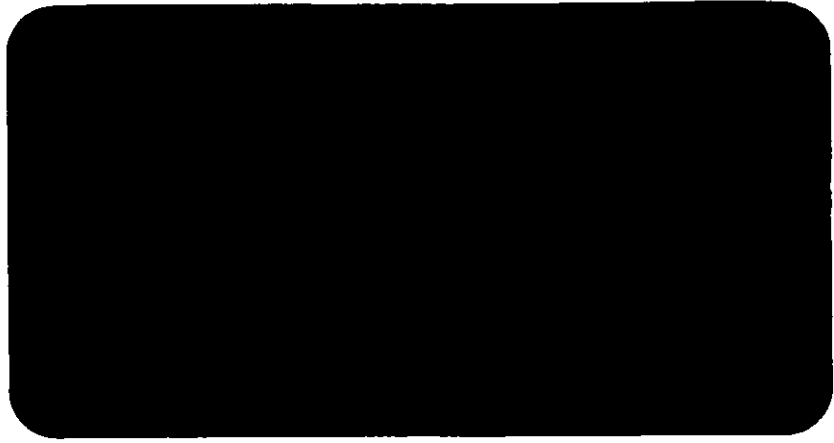


# Proof of Evidence

of

R.M. Sellwood BA. Dip. TP. MRTPI. FRICS



**St James Homes Ltd.**  
**1/3 Marloes Road**  
**Kensington, London W8**  
**(APP/K5600/A/01/1062450)**

**Proof of Evidence**  
**by**  
**R M Sellwood**  
**BA. Dip.TP. MRPTI. FRICS**

**July 2001**

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## **APPENDICES**

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- Appendix 2 : 3 Marloes Road : July 1959 Planning Permission
- Appendix 3 : 1 Marloes Road : October 1962 Appeal Decision
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## **EXHIBITS**

- RMS 1 Site Context Plan Scale 1 : 25,000
- RMS 2 Site Plan Scale 1 : 1,250

1.0.0      **INTRODUCTION**

1.1.0      **Qualifications & Experience**

1.1.1      My name is Robert Mark Sellwood and I am the Principal of Sellwood Planning, Chartered Town Planners and Chartered Surveyors. I have an honours degree in Social Science and a Post Graduate Diploma in Town Planning. I am also a member of the Royal Town Planning Institute and a Fellow of the Royal Institution of Chartered Surveyors.

1.1.2      I have over twenty five years experience as a Town Planner in both public and private practice. This has included eight years with Essex County Council and sixteen years with G.L. Hearn and Partners. For the eleven years prior to the establishment of Sellwood Planning in 1998, I was a Partner with G.L. Hearn and Partners.

1.1.3      I have advised a wide range of public, private and institutional clients in respect of land use issues on a national basis. This has involved appearing and giving evidence at Structure Plan EIP's, Local Plan Inquiries, Appeals, Lands Tribunal and Crown Court proceedings. I was also a participant at the Core Strategy sessions of the Public Examination into the revised Regional Guidance for the South East.

1.1.4      I can confirm that this Statement has been prepared in accordance with the RICS Practice Statement "Surveyors Acting As Expert Witnesses". As a consequence, it contains my professional opinion of all matters of relevance to this appeal.

1.2.0        **Background To Evidence**

1.2.1        In order to clarify the scope and nature of my evidence, it may be of assistance briefly to outline the structure of this proof. Section 2 provides a description of both the site and the wider area in which it is situated. This is followed in Section 3 by an evaluation of the planning history of the site. Particular attention will be given to the personal consents granted for the use of the site as a residential hostel in 1959 and 1962. This section also explains the current appeal proposal to convert these premises into ten flats.

1.2.2.        Section 4 considers the main issues raised by this appeal. In my view the primary issue relates to the lawful use of 1 and 3 Marloes Road now that the occupier with the benefit of the personal consent has vacated. The second issue relates to the inability to accommodate car parking on the site. This issue will be considered in the context of emerging guidance on reduced car parking standards and the Appellant's Unilateral Undertaking to withdraw the right of future occupiers to obtain residents car parking permits.

1.2.3        Section 5 is the final section of my evidence where I conclude that there is a compelling case in favour of permitting a conversion of 1/3 Marloes Road into ten flats.

**2.0.0            DESCRIPTION OF THE SITE AND THE LOCALITY**

**2.1.0            Analysis of the Locality**

2.1.1            The appeal site is located in the Abingdon Ward of the Royal Borough of Kensington & Chelsea as shown on my plan RMS1. The site is some 60 metres north of Cromwell Road (A4), 550 metres south of Kensington High Street (A315) and 250 metres east of Earls Court Road (A322).

2.1.2            The site has excellent public transport accessibility. In addition to the numerous buses running east/west along the Cromwell Road, the site is within walking distance of the following underground stations;

- (a)      Gloucester Road (550 metres to the east)
- (b)      Earls Court (350 metres to the south west)
- (c)      High Street, Kensington (630 metres to the north).

2.1.3            In addition to public transport, the site is close to a range of local facilities including Stratford Road (150 metres north of the site) which is identified as a local shopping centre in the adopted UDP. The larger identified local centre of Gloucester Road is 700 metres to the east of the site and the large modern Sainbury's Superstore at Cromwell Road is 350 metres east of the site. The nearest principal shopping centres to the appeal site are Kensington High Street (630 metres to the north) and South Kensington (just over 1 kilometre to the south east).

2.1.4            The nearest junior schools to the site are St Barnabas & St Philip Church of England School (400 metres to the north west) and St Cuthbert & St Matthias Church of England School, which is 700 metres to the south of the site. Taken



together, these factors demonstrate how 1/3 Marloes Road is close to a good range of local facilities and public transport.

2.1.5 The predominant character of Marloes Road is of large late Victorian terraced dwellings. However, immediately to the south of the site (on the western side of Marloes Road) is a block of modern apartments. On the eastern side of Marloes Road at its junction with Cromwell Road is the Cromwell Hospital. The main vehicular entrance into the hospital is from the eastern side of Marloes Road just south of the appeal site.

## 2.2.0 **Site Analysis**

2.2.1 The application site comprises two linked late Victorian terraced properties with a site area of 0.033ha (330m<sup>2</sup>). The site is situated on the western side of the southern section of Marloes Road (Plan RMS2). 1 and 3 Marloes Road comprise the first two properties in a terrace of eight units extending as far north as Lexham Gardens. The appeal site is bounded to the south by Sherborne Court (a modern block of flats) and to the west by the rear area of the Lee Abbey International Students Club.

2.2.2 1 and 3 Marloes Road are typical properties of their date and of this part of Kensington. Each comprises a lower ground floor, ground floor and three upper floors and were originally constructed as single dwelling houses. The generous scale of the properties can be seen from the fact that over 360m<sup>2</sup> (3875ft<sup>2</sup>) of floorspace is provided in each, giving a combined floorspace level of just over 720m<sup>2</sup>.

- 2.2.3 In the course of the 20<sup>th</sup> Century the fortunes of this area took a downturn. As a consequence, many properties of this type were sub-divided into self contained bedsits, hostels and small hotels. It is only over the last twenty years that the fortunes of the area have again prospered, leading to better quality flat conversions and some properties being returned to use as a single dwelling.
- 2.2.4 Appendix 1 contains A3 reduced copies of the existing floor plans of 1 and 3 Marloes Road. This shows how the present accommodation is sub-divided into twenty five bedrooms, five living room/lounges, three bathrooms, two toilets and one kitchen. There is a small garden at the rear of each property and no scope to provide any on-site car parking.

3.0.0 **PLANNING HISTORY & THE CURRENT DEVELOPMENT PROPOSALS**

3.1.0 **Planning History**

3.1.1 The full planning history of 1 and 3 Marloes Road has been investigated at the Borough Council offices. This discloses no applications on either site between 1948 and 1959. In May 1959 a planning application was submitted to London County Council for the;

**“use of No. 3 Marloes Road, Kensington, as a residential hostel including the part time use of the common room for lectures and discussions.”**

3.1.2 This was approved with conditions on the 16<sup>th</sup> July 1959 and a copy of the planning permission forms Appendix 2 of my evidence. The two conditions were;

**“(1) This permission shall be personal to the Capricorn Africa Trust and shall not enure for the benefit of the land**

**(2) The provision and maintenance of adequate residentail (sic) supervision and control**

**- (1) and (2) to enable the Council to retain control of any future use of the premises, and to safeguard the residential amenities of the surrounding properties.”**

3.1.3 This was followed by an application in early 1962 to use number 1 Marloes Road as an extension to the hostel at 3 Marloes Road. This was refused by the

Borough Council in May 1962. This refusal was taken to appeal and the appeal was permitted in October 1962. My Appendix 3 contains a copy of the Secretary of State's decision letter. Regrettably, the Inspector's Report now appears to be lost.

3.1.4 In paragraph 3 of the decision letter the Secretary of State comments that:

**“The Minister understands the Borough Council’s wish to preserve a balance between accommodation for permanent and for transient residents, but he also recognises that there is a need for the provision of accommodation of the kind under consideration. He considers that, in the light of the Inspector’s Report, the property in question is suitable for the purpose. In these circumstances the Minister accepts the Inspector’s recommendation that the appeal should be allowed. He accordingly hereby grants permission for the use of No. 1 Marloes Road, Kensington, subject to condition that the permission hereby granted shall enure solely for the benefit of Zebra House Limited and shall not run with the land.”**

3.1.5 Between 1962 and the cessation of the use by Zebra House in the late 1990s the only planning applications were for minor developments such as new windows and a rear extension. Following the issuing of a Planning Contravention Notice in June 1999 in respect of the unauthorised use of the property for short term lettings, the premises became vacant.

3.2.0 **Current Development Proposals**

3.2.1 In January 2000 the Agents for the owners of 1 and 3 Marloes Road wrote to the Borough Council seeking clarification of the planning status of the properties following their disposal by the previous owners who had the benefit of the personal planning permission. The Borough Council responded on the 27<sup>th</sup> January 2000 (see Appendix 4) confirming that;

**“I note that the property is currently vacant, but that it’s previous use was as a residential hostel which was the subject of a personal permission hence it is considered that the property has a nil use. I would advise that therefore the conversion of the property to residential flats is likely to be acceptable in principle.”**

3.2.2 On the basis of this advice that the properties now have a nil use and a residential conversion to flats was acceptable in principle, a planning application to convert 1/3 Marloes Road into ten flats was submitted by the London Opportunity Fund Plc. in May 2000. This application also included some small extensions to the rear. Prior to the determination of this application, a second planning application was submitted by Bremday Ltd. on the 29<sup>th</sup> September 2000. This also proposed the conversion of the properties into ten flats although no rear extensions were included in this application.

3.2.3. Negotiations proceeded on both applications during the autumn and winter of 2000 and the only concern expressed by the planning officer and the Team Leader related to the inability to provide any on site car parking. The officers felt that because Marloes Road is perceived as being in an area of parking

stress this would be exacerbated by the potential on street car parking needs of the residents of the ten flats, all of whom could be eligible for residents' parking permits.

3.2.4 This concern was summarised by officers in the following letter dated the 4<sup>th</sup> August 2000 (Appendix 5) which stated:

**“The current application fails to provide any off street car parking spaces for the proposed ten self-contained residential units, in an area which suffers from severe on street parking stress and is therefore contrary to the Council’s policies as set out in the Unitary Development Plan and the Unitary Development Plan Alterations.**

**I recommend that this issue be addressed in one of the following ways, with amended drawings submitted where appropriate;**

- 1. The change of use of the properties should be restricted to either two single dwelling houses or alternatively two residential units in each property only.**
- 2. A minimum of six off street parking spaces provided within the immediate locality of the properties. Evidence would be required in order to confirm that the car parking spaces would be for the sole use of the residential units proposed by the current application.”**

3.2.5 Again, this letter makes it clear that there is no objection to a residential use of the properties and there is no reference to any policy objection based on a desire to re-establish a hostel use. The only detailed concern is a suggestion that the conversion could be limited to two dwellings or four flats in order to minimise the impact of on street parking.

3.2.6 In late 2000 the appeal site was acquired by St James Homes and the company suggested that the concern about an increase in on street car parking could be overcome by a Unilateral Obligation under S106 which would prevent the occupiers of the ten flats obtaining residents' car parking permits. A signed Unilateral Obligation was completed by St James Homes on the 15<sup>th</sup> January 2001 and sent to the Council (Appendix 6). This followed an exchange of correspondence including comments from the Council's legal department on points of detailed legal drafting contained in an earlier draft S106.

3.2.7 Both the Bremday and Local Opportunity Fund applications were the subject of officer reports which were placed on the Agenda for the Planning Services Committee of the 27<sup>th</sup> March 2001. Both reports were accompanied by officer recommendations of approval (See Appendix 7). Paragraph 4.3 summarises the main conclusion of the officer as follows;

**“The properties were last in use as a residential hostel. The use was granted with a personal condition attached to each planning permission on both properties. The properties are currently vacant, therefore they have reverted to a nil use, in light of the personal permissions. The principle of the use of the properties as self contained residential units is therefore in accordance with STRAT2, STRAT14 and STRAT16 together with the policies contained within the “Housing” Chapter of the UDP.”**

- 3.2.8 The Planning Services Committee of the 27<sup>th</sup> March 2001 was also, coincidentally, the same Committee meeting which was due to consider the St James Homes S73 applications relating to off site affordable housing on the former waterworks site. These reports recommended refusal on the basis that 24 affordable units at Finborough House did not overcome the policy objection. Since the granting of the applications at 1/3 Marloes Road would give St James Homes the opportunity to offer an additional ten off site affordable units, Martin Simms (the Deputy Managing Director of St James Homes) wrote to the Council on the 26<sup>th</sup> March 2001 (see Appendix 8). This letter explained that 1/3 Marloes Road was now available as part of the off site affordable housing package and would increase the number of units from 24 to 34. The letter also suggested that the two Marloes Road applications should be withdrawn from the Agenda in order for a comprehensive solution to be formulated. As a result, neither of the Marloes Road applications were considered by Members in March 2001.
- 3.2.9 Shortly after the 27<sup>th</sup> March Committee meeting I spoke to the Area Planning Officer concerning the Marloes Road applications and he advised that officers were now contemplating refusal. On the basis of this advice, I took the precaution of lodging an appeal on the grounds of non-determination on the 2<sup>nd</sup> April 2001. Since the only documentary evidence from the Council was the Committee Report recommending approval, a written representation appeal was suggested.
- 3.2.10 Subsequent to lodging the appeal, I spoke to the Area Planning Office (Mr Kelsey) who confirmed that the basis for a possible refusal was a desire not to “lose” a residential hostel, however no final decision had been made on the recommendation to Members. In view of this, I wrote to the Council on the 24<sup>th</sup> May 2001 (Appendix 9) outlining the reasons why there were no grounds



to refuse the application since the personal planning permission meant that the former residential hostel had now been extinguished. Thus there was no residential hostel use to “lose”.

3.2.11 On the 19<sup>th</sup> June 2001 officers put reports to Committee on both Marloes Road applications (Appendix 10) Both were recommended for refusal on the grounds of the “loss” of a residential hostel and lack of provision for any off street parking. With regard to the hostel use the report stated;

**“The properties are currently vacant, therefore, in the light of the personal permissions, technically they have reverted to nil use. However, the properties were occupied as a residential hostel for students for a period in excess of 35 years. In the light of this extensive period of continuous occupation it is considered that the use can be considered as de facto, a hostel use, and therefore should be considered in accordance with the Council’s policies relating to residential hostels.” (para. 4.4)**

3.2.12 The proposed reason for refusal relating to the residential hostel states that;

**“The proposed change of use of the properties to ten self contained flat is considered to be unacceptable in that it would result in the loss of premises suitable for continued hostel use, and therefore, would be contrary to Policy H25 of the Unitary Development Plan”.**

3.2.13 The proposed reason for refusal relating to the car parking was as follows;

**“The proposed change of use of the properties to ten self-contained flats is considered to be unacceptable in that it would result in the formation of dwellings without making any associated provision for off street parking. As a result, the use would generate additional on street car parking demand in an area that already experiences severe on street parking stress, to the detriment of the amenities of existing residential occupiers. In this respect the proposal is contrary to Policy TR46 of the Unitary Development Plan.”**

3.2.14 At the meeting Members considered the reports on both applications but did not agree with the recommendation to refuse. Following the debate, Members deferred both applications and made the following resolution;

**“The Committee resolved that they were minded to grant both applications but that they be deferred to allow further consultation to take place.”**

3.2.15 My Appendix 11 contains a copy of the Addendum Report to Committee of the 4<sup>th</sup> July 2001 which recited the previous resolution and suggested possible conditions if Members were inclined to approve. Officers also reported verbally that further local consultation had yielded one letter of support and one letter of objection based on the linkage between 1/3 Marloes Road and the appeal on the former Waterworks site.

3.2.16 Following discussion Members refused the application for the two reasons outlined in the report to Committee of the 19<sup>th</sup> June 2001.

4.0.0 **PLANNING ISSUES**

4.1.0 **The Status of The Previous Use**

4.1.1. There is no disagreement between the Council and the Appellant concerning the nature of the personal planning conditions attached to the 1959 and 1962 planning permissions. There is also no disagreement that once the organisation with the benefit of the conditions vacated the properties, the residential hostel use is extinguished and the properties have a 'nil use' in planning law. The fundamental difference between the Appellant and the Council concerns what a nil use means in terms of S54A and the current appeal proposal.

4.1.2. Whereas in their letters of January 2000 and August 2000 (Appendices 4 and 5) the Council accepted that the implications of a nil use meant that a residential conversion was in accordance with the adopted and emerging UDP, the June 2001 Committee Report (Appendix 10) creates the concept of a "de facto hostel use". In particular, paragraph 4.7 of the Committee report states;

**"In the light of Policy H25 it is considered that the de facto residential student hostel use of the properties should be protected ..... Technically, the properties currently have a nil use, therefore planning permission would be required for the continued use of the property as a residential student hostel."**

4.1.3 This quotation usefully summarises the essential contradiction and flaw in the Council's approach to this application. Clearly there is no such concept in planning law as a 'de facto' use. The Council acknowledges this by accepting that any use of 1/3 Marloes Road now requires an express planning permission. A 'nil use' currently prevents any use of the premises.

4.1.4 The Council's reason for refusal relies solely on Policy H25 of the adopted UDP which states;

**“To resist the loss of existing residential hostels, except, in Earls Court.”**

4.1.5 In this case the Council accepts that the residential hostel use ceased in 1998 and the properties now have a nil use. On this basis, in terms of planning law there is no “existing” residential hostel to “lose”. As a consequence, the current appeal proposal to convert the properties into ten flats is not in conflict with Policy H25. This is the correct approach and the one that the officers adopted in the fifteen months up to the time the favourable March 2001 Committee report was prepared.

4.1.6 Whilst a property with a nil use is unusual, it does not alter the way that Section 54A will apply to any planning application. In this case the correct approach is to assess the proposed use against the provisions of the adopted UDP. In contrast, the Council seeks to resist a use which itself accords with the UDP and seeks to argue for the re-establishment of a use which has ceased and is not sought by the Appellant.

4.1.7 If the appeal proposal is assessed against the provisions of the adopted UDP, I can do no better than quote the assessment contained in the officers' report of the 27<sup>th</sup> March 2001 (Appendix 7);

**“The principle of the use of the properties as self contained residential units is therefore in accordance with STRAT2, STRAT14 and STRAT16 together with the policies contained in the “Housing” Chapter of the UDP. The size and layout of the units is in accordance with the Council’s guidelines” (para. 4.3).**

4.1.8 My Appendix 12 contains a copy of the policies referred to above plus the Housing Chapter. In summary the appeal proposal accords with all the following UDP policies;

- (a) STRAT2 – increase residential accommodation in the Borough
- (b) STRAT13 – increasing the dwelling stock in the Borough
- (c) STRAT14 – maximising residential capacity in the Borough
- (d) STRAT16 – increase the amount and range of housing in the Borough
- (e) H2 – seek the development of buildings for residential use
- (f) H3 – to encourage the use of property for housing
- (g) H6 – to encourage residential conversions to smaller self contained residential units
- (h) H13 – the improvement and preservation of the housing stock.

4.1.9 To conclude on the first reason for refusal, the Council proceeded to approach the appeal proposal in a manner that was consistent with planning law and S54A up to the favourable 27<sup>th</sup> March 2001 Committee Report. Since that time the Council has sought to rely on the concept of a ‘de facto’ residential hostel use that has no status in law and to ignore the correct S54A approach.

In my opinion the correct way forward is clear. The residential hostel use had been extinguished and the properties have a 'nil' use. Policy H25 cannot be used to revive the residential hostel use. Against the 'clean sheet' of a nil use a proposal to convert the properties into ten flats wholly accords with the housing policies of the UDP and should be approved.

4.2.0 **Car Parking**

4.2.1 In the previous section of my evidence I explained how the officers' approach to the principle of a residential conversion had changed following the 27<sup>th</sup> March 2001 Committee Report. A similar change of stance also occurred in terms of car parking notwithstanding the fact that there have been no changes to the policy context since March 2001 and the Appellant's Unilateral Obligation has been before the Council since January 2001.

4.2.2 The March 2001 Committee Report (Appendix 7) referred to Policy TR46 of the 1995 adopted UDP and the normal requirement for one off-street space per unit. The report also referred to a recent parking survey, which revealed "on street parking stress of 100% for Marloes Road and Lexham Gardens". However, despite these points the report concluded;

**"In order to address the lack of on-site parking the applicant has submitted a Unilateral Undertaking to covenant all the proposed flats to the effect that the leaseholders would not at any time apply for a residents' parking permit. Whilst concerns are raised over the enforceability of this Obligation, taking into account the existing nil use of the properties, together with the limited number and size of units proposed, it is considered that the concerns raised**

**with regard to the policies of the UDP can be addressed in the exceptional circumstances of this case.” (para. 4.5)**

4.2.3 In contrast to this approach, the officer report to Committee some three months later (19<sup>th</sup> June 2001) recommends refusal on car parking policy grounds. Reference to the June 2001 Committee Report (Appendix 10) discloses two changes from the March 2001 report. The first change (para. 4.10) refers to the previous hostel use and concludes that the residential hostel use would have generated less applicants for residents’ car parking permits than ten self-contained flats. Whilst I would question whether a residential hostel containing 25 bedrooms would generate less applicants for residents’ parking permits than 10 flats, this is an irrelevant consideration since the residential hostel use is now extinguished and there is no application to re-establish it.

4.2.4 Even if it was concluded that the appeal proposal would lead to the potential for a higher number of resident parking permits, this is addressed through the Appellant’s Unilateral Undertaking. The officers’ report gives no explanation why this was regarded as acceptable (with reservations) in March 2001 but unacceptable in June 2001. The obligations are enforceable in two ways;

- (a) firstly, the purchasers of the flats will sign leases that prevent them from applying for a residents’ parking permit. This covenant can be enforced against the original leaseholders and successors in title as well as the freeholder

- (b) the Council will be aware of the flats where occupiers are precluded from applying for a residents' permit. It will therefore be a simple matter for the Council's Residents Parking Department to cross-check each application to ensure that it does not relate to one of the properties that are subject to the S106 agreement

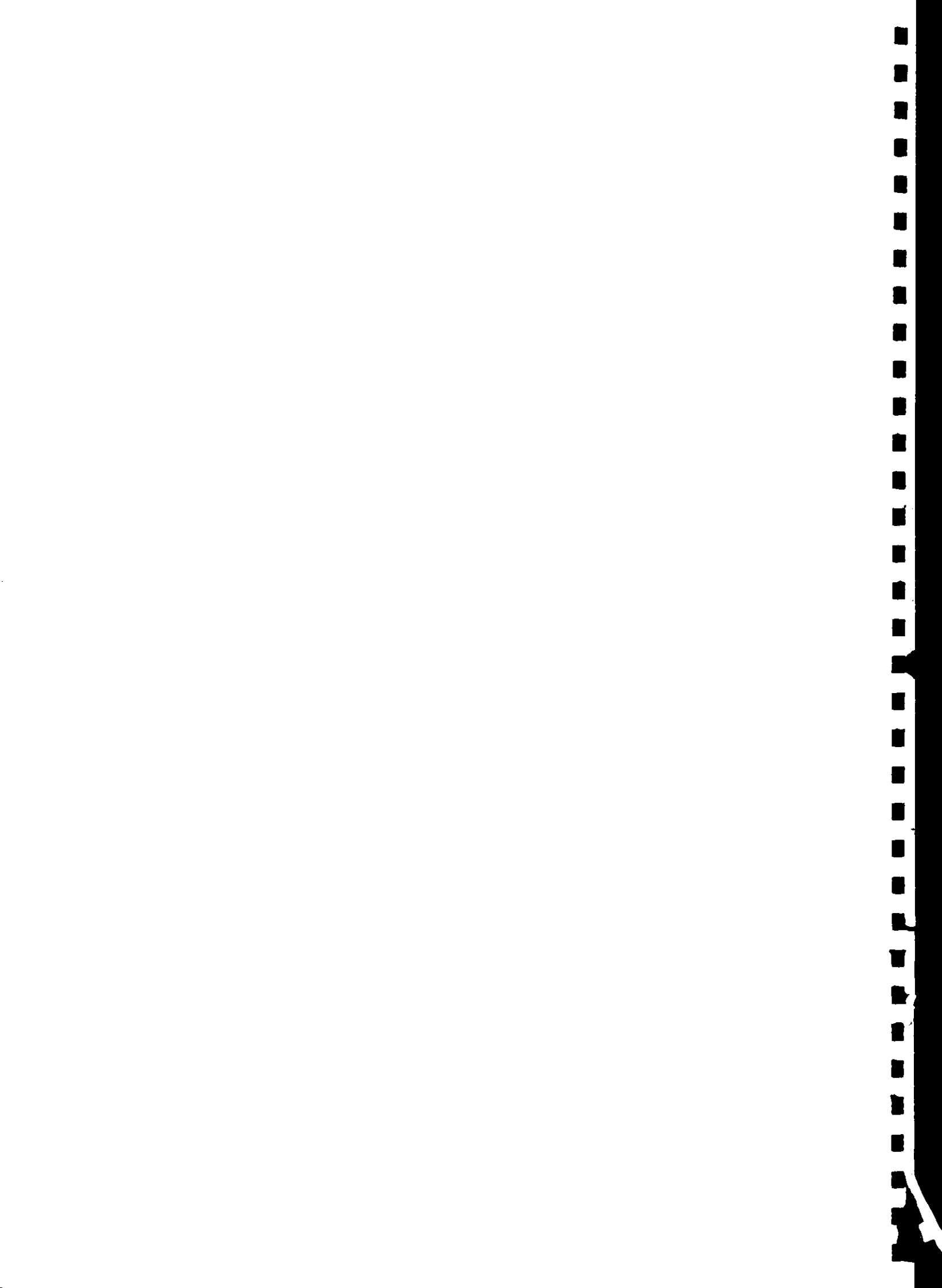
4.2.5 The final aspect of this issue relates to the degree to which Policy TR46 of the 1995 adopted UDP accords with more recent statements of Government Policy on parking. Policy TR46 states (Appendix 12);

**“To require all new residential development to include adequate off-street parking unless such provision would be unacceptable in townscape terms.”**

4.2.6 The supporting text (para. 6.16) makes it clear that “adequate off-street parking” is the standard contained in the ‘Planning Standards’ chapter of the UDP. The standard for converted flats is one space per dwelling. This policy predates the revised PPG13 which was published in March 2001. The new PPG13 takes the view that car parking should generally be restricted in order to encourage greater use of public transport and allow development at higher densities. Two quotes from paragraph 51 and 52 of PPG13 are particularly pertinent to this appeal;

- **“not require developers to provide more spaces than they themselves wish, other than in exceptional circumstances which might include for example where there are significant implications for road safety which cannot be resolved through the introduction or enforcement of on street parking controls” (para. 51)**





- **“Policies in development plans should set maximum levels of parking for broad classes of development ... There should be no minimum standards for development, other than parking for disabled people”. (para. 52)**

4.2.7 In this case the Appellant is content that the development shall have no on-site car parking. It is the experience of St James Homes that such restrictions are perfectly acceptable to purchasers in well located urban locations such as Marloes Road.

4.2.8 The emerging UDP Alterations go some way towards reflecting the advice in PPG13. In particular, some changes are proposed to the wording of Policy TR46 (Appendix 13). The amended policy now states;

**“Normally to require all residential development to include adequate off-street parking”**

4.2.9 Reference to the parking standards chapter discloses that the proposed standard for converted flats is **“ 1 space per dwelling is desired”**. However, paragraph 5.2.5 states;

**“With residential development it is normally considered necessary to require off-street parking to supplement the restricted on-street provision. Parking provision should be made available to, and permanently retained for use by residents of the development. Parking at the levels shown in Table 5.1 are considered maximum provision. The Council recognises that in some cases proposals for residential development such as conversions of homes into multiple units will not include off-street car parking, or adequate off-street car parking to accommodate the demand for parking for residents.**

**In such cases the additional demand for on-street parking spaces may preclude the granting of a planning permission unless means can be agreed with the Council to avoid any increase in parking demand away from the development (see paragraph 6.16b of the Transportation Chapter)."**

4.2.10 This reference to paragraph 6.16b is illuminating since this states;

**"In those circumstances where no, or inadequate off-street car parking is proposed the Council will wish to ensure that such development does not generate unacceptable levels of on-street parking demand or exacerbate already severe problems of restricted on-street provision. It will consider ways of avoiding any increase in on-street parking pressures, through the use of Planning Obligations (see Policy M11). For example, the Council will consider making more effective use of existing alternative off-street parking where there is spare capacity. The Council will resist inappropriate development unless means can be agreed to avoid any increase in on-street parking demand." (6.16b)**

4.2.11 It would appear from the above that the emerging UDP Alterations are seeking to reflect the advice in PPG13 by specifying a maximum car parking standard of one space per unit for residential conversions. In areas of parking stress Policy M11 allows the use of Planning Obligations to avoid increasing on-street parking pressures.

- 4.2.12 It is also relevant to note that as of the 17<sup>th</sup> July 2001, the Borough Council is changing the parking regime in Marloes Road and the surrounding area to increase the evening capacity for residents' parking. This should alleviate some of the problems identified by the Council's survey.
- 4.2.13 In addition to my evidence, separate transportation evidence is also being presented at this Inquiry on behalf of St James Homes by Geoff Heard of WSP.
- 4.2.14 The manner in which the Council has dealt with the car parking issue echoes the experience in respect of the residential hostel question. The appeal proposal combined with a S106 obligation was regarded as acceptable by officers in March 2001 but is not acceptable in June 2001. No convincing justification is put forward to support this change of stance. Indeed, the contents of the emerging UDP in terms of maximum car parking standards and the use of planning obligations in areas of perceived stress both would lead to the conclusion that the appeal proposal is acceptable in terms of car parking and should be approved.

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## 5.0.0 CONCLUSIONS

5.1.1 This is an unusual appeal since we have before us two officers' reports, written three months apart, which come to completely different conclusions on the acceptability of converting 1/3 Marloes Road into ten flats. The change from consistently supporting the proposal up to March 2001 is all the more surprising since the S54A policy context has remained unchanged. Similarly, the conclusion on the nil use of the premises has been a consistent view since January 2000. In view of these factors, the current position of the Council lacks credibility.

5.1.2 Dealing first with the reason for refusal relating to the "loss" of a residential hostel and the alleged conflict with Policy H25, the Council's arguments fail in terms of both planning law and logic. Both the Appellant and the Council accept that the former residential hostel use has been extinguished and the site now has a 'nil' use. Since Policy H25 only refers to the loss of "existing" residential hostels, the policy cannot apply to a hostel that, by common consent, no longer exists. In the circumstances of a property with a 'nil' use the correct approach is to consider any planning application in the context of the policies of the adopted development plan. As the March 2001 Committee report concluded, the current appeal proposal wholly accords with the housing policies of the UDP and merits approval.

5.1.3 Turning to the issue of car parking, the March 2001 Committee report noted that the proposal could not provide on-site car parking and was contrary to UDP Policy H46. However, it was concluded that given the Unilateral Obligation, the limited number and size of the units and nil use of the property;

**“the concerns raised with regard to the policies of the UDP can be addressed in the exceptional circumstances of this case”. (Appendix 7, para. 4.5)**

5.1.4 The subsequent reason for refusal revises this conclusion and suggest that the Unilateral Obligation is not enforceable. However, the report does not explain this assertion. It is also interesting to note that the June 2001 Committee report did not refer to the policies of the emerging UDP Alteration. These much more closely reflect the advice in PPG13 by stating that the standard of one space per unit is now a maximum and accept that where schemes do not provide this, the concerns can be met by the use of planning obligations. This is precisely the approach proposed by the Appellant in this case.

5.1.5 In my opinion the approach adopted by officers in their March 2001 Committee Report was sound and merits support. The subsequent June 2001 Committee Report and refusal is based on flawed logic and should be rejected. There are, therefore, compelling grounds to allow this appeal.