermore, the development has already been implemented, with the relevant position evidenced by Lawful Development Certificate ref. E0009.24.

The proposed amendment cannot relate to the description of development:

4.25 The description of development on the existing permission (ref. P1301.19) is as follows:

> *"Demolition of the existing public house "the Pompadours" and the construction of 21 new houses."*

4.26 The proposed amendments do not seek to alter the above description of development. The development will continue to comprise the demolition of the existing public house and the construction of 21 new houses. The proposed change relates solely to the tenure of the dwellings and the associated amendments to the approved drawings and planning conditions.

The proposed amendment can only be used if there is a relevant condition in the permission listing the originally approved plans:

4.27 Condition 2 of the existing planning permission controls the approved planning drawings. The principal purpose of this application is to amend one of those drawings, namely the Proposed Site Layout Plan, requiring a corresponding amendment to Condition 2. The application therefore satisfies the relevant requirement identified within the PPG, as the drawing to be amended is expressly referenced by an existing planning condition.

Examples of similar applications

4.28 There are a number of appeal decisions which provide useful clarification on the scope of Section 73 applications in circumstances where amendments to affordable housing provision are proposed. In particular, the appeal decisions relating to Lancaster Road, Cockerham (APP/A2335/W/25/3359581) and Rockingham Street, Sheffield (APP/J4423/W/23/3318273) are considered directly relevant to the proposals now submitted.

4.29 In the appeal relating to Lancaster Road, Cockerham, the Inspector considered whether a Section 73 application could be used to alter the level of affordable housing previously secured through a planning permission. The Inspector noted that the description of development did not refer to

affordable housing and that there was no statutory limit on the degree of change permissible to planning conditions. The Inspector subsequently concluded:

"In these circumstances a Section 73 application would be an appropriate means to alter the level of affordable housing previously secured."

4.30 This decision is particularly relevant as it expressly confirms that Section 73 can provide an appropriate mechanism for amending the level of affordable housing provision, subject to consideration of the relevant planning obligations and viability evidence. Appeal Costs were awarded to the Appellant as part of this decision.

4.31 Further support is provided by the appeal decision relating to Rockingham Street, Sheffield. In this instance, the Inspector considered a proposal to remove affordable housing references from approved plans through a Section 73 application. The Inspector noted that the affordable housing notation had originally been introduced through a subsequent Section 73 application and considered that there was no reason why a further Section 73 application could not be used to remove it. The Inspector concluded that:

"Logic would suggest that if a section 73 application could be used to add this notation, then a subsequent section 73 application could also be used to remove it."

4.32 The Inspector also considered the relationship between Section 73 applications and Section 106 Agreements, confirming that planning obligations are freestanding legal instruments which do not form part of the planning permission itself. Accordingly, the existing Section 106 Agreement did not prevent the grant of a new planning permission under Section 73, although its subsequent modification would need to be addressed separately. The Inspector identified a Deed of Variation or an application under Section 106A of the Town and Country Planning Act 1990 as potential mechanisms for addressing the existing obligations.

4.33 A further relevant appeal decision is that relating to 397 Cockfosters Road, Enfield (APP/Q5300/W/22/3294731). In this instance, the Inspector considered a Section 73 application involving amendments to the approved drawings, alongside a revised Section 106 Agreement relating to affordable housing provision.

4.34 The Inspector considered the relationship between Section 73 applications and planning obligations, having regard to the Planning Practice Guidance and the High Court judgment in *Norfolk Homes Limited v North Norfolk District Council* [2020] EWHC 2265 (QB). The Inspector concluded that the Section 73 application <u>was an appropriate mechanism for securing the proposed amendments and that the associated planning obligation could be revisited alongside the application</u>.

4.35 Of particular relevance, at paragraph 16, the Inspector confirmed that the affordable housing contribution could be reassessed using up-to-date cost information and viability evidence. Although the appeal resulted in a reduced financial contribution rather than the complete removal of affordable housing, the decision provides further support for the principle that affordable housing obligations can be reconsidered alongside a Section 73 application, with the necessary amendments to the Section 106 Agreement addressed separately.

4.36 These appeal decisions provide relevant support for the use of Section 73 to amend planning permissions where affordable housing provision is to be removed or altered. In particular, they demonstrate that the removal of affordable housing references from approved drawings and the amendment of the associated planning conditions can be considered separately from the legal process required to amend the underlying Section 106 obligations. This is directly relevant to the

current application, which seeks to amend Condition 2 and the approved Proposed Site Layout Plan, with the associated affordable housing obligations to be addressed separately through a Deed of Variation to the existing Section 106 Agreement.

4.37 The three appeal decisions referred to above are attached as Appendices 1 to 3 of this report.

4.38 Finally, we include in Appendix 4, a letter sent from the Matthew Pennycook MP (Minister of State for Housing and Planning) to the Planning Inspectorate dated 18 December 2025. This letter highlights the economic challenges faced by housebuilders with a direct acknowledgement that it "*may be necessary in specific circumstances to modify existing planning obligations to improve the viability of housing developments in the near term, boosting the number of new homes, including social and affordable homes, delivered over the course of the next few years*." This letter goes on to acknowledge a circumstance where affordable housing can be reconsidered via the S73 process, stating that such applications should be "scrutinised carefully". The Applicant welcomes such scrutiny to be applied to this application.

Conclusion

4.39 This section has considered the relevant provisions of Section 73 of the TCPA, the associated guidance within the PPG and relevant case law and appeal decisions to establish the suitability of this application for securing the proposed amendments to planning permission P1301.19.

4.40 The proposed amendments relate to Condition 2 and the approved drawings referenced within it. They do not seek to alter the operative part or description of the original planning permission, nor do they seek to vary the time limit for implementation of the development. The development will continue to comprise the demolition of the existing public house and the construction of 21 new houses, with no changes proposed to its approved physical form, design, scale or layout.

4.41 The Court of Appeal judgment in *Test Valley Borough Council v Chala Fiske* [2024] EWCA Civ 1541 provides important clarification regarding the scope of Section 73, confirming that there is no general restriction preventing conditions from making fundamental or substantial alterations to a previously approved scheme, provided that the conditions imposed are consistent with the operative part of the original permission.

4.42 Furthermore, the appeal decisions relating to Lancaster Road, Cockerham (APP/A2335/W/25/3359581) and Rockingham Street, Sheffield (APP/J4423/W/23/3318273) provide relevant support for the use of Section 73 to amend affordable housing provision and remove associated references from approved plans. In particular, these decisions demonstrate that amendments to planning conditions and approved drawings can be considered separately from the legal process required to amend the underlying Section 106 obligations. The Minister of State for Housing and Planning has directly acknowledged that S73 Applications can be considered where a reduction in affordable housing is proposed, and that such applications should be scrutinised carefully.

4.43 In this instance, the removal of the affordable housing obligations secured through the existing Section 106 Agreement (ref. HAV021000) will be addressed separately through a Deed of Variation. The Section 73 application will therefore deal with the corresponding amendments to the approved plans and planning conditions.

4.44 Accordingly, having regard to the statutory provisions, relevant planning guidance, the Court of Appeal judgment and the comparable appeal decisions considered above, it is considered that a Section 73 application represents an appropriate mechanism through which to secure the proposed amendments to planning permission P1301.19, with the associated Section 106 obligations to be addressed separately through a Deed of Variation.

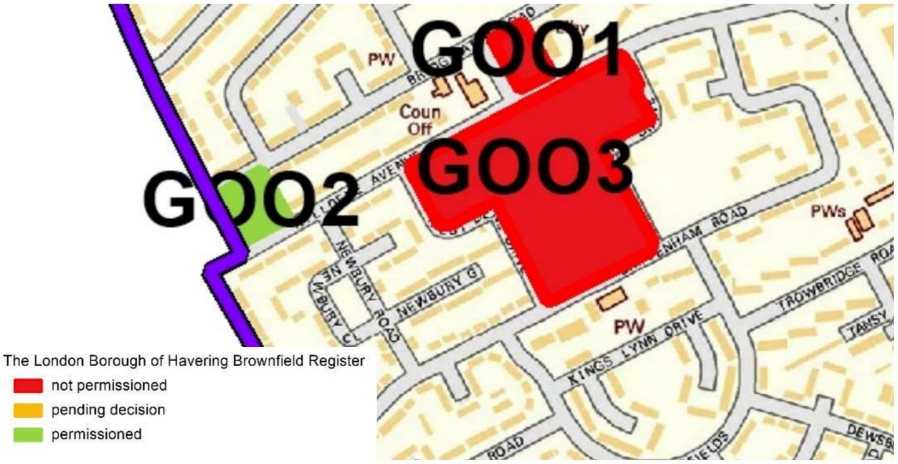
5.0 RELEVANT PLANNING FRAMEWORK

5.1 The relevant planning framework comprises the following:

- NPPF (2026)
- NPPG (2026)
- London Plan (2021)
- Mayor's Affordable Housing and Viability Supplementary Planning Guidance (2017)
- Havering Local Plan 2016-2031 (2021)

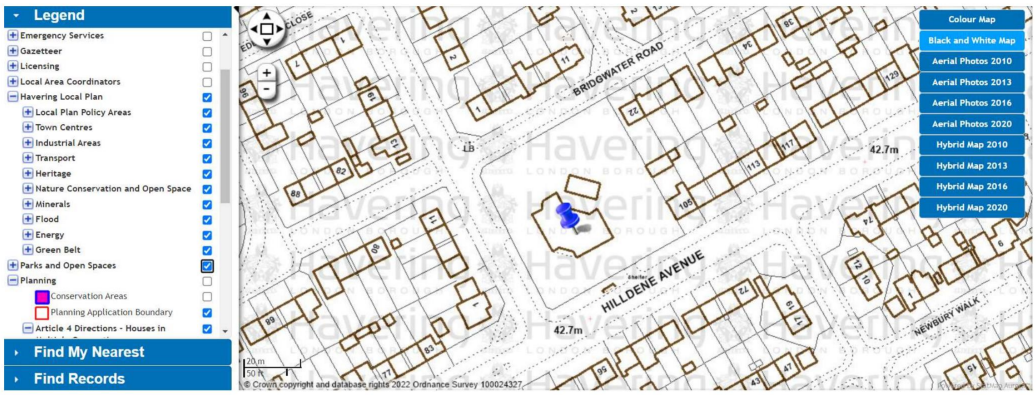
5.2 In accordance with the Council's Online Mapping, (extract below), the Sites has the following designations:

- Brownfield Land Register (**GOO2**) – The online mapping states that "permission pending", however the register on the Havering website confirms that the site is "permissioned" with a "minimum net dwellings of 21 units".



EXTRACT FROM GOOSHAYS BROWNFIELD LAND REGISTER

5.3 In the context of the Havering Local Plan, the site is unencumbered by planning designations (see below).



ZERO LOCAL PLAN RELATED DEISGNATIONS

6.0 PLANNING ASSESSMENT

6.1 As the development being considered within this application solely comprises the removal of any reference to affordable housing within the approved plans, there is one planning topic which merits detailed discussion within this section:

- Affordable Housing

6.2 This is discussed in depth below:

AFFORDABLE HOUSING

Viability and Affordable Housing Related Policy

6.3 Policy DM5 of the NPPF (2026) establishes that development should generally be assumed to be viable where it accords with relevant up-to-date planning policies (DM5(1)). However, DM5(2) recognises that a viability assessment may be justified where development cannot proceed on a policy-compliant basis. This includes circumstances where a development is demonstrably burdened by costs not previously accounted for (DM5(2)(c)), or where site or economic circumstances have changed significantly since the viability assessment informing the development plan was prepared (DM5(2)(d)). Footnote 22 to Policy DM5 clarifies that significant economic changes include a recession or similar significant economic change.

6.4 The NPPG provides further clarification on the circumstances in which viability assessments may be appropriate. Paragraph 008 (Reference ID: 10-008-20190509) confirms that applicants may submit viability assessments where significant economic changes, such as a recession, have occurred since the relevant plan was brought into force. Paragraph 009 (Reference ID: 10-009-20251216) states that assessments should refer back to the viability evidence informing the relevant plan and provide evidence of what has changed. The decision-maker should consider whether the assessment and its conclusions are objective, reasonable and realistic. Furthermore, Paragraph 011 (Reference ID: 10-011-20180724) identifies the principal components of a viability assessment, including gross development value, development costs, land value, landowner premium and developer return.

6.5 At a regional level, Policy H4 of the London Plan (2021) sets a strategic target of 50% of all new homes to be genuinely affordable. The threshold for provision on gross residential development is set at a minimum of 35%, however a Viability Tested Route is set out within Section F. Part J states that "*Any proposed amendments that result in a reduction in affordable housing, affordability or other obligations or requirements of the original permission should be rigorously assessed under the Viability Tested Route. In such instances, a full viability review should be undertaken that reconsiders the value, costs, profit requirements and land value of the scheme*."

6.6 Paragraph 2.16 of the Mayor's Affordable Housing and Viability Supplementary Planning Guidance (2017) further establishes that proposals resulting in a reduction in affordable housing, affordability or other obligations secured through the original permission should be rigorously assessed under the Viability Tested Route, requiring a full viability review of the scheme's values, costs, profit requirements and land value, echoing the requirements of Policy H5 of the London Plan.

6.7 At a local level, Policy 4 of the Havering Local Plan (2021) seeks to maximise affordable housing provision within the Borough. It requires developments of 10 or more dwellings, or residential developments with a site area exceeding 1,000 sq m, to provide at least 35% affordable housing based on gross habitable rooms. A higher requirement of 50% applies to specified development on public sector land and industrial sites. The Local Plan also confirms that proposals which do not

meet the applicable affordable housing thresholds, or require public subsidy to do so, must be supported by a detailed viability assessment.

6.8 This section of the Planning Statement sets out the viability considerations relevant to the proposed development and explains why, having regard to prevailing market conditions and the scheme's development economics, the provision of affordable housing can no longer be viably supported on the site. This section should be read alongside DS2's Financial Viability Appraisal, which provides the detailed financial evidence and assessment underpinning this position.

Market Climate

6.9 The development market, particularly across London, has experienced considerable economic pressures in recent years, arising from elevated interest rates, persistent construction cost inflation and a more restrictive and expensive lending environment. Ongoing geopolitical uncertainty has further contributed to inflationary pressures and uncertainty across construction supply chains. These factors have had a significant impact on development economics and the viability of residential development, contributing to a sustained reduction in housing starts and completions across London.

6.10 The challenging market conditions are reflected in a notable reduction in housing delivery across the capital. In Havering, for example, reported housing completions have fallen significantly below the annual housing target established by the adopted Local Plan. This demonstrates the wider difficulties facing residential development and the importance of ensuring that planning policy requirements are balanced against prevailing economic conditions to support the delivery of new housing.

6.11 In this context, the circumstances outlined above provide justification for undertaking a site-specific viability assessment in accordance with Policy DM5 of the NPPF (2026) and the supporting NPPG guidance. In particular, DM5(2) recognises that significant changes in economic circumstances since the preparation of the development plan viability evidence may warrant a reassessment of viability.

6.12 Since 2021, the Applicant has repeatedly sought to find a mechanism by which the approved 2021 planning permission could be delivered in a viable manner, however costs have increased year upon year, whist values have not proportionately increased. Whilst the planning permission has lawfully commenced, it is prevented from being completed due to the fact that it would not be viable.

6.13 Accordingly, DS2's Financial Viability Appraisal has been prepared to assess the development economics of the proposed scheme in the context of prevailing market conditions. The appraisal demonstrates that the provision of affordable housing at the approved levels would render the development financially unviable and that, in order to facilitate the delivery of the proposed development, a nil affordable housing contribution is justified on viability grounds.

Financial Viability Assessment

6.14 DS2's Financial Viability Appraisal provides a detailed breakdown of the proposed scheme's appraisal inputs and financial performance under three different affordable housing scenarios: 0%, 20% (Emergency Measures) and 38% affordable housing (approved). Each scenario has been assessed using a consistent methodology and a conservative Existing Use Value (EUV) of £1.

6.15 In considering the results, it is important to have regard to the appropriate developer return. The standard viability assumption adopted within the appraisal is 17.5% of Gross Development Value (GDV). This is consistent with the NPPG, which at Paragraph 019 (Reference ID: 10-019-20190509)

identifies a developer return of between 15% and 20% of GDV as potentially appropriate for plan-making purposes when establishing the viability of planning policies.

6.16 The appraisal demonstrates that the current consented scheme, which provides 38% affordable housing, generates a deficit of approximately £185,000, equivalent to -2.63% of GDV. This indicates that the consented scheme is extremely financially unviable, even when assessed against the conservative EUV assumption.

6.17 The 20% affordable housing scenario generates a modest surplus of approximately £701,563, representing 8.82% of GDV. Whilst this technically produces a positive return, it remains substantially below the 17.5% developer return benchmark and therefore does not represent a sufficient return to incentivise delivery. Furthermore, this scenario relies upon additional assumptions and external factors which cannot currently be guaranteed, including the availability of additional CIL relief, which DS2 advises is not yet established in legislation, and the willingness of a Registered Provider of Social Housing (RPSH) to acquire and manage a relatively small number of affordable housing units (4 units). The practical deliverability of this option is therefore uncertain and should not be committed to.

6.18 Finally, the 0% affordable housing scenario generates a surplus of approximately £664,068. Whilst this also falls below the 17.5% developer return benchmark (8.02% profit on GDV), it represents the only scenario which does not rely upon uncertain legislative changes or the willingness of an RPSH to take on a small affordable housing allocation. On this basis, it represents the most realistic and deliverable option having regard to the prevailing economic and market conditions.

6.19 Overall, the appraisal demonstrates that the provision of affordable housing, whether at the previously consented level of 38% or a reduced level of 20%, would not provide a sufficient financial return to support the delivery of the proposed development on a viable basis. The 0% affordable housing scenario therefore represents the only realistically deliverable option, and a nil affordable housing contribution is consequently justified on viability grounds.

6.20 The Applicant understands that the Council will need to confirm the figures presented within the FVA presented and the Applicant is happy for this process to take place. Should this require the involvement of an external party, the applicant is willing to cover the cost of this process.

Consequences of non-delivery

6.21 In considering the viability of the proposed development, it is also important to recognise the consequences of the site failing to come forward for development. The viability challenges identified within DS2's Financial Viability Appraisal are reflective of the prevailing market conditions and are not unique to the Applicant. It is therefore reasonable to conclude that other prospective developers would face similar financial constraints in seeking to deliver the consented scheme with its existing affordable housing requirement. Consequently, unless the viability position is recognised, there is a real risk that the existing permission will remain undeliverable and the site will continue to lie vacant, with the former public house remaining in its current unsightly and vandalised condition. It is understood that there is local and political support for this site to come forward for development and the applicant is willing to do so on the proviso that it does not result in financial loss.

6.22 This would represent a significant missed opportunity to optimise the use of the site through the delivery of much-needed housing. Failure to deliver the proposed development would mean that 21 new homes would make no contribution towards meeting Havering's housing needs or supporting the Council's housing supply. It would also result in the loss of an opportunity to provide additional homes for existing and future residents, together with the associated social benefits of new housing. In this context, facilitating the delivery of all 21 dwellings as market housing, rather

than maintaining an affordable housing requirement that renders the scheme unviable, represents a more positive planning outcome and a beneficial use of the site.

7.0 SUMMARY AND CONCLUSIONS

7.1 This Section 73 application seeks to vary the existing planning permission (ref. P1301.19) to vary condition 2, removing any reference to affordable housing units, enabling all 21 dwellings to be delivered as market housing. The application has been brought forward in response to changed economic and market circumstances, with the Applicant's latest Financial Viability Appraisal demonstrating that the provision of affordable housing is no longer financially viable.

7.2 As set out within this Planning Statement, Section 73 of the Town and Country Planning Act 1990 provides an appropriate mechanism for securing the proposed amendments to the existing planning permission. In particular, the Court of Appeal judgment in *Fiske* [2024] confirms the scope of Section 73 to vary planning conditions, provided that any resulting conditions remain consistent with the operative part of the original permission. The associated affordable housing obligations within the existing Section 106 Agreement will be addressed separately through a Deed of Variation. The suggested planning strategy is supported by precedent appeals and recognised by the Minister of State for Housing and Planning.

7.3 The Financial Viability Appraisal prepared by DS2 demonstrates that neither the previously consented 38% affordable housing provision nor a reduced 20% provision would generate a sufficient financial return to support the delivery of the development. The 0% affordable housing scenario represents the only realistically deliverable option, notwithstanding that the resulting developer return remains below the standard viability benchmark. The removal of affordable housing provision is therefore justified on viability grounds and is necessary to facilitate the delivery of the development.

7.4 Importantly, the application does not seek to alter the approved physical form, design, scale or layout of the development, which will continue to comprise the demolition of the existing public house and construction of 21 dwellings. The proposed amendments are limited to the affordable housing provision, Condition 2 and the approved Proposed Site Layout Plan.

7.5 In conclusion, the proposed Section 73 variation represents an appropriate and justified response to the changed viability circumstances affecting the development. Maintaining the existing affordable housing requirement risks rendering the scheme undeliverable, resulting in the continued vacancy of the site and the loss of an opportunity to deliver 21 new homes towards meeting Havering's housing needs. The proposed variation therefore provides a proportionate means of facilitating the delivery of much-needed housing, whilst retaining the approved form of development. Accordingly, the Local Planning Authority is respectfully requested to grant planning permission, subject to the appropriate variation of the relevant conditions and the separate completion of a Deed of Variation to the existing Section 106 Agreement.