

TO: COUNCIL  
22 JANUARY 2014

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**RELEASE OF BLUE MOUNTAIN GOLF COURSE FROM  
1990 SECTION 52 AGREEMENT**  
**Director of Corporate Services – Legal/Director of Environment, Culture and  
Communities**

**1 PURPOSE OF REPORT**

- 1.1 This report seeks the views of Council as to whether or not land at the Blue Mountain Golf Course, Binfield, should be released from provisions set out in an Agreement made pursuant to (inter alia) Section 52 of the Town and Country Planning Act 1971, with a view to making a recommendation to the Executive Member for Planning and Transportation who will make the decision. The report is brought to full Council at the request of the Council's Executive which at its meeting on 10 December 2013 considered the request for the Section 52 Agreement to be released.

**2 RECOMMENDATION**

- 2.1 **That the Council recommend to the Executive Member for Planning and Transportation that land at Blue Mountain Golf Course, Binfield, Luff Farms Limited and the current owners be released from the provisions of the Section 52 Agreement dated 16 February 1990 made between the Council, Berkshire County Council, Bracknell Town Council and Luff Farms Limited relating to land at Park Farm/Jocks Lane, Bracknell, on the basis that any housing development of the site will be in accordance with the Site Allocations Local Plan Policy SA7.**

**3 REASON FOR RECOMMENDATION**

- 3.1 The release of the Section 52 Agreement will be required if Site Allocations Local Plan ("SALP") Policy SA7 is to be implemented. SALP has very recently been adopted by the Council as part of the statutory Development Plan following a lengthy process involving careful consideration by the Council, extensive public consultation and an examination in public.

**4 ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 Not to release the Blue Mountain Golf Course from the Section 52 covenant, the consequence of which would be that a mixed development of the site as envisaged by the Council's Development Plan could not proceed unless the site is acquired through the use of compulsory purchaser powers.

**5 SUPPORTING INFORMATION**

Background

- 5.1 In 1990 the Council granted planning permission (reference 614307) for development of 85ha of land then known as Park Farm, Binfield. The permission granted was for residential development, hotel, golf course, balancing pond, construction of distributor road and provision of open space.

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The residential development provided pursuant to the planning permission, is now known as Temple Park and the golf course (which also comprises a conference centre) is known as the Blue Mountain Golf and Conference Centre. The golf course and conference centre is shown on the plan at Annexe A.

- 5.2 The Park Farm development was part of the large scale residential development to the north of Bracknell for which planning permissions were granted in the late 1980's/early 1990's to meet the strategic housing allocation target for the Borough, set by the Structure Plan for Berkshire. Planning permission for the majority of the housing in north Bracknell was granted on appeal by the Secretary of State at the same time as the Replacement Structure Plan for Berkshire (which set the housing allocations for the Berkshire District Councils) was approved by the Secretary of State. Planning permission for the Park Farm site was, however, granted by the Council.
- 5.3 A key aim of the planning policy framework which pertained at the time planning permission was issued for the Park Farm (and other north Bracknell) development) was to secure the continuation of strategic "gaps" between designated settlements, including the "gap" between Bracknell and Binfield. The essential purpose of the "gap" policies was to prevent the merger of settlements by ensuring that the land between the settlements functioned as countryside areas.
- 5.4 In considering the proposed development at Park Farm one of the key concerns of the Council at the time was to put in place arrangements which would permanently secure the gap between Bracknell and Binfield. To achieve that aim the Council utilised both planning and general local authority property powers. The use of planning powers took the form of the Section 52 Agreement as outlined below. So far as land ownership powers are concerned, the exercise of those powers resulted in the Council taking a lease of the Golf Course land for a term of 125 years from 16 February 1990 and a lease back (to Luff Farms Limited), which was completed in 1993, following completion of the construction of the Golf Course, for a term expiring on 15 February 2115 (i.e. the expiry of the Head Lease). The Head Lease (to the Council) stipulated that the land demised was only to be used for one or more of the following:-
- (a) a golf course
  - (b) the provision of sporting or other recreational facilities
  - (c) open space
  - (d) agriculture

The sub-lease back to Luff Farms Limited stipulated that the land should not be used "other than as a golf course with driving range and ancillary uses **PROVIDED THAT** no ancillary use shall be carried out or permitted on the Land which may in the reasonable opinion of the Bracknell Forest Borough Council detract from the function of the Land as an open piece of land between Bracknell and Binfield".

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- 5.5 The information provided above in relation to the lease and lease-back arrangement is given by way of context and to aid the understanding of representations made as a result of the Council's consultation on the proposal to release the Section 52 Agreement. At this juncture no decision is sought relating to the termination of the lease and sub-lease.

### The Section 52 Agreement

- 5.6 Section 52 of the Town and Country Planning Act 1971 was the predecessor to Section 106 of the Town and Country Planning Act 1990. Section 52 empowered local planning authorities to enter into Agreements with landowners "for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the Agreement". Covenants given by landowners in Section 52 covenants are enforceable by the local planning authority not only against the original covenanting party but also against their successors in title (in the same way as if the local planning authority owned adjacent land with the benefit of a restrictive covenant). For technical legal reasons, which are of no relevance for current purposes, agreements entered into under Section 52 were often (as in the case of the Park Farm Agreement) expressed to be entered into under other powers as well as Section 52.
- 5.7 A Planning Application for both the Temple Park housing and the Golf Course was approved by the Council in May 1989 subject to a Section 52 Agreement. The Park Farm Section 52 Agreement was completed on 16 February 1990. It was entered into by:-
- the Council
  - Berkshire County Council
  - Bracknell Town Council
  - Luff Farms Limited

Bracknell Town Council was a party to the Agreement as an existing community building located on land owned by the Town Council was proposed to be demolished and a new recreation area was provided and transferred to the Town Council. The Town Council also took the benefit of covenants in respect of footpaths and cycleway provision. Luff Development Limited and the Trustees of the Luff Pension Scheme have requested Bracknell Town Council to formally release the Golf Course land from the covenants given in favour of the Town Council and the Town Council have indicated that they are agreeable to doing so.

The Agreement is, as would be expected in the case of a planning agreement concerning a major development proposal, a very lengthy document, including ten schedules. The Agreement contains covenants on the part of the landowner in favour of the Council, with provisions for:-

- some Affordable Housing;
- woodland works and retention within Temple Park;
- badger foraging runs
- drainage,
- contributions to recreational and community facilities;
- a site for a hotel

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- use of land as a golf course, or other sporting/recreational/open space use.

With the exception of the hotel site (subsequently developed for housing under a 1994 planning permission), all other covenants given in favour of the Council have been achieved and met to the satisfaction of the local planning authority. The golf course has been in use for more than 20 years.

The Agreement also contained covenants by the landowner in favour of Berkshire County Council concerning highway works, the transfer of land (with access and services) for a school, the provision of footpaths and cycleways and the carrying out of works to record the archaeology of the development site. It is understood that subsequently the County Council released the developer from the obligation in respect of the transfer of land for a school. The Council is the statutory successor to the County Council.

- 5.8 The only provision of the Agreement which has continuing effect is a covenant which is in the following terms:-

“Not to use the Golf Course Land for any purpose other than as a golf course for the provision of sporting or other recreational facilities or as open space and not to construct any buildings on the Golf Course Land other than as reasonably required in connection with any of the uses mentioned in this paragraph”.

- 5.9 The covenant is not expressed to be limited in time i.e. unless released by the Council it will remain enforceable indefinitely (this is a slight oversimplification as there is a legal process which allows for application to a Tribunal for the discharge of covenants on specified grounds, but in this instance that possibility can, in relation to the covenant in the Section 52 Agreement, effectively be disregarded). However, the covenant may be discharged by agreement between the Council, the original covenantor (the party which gave the covenant i.e. Luff Farms Limited) and the current owners of the Golf Course Land. In this connection, it is relevant (in light of many representations received to contrary effect) that neighbouring properties (including properties within the Temple Park development) do **not** have the legal benefit of the golf course covenant given through the Section 52 Agreement (however, as to the existence of separate covenants given on the transfer of the Temple Park development area to the developer, see below under “Legal Objections”).

### 5.10 **Development Plan**

At a meeting of the Full Council on 17 July 2013, the Site Allocations Local Plan (SALP) and Policies Map were adopted and became part of the Council’s statutory Development Plan, against which all planning applications must be considered. As Members will be very well aware, SALP was only adopted after a very extensive process of consideration of the merits of all proposed sites, the selection of preferred sites, publication of proposals, consideration of public and other representations. It was also subject to examination in public by an Inspector and consideration of the Inspector’s report which endorsed the Council’s site selection methodology and the proposal to include Blue Mountain as a site for development. SALP Policy SA7 and the Illustrative Concept Plan is shown as Annexe B. “Land at Blue Mountain, Binfield” is a site allocated for a development which is in line with

the adopted Policies Map and a SALP Illustrative Concept Plan. It is one of four SALP allocations to extend built up areas (urban extensions) that are now part of the Development Plan. The Blue Mountain Golf and Conference Centre, including its 18 hole Golf Course, is within "Land at Blue Mountain, Binfield" shown as allocated for mixed use on the Council's Policies Map. The Policies Map settlement boundary takes in about 40% of the golf course land for housing and a school. The SALP Illustrative Concept Plan indicates a further 20% being for school playing fields and a football ground/pitches, and about 40% of the golf course land remaining open and undeveloped. Before the changes made by SALP and the Policies map, the old (now superceded) Development Plan showed land on either side of Wood Lane as being both "Land outside Defined Settlements" and mostly, including all of the golf course, as being "Open Space of Public Value". Temple Park housing, south of Temple Way and the golf course were allocations in a previous Development Plan.

The Council was fully aware of the existence of the S52 agreement when it adopted the SALP, as was the inspector during the Examination in Public.

#### 5.11 **Modifying the 1990 Section 52 Agreement**

On 2 October 2013 the Council received a formal request from landowners (The Trustees of the Luff Pension Scheme and Luff Farms Limited), of land at the Blue Mountain Golf Centre to be released from the s52 Agreement of 16 February 1990. The request has been given publicity and comments invited by-

- site notices on the golf course perimeter,
- a public notice in the 10 October Bracknell Standard newspaper,
- letters to the golf course operator, Bracknell Town Council, Binfield Parish Council and the Binfield Village Protection Society
- e-mail to local Borough Council ward members
- 133 letters to addresses from the Council's Local Plan database of those who made representations about land at Blue Mountain allocation policy SA7 at the Draft Submission Stage of the Site Allocations Development Plan Document

The landowner's request was made available for viewing together with the 1990 Agreement and the consultation period was 1 month ending on 10 November 2013.

#### 5.12 **Consideration of Objections**

The representation received from Binfield Parish Council is considered separately below. As was apparent throughout the process which led to the adoption of SALP, the proposed development on part of the Blue Mountain Golf Course is a matter of significant concern, especially in Binfield and particularly to residents of the Temple Park development. A total of three hundred and twenty objectors to the proposal to release the land from the Section 52 Agreement have made representations and one representation which was neutral has been received. A compilation of the objections (with names, addresses and e-mail addresses removed) is available for inspection in the Democratic Services office and has been placed on the Council's web-site. The objections have been summarised in Annexe C. The objections may in broad terms be considered to be of a legal nature or of a planning nature and the response to objections is set out below.

5.13 **Legal Objections**

(i) **Objection**

There has been insufficient consultation/I should have been consulted on individually as the covenant is part of the title to my property.

**Response**

The issue as to whether the Section 52 covenant forms part of the title to properties within the Temple Park development is considered below. Suffice to say in consideration of this objection that the key consideration is whether any of the Temple Park properties (or for that matter any other property) has the legal benefit of the covenant and consequently whether the consent of relevant owners is required. The clear and unambiguous view of the Borough Solicitor is "no" to both questions, The process of consultation is described in paragraph 5.11 above and is considered to have both been adequate and effective (as witnessed by the very considerable number of objections received).

(ii) **Objection**

The Golf Course was a reason for my moving into the area.

**Response**

It is quite probable that the proximity of the Golf Course with consequent open aspect of the land was a significant factor which influenced at least a proportion of residents of the Temple Park development (and other neighbouring properties) to purchase their properties. At one level it is, of course, regrettable that part of such an area should be put to residential or any other urbanising use. However, the Council is required by national planning policy to plan to meet its housing needs. That means providing additional housing and during the process which led to the adoption of SALP it was concluded that the public interest lay with the Blue Mountain site being developed in accordance with SALP SA7, not just for housing but also as a location for major educational facilities (including a new secondary school) and a new football ground.

(iii) **Objection**

The Agreement protecting the golf course land was for a period of 125 years and should not be changed/the credibility of the Council is damaged if it reneges on the Agreement/would set a dangerous precedent.

**Response**

As outlined above, the Section 52 covenant is not expressed to be time limited, although the lease and lease back arrangement was put in place until 2115. At the time the Section 52 Agreement was entered into it was envisaged that the covenant as to the use of Blue Mountain being restricted to that of a golf course or open space would have permanent effect. If the Council does not agree to the release of the covenant then it would continue to have effect and remain enforceable. However, in order to provide for the additional housing and supporting infrastructure which the Borough requires the Council has had (through the process leading to the adoption of SALP) to assess all potential sites for development. The owner of Blue Mountain proposed the site as one for significant residential development and a potential site for education. After evaluation of the possible alternatives the Council decided through the SALP process to support that proposal. If the

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Blue Mountain site were not to be developed because the Council refused to release the Section 52 covenant one or more other sites would have to be developed, even though in planning terms they have been assessed as less appropriate. It would also mean having to find a new location for major educational provision in a suitable location to serve planned growth around north Bracknell.

It is not considered that the Council is “reneging” on an Agreement. If the Council agrees to the landowner’s request it will be agreeing to a release of what would otherwise be a binding covenant because it is considered desirable to do so in the public interest. Neither is it considered that there is any merit to the contention that a release would create a precedent. Apart from the fact that very few (if any) other sites have a covenant to similar effect as that which relates to Blue Mountain, it is always possible for the Council to agree a release or variation of a planning or other Agreement. Whether any Agreement should be varied or released depends upon the Council’s determination of the public interest in the particular case.

(iv) Objection

The Agreement is referred to in Temple Park property deeds and properties were sold/purchased in the knowledge of this and the restriction on the golf course land being used only for a golf course or other sporting/open space purposes. “I do not consent to the change”.

Response

As explained above, the open space covenant was only expressed to be given in favour of the Council. It was not intended by the Council to be enforceable by any other party and the drafting of the Agreement reflects that intent. None of the owners of properties within the Temple Park development (or any other property) can enforce the covenant and their consent for its release is not required.

In order to ascertain whether the Blue Mountain Section 52 Agreement or the open space covenant is referred to in the Land Registry titles (the modern equivalent of “title deeds”) the Borough Solicitor has obtained a sample Land Registry titles of properties whose owners have claimed that the covenant is referred to in their titles. As anticipated there was no apparent reference to the Section 52 Agreement or the open space covenant in any of those Land Registry titles. Even if the open space covenant were referred to in the titles any such reference could not confer upon the owner the legal right to enforce the covenant (i.e. their consent to release the covenant would still not be necessary).

Subsequent to the drafting of the report to the Executive (paragraph 5.16 below refers), the Borough Solicitor obtained a copy of the freehold title at HM Land Registry. That title search disclosed that when in 1990 Luff Farms Limited sold the land for the Temple Park development to the developer it gave separate covenants “to observe and perform the provisions of the Section 52 Agreement” and “not to commit any breach..... of the Section 52 Agreement”. The covenants were expressed to be given for the benefit of the Temple Park land i.e. it was intended that subsequent purchasers of properties within the development site would have the benefit of the covenant. The Council was not a party to the transfer which contained the restrictive covenants.

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It is important to bear in mind that at this stage the Council has only been requested to release Blue Mountain from the Section 52 Agreement, not the separate covenants in the transfer of the Temple Park site by Luff Farms Limited. The Council has no power to release Blue Mountain from the covenants in the transfer given by the freeholder. Indeed that would normally be a matter for the freehold owner to deal with. At this juncture, however, it is sufficient to note that the existence of the transfer covenants do not necessarily preclude development as proposed by SALP.

In accordance with proper practice the Section 52 Agreement (with the open space covenant) was registered as a Local Land Charge. The effect of registering the Agreement as a Local Land Charge is that when solicitors/licensed conveyancers acting for a potential purchaser carry out the normal pre-purchase searches and enquiries relating to a property within the area covered by the Section 52 Agreement (as the Temple Park properties are) the existence of the Section 52 Agreement would be disclosed. If purchasers solicitors/licensed conveyancers exercised due diligence and investigated the terms of the Section 52 Agreement then they may very well have advised their clients of the existence of the covenant.

It is therefore accepted that at least some of the residents of the Temple Park development may have purchased their properties with knowledge of the existence of either or both of the Section 52 Agreement covenant and the covenants in the transfer to the developer. Such knowledge, combined with an expectation that the Agreement and covenants would remain in place, may have been a factor in decisions to purchase. It is quite possibly the case that if the Council released the Section 52 Agreement then the covenant given on the transfer of the Jennett's Park development site, which was given for the benefit of properties comprised in that site, will effectively cease to have effect and not be enforceable. Those circumstances are considered to be relevant matters to be taken into account in deciding whether or not to agree to a release of the Section 52 Agreement. They are factors which must be placed in the balance. On the other side of the balance is the public interest in permitting development to be carried out as envisaged by SALP SA7. It is suggested that the greater public interest is in the latter consideration prevailing.

(v) Objection

Council money should not be spent on changing the Agreement.

Response

It is very unlikely that the Council will incur any expense in effecting a release of the Section 52 Agreement as the Council will most likely require the landowner to meet the Council's legal costs of completing a Deed of Release.

(vi) Objection

The modification has only been sought for financial gain and will impact on local property prices.

Response

Any issue as to whether or not the landowner or the Council (by any subsequent termination of the lease and lease back arrangement for example) would receive any financial gain is entirely irrelevant to (and must not be taken into account in reaching) the decision as to whether or not the Section 52 Agreement should be released. For the avoidance of doubt, there is no agreement in place between the Council and the landowner relating to



the possible variation or determination of the lease and lease back arrangement. It is far from clear that the release of the Section 52 covenant and the carrying out of development as proposed by SALP will have a significant (if any) adverse impact upon the value of neighbouring properties. It is conceivable that any impact, particularly the establishment of a new secondary school in the vicinity, would be positive.

(vii) Objection

What guarantee is there that if the covenant is lifted it will be used for SALP rather than for other purposes?

Response

It is considered that the Council's Core Strategy and SALP provide a robust Planning framework which would enable the Council to successfully resist any proposed development which was significantly at variance with SALP. However, it would be possible to structure a Deed of Release and/or a Section 106 Agreement to be put in place on the grant of planning permission for development in accordance with SALP SA7 such as to ensure that the release will secure that any housing development is only carried out in accordance with SALP SA7. It is therefore proposed that the Section 52 Agreement should be released on that basis.

5.14 **Planning Comments and Objections**

(i) Objections

- Loss of wildlife and their habitat
- Loss of gap between Binfield village and Bracknell
- The golf course should be protected
- The golf course was the reason for moving to the area
- Loss of golf course jobs and business opportunities

Response

If development is carried out in accordance with SALP SA7 the Binfield/Bracknell gap would be reduced.

SALP Policy SA7 and the accompanying Proposals Map proposes that approximately 60% of the golf course land would be used for a mixed use development. That SALP allocation now forms part of the Council's Development Plan for the Borough (see above). As illustrated on the SALP Concept Plan for land at Blue Mountain, the Development Plan envisages that

- about 40% of the land used as a golf course will still remain open and undeveloped
- the open land will include:
  1. a large area (about 16ha.) of "SANG" (Suitable Alternative Natural Greenspace) open space between Binfield village and the proposed football ground/pitches and school playing fields. As SANG, this open space would be a semi-natural green space.
  2. another large area (about 10ha.) of accessible open space situated between Binfield Manor and the proposed school/residential area

Both will provide a wildlife habitat and contribute to a visual separation gap between Binfield and the proposed urban extension onto the golf course land.

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The school site would also comprise a significant area for playing fields.

The presence of a golf course, the relatively rural or semi-rural character of the land together with the open aspect which it provides may well have been a significant factor taken into account by at least some in deciding to live nearby. Although the loss of habitat and a significant part of the golf course land as a visually open space area is in many regards to be regretted, the development proposed for the site (including the proposed educational facilities which will serve some of the other proposed development sites as well as Blue Mountain) is an important part of the strategy proposed by SALP to meet the housing needs of the Borough.

(ii) Objection

Loss of a local golf and conference centre facility providing:-

- open space for active recreational use (golf course and driving range) and more passive outdoor leisure pursuits
- a venue for socialising and for commercial and community events.

Response

The loss of a popular facility as a consequence of development proposed by SALP SA7 is regrettable but it is not considered that it would result in an unacceptable lack of such facilities. Albeit further away and with extra travelling, there are other pay and play golf courses, countryside areas and venues serving the need for such facilities. Also, SALP proposes that new open spaces and community facilities should form part of a mixed use development of land at Blue Mountain. The intention is that the development will include a building for community uses and new sporting facilities provided by the proposed football ground/pitches and school playing fields which could also be available for some community use.

(iii) Objections

Goes against the National Planning Policy Framework  
Other sites should be developed before the golf course.

Response

The National Planning Policy Framework ("NPPF") sets out government planning policies and guidance on how they are to be applied. The contention that the SALP proposal is contrary to the NPPF is firmly rejected. The NPPF was published in March 2012. The examination in public for SALP did not conclude until many months later and indeed specific modifications were made to the public consultation version in order to reflect the NPPF. Had the Inspector considered SALP to be inconsistent with the NPPF he would not have recommended adoption subject to modifications (as he did). The Inspector took account of a technical report on the loss of Blue Mountain and alternative golf provision available in the area and of the views of Sport England and concluded that there were adequate alternative facilities within a reasonable travel time to satisfy the policy requirements set out in the NPPF.

A key aim of the NPPF is to secure the delivery of a wide choice of high quality homes. It stipulates that to "boost" significantly the supply of housing local planning authorities should (inter alia):-

- identify key sites which are critical to the delivery of the housing strategy over the plan period.

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- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirement.

SALP was adopted (with the inclusion of Blue Mountain as a deliverable housing site) to secure those objectives.

SALP was prepared and adopted by the Council in the context of the need to meet the housing requirement set out in the Council's adopted Core Strategy 2008. Many sites were assessed during the preparation of the SALP document to guide the Core Strategy growth. The Council's final proposals to allocate the golf course land at Blue Mountain for a mixed development and all duly made representations thereon, including substantial local opposition, were examined by an independent Planning Inspector whose report on the detail of SALP policy SA7 Land at Blue Mountain, is reproduced in Annex D.

The examining Inspector's general conclusions were:

- SALP with some modification provided an appropriate basis for the planning of the Borough until 2026
- The site's character would be changed substantially
- The site is comparatively well related to the main urban area and Bracknell Town Centre

The NPPF also contains guidance on conserving and enhancing the natural environment and advises that policies should guard against the unnecessary loss of valued facilities and services. Referring to open space and recreational facilities the NPPF says they should not be built on unless:

- an assessment clearly shows the open space, buildings or land to be surplus to requirements; or
- the loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.

### Objection

Development following a release of the golf course covenant

- will threaten preservation of the archaeological evidence the Section 52 Agreement refers to
- will be an unacceptable and extra burden on local infrastructure and community facilities

### Response

If justified, a proper investigation of archaeological impacts and the safeguarding of any archaeological evidence would almost certainly be a condition of the grant of planning permission.

In preparing and adopting SALP, account was taken of wide ranging evidence including impacts on infrastructure and local facilities and the impact the proposed development would, with other allocations, have on the road network. The SALP is accompanied by an Infrastructure Delivery Plan which sets out the impact mitigations that are expected. A Planning Application in line with the Development Plan would have to take account of SALP Policy SA7 Policy which lists the infrastructure to support a mixed development on land at Blue Mountain, including:-

- A comprehensive package of on and off-site transport measures to mitigate the development's impact on roads and encourage sustainable modes of transport.
- On-site in-kind provision of a waste recycling facility.
- Provision of land and financial contributions towards on-site Primary School, Secondary School and Special Educational Needs places.
- In-kind provision, or financial contributions towards an on-site multi-functional community hub, including land set aside for the delivery of a Full Daycare Nursery.
- Measure to avoid and mitigate the impact of residential development upon the Thames Basin Heaths Special Protection Area (SPA), in agreement with the Council and Natural England. This will include provision in perpetuity of on-site bespoke SANG of at least 8ha per 1,000 new population; a financial contribution towards Strategic Access Management and Monitoring; and any other measures that are required to satisfy Habitats Regulations, the Council's Thames Basin Heaths SPA Avoidance and Mitigation Strategy and relevant guidance.
- A comprehensive package of on-site, in-kind Open Space of Public Value, in accordance with standards.
- Protection and enhancement of Public Rights of Way.
- Integration of Sustainable Drainage Systems.
- Provision of Green Infrastructure

#### 5.15 **Binfield Parish Council Representations**

Binfield Parish Council has made a representation which is shown (together with the annexes thereto, other than the sub-lease from the Council to Luff Farms Limited which is described sufficiently above) at Annexe E.

The copy correspondence and minutes attached to the Parish Council representation effectively confirm what is previously set out above as to the aim and intention of the Borough Council in the arrangements which were put in place for Blue Mountain i.e. to secure (or, to use the language then used, to put in place "watertight" arrangements for) a green gap between Binfield and Bracknell. Those arrangements were and are "watertight" in that if the Council thought that it was not in the public interest for any of the land to be developed then those arrangements would remain effective. However, Council policy is (as evidenced by the adoption of SALP) that part of the site should be developed. With respect to the Parish Council, the issue for the Council is not one of "honouring" the agreement or not. The issue is whether it is in the public interest for part of the site now to be developed as proposed by SALP.

If one party to an Agreement judges that it is appropriate to release the other party from obligations under the Agreement it is not (by definition) a breach of Agreement nor a "dishonouring" of the Agreement.

#### 5.16 **Recommendations of the Executive**

The Executive considered the request for the release of the Section 52 Agreement at its meeting on 10 December 2013. The Executive resolved:-

- (a) to support in principle the release of the Section 52 Agreement,

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- (b) that the Leader arrange for the function of determining the request be discharged by the Executive Member for Planning and Transportation, and
- (c) that the request should be referred to full Council in order for Council to express its view and to formulate a recommendation to the Executive Member for Planning and Transportation.

The report to the Executive did not contain the information set out in this report concerning the separate covenants given on the transfer of what is now Temple Park by Luff Farms to the developer.

## **6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

### Borough Solicitor

- 6.1 The Borough Solicitor is the co-author of this report.

### Borough Treasurer

- 6.2 There are no financial implications directly arising from this report.

### Equalities Impact Assessment

- 6.3 An Equalities Impact Assessment Screening has determined that a full Assessment is not required. An Equalities Screening carried out for the adoption of SALP concluded that there would be no adverse impact upon persons who share a protected characteristic as defined by the Equality Act 2010.

### Strategic Risk Management Issues

- 6.4 Not Applicable.

## **7 CONSULTATION**

### Principal Groups Consulted

- 7.1 See Section 5 above.

### Method of Consultation

- 7.2 See Section 5 above.

### Representations Received

- 7.3 See Annexes A and B.

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Background Papers

File of Borough Solicitor (exempt)

File of Planning Department (exempt insofar only as it contains communications with the Borough Solicitor or otherwise contains advice attracting legal professional privilege).

Contact for Further Information

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