

North Northamptonshire Area Planning (Kettering) Committee 03/03/2022

Application Reference	NK/2021/0957
Case Officer	Richard Marlow
Location	16 - 18a Horsemarket, Kettering
Development	Full Planning Permission: Mixed use development consisting of 28 no. flats and ground floor commercial unit
Applicant	Newlands Development Ltd
Agent	Newlands Development Ltd
Ward	William Knibb
Overall Expiry Date	02/03/2022
Agreed Extension of Time	

All plans and documents can be viewed using the application reference number at <https://www.kettering.gov.uk/planningApplication/search>

Scheme of Delegation

This application is brought to committee because Kettering Town Council has a material written objection. In addition, there are unresolved, material objections to the proposal and the application requires an agreement under s.106.

1. Recommendation

- 1.1 That planning permission be GRANTED subject to conditions and the completion of a Section 106 Legal Agreement by 31 March 2022 (or other date to be agreed).

2. The Proposal

- 2.1 The application seeks full planning permission for a five-storey mixed use development of 28 no. flats and ground floor commercial unit. The application is consistent with the scheme submitted through reference KET/2020/0586 that was dismissed at appeal in August 2021.

- 2.2 As set out in section 4.0 below the site has a long and complex planning history. Of key importance are the appeals through KET/2019/0663 for a six storey development comprising 35 no flats with ground floor commercial and KET/2020/0586 a five storey development consistent with this proposal (28 no. flats and ground floor commercial). Both appeals were heard by the same Planning Inspector during an informal hearing in Spring 2021 with decisions dismissing both appeals issued in August 2021.
- 2.3 In summary, the Inspector concluded that the six storey development, at a height of 17 metres fronting Horse Market represented an incompatible scale which would harm the character and appearance of the Conservation Area and the setting of a listed building and fails to secure the timely transfer of land required for highway improvements. For these reasons and conflict with the development plan, he concluded that the appeal should be dismissed.
- 2.4 For the five-storey proposal, which at a height of 14.47 metres fronting Horse Market is only 47cm taller than the approved hotel scheme through KET/2011/0152, the Inspector dismissed the appeal. He concluded that scheme was acceptable in highway terms and made no comments about the schemes scale but dismissed that appeal on a technicality due to errors within the drafting of the Unilateral Undertaken presented by the applicant. The lack of a trigger for the transfer of land for highway improvements and mapping errors meant that the Inspector could not be certain about the effectiveness of the Unilateral Undertaking in securing the timely transfer of land for highway improvements.
- 2.5 This latest application therefore is a resubmission of the previously appealed scheme with the intention of resolving the key outstanding matter, namely the Unilateral Undertaking. An identical scheme was submitted in autumn 2021 and an appeal lodged with the Planning Inspectorate due to the non-determination of the scheme by the Local Planning Authority.

3. Site Description

- 3.1 The application site stands within Kettering Town Centre, at the junction of Queen Street and Horse Market and is located within the Silver Street Quarter established by policy 22 of the Kettering Town Centre Area Action Plan (AAP).
- 3.2 The site comprises of a boarded area of land fronting the Horse Market with consent for a hotel and is surrounded by a mix of commercial and residential uses. Queen Street bounds the site to the north which is currently a one way street leading towards Horse Market. Planned highway improvements in Queen Street set out in the AAP would accommodate two way traffic and these would encroach into the site. To the south of the site is Hogs Lane, a narrow one way service road that serves the rear of residential properties fronting Green Lane. A car sales site stands beyond Hogs Lane to the south, whilst to the north there is a vehicle body repair specialist. To the east of the site is a council owned public car park whilst beyond the car sales to the south is Dalkeith Works factory a three-storey grade II listed building.

3.3 Any Constraints Affecting the Site

- Planned Highway Improvements to Queen Street.
- Within and adjacent to Conservation Area.
- To the south of the site is a car sales garage and Dalkeith Works, a Grade II Listed Building beyond.

4. **Relevant Planning History**

NK/2021/0692 Mixed use development consisting of 28 no. flats and ground floor commercial unit. Appeal made due to non-determination.

KET/2020/0586 Mixed use development of 28 no. flats and ground floor commercial unit (A1/A2/B1) Appeal dismissed

KET/2019/0663 Mixed use development of 35 no. flats and ground floor commercial unit (A1/A2/B1) REFUSED and appeal dismissed.

KET/2018/0525 Outline application with all matters - Development of up to 36 no. retirement apartments including communal facilities and parking, with ground floor retail unit for A1 or A3. Committee resolution 18/12/2018 minded to grant approval subject to S106 securing accommodation for over 55-year-old residents as specified within the application.

KET/2017/0381 Outline application with access 41 no. retirement apartments, including communal facilities, access and parking, and ground floor retail and/or restaurant unit. REFUSED and appeal dismissed through APP/L2820/W/18/3207628

KET/2014/0546 Extension to KET/2011/0152 of 21 no. hotel rooms and a re-configured car park, with access onto Queen Street. APPROVED 28/1/16.

KET/2014/0383 - Change of use of site to a car park with car valet service, new vehicular access to Queen Street and erection of portacabin. APPROVED 04/08/2014.

KET/2014/0234 - Change of use of site to a car park with car valet service, new vehicular access to Queen Street and erection of portacabin. WITHDRAWN

KET/2011/0196 - Redevelopment of car sales and services area car park and access road to form phase 2 of retail (A1/A3) and hotel development. APPROVED 16/08/2011.

KET/2011/0152 s.73 Application Variation of conditions 2 (materials), 4 (noise mitigation), 5 (contamination assessment), 10 (approved drawings), 11 (servicing facilities) and 12 (highway details) of planning permission KET/2007/0449 (permission allows a hotel, ground floor retail unit and basement health club) in order to accommodate planned highway improvements and changes to fenestration APPROVED 03/06/2011.

KET/2010/0344 – Landscaping scheme – APPROVED 15/07/2010

KET/2009/0661 – Demolition of buildings – APPROVED 25/02/2010

KET/2008/0924 – Demolish and clear existing buildings – APPROVED 29/01/2009

KET/2007/0449 – 45 bed hotel with ground floor A1 or A3 unit and basement health club – APPROVED 11/06/2008

5. Consultation Responses

A full copy of all comments received can be found on the Council's website at:
<https://www.kettering.gov.uk/planningApplication/search>

5.1 Kettering Town Council

Objection on the following grounds

- a. The proposals represents an over development of the site, with a building that is out of scale with its surroundings
- b. There is insufficient parking associated with the development
- c. Poor disabled access

The Council also notes that the artists impressions accompanying the site are highly misleading and under-represent the scale of the building compared to its surroundings.

5.2 Neighbours / Responses to Publicity

Two third party objections have been received including one from the neighbouring car sales premises to the south of the application site on the following grounds:

- There have been many refusals for planning applications on this site which have proved contentious and controversial
- The application states that no work has started on the application.
- Concern regarding any contamination on the site.
- Concern regarding new or altered pedestrian access to or from a public highway.
- Concern regarding trade waste and effluent.
- Concerns about disabled access and the provision of toilets
- No reference to opening hours or deliveries.
- This is a 5 storey building which is completely out of character with the Horse Market as stated by English Heritage.
- There are no plans for the flat roof area.
- There will be serious overlooking of the rear of houses on Green Lane, given windows facing houses from up to five storeys, especially as this development will face kitchens, living rooms and bedrooms.
- There are skewed perspective photos which completely misrepresent the effect of this development on the Horse Market.
- Anglian Water point out the inadequacy of the drainage system from this proposal.
- The supply of car parking spaces is completely inadequate.
- There is no mention of a fire sprinkler system being installed to prevent a repeat of what happened in a secluded ground floor car park in Dryland Street where a blazed tore through the car park burning out cars and damaging the flats above creating a fire risk.

- Just one lift for five floors is a fire risk especially for disabled resident and indeed the total number of residents.
- Hogs lane provides vehicular access for Beddows Motor Company and some green lane residents who have a car parking access directly onto Hogs lane which is a one way street flowing from Mill road to London road if this plan proceeds and Hogs lane is closed these road users would only be able to exit by driving the wrong way up a one way street, we therefore totally object to losing our rear access that we have had since the 1970's, surely if a road is to be closed this would involve consultation with affected parties, the Council and the department of transport, not to mention the total inconvenience we would suffer as a long standing business.

5.3 Local Highway Authority (LHA)

No comments

5.4 Anglian Water

Anglian Water have no objection to the proposal and have recommended conditions regarding foul water drainage and surface water disposal if the Local Planning Authority is mindful to grant planning approval.

5.5 NNC Environmental Protection

In line with our comments on the previous application, they recommend that the following conditions are attached to any permission:

XA1 Air Quality dwellings

XCD2 Working hours for construction

IEH1 Radon

XCL4 Contaminated land – unexpected contamination (all sites)

IEH2 Invasive Weeds - Informative

XN1 Protection from Noise (all residential in close proximity to road, rail, and non-domestic uses)

IEH5 Acoustic separation (all domestic dwellings) informative

XRL1 Refuse (Flats)

XND1 Control of hours retail shops

XNG2 Control of hours deliveries and collections

5.6 NNC Key Services (Education, Libraries, Superfast Broadband) and on behalf of Northamptonshire Fire & Rescue Service (NFRS)

Requests have been made based on the proposed dwelling mix as follows:

£20,928 towards Early Years Provision

£33,492 for Primary Education

£14,412 Secondary Education

A Libraries Contribution of £3,856

£921 for 1x fire hydrant

Fire

Any hydrants and/or sprinkler systems, if required, should be installed at the same time as the rest of the water infrastructure and prior to any dwellings/commercial building being occupied. This is to ensure adequate water infrastructure provision is made on site for the fire service to tackle any property fire.

The final location of any fire hydrants and/or sprinkler systems for the new development must be agreed in consultation with the Northamptonshire Fire and Rescue Service Water Officer prior to installation, and secured through a planning condition.

5.7 NHS Northamptonshire CCG

A request of £14,235.33 towards increased primary care capacity has been made although no specifics about where or for what purpose the contribution would be used has been specified.

5.8 Northamptonshire Police Crime Prevention Design Advisor

This area of Kettering has historically and periodically still does suffer from incidences of robbery, burglary, theft from Motor vehicles, and theft of motor vehicles, criminal damage and issues of anti-social behavior. Due to the location of the site, designing out crime should be high on the list of sustainable priorities.

Part Q building regulations will only apply to the dwellings and not the car park, bike store or commercial element of the site as such the applicant should provide full security details relating to these elements preferably on a plan that can form part of the planning approval (should it be granted).

The applicants have provided a statement regarding security within the Design and Access. They have used some generic language such as 'lockable' and 'key/fob'. The security details need to be more specific. To make sure this forms part of the completed project the applicants should provide a plan or statement with technical details showing enclosures and location of CCTV. It should also specify door and window security (including bike and bin stores) including entry systems and lighting of the car park. This plan will then form part of any planning approval.

Should the application be granted permission a condition added to ensure security and crime prevention measures are implemented in line with national and local policy.

6. Relevant Planning Policies and Considerations

6.1 Statutory Duty

Planning law requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.

6.2 National Policy

National Planning Policy Framework (NPPF) (2021)

Policy 6 – Building a strong, competitive economy

Policy 7 – Ensuring the vitality of town centres

Policy 8 – Promoting healthy and safe communities

Policy 9 - Promoting sustainable transport

Policy 12 - Achieving well-designed places

Policy 16 – Conserving and enhancing the natural environment

National Planning Practice Guidance (NPPG)
National Design Guide (NDG) (2019)

6.3 North Northamptonshire Joint Core Strategy (JCS) (2016)

North Northamptonshire Joint Core Strategy (JCS)

- Policy 1: Presumption in favour of Sustainable Development
- Policy 2: Historic Environment
- Policy 3: Landscape character
- Policy 4: Biodiversity and Geodiversity
- Policy 5: Water environment and flood risk management
- Policy 7: Community assets
- Policy 8: North Northamptonshire Place Shaping Principles
- Policy 9: Sustainable Buildings
- Policy 10: Provision of Infrastructure
- Policy 11: The Network of Urban and Rural Areas
- Policy 15: Well-Connected Towns, Villages and Neighbourhoods
- Policy 22: Delivering Economic Prosperity
- Policy 28: Housing Requirements
- Policy 29: The Distribution of New Homes
- Policy 30: Housing Mix and Tenure

Kettering Town Centre Area Action Plan

Supplementary Planning Documents
Urban Codes SPD

6.4 Kettering Town Centre Area Action Plan

- Policy 1 – Regeneration Priorities
- Policy 2 – Urban Quarters, Urban Codes and Development Principles
- Policy 5 – Culture, Tourism and Leisure
- Policy 7 – Road Network and Junctions
- Policy 12 – Heritage conservation and archaeology
- Policy 22 – The Silver Street Quarter

6.5 Other Relevant Documents

Urban Codes SPD

7. Evaluation

The key issues for consideration in this application are:-

- Principle of Development;
- Character and Appearance;
- Amenity
- Highways, Access and Parking;
- Flood risk and Drainage;
- Sustainable Building Implications;
- Affordable Housing and Community Infrastructure.

7.1 Principle of Development

The proposal comprises mixed use development of 28 self-contained flats, with a ground floor commercial unit on a site which falls within the town centre boundary as set out within the Kettering Town Centre Area Action Plan (AAP). Policies 11 and 29 of the North Northamptonshire Joint Core Strategy (JCS) focus new development within the growth town of Kettering.

The application site comprises the western part of site SSQ5, as set out in the AAP, allocated for commercial use and having potential for hotel use together with road and junction improvements as set out in policy 22. Objective 3 of the AAP seeks to deliver a new residential community and utilise residential uses to support and complement the quarters. A vertical mix of uses with active uses at ground floor and residential above, as proposed here, is supported throughout the AAP.

In conclusion, the scheme falls within the town boundary of Kettering and its development is consistent with policies 11 and 29 JCS and saved policy 35 of the Local Plan for Kettering Borough. The proposed scheme would therefore contribute to the redevelopment of a key site within the town centre and subject to the detailed matters considered below the principle of residential led development on the site accords with the requirements of the development plan subject to satisfying the criteria below.

7.2 Character and Appearance

Policy 8(d) of the JCS, consistent with chapter 12 of the NPPF, seeks development to respond to local character and wider context.

As the proposal is within the setting of adjacent Grade II Listed Building at Dalkeith Works on Green Lane the proposal falls to be considered under Section 66 of The Planning (Listed Buildings and Conservation Areas) Act 1990 which sets out the duty of Local Planning Authorities (when considering whether to grant planning permission for development which affects a listed building or its setting) to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Moreover, given that part of the site is located within a Conservation Area it also falls to be considered under Section 72 of The Planning (Listed Buildings and Conservation Areas) Act 1990 which sets out the duty of Local Planning Authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

This scheme proposes a 5-storey development with a height of 14.47m to the west elevation fronting Horse Market which is set within the Conservation Area and the setting of the adjacent Grade II Listed Building at Dalkeith Works on Green Lane.

The Kettering Town Centre Area Action Plan (AAP) sets out the planning policies for this area and guiding principles specific to the character of each quarter are set out in the supporting Urban Codes supplementary planning document (SPD) which is a key element in achieving the urban quarters concept and in delivering design-led regeneration. The Urban Codes as set out in policy 2 of the AAP outline specific

buildings uses, heights, massing, density and materials as well as identifying key spaces, streets and necessary public realm improvements for each area.

The site forms the western part of allocated site SSQ5 allocated for commercial use with the potential for a hotel through policy 22 of the AAP. The Urban code for the Silver Street Quarter, specified within the SPD, envisages buildings of 3-4 storeys in height on either side of Queen Street facing Horse Market with the potential for new landmark buildings whilst respecting their surroundings and setting.

The height of the proposal, its design, detailing and appearance presents a scheme that would impact upon the character and appearance of the Conservation Area and detract from the setting of the Grade II listed Dalkeith Works Factory.

Section 16 NPPF sets out that in determining applications Local Planning Authorities should take account of the desirability of new development making a positive contribution to local character and distinctiveness. This is further amplified in paragraph 202 which states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

The Dalkeith Works is a Grade II listed building located on Green Lane. It is a large three-storey imposing building, set at the back edge of the footway within an area of mainly smaller scale residential terraces. Its significance is largely derived from its historic form and particular architectural features. An appreciation of the architectural importance of Dalkeith Works is mainly available from Green Lane itself, due to the closeness of the built form of the surrounding area. In that respect, the setting and its contribution to its significance is limited. Nevertheless, the presence of large, high structure on the proposed site would dominate the surrounding area and therefore there would be some limited harm to the significance of the listed building.

The siting of the proposed building adjacent to Horse Market means that it would be highly visible within both the streetscene and Conservation Area. The five-storey proposal would exceed the height of all surrounding buildings but would only be marginally higher than the consented hotel scheme for the site which was secured back in 2011. The scheme exceeds the advice set out in the Council's Urban Code Supplementary Planning Guidance (UCSPG) which is a framework to guide development within the various designated Quarters of the town. However, given that this proposal seeks only a modest increase in height from the previous hotel consent, the scale of the proposal in this instance is considered to be acceptable and its impact on designated heritage assets and the Conservation Area would be comparable to the extant hotel scheme. Indeed, the Planning Inspector in dismissing the identical scheme raised no concerns about its scale or built form

Policy 8(d)(i) of the North Northamptonshire Joint Core Strategy requires new development to respond to the site's immediate and wider context and local character.

The design of the building itself incorporates red brick faced elevations with stone banding and coping details topped by a zinc clad top floor (fifth floor). Subject to the

use of appropriate materials and detailing, notably for the fenestration of the building, and given the sites history, with extant planning permission at 14m height, the proposal is considered to be acceptable in terms of its appearance and design.

7.3 **Amenity**

JCS Policy 8 (e) seeks development to protect the amenity of all future and surrounding users of land and buildings.

The footprint of the building fronting Horse Market is consistent with the previous hotel consent through KET/2011/0152. This building would be sited directly north of the neighbouring car sales/ servicing business accessed off Green Lane and south of the vehicle body repair specialists on the opposing side of Queen Street. It would be located to the north west of the nearest residential property at no 27 Green Lane, and therefore due to the path of the sun will result in no overshadowing or loss of light to nearest residential units or the car sales business to the south.

The siting of the proposal means that it would be in excess of 30m from nearest residential properties at Green Lane and Dalkeith works and given the separation distances and town centre location are considered acceptable to protect neighbouring amenity.

Any significant impacts arising as a result of construction work associated with the proposal could be controlled via provision of condition restricting construction hours as recommended by the Council's Environmental Protection Department.

The Councils Environmental Protection team have raised no objection to the scheme subject to a number of conditions including those relating to contamination, air quality, refuse and noise impacts.

Moving on to future occupiers living conditions. The proposal has been designed to meet National Space Standards required by policy 30 (b) of the JCS.

No significant adverse impact would result from the development in terms of amenity and the scheme therefore accords with policy 8 of the North Northamptonshire Joint Core Strategy. The Planning Inspector in dismissing the two previous applications raised no concerns about the amenity impacts of development on this site.

7.4 **Highways, Access and Parking**

Policy 8 (b) of the JCS states that new development should make safe and pleasant street by, amongst other ways, ensuring a satisfactory means of access and provision for parking, servicing and manoeuvring in accordance with adopted standards whilst also resisting developments that would prejudice highway safety.

No comments have been received to this application from the LHA. On the previous identical scheme they objected on the grounds of insufficient parking facilities, proximity to the highway boundary and insufficient pedestrian visibility splays and no vehicle visibility splays and these matters were assessed in detail by the Planning Inspector. Additional comments have made by third parties to this application regarding car parking provision, access and egress to the site and servicing. The

commercial unit is small at 122 sq. metre floorspace and given its size is not demonstrated to require dedicated provision for delivery vehicles, consistent with many small retail and commercial units in the town centre. The submitted plans also do not show any permanent closure of Hogs Lane to vehicles.

The NPPF seeks to steer away from the setting of broad parking standards unless there is clear and compelling justification to do so. This is to acknowledge differences in site locations and varied nature of development and accessibility to public transport options. In effect the NPPF advocates a site-specific approach for a developments parking requirement when assessing the impact of development on highway safety.

The site is located within Kettering town centre, in an accessible urban location whereby alternative modes of transport to the car would be on offer and the Highways Authority have no objection or comment to this proposal. The vehicle and cycle parking provision, the latter of which also provides electric vehicle charging, is considered acceptable in this town centre location where there are a number of other public car parks in close proximity to the site. Importantly it will also not prejudice the planned highway improvements to provide two-way traffic movement on Queen Street as envisaged by policy 7 of the AAP.

The Inspector conclusions on highway elements is set out below:

6. Vehicular traffic outside the location of the proposed egress, travels one way, east to west towards Horse Market. Drivers travelling along this part of the road are generally reducing speeds as they approach the traffic-light controlled junction with Horse Market. This section of the highway is also relatively straight, and the building would be set back from it. Therefore, drivers leaving the proposed egress would have sufficient sight of vehicles approaching from the east. The egress would also be about 7m wide, enabling drivers to see pedestrians emerging from either side of it.

7. To prevent vehicles entering the proposed car park from Queen Street, 'Alligator Teeth' are to be installed along the egress. This physical feature combined with the modest size of the car park would mean that drivers of vehicles leaving this would do so cautiously and at low speeds. Also, the car parking area would accommodate a modest number of vehicles (8). This, together with the town centre location of the appeal site and its good accessibility to a range of facilities including public transport, means that the activity associated with the car park and its egress is likely to be limited.

8. In light of the above site-specific circumstances, whilst the required pedestrian and vehicular visibility splays have not been shown, the proposed egress arrangement would not unacceptably compromise the safety of pedestrians and vehicles using the highway. Consequently, the proposal would not conflict with the overarching highway safety aims of Policy 8(b) of the North Northamptonshire Joint Core Strategy 2011-2031 adopted in 2016 ('JCS').

7.5 **Flood Risk and Drainage**

When determining planning applications Policy 5 of the JCS, amongst other things, seeks development to reduce flood risk and contribute toward flood risk management.

The site is less than 1 hectare in area and is located within flood zone 1 and therefore is of low probability of fluvial flooding. The NPPF Technical Guidance states that in zone 1, developments should seek to reduce the overall level of flood risk through the layout and form of development and the appropriate application of sustainable drainage systems.

The surface water strategy/flood risk assessment submitted with the planning application relevant to Anglian Water is unacceptable. Anglian Water have however not objected to the scheme and have requested conditions for on-site foul water drainage works and a surface water management strategy should the development be approved.

7.6 **Sustainable building implications**

Policy 9 of the JCS says that all residential dwellings should incorporate measures to limit water use to no more than 105 litres per person per day and in its pre-text encourages low carbon energy development and a limited cost passive approach. To deal with the water saving matters a suitable condition could be imposed.

7.7 **Affordable Housing and Community Infrastructure**

Private sector housing of 15 or more dwellings would require 30% affordable housing provision as stated at JCS Policy 30 (d) or otherwise contribute toward off-site affordable housing.

As the proposal relates to the provision of a 'major' development as defined by The Town and Country Planning (Development Management Procedure) (England) Order 2015 the application would be expected to provide appropriate community infrastructure contributions that off-sets its impacts. Such contributions will usually be secured in a Section 106 Agreement.

In addition, with regards to affordable housing provision would normally be secured through a Section 106 agreement either at the site or otherwise payment in lieu will be required in association with the delivery of affordable homes elsewhere.

The applicant produced a Financial Viability Analysis to support the previous identical scheme (KET/2020/0586) which considered the impact of affordable housing and developer contributions on the scheme viability. This matter was considered in detail by the Planning Inspector.

The scheme, consistent with previous proposals on this site, has been set back from the junction of Queen Street and Horse Market providing a rounded corner to the building but importantly allows sufficient room for the two-way road improvement set out in policy 7 of the AAP. The applicants financial analysis concluded that the

scheme is not viable with the provision of affordable housing or financial contributions to community infrastructure

They have however calculated a value for the circa 28.4m² corner of the site that is not utilised to allow for the proposed widening scheme and compared this to the financial contributions requested via consultation. They concluded that the build out value of the land which is given up significantly exceeds the requested contributions and therefore have offered the land to the Council in lieu of other contributions.

The previously submitted report, was subject to an independent viability assessment as required by paragraph 3.9 of the North Northamptonshire Joint Core Strategy. The summary of the independent assessor was that the scheme has potential to support affordable housing/planning contributions. However, the appellant highlighted a number of elements within the appraisal that they disputed and set out their reasonings for the difference of approach within their statement, which was put before the Inspector.

While there were differing views and approaches to the methodology employed the findings of the viability assessment concluded that there may be limited scope for affordable housing and other planning contributions. It is anticipated that the magnitude of all contributions requested, including affordable housing, education and libraries would be of a similar magnitude to the build out value that may result from the developer setting their building back to accommodate the proposed highway improvements set out within the Kettering Town Centre Area Action Plan.

The conclusions of the Inspector, which supports the approach detailed above, are set out below. The Inspectors words also explain his reasons for refusing the previous scheme:

Land for highway improvements

9. The proposed building would be set back from the junction of Queen Street and Horse Market to provide sufficient land for the Council's planned improvements along Queens Street to accommodate two-way traffic. The appellant has agreed to convey this land to the Council for this purpose.

10. Moreover, the proposed highway improvement is one of a number of key road and junction improvements identified under Policy 7 of the of the Kettering Town Centre Action Plan 2001-2021 ('AP') which also states that developer contributions will be sought towards these improvements.

11. At the Hearing I was referred to the Kettering Town Transport Strategy, January 2015, which also identifies highway improvements along Queen Street. The Council's representative confirmed that some of the road improvements had been undertaken and others were dependant on land availability. I am also mindful that the proposal would result in some increase in vehicular and pedestrian activity in the area.

12. For the above reasons, the provision of land for highway improvements meets the tests laid out at Paragraph 57 of the Framework, 2021 and set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and therefore is appropriate.

13. The mechanism intended to secure the transfer of land for highway improvements is the submitted UU. However, whilst some details including a Title Number have been provided from HM Land Registry, there is no accompanying plan showing the extent of land ownership to which these relate to. Furthermore, although the 'Schedule' to the UU sets out the developer's obligation to transfer to the Council the land edged blue in the attached plan, on the attached plan this is not edged blue. More significantly, there is no trigger or date for when the land transfer would take place. Drawing on these reasons, I cannot be certain of the effectiveness of the UU to ensure the timely transfer of land required for highway improvements. As such, I find conflict with Policy 10 of the JCS which supports the timely delivery of infrastructure, services, and facilities necessary to meet the needs arising from the development.

Subject to an appropriate legal agreement which secures the transfer of the land for highways improvements, which is currently being checked by the Council's legal team, the scheme accords with Policy 10 of the JCS which supports the timely delivery of infrastructure, services, and facilities necessary to meet the needs arising from the development.

Crime and Disorder

Policy 8 of the JCS emphasises the importance of considering the potential for crime in planning decisions. Northamptonshire Police have raised comments about the development and have suggested a number of methods for reducing the potential for crime and anti-social behaviour within the development. It is therefore considered reasonable to impose a condition requiring the submission of a scheme of security measures to be incorporated within the development.

8. Other Matters

8.1 None

9. Conclusion / Planning Balance

9.1 The proposal would contribute 28 residential units within an accessible brownfield location that forms part of an allocated development site. The less than substantial harm to the significance of a designated heritage asset (Dalkeith Works) should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The construction of the building would derive economic and social benefits, and both the Area Action Plan and the Kettering Conservation Area Appraisal identify the site for redevelopment, to contribute to regeneration and improve the quality of the area. Accordingly, and subject to a S106 agreement which conveys land to the Council for highway improvements, the benefits of the scheme would outweigh any harm and the scheme is therefore recommended for approval.

10. Recommendation

10.1 Approve subject to conditions and the completion of a S106.

11. Conditions

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.
REASON: To comply with Section 91 of the Town and Country Planning Act 1990 and to prevent an accumulation of unimplemented planning permissions
2. The development hereby permitted shall not be carried out other than in accordance with the approved plans listed below.
REASON: In the interest of securing an appropriate form of development in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy
3. Prior to first occupation of the development a scheme for the provision of the surface and wastewater drainage shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved scheme.
REASON: To prevent pollution of the water environment in accordance with Policy 5 of the North Northamptonshire Joint Core Strategy.
4. Construction works shall not take place on site outside of the following times: Monday to Friday 08.00 to 18.00 hrs, Saturday 08.30 to 13.30 and at no time whatsoever on Sundays or Public/Bank Holidays. This includes deliveries to the site and any work undertaken by contractors and sub-contractors.
REASON: In the interests of the amenity of nearby occupiers in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.
5. Prior to the commencement of development an air quality assessment to assess the impact of local air quality on occupiers of the proposed development against the National Air Quality Standards and Objectives shall be submitted to and approved in writing by the Local Planning Authority. The submitted assessment shall identify exceedances of the air quality objectives in addition to any mitigation measures required to reduce exposure. Once approved the mitigation measures shall be implemented in full prior to the first occupation of the development and retained where appropriate at all times thereafter.
REASON: Details are required prior to the commencement of development in the interest of safeguarding residential amenity and to protect public health in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.
6. Prior to the commencement of development, a scheme for achieving the noise levels outlined in BS8233:2014 with regards to the residential units shall be submitted and approved in writing by the Local Planning Authority. Once approved the scheme shall be implemented before first occupation of the residential units and therefore maintained in the approved state at all times. No alterations shall be made to the approved structure including roof, doors, windows and external facades, layout of the units or noise barriers.
REASON: Details are required prior to the commencement of development in the interest of safeguarding residential amenity in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

7. The commercial use (class E) of the ground floor unit shall not be open to the public before 08:00 hours or remain open after 22:00 hours on Mondays to Saturdays, nor before 10:00 hours or after 20:00 hours on Sundays or any recognised public holidays unless alternative hours are agreed in writing in advance by the Local Planning Authority.

REASON: To protect the amenities of the occupiers of nearby properties in the interests of amenity in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

8. The ground floor commercial unit hereby approved shall only be used for uses falling within Class E (Commercial, Business and Service) of the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any statutory instrument revoking and re-enacting that Order with or without modification.

REASON: In the interests of amenity in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

9. Notwithstanding the provisions of Part 3 of Schedule 2 of the (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no change of use permitted by Class MA shall take place on the application site.

REASON: To ensure that commercial activity is retained at ground floor level in accordance with policies 2 and 22 of the Kettering Town Centre Area Action Plan.

10. No development above slab level shall take place until a plan prepared to a scale of not less than 1:500 showing details of intended final ground and finished floor levels has been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.

REASON: To preserve the character of the area and to protect the privacy of the occupiers of adjoining properties in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

11. There shall be no external illumination on the site at any time other than in accordance with a detailed scheme which shall first have been submitted to and approved in writing by the Local Planning Authority.

REASON: In the interests of the amenities of the area and adjoining residential properties in particular in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

12. No development above slab level shall commence on site until details of the types and colours of all external facing and roofing materials to be used (including samples), have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.

REASON: In the interests of the visual amenities of the area in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

13. No development above slab level shall take place on site until full architectural details of all windows, doors, timber finishes, verge detailing and rainwater goods have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.

REASON: In the interests of visual amenity in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

14. In the event that unexpected contamination is found at any time when carrying out the development hereby approved, it must be reported immediately to the Local Planning Authority. Development works at the site shall cease and an investigation and risk assessment undertaken to assess the nature and extent of the unexpected contamination. A written report of the findings shall be submitted to and approved by the Local Planning Authority, together with a scheme to remediate, if required, prior to further development on site taking place. Only once written approval from the Local Planning Authority has been given shall development works recommence.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised in accordance with Policies 6 and 8 of the North Northamptonshire Joint Core Strategy.

15. No development above slab level shall take place until a scheme and timetable detailing the provision of fire hydrants, sprinkler systems and their associated infrastructure has been submitted to and approved in writing by the Local Planning Authority. The fire hydrants, sprinkler systems and associated infrastructure shall thereafter be provided in accordance with the approved scheme and timetable.

REASON: In the interests of safety in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

16. No development above slab level shall take place until a scheme of hard (full details of materials) and soft landscaping works have been submitted to and approved by the Local Planning Authority. The scheme shall make provision for biodiversity enhancement through the use of bird boxes or bird nest bricks.

REASON: To improve the appearance of the site in the interests of visual amenity and to protect and enhance biodiversity in accordance with Policy 5 of the North Northamptonshire Joint Core Strategy.

17. All residential units shall be constructed to achieve a maximum water use of no more than 110 Litres per person per day in accordance with the optional standards 36(2)(b) of the Building Regulations 2010 (as amended) as detailed within the Building Regulations 2010 Approved Document G - Sanitation, hot water safety and water efficiency (2015 edition).

REASON: In the interests of water efficiency in a designated area of water stress in accordance with Policy 9 of the North Northamptonshire Joint Core Spatial Strategy 2016.

18. No development above slab level shall take place until a scheme detailing the security measures/standards to be incorporated within the development, with reference to the

'Secured By Design' principles, shall have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with these approved details.

REASON: To reduce the potential for crime in accordance with policy 8 of the North Northamptonshire Joint Core Strategy

19. All windows on the Horsemarket and Queen street elevations must open inwards away from the highway.

REASON: To prevent overhanging of the public highway and the scheme to widen Queen Street as set out in policy 7 of the Kettering Town Centre Area Action Plan.

20. The two 2m x 2m lines of visibility splays denoted on drawing 19-084-04F shall be maintained in perpetuity and shall be kept free of all obstacles to visibility over 0.9m in height above carriageway level.

REASON: To protect any pedestrians on Queens Street, and to enhance vehicular vision onto the highway in the interests of highway safety as set out in policy 8 of the North Northamptonshire Joint Core Strategy.

21. Alligator teeth enforces shall be installed within the surface level car park at the exit point of the development onto Queens Street.

REASON: To prevent direction of travel from Queens Street onto the development and in the interests of highway safety as set out in policy 8 of the North Northamptonshire Joint Core Strategy.

22. Prior to the first occupation of the development hereby approved, refuse storage and collection facilities shall be made available for use. The refuse storage area shall be in a separate room not connected to any habitable area. These facilities shall be retained at all times thereafter, unless otherwise agreed in writing with the Local Planning Authority.

REASON: In the interest of public health and safeguarding residential amenity in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

23. Prior to the commencement of the commercial use hereby approved a scheme for the storage and collection of waste shall be submitted to and approved in writing by the Local Planning Authority and shall be implemented in accordance with the approved details and retained at all times thereafter..

REASON: This is a pre-commencement condition because the waste facilities will need to be in place at the outset of the development and in the interest of public health and safeguarding residential amenity in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

12. Informatives

Positive/Proactive - pre-application advice
 Radon - Protection of Dwellings Informative
 Acoustic separation (all domestic dwellings) informative
 Public Sewers

List of plans

The plans and documents, some of which may have been subsequently referenced by the LPA, are set out below and form the basis for this decision:

Title	NK Ref.	Agent's Ref	Received Date
Existing site and location plans		19-084-10	01/12/2021
Proposed elevations		19-084-12	01/12/2021
Proposed ground, first, second, third and fourth floor plan		19-084-11	01/12/2021
Appendix 3c, proposed site plan		19-084-04F	01/12/2021
Proposed site plan		19-084-13	01/12/2021
Proposed vehicle tracking		19-084-14	01/12/2021
Traffic plan		TMO_PL_009.Rev9	01/12/2021
Typographical Survey		200	01/12/2021
Design & Access Statement	NK/2021/0957/5		01/12/2021
Appendix 1 Appeal decision		APP_L2820_W_21_3269021	01/12/2021
Appendix 2, Common Ground KET.2020.0586	NK/2021/0957/4		01/12/2021
Appendix 3a Unilateral Undertaking	NK/2021/0957/6		
Appendix 3b Register		NN72976	01/12/2021

Photo 1, 5 Storey Perspective 1	NK/2021/0957/1		01/12/2021
Photo 2, 5 Storey Perspective 2	NK/2021/0957/2		01/12/2021
Photo 3, 5 Storey Perspective 3	NK/2021/0957/3		01/12/2021



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