



# FARNHAM TOWN COUNCIL

## Report Council

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**Date: 3<sup>rd</sup> November 2016**

### **Judicial Review – Brightwells (East Street)**

#### **Introduction**

- 1 Strategy & Finance Working Group noted that for more than a decade, Farnham Town Council has raised concerns over the East Street development. These concerns have reflected wider community concerns and have been raised cross party. Several of the concerns have rested on legal issues such as the Compulsory Purchase Order of the Marlborough Head; the extinguishment of rights of access; the use of NMAs (Non Material Amendments) to progress significant changes to the approved planning permission; questions over the decision not to pursue required Environmental Impact Assessments on key issues such as the enabling sewer works; and questions over procurement legislation and financial issues such as whether the project had changed so much that it was no longer the same project such that it may be advantaging the developer and not now be delivering best value for the taxpayer.
- 2 Farnham Town Council has resolved to take action in respect of each of these issues (and in accordance with earlier resolutions working alongside other interested parties) and was in the process of clarifying the legal position in regard to due process following a Council Resolution in April when the Judicial Review action was launched. The final point in paragraph 1 (Resolved in April 2016) is one of the key components of the Judicial Review.
- 3 As a result of the lodging of the Judicial Review, the Council was advised it did not need to duplicate the legal advice being sought as the Judge had already determined there were matters to be pursued by approving the Judicial Review progressing to its next stage. A preliminary hearing is taking place on 31st January 2017 at the request of Waverley Borough Council on the standing of the applicants.
- 4 At recent Council meetings, questions have been asked about whether the Council could contribute to the Judicial Review (through a financial contribution or by making representation to the Review.). Council resolved not to make a financial contribution but to seek clarification as to its position should it determine to make a statement. The Council's legal advisors have confirmed that the rules around judicial reviews are flexible and that the Council would be able to make a statement setting out its position. There would be no financial implications of so doing (apart from the time involved). They have also advised, that given the Council's Resolutions, if there were a question over the locus or standing of the applicants (the challenge to which was thought to be a surprise to our solicitor) for the Judicial Review the Council's involvement would give it the necessary standing.

- 5 Previously the solicitor had advised that the claim seemed a sensible one (in terms of the Council's resolution) and that the fact that it was given approval to progress showed that the Judicial Review had merit, given the small number that do not progress beyond the initial application. The Council's solicitor had also said (earlier) that it may be sensible for the Council to make representation to the Judicial Review if permission to proceed was granted.
- 6 As Farnham Town Council has been concerned to clarify that the development was progressing lawfully, the Judicial Review will give a definitive external independent legal assessment resolving the matter of value for money for the taxpayer.
- 7 Attached are a range of documents setting out the factual position of Council resolutions relating to East Street (Brightwells) development going back to 2004. This is not a comprehensive list of decisions but gives a clear indication of the nature of the concerns from the outset. Annex 12 sets out some of the questions and responses of the solicitor advising the Council and is by convention exempt information.
- 8 The decisions to date also set out how the Town Council supports a development in principle but does seek to influence an amended plan especially if it can improve viability.
- 9 Strategy & Finance sought confirmation that if the Town Council made a statement to the Judicial Review on its decisions it would not incur any costs of the Judicial Review. It also sought clarification of the position if the Judge found that there was no standing whether this might have implications for the Council. Based on advice received, the Council could make it clear in its covering letter that it wanted to set out its historical concerns on the matter for determination once and for all on due process, but it did not wish to be joined as a party to the Judicial Review. This would therefore protect the Council's interests.

## **Recommendation**

**Strategy and Finance Recommends to Council that Farnham Town Council makes representations to the Judicial Review setting out the Council's long standing concerns over the development reflecting past actions and welcoming the clarification of matters without getting further involved financially.**

2016 28<sup>th</sup> APRIL

C192/15 Cllr Ward reported on discussion by Strategy & Finance on the Motion passed at the Annual Town Meeting of Electors. Broadly Farnham Town Council supports the regeneration of what was once called the “East Street Area of Opportunity” but had previously expressed a number of concerns about how the project was being handled. It was a matter of record that FTC opposed the Compulsory Purchase Order for the Marlborough Head which was eventually granted as the developers claimed that the retail space was needed to make the project viable.

Cllr Ward said that the Strategy & Finance Working group sympathised with the concerns expressed by its citizens about the continual use of NMAs (Non Material Amendments) which seem to have dramatically altered the approved project and understood concerns that this may have financially advantaged the selected developer. However, the Working Group felt that an open-ended financial commitment to support legal action was not appropriate at this stage, but considered that the Town Council should take Counsel’s Opinion as to whether due process had been followed. Cllr Ward added that being well aware that Counsel’s opinions were often coloured by the way the question was formulated, the Town Council should use a solicitor experienced in these matters as an adviser to ensure that it obtained the desired information in an unbiased manner.

Cllr Ward concluded his introduction by saying that the Working group also thought that the proposed Sewage and other works which would bring considerable disruption to Farnham should be the subject of an EIA (Environmental Impact Assessment). Cllr Williamson agreed with everything said by Cllr Ward, underlining how important it was for the Council to be seen to be listening to residents and take on board the points they make – even if they are not always agreed with. He suggested a cap should be put on the level of funding that would be expended at this stage.

Cllr Macleod said he was astonished that this was actually happening; that a developer would be using a device or loophole and that the Borough Council was not using its powers as the landowner or development partner to stop it.

Cllr Hill agreed that a cap should be applied and asked what was an appropriate sum. The Town Clerk advised that the Legal expenses earmarked reserve stood at £20,000 but that Council could adjust the reserves if appropriate. Cllr Ward said he was happy that the initial advice would not exceed the earmarked reserves figure of £20,000 and he proposed this as an additional recommendation, seconded by Cllr Cockburn.

**It was RESOLVED by 11 votes to 2 that:**

**Farnham Town Council:**

- i) **Ask the Secretary of State to review the Screening Opinion decision for the moving of the Sewers on the basis that they are for an EIA development and as such an EIA statement is required by legislation;**
- ii) **Take independent legal advice and Counsel’s opinion, if required, to clarify:  
a) whether due process has been followed and b) whether the project had changed so substantially that it was no longer the same project such that it may be advantaging the developer and not now be delivering best value for money for the taxpayer; and**
- iii) **The funding for the initial advice should not exceed the earmarked reserves figure of £20,000**

2015

NMA/2015/0039

C197/14

Cllr Genziani introduced the minutes of the Planning & Licensing Consultative Group meetings held on 23<sup>rd</sup> March and 13<sup>th</sup> April 2015. He commented on the reuse of older buildings that were bringing vibrancy and trade for the town.

Cllr Genziani advised that at the most recent meeting there had been great concern over the applications for the Brightwells development that were proposed as Non Material Amendments (NMAs). The changes proposed by the application were clearly significant and did not come under the rules for NMAs. Cllr Cockburn said that Waverley Borough Council had assured councillors when the previous NMAs (which also were considered as significant changes) were considered a promise had been made that no further NMAs would be put forward for the Brightwells scheme. The suggestion of removing the bridge as an NMA was not acceptable as it was a major change requiring a full planning application.

Cllr Frost agreed and said that everyone had fought hard for the bridge to alleviate traffic problems in the town and the bridge had to be in place before any demolition or other works took place.

It was agreed that the proposed response to Waverley was not strong enough and the council should strongly object to the proposal.

Cllr Hargreaves said that the building of the hotel in Guildford Road also had to be taken into account and the Town would be gridlocked if the proposal went forward.

Cllr Ward said that this was a major amendment and the Town Council should be in liaison with other competent authorities to address the concern that this could be an NMA. There was concern that this application appeared to be trying to slip through on a faster timescale something that should be dealt with as a full application as it had a number of material considerations.

**It was RESOLVED *nem con* that:**

**The response to Waverley Borough Council on the East Street Brightwells NMA should be strengthened expeditiously with the points made by Council.**

**Letter considered by Council which needed to be strengthened is set out below:**

Mrs M Knight  
Waverley Planning Department  
The Buryes  
Godalming  
Surrey  
GU7 1HR

**Iain Lynch**  
**Town Clerk**  
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17<sup>th</sup> March 2015

**Application ref: NMA/2015/0039**

Farnham Town Council strongly objects to the above application for a non-material amendment to vary condition 16 of planning permission WA/2008/0279.

This application appears to seek to exploit Section 69a of the Town & Country Planning Act 2009 for NMAs, in order to bring in significant material amendments to Condition 16 through the 'back door'. The NMA legislation is designed to streamline the planning process to accommodate alterations to conditions which would make no significant difference to a permission for development.

The Local Planning Authority (LPA) must be satisfied that the amendment sought is non-material in order to grant an application under section 96A of the Town and Country Planning Act 1990. Legally, the Planning Application would remain unchanged by the decision (Sec. 73 variation of conditions). These provisions are typically used to allow insignificant changes in physical details of a development which make no difference to the impact of the development. This provision is wholly unsuitable for amendments of overwhelming public interest such as this, which will fundamentally alter the planning permission and drastically affect the public and residents of Farnham and the local economic and environmental character.

FTC is aware that problems arising from the construction period of any works, e.g. noise, dust, construction vehicles, hours of working (covered by Control of Pollution Acts) are not considered to be material in planning terms. However, even though publication of DCLG's new Planning Practice Guidance on 6 March 2014 cancelled Circular 11/95, Appendix A on model conditions has been retained. With respect to this application, this means that in order for the restrictive condition to have been applied, Waverley Borough Council, as the Local Planning Authority, must have considered that the application would have been refused if condition 16 were not imposed.

If this condition is varied, Waverley would appear to be conceding that its imposition of condition 16 was unlawful as conditions should only be used where the local planning authority is satisfied that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted, that it would have been otherwise necessary to refuse the whole permission. With this in mind, the variance of this condition cannot be non-material.

The provision provided by prohibiting development until the bridge was constructed was a material consideration presented to the Planning Committee, when approving the scheme. It would be very surprising that it could now be considered 'non-material' and essentially render the initial concerns void.

Furthermore with respect to materiality, it is clear that the amendment would result in the scheme becoming contrary to the adopted policies of the Council, notably policies M2 and M3 of the Waverley Local Plan 2002. For this reason, the variance cannot be considered non-material and should be subject to a full planning application, which should also be refused on this basis.

Following refusal of this NMA, as with all applications under section 96A of the Town and Country Planning Act 1990, the applicant does not have rights of appeal and would need to submit a full planning application to seek approval for the proposed amendments. This would then be subject to the proper notice and consultation with stakeholders and statutory bodies, such as Surrey Highways. This is imperative as the this condition was put in place in order to ensure the development would not prejudice highway safety, the free flow of traffic nor cause inconvenience to other highway users. In addition, there were concerns about the congestion throughout the whole of farnham and the damage to the local economy that would result from the early construction traffic for this development being directed through the town centre. It should be noted that since approval of the application for this scheme, further significant development has been approved, such as that at Guildford Road (Premier Inn and Beefeater – WA/2013/1243). This would cumulatively have a significant effect on the movement of traffic in the town, contrary to Policy M2 of the Waverley Local Plan 2002. Waverley must recognise that an application which seeks to contravene the requirements of the Highway Authority is material.

As this condition includes and affects the work to demolish the Redgrave Theatre building which is permitted under listed building consent WA/2014/1926, this application cannot be a non-material amendment, as it has an effect on the existing listed building consent.

In addition, works including the laying of a new sewage system, the laying of a new utility system, and the demolition of the existing tennis club would be affected by the varying of this condition and this physical infrastructure will be affected. A full planning application should therefore be submitted.

Finally, it appears to councillors, that the purpose of this application for an NMA is to escape the time limit of the original planning application. If the LPA allows the misuse of an NMA to escape the time limit set, there will be significant negative consequences for residents and the environment and set an unfortunate precedent for other applications in the borough.

Time conditions on planning applications are required in order that changes over time in material considerations can be properly taken into account by the LPA when making planning decisions, for the proper planning of the development of the borough. The public have clearly expressed their concern over various aspects of the development and its impacts in their objections to earlier applications. The public have a right to have these issues revisited in a new planning application after the standard time has expired and taking in to account the obvious significant commercial, economic and environmental changes.

Farnham Town Council looks forward to the opportunity to comment on the full planning application in relation to this matter in due course.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Iain Lynch', written in a cursive style.

**Iain Lynch**  
Town Clerk

**Amended Application 2015****C025/15 Significant Planning Applications**

The Mayor reminded members of the public that this was a meeting of Farnham Town Council in public, and not a public meeting, and that the item in question was an amendment to a planning application, but not a mechanism to revamp the original application.

Rachel Aves introduced the report at Appendix D to the agenda and outlined the changes to the original Non Material Amendment Application (NMA/2015/0036) that had been considered by the Council in March. The Council's response was attached to the agenda.

It was noted that legal advice had been sought by officers and this confirmed that there was no power to make an application under s96A of the Town and Country Planning Act 1990 unless the applicant had an "interest in land". Officers explained that as Crest Nicholson had a unilateral notice on title to the land with Land Registry and as such Crest Nicholson held sufficient interest to make an application under s96a. Members were advised that objection on the basis of failing to meet the "interest in land" criteria was not advisable.

Cllr Cockburn said that in her view although the works were less the changes had to be considered material as the bridge was felt to be an essential element when the initial application was decided. There would still be large vehicles, dust, traffic and highways safety issues.

Cllr Hill reported that he and Cllr Macleod had met with Matthew Evans at Waverley BC and that he felt the changes now proposed were not material and he felt that the NMA should be allowed.

Cllr Williamson said that he agreed with Cllr Cockburn and that the changes were material. He added that the Town Council should reference the lack of Environmental Impact Assessment for the main planning permission in their objection as it was relevant to this application.

Cllr Ricketts said the concerns of local people on traffic, congestion and air pollution should be raised, and the bridge should be built.

Cllr Blagden noted the debate was similar to the previous discussion on the NMA relating to the changes for Marks and Spencer and seemed to be an evasion of proper planning procedure. He pointed out that from his earlier career there were temporary equipment bridging options that could be put in place very quickly and be removed quickly.

Cllr Potts said that everyone agreed that a major start on site without the bridge was a 'red line'. It was important to consider how to get on site to build the bridge. Something had to be done to make a start and as a Town Councillor she supported the NMA. She felt the response should include a comment that major work could not start without the bridge, although she noted that the applicant was not asking or seeking not to build the bridge.

Cllr Macleod added that NMA applications should be considered with preceding NMA's in mind. He felt that this application, alongside the previous approved NMA applications for this site, meant that the application was considered material. Non

Material meant trivial or unimportant. Examples of NMAs turned down in Waverley included the inclusion of a toilet in a utility room extension. The cumulative effect of the NMAs on this site were significant in comparison, including the fact that the Gostrey Centre could no longer operate on site as a result of NMA changes. He pointed out that Crest Nicholson had had six years to make a start on site but had not done so.

Cllr Ward felt the issue was between imperative and non-material. If something was imperative, it was stretching the English language to call it non-material. Cllr Ward said NMAs were designed so Planning Committees did not have to consider minor issues such as colour of bricks at the back of a development, or whether a window could be a few inches wider. If funding were in place, if the land acquisition had been completed it would be hard to object but there was a danger that the town could be blighted if the application were approved.

Cllr Fraser said that he felt the changes were very material and that the use of an NMA was devious. He felt the draft letter was excellent and could be enhanced with some minor amendments.

On a proposal by the Mayor, Seconded by Cllr Attfield Council agreed

- 1) by 13 votes to 4 that the changes proposed were Material
- 2) by 12 votes to 4 with one abstention that the lack of a bridge of some sort would have an impact on traffic and pedestrian safety. It was recognised that an equipment bridge could be utilised.

It was proposed by Cllr Ricketts and seconded by Cllr Fraser and agreed by 13 votes to 4 that the requirement for an Environmental Impact Assessment to be carried out should be raised.

Cllr Hollins-Owen arrived at this point

Cllr Macleod noted that that in the applicants' letter it was said that traffic in the Town Centre had decreased since 2006. This was not true as all traffic was increasing and estimates showed that traffic in South Street alone had increased by 35%.

**It was RESOLVED *nem con* that**

- 1) the initial objection submitted to Waverley BC in respect of the detail of the application in April 2015 be noted**
- 2) The Town Clerk prepares a further enhanced objection response based on the issues raised in the debate.**



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10<sup>th</sup> June 2015

Dear Matthew

**NMA/2015/0039 – Amended Plans**

Farnham Town Council considered the amended plans at its meeting held on 4<sup>th</sup> June 2015 and maintains its strong objection to the above application for a non-material amendment to vary condition 16 of planning permission WA/2008/0279.

It should be noted that this objection **does not** replace the Town Council's previous objection (attached at annex 1), but adds to some of the main concerns, in light of the amended plans submitted by the applicant. The issues raised in both letters of objection should be considered. However, it is acknowledged that comments made specifically in relation to the demolition of the Redgrave and laying of utility services are no longer applicable.

Following the changes made to this application by Crest Nicholson, the Local Planning Authority (LPA) must be satisfied that the amendment sought is non-material in order to grant an application under section 96A of the Town and Country Planning Act 1990. These provisions are typically used to allow insignificant changes in physical details of a development which make no difference to the impact of the development. This provision is wholly unsuitable for amendments of overwhelming public interest such as this, which is an application to facilitate a material start on the planning application, in order that it does not expire and prompt the need for a new application to be lodged.

Various legal and contractual conditions for the proposed development have not yet been satisfied, such as the Environmental Impact Assessment and funding for the scheme. Allowing inappropriate use of an NMA so as to enable a false material start on the site is considered irresponsible by Farnham Town Council and could be considered as negligent by Waverley BC as the Local Planning Authority. The officer's report notes comments in support of this application to the effect that the approval of this application would "allow the regeneration of the main site". This is clearly not a planning consideration and the Borough Council's objective to deliver the regeneration of this site should not influence the decision on whether or not to allow large changes through the system, inappropriately exploiting sec 96A of the Town and Country Planning Act 2009.

Farnham Town Council maintains that if this condition is varied, Waverley would appear to be conceding that its imposition of condition 16 on the 2012 application was unlawful as conditions should only be used where the local planning authority is satisfied that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted, that it would have been otherwise necessary to refuse the whole permission. With this in mind, the variance of this condition cannot be non-material and Farnham Town Council strongly objects to the variance of this condition.

The imposition of the condition prohibiting any work on site until the bridge was constructed was a material consideration agreed by the Planning Committee, when approving the scheme. It would be very surprising that it could now be considered 'non-material' and essentially render the initial concerns void.

Crucially, Farnham Town Council would like to point out that Waverley has a responsibility to consider this application's materiality whilst having regard to the changes proposed, together with any previous changes made under Section 96a. Clearly, the effect of previous NMAs, alongside this one are, cumulatively, material.

An NMA should not be used merely to allow a permission that has already been extended to be implemented, in order to avoid the need to reapply for planning permission. It has been argued that, a decision in favour of this application for a material change, using Section 96a of the TCPA 2009 would be purely to avoid a new application. The Borough Council must be very transparent and avoid confusion in its different functions and roles as landowner and development partner and as the Local Planning Authority.

Farnham Town Council formally requests that Waverley Borough Council rejects this application for a non-material amendment in accordance with good practice and planning law.

Yours sincerely

**Iain Lynch**  
Town Clerk

**July 2013**

Farnham Town Council's decision to object and participate in the inquiry to extinguish rights of way followed an earlier strong objection to the appropriation and loss of public open space of land at East Street, Farnham and the intention to further lease this land to a private developer for over 125 years, thus removing well-established rights and public access that had existed for almost a century.

**August 2012**

**WA12/0912 and WA/12/0911**

### **Resolution**

**At its meeting on Thursday 12<sup>th</sup> July 2012** and after discussion and consideration of the applications, informed by presentations, by Jim Duffy, Architect and Geoff Reeve of Wadham and Isherwood, Chartered Surveyor at the Planning Consultative Group on 5<sup>th</sup> July, **Farnham Town Council resolved to:**

**a) Object to Application Waverley WA/12/0912**

On the grounds that there is substantial doubt and uncertainty as to the suitability of the current scheme to meet the future needs of Farnham and is not sustainable development. Whilst strongly of the view that positive proposals are needed to secure the timely regeneration of the East Street Area with an appropriate scheme, Farnham Town Council would wish to work cooperatively with Waverley Borough Council, landowners and developers to achieve this. Farnham Town Council regards the uncertainties of viability, design and traffic as set out in the report of the Planning Consultative Group to render the proposed development flawed and not justifying the extension of the previous permission.

**b) Support Application Waverley WA/12/ 0911 (bridge from A31)**

On the grounds that the option of securing of a proper means of access into the site is important for any regeneration of the East Street Area

The Town Council also confirmed it was committed to working with Waverley Borough Council and others in securing development that is viable, will be sustainable, and will enhance the economic social and environmental roles of Farnham as a vibrant community.

**April 2013**

Following discussion at Council it was resolved that FTC would set out its concerns over the CPO of the Marlborough Head and that the Council should work with the Farnham Interest Group's solicitor.

- "C105/12      After further discussion, it was resolved *nem con* that:
- 1) **Officers, supported by the Infrastructure Planning Group and Chair of the Planning Consultative Group, should prepare a Statement of Farnham Town Council's position in relation to East Street, buildings and Open Space affected by the CPO Inquiry;**
  - 2) **Officers work with other Farnham representatives at the Inquiry to avoid duplication."**

**Marlborough Head CPO Inquiry** (Extract summarising the Town Council's position from the Report of the Inspector Mr C J Ball. NPCU/cpo/r3560/70501)

### **Farnham Town Council**

I34. The Town Council raises serious concerns over the scale and mix of the scheme; adverse air quality implications; the loss of a key building (the Marlborough Head) adjacent to the Conservation Area; loss of open space and public rights of access; inadequate infrastructure and parking; and viability (NQ4.1.1, NQ4.3).

I35. Need for Development The Town Council accepts that land at East Street, Farnham requires appropriate development to enhance the area and town centre, and further accepts that land assembly to achieve a development is required (something the Borough Council has been pursuing for many years). However, the Town Council has a number of concerns on aspects which are considered to be detrimental to the economy and social and environmental well-being of Farnham.

Some are longstanding such as the need to retain the Marlborough Head (2004); whilst others such as concerns over viability are more recent (2012), and based on input from expert advisors (NQ4.1).

I36. The Town Council is the voice of the local community and in determining its policy has represented the views received from the people of Farnham (NQ4.2.1).

The Town Council recognises that there is inevitably a range of views on the scheme and considerable frustration at how long it has taken to develop the area. However there is real concern over the loss of public space and rights of access, losing genuine open space to public realm corridors in a development; and giving away public land with rights to permissive access at the whim of a private developer.

I37. Air quality There are genuine concerns over the breach of air quality standards in central Farnham and failures to follow required Defra practice, despite the recommendations of the Council's own Air Quality officer (NQ4.4.3). The proposed development, which will proceed should the CPO be granted, would cause further exceedances in the air quality standards, both in terms of degree and location. Air quality is required to be an over-riding consideration. The planning process has not been undertaken on this basis as the flawed air quality assessments to date significantly under-predict the impact of the development.

I38. The CPO and the associated development would not improve the environmental well-being of the area. The air quality assessment undertaken to support the original planning application in 2008, was based on a model that did not correlate to the monitored data and significantly under-reported the impact of the development. There have been a number of air quality assessments regarding the development, and each was flawed as demonstrated in NQ4.4, NQ4.4.1, & NQ4.4.3. The current proposed purpose would not serve to improve air quality in Farnham. Further efforts should be made by the Borough Council to reduce acknowledged poor air quality. Development should not be allowed to proceed and the CPO should not be permitted until a revised air quality assessment, based on a revised model that has been correlated to the current monitoring data, has been carried out (NQ4.4).

I39. The Marlborough Head Town Council policy is to "retain the Marlborough Head Public House as a landmark" (NQ4.1). The loss of the existing building and public house role would be detrimental to the character of the conservation area. Despite being directly adjacent, the replacement building on Plot 5 would not enhance the conservation area or its setting, contrary to s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and local planning policies. Whilst it is recognised that the scheme would offer social opportunities to some extent through the (albeit reduced and limited) public realm land and restaurants, the removal of the Marlborough Head (Plot

5) would reduce social opportunity, with no apparent proposal to replace this type of venue within the scheme. It is felt that integrating the Marlborough Head into a smaller scheme would be more beneficial towards improving social well-being in the town.

140. Much has been made at the inquiry of the impossibility of delivering the regeneration of East Street without this building. That concept is plainly not correct. A number of changes to the development proposals have been made over the years to deliver an improved scheme or because key partners withdrew. Recent significant changes have been made under non-material amendment provisions, and the exclusion of the Marlborough Head from the scheme should not pose any greater challenge but would bring community and environmental benefits. The Framework requires that development should “reflect the individuality of the Town Centres” and “be sensitive to the defining characteristics of the local area”: the retention of the Marlborough Head would help achieve this.

141. Public Access and open space The Town Council has been very concerned about the loss of rights of public access on the development. The site, purchased by the former Farnham UDC in 1920, has been used as pleasure grounds and public gardens to which the public has enjoyed a right of uninterrupted access for over 90 years. The extinguishment of public rights-of-way through the development and along riverside walks, with this public right replaced by a ‘permission’ managed by a private developer through a 125 year lease is of great concern, and impacts on the human rights of residents. The appropriation of public space land was undertaken under Local Government Act 1972 provisions and agreed by the Borough Council, seemingly incorrectly, as the Council stated the land would still be held for the same ‘public realm’ purposes after appropriation.

142. Local Economy At present the town is well-balanced. Primary retail provision is situated within the adjacent Conservation Area, while East Street and the shops in the Woolmead continue to offer secondary retail provision. There is easy access to all areas, with a network of footpaths and yards and no single area is disadvantaged. If the current scheme is completed without changes, there is a real possibility that the town centre would not only be divided but that the Conservation Area would be seriously harmed. There are few natural links remaining between this East Street scheme and the existing town centre (NQ4.3).

143. The inquiry has heard that the implementation of the proposed scheme would divide the town’s retail areas and that the split of the town would adversely affect the balance with an inadequate road system and no improved infrastructure. The segregation of the historical part of the town centre (i.e. Castle Street, Downing Street, etc.) from the development would adversely impact on the market-town character and the unique selling point of Farnham would be diminished. With less permeability and with the access points planned, the older part of the town may become isolated and, with the anticipated congestion, less attractive (NQ4.2).

144. Farnham is a distinctive craft town with a University of Creative Arts and a long tradition of small independent businesses. The new development should complement the town not divide it. Overall it does not seem as though the change of scenario – evident, since the current scheme was conceived, as a result of the economic climate, neighbouring developments and changes in retail and residential markets - has been recognised (NQ4.1). As such, evidence has been put forward questioning whether the current proposal is financially viable (NQ4.4,NQ4.3).

**2008**

When planning permission for the East Street redevelopment was granted in 2008 Waverley Borough Council received 5,833 objections and 25 expressions of support.

2004

FARNHAM TOWN COUNCIL'S VIEWS ON THE EAST STREET REDEVELOPMENT SCHEME
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Farnham Town Council have resolved that:

1. What the people of Farnham have strongly said they demand to see in the East Street area is development consistent with the character, style, quality and scale of the historic town centre; in particular no buildings above three floors in height.
2. The number of housing units in the current proposal is unacceptable and should be reduced to a number as small as is feasible.
3. Any reduction in the number of housing units should result in the removal of the proposed building D5 to ensure clear views of the river.
4. The Town Square should be enlarged in size so that there is a significant area of public open space as required in the Development Brief.
3. Building heights within the scheme are kept down , especially as they approach the riverside area.
4. Parking is either underground or semi-basement parking as appropriate but in any event Waverley Borough Council should actively work on the principle that there should only be one car parking space per residential unit as applies in other parts of the town.
5. Brightwell House should be restored and the garden walls and cottage be retained.
6. If possible the Redgrave Theatre be retained, but if this is not feasible, there should be provision for theatre facilities elsewhere in the town.
7. The scheme should contain other public facilities such as street market (with appropriate facilities) , a cinema, a young peoples' centre, and shop mobility provision with the Gostrey Centre adjacent to it.
8. Sainsbury's store should remain in South Street, with its space reduced and with architectural improvements and underground servicing.
9. The Marlborough Head Public House should be retained as a landmark.

If possible discussions should be held with the landowners of the Woolmead so that it can be included in the debates on the proposals.

Farnham Town Council takes the view that any dividend from a successful scheme should be in the form of improved public facilities within Farnham, rather than a cash sum for Waverley Borough Council.

Farnham Town Council seeks assurance that Waverley Borough Council will ensure that the future consultation will be meaningful and involve Farnham Town Council and that steps will be taken to ensure the process of analysis will be clear and transparent.

28<sup>th</sup> April 2004