

WARD: Bedminster **CONTACT OFFICER:** Alex Hawtin
SITE ADDRESS: Ashton Vale Club For Young People Silbury Road Bristol BS3 2QE

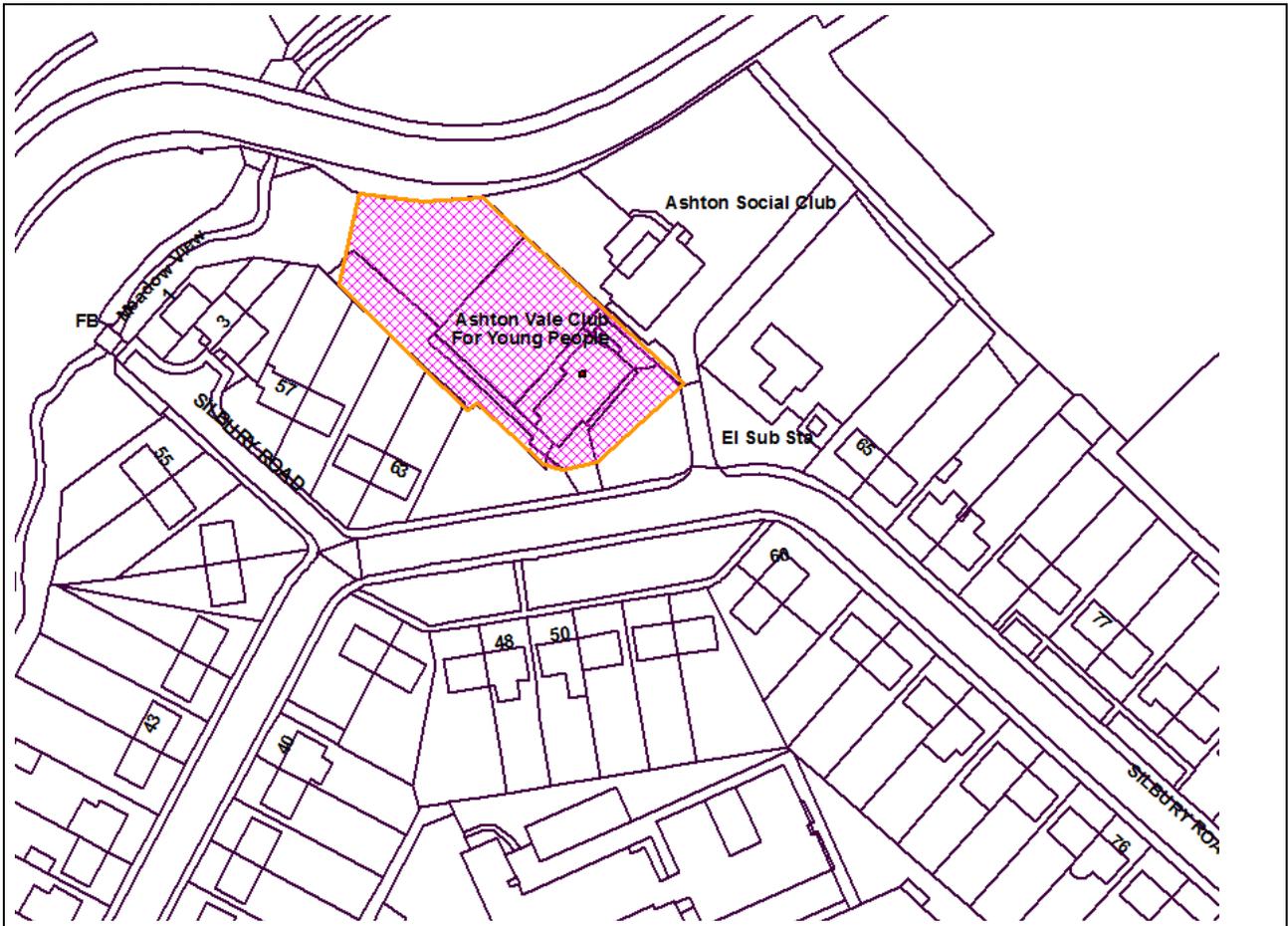
APPLICATION NO: 18/04627/CAAD Cert of Appropriate Alternative Dev
DETERMINATION DEADLINE: 23 November 2018
Application for certificate of appropriate alternative development - residential development.

RECOMMENDATION: Negative certificate issued

APPLICANT: Duries Chartered Surveyors
Leigh Court Business Centre
Abbots Leigh
Bristol
BS8 3RA

The following plan is for illustrative purposes only, and cannot be guaranteed to be up to date.

LOCATION PLAN:



Development Control Committee A – 27 February 2019

Application No. 18/04627/CAAD : Ashton Vale Club For Young People Silbury Road Bristol BS3 2QE

SITE DESCRIPTION

This application relates to the site occupied by the Ashton Vale Club for Young People, Silbury Road, Ashton Vale, in south west Bristol.

The site consists of a part two storey, part single storey building, in use as a youth club. A sports court is located within the northern part of the site. An area of curtilage green space is situated to the south of the site adjacent to Silbury Road.

The MetroBus guided busway, linking the Long Ashton Park & Ride to Winterstoke Road intersects the northern part of the site.

APPLICATION

The application seeks confirmation that residential development would be appropriate on the youth club site, via a “certificate of appropriate alternative development”.

The application tests solely whether the principle of a residential use of the site would be acceptable against adopted planning policy. There are no further details of the proposed development.

RELEVANT HISTORY

13/05921/K - Ashton Vale to Temple Meads and city centre rapid transit. (Transport and Works Act Order) – ORDER MADE.

RESPONSE TO CONSULTATION

There is no requirement to consult with neighbours under s.17 of the Land Compensation Act 1961; however one representation was received from a member of the public:

“I object to the application for certificate of appropriate alternative development. It shouldn't be allowed to be used for housing, it should be kept for community use. A youth club will be needed even more when the new houses are built.”

RELEVANT POLICIES

National Planning Policy Framework – March 2012

Bristol Local Plan, Comprising:

- Core Strategy (Adopted June 2011)

- Site Allocation and Development Management Policies (Adopted July 2014)

In determining this application, the Local Planning Authority has had regard to all relevant policies of the Bristol Local Plan and relevant guidance.

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KEY ISSUES

A. WOULD THE ALTERNATIVE DEVELOPMENT BE APPROPRIATE IN PRINCIPLE?

Section 14 of the Land Compensation Act 1961 (the Act) sets out that when assessing the value of land for compulsory acquisition, account may be taken:

“(a) of planning permission, whether for development on the relevant land or other land, if it is in force at the relevant valuation date, and

(b) of the prospect, on the assumptions set out in subsection (5) but otherwise in the circumstances known to the market at the relevant valuation date, of planning permission being granted on or after that date for development, on the relevant land or other land, other than—

(i) development for which planning permission is in force at the relevant valuation date, and

(ii) appropriate alternative development.

The certificate of appropriate alternative development has been applied for to establish land value for alternative uses in accordance with s.14 (a)(ii) of the Act.

Section 17 of the Act sets out that:

“Where an interest in land is proposed to be acquired by an authority possessing compulsory purchase powers, either of the parties directly concerned may (subject to subsection (2)) apply to the local planning authority for a certificate containing whichever of the following statements is the applicable statement—

(a) that in the local planning authority's opinion there is development that, for the purposes of section 14, is appropriate alternative development in relation to the acquisition;

(b) that in the local planning authority's opinion there is no development that, for the purposes of section 14, is appropriate alternative development in relation to the acquisition.”

The Ministry of Housing, Communities & Local Government “Guidance on Compulsory purchase process and The Criche Down Rules” sets out the process for assessing Certificates of appropriate alternative development:

“The authority should seek to come to a view, based on its assessment of the information contained within the application and of the policy context applicable at the relevant valuation date, the character of the site and its surroundings, as to whether such a development would have been acceptable to the Authority. As the development included in the certificate is not intended to be built the local planning authority does not need to concern itself with whether or not the granting of a certificate would create any precedent for the determination of future planning applications.”

Policy BCS1 sets out that South Bristol will be a focus for development, including the provision of around 8,000 new homes.

Policy BCS5 sets out that the Core Strategy aims to deliver new homes within Bristol's existing built up areas. Between 2006 and 2026, 30,600 new homes will be provided in Bristol.

Policy BCS12 sets out that existing community facilities should be retained, unless it can be demonstrated that there is no longer a need to retain the use or where alternative provision is made.

Policy DM5 sets out that proposals involving the loss of community facilities land or buildings will not be permitted unless it is demonstrated that:

i. The loss of the existing community use would not create, or add to, a shortfall in the provision or quality of such uses within the locality or, where the use has ceased, that there is no need or demand for any other suitable community facility that is willing or able to make use of the building(s) or land; or

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- ii. The building or land is no longer suitable to accommodate the current community use and cannot be retained or sensitively adapted to accommodate other community facilities; or
- iii. The community facility can be fully retained, enhanced or reinstated as part of any redevelopment of the building or land; or
- iv. Appropriate replacement community facilities are provided in a suitable alternative location.

The existing site consists of land occupied by a youth club and an associated sports pitch. The application seeks confirmation that the land is appropriate for residential development.

Whilst the northern portion of the site has been intersected by the MetroBus route, the youth club building remains intact as a community facility and there is a sports court to the rear of the building.

Policies BCS1 and BCS5 set out a need deliver new homes within existing built areas both across South Bristol, however community facilities, such as the youth club, are protected by Policies BCS12 and DM5.

As no information has been provided to set out that there is no longer a need for the community use, nor has any information been provided to show that the loss of the youth club would not result in a shortfall of this type of facility in this location, it can be concluded that the proposal would not accord with Policies BCS12 and DM5.

Policies BCS12 and DM5 set out that proposals could be acceptable if alternative reprovision of community uses is made. However, as this application seeks confirmation of the appropriateness of solely residential development, the application can does not accord with Policy BCS12 and DM5 part iv.

In conclusion, the alternative residential development would result in an unacceptable loss of a community facility. As such, under s.17 (b) of the Land Compensation Act 1961, in the local authority's opinion, residential development is not appropriate in relation to the acquisition.

CONCLUSION

The proposed residential use would result in an unacceptable loss of a community facility and would be contrary to Policies BCS12 and DM5. It is local planning authority's opinion that no residential use, for the purposes of section 14, is appropriate alternative development in relation to the acquisition.

RECOMMENDED NEGATIVE DECISION

The following reason(s) for refusal are associated with this decision:

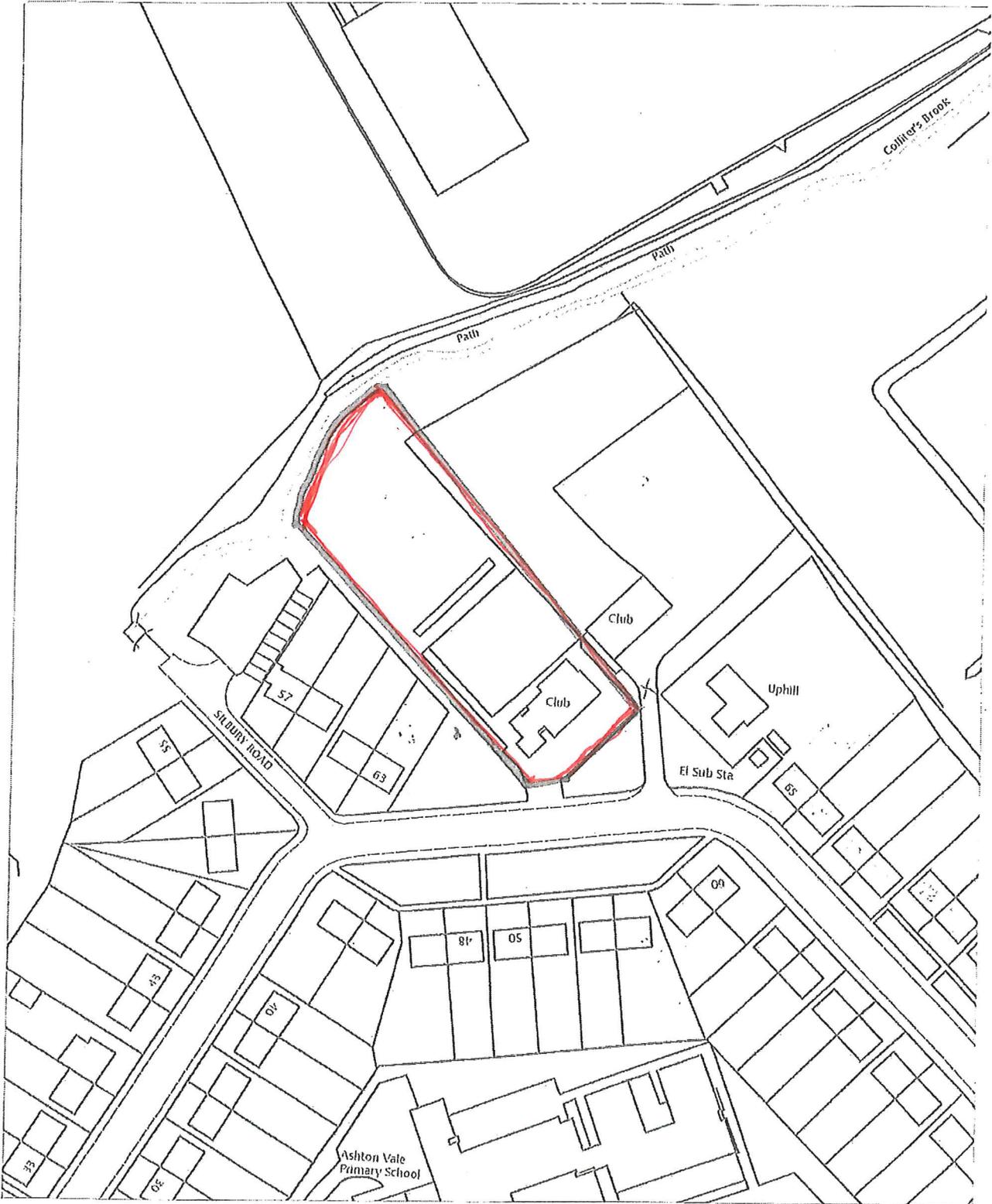
Reason(s):

1. The proposed residential use would result in an unacceptable loss of a community facility, as protected by Policies BCS12 (Community Facilities) and DM5 (Protection of Community Facilities), and no alternative facilities would be provided contrary to the aforementioned policies.

Supporting Documents

- 6. Ashton Vale Club For Young People, Silbury Road, Bristol, BS3 2QE**
 1. Site location plan
 2. Govt guidance on CAAD (extracts)

FOR IDENTIFICATION ONLY



Young Bristol Silbury Road 8/2018
Plan Attached to ~~Local~~ Application for
Certificate of - Appropriate Alternative Development

20/8/18

Section 20: certificates of appropriate alternative development

254. What are the planning assumptions?

[Part 2 of the Land Compensation Act 1961](#) as amended by Part 9 of the Localism Act 2011 provides that compensation for the compulsory purchase of land is on a market value basis. In addition to existing planning permissions, section 14 of the 1961 act provides for certain assumptions as to what planning permissions might be granted to be taken into account in determining market value.

Section 14 is about assessing compensation for compulsory purchase in accordance with rule (2) of section 5 of the 1961 act (open market value). The planning assumptions are as follows:

- subsection (2): account may be taken of (a) any planning permission in force for the development of the relevant land or other land at the relevant valuation date; and (b) the prospect (on the assumptions in subsection (5)) in the circumstances known to the market on the relevant valuation date of planning permission being granted, other than for development for which planning permission is already in force or appropriate alternative development
- subsection (3): it may also be assumed that planning permission for appropriate alternative development (as described in subsection (4)) is either in force at the relevant valuation date or it is certain that planning permission would have been granted at a later date
- subsection (4): defines appropriate alternative development as development, other than that for which planning permission is in force, that would, on the assumptions in subsection (5) but otherwise in the circumstances known to the market at the relevant valuation date, reasonably have been expected to receive planning permission on that date or a later date. Appropriate alternative development may be on the relevant land alone or on the relevant land together with other land.
- subsection (5): contains the basic assumptions that (a) the scheme underlying the acquisition had been cancelled on the launch date; (b) that no action has been taken by the acquiring authority for the purposes of the scheme; (c) that there is no prospect of the same or similar scheme being taken forward by the exercise of a statutory power or by compulsory purchase; and (d) that if the scheme is for a highway, no other highway would be constructed to meet the same need as the scheme
- subsection (6): defines the 'launch date' as (a) for a compulsory purchase order, the publication date of the notice required under [section 11](#) of or paragraph 2 of [schedule 1](#) to the Acquisition of Land Act 1981; (b) for any other order (such as under the [Transport and Works Act 1992](#) or a development consent order under the [Planning Act 2008](#)) the date of first publication or service of the relevant notice; or (c) for a special enactment, the date of first publication of the first notice required in connection with the acquisition under section 15, planning permission is also to be

assumed for the acquiring authority's proposals

255. On what date are the planning assumptions assessed?

The main feature of the arrangements is that the planning assumptions are assessed on the relevant valuation date (as defined in [section 5A of the Land Compensation Act 1961](#)) rather than the launch date (even though the scheme is still assumed to have been cancelled on the launch date). This will avoid the need to reconstruct the planning regime that existed on the launch date, including old development plans, national planning policy and guidance. Also that the planning assumptions are based on 'the circumstances known to the market at the relevant valuation date', which would include the provisions of the development plan. This removes the need for the specific references to the development plan which were contained in the previous section 16 that had become out of date.

256. What is a certificate of appropriate alternative development?

Where existing permissions and assumptions are not sufficient to indicate properly the development value which would have existed were it not for the scheme underlying the compulsory purchase, [Part 3 of the Land Compensation Act 1961 as amended by Part 9 of the Localism Act](#) provides a mechanism for indicating the descriptions of development (if any) for which planning permission can be assumed by means of a 'certificate of appropriate alternative development'. The permissions indicated in a certificate can briefly be described as those with which an owner might reasonably have expected to sell his land in the open market if it had not been publicly acquired.

257. Who can apply for a certificate of appropriate alternative development?

[Section 17\(1\) of the Land Compensation Act 1961](#) provides that either the owner of the interest to be acquired or the acquiring authority may apply to the local planning authority for a certificate. Where an application is made for development of the relevant land together with other land it is important that the certificate sought relates only to the land in which the applicant is a directly interested party. The description(s) of development specified in the application (and where appropriate the certificate issued in response) should clearly identify where other land is included and the location and extent of such other land.

258. In what circumstances might a certificate be helpful?

Circumstances in which certificates may be helpful include where:

- a) there is no adopted development plan covering the land to be acquired
- b) the adopted development plan indicates a 'green belt' or leaves the site without specific allocation; and
- c) the site is allocated in the adopted development plan specifically for some public purpose, eg a new school or open space
- d) the amount of development which would be allowed is uncertain
- e) the extent and nature of planning obligations and conditions is uncertain

259. When does the right to apply for a certificate arise?

The right to apply for a certificate arises at the date when the interest in land is proposed to be acquired by the acquiring authority. [Section 22\(2\) of the Land Compensation Act 1961](#) describes the circumstances where this is the position. These include the launch date as defined in section 14(6) for acquisitions by compulsory purchase order, other orders or by private or hybrid Bill. For acquisition by blight notice or a purchase notice it will be the date on which 'notice to treat' is deemed to have been served; or for acquisition by agreement it will be the date of the written offer by the acquiring authority to negotiate for the purchase of the land.

Once a compulsory purchase order comes into operation the acquiring authority should be prepared to indicate the date of entry so that a certificate can sensibly be applied for.

Thereafter application may be made at any time, except that after a notice to treat has been served or agreement has been reached for the sale of the interest and a case has been referred to the Upper Tribunal, an application may not be made unless both parties agree in writing, or the Tribunal gives leave. It will assist compensation negotiations if an application is made as soon as possible.

Acquiring authorities should ensure, when serving notice to treat in cases where a certificate could be applied for, that owners are made aware of their rights in the matter. In some cases, acquiring authorities may find it convenient themselves to apply for a certificate as soon as they make a compulsory purchase order or make an offer to negotiate so that the position is clarified quickly.

It may sometimes happen that, when proceedings are begun for acquisition of the land, the owner has already applied for planning permission for some development. If the local planning authority refuse planning permission or grant it subject to restrictive conditions and are aware of the proposal for acquisition, they should draw the attention of the owner to his right to apply for a certificate, as a refusal or restrictive conditions in response to an actual application (ie in the 'scheme world') do not prevent a positive certificate being granted (which would relate to the 'no scheme world').

260. How should applications for a certificate be made and dealt with?

The manner in which applications for a certificate are to be made and dealt with has been prescribed in articles 3, 4, 5 and 6 of [the Land Compensation Development \(England\) Order 2012](#).

Article 3(3) of the order requires that if a certificate is issued otherwise than for the development applied for, or contrary to representations made by the party directly concerned, it must include a statement of the authority's reasons and of the right of appeal under section 18 of the 1961 act. From 6 April 2012, this has been to the [Upper Tribunal](#). Article 4 requires the local planning authority (unless a unitary authority) to send a copy of any certificate to the county planning authority concerned if it specifies development related to a county matter or, if the case is one which has been referred to the county planning authority, to the relevant district planning authority. Where the certificate is issued by a London borough or the Common Council of the City of London, they must send a copy of the certificate to the Mayor of London if a planning application for such development would have to be referred to him.

Article 4 should be read with paragraph 55 of [schedule 16 to the Local Government Act 1972](#), which provides that all applications for certificates must be made to the district planning authority in the first instance: if the application is for development that is a county matter, then the district must send it to the county for determination. This paragraph also deals with consultation between district and county authorities where the application contains some elements relating to matters normally dealt with by the other authority. Where this occurs, the authority issuing the certificate must notify the other of the terms of the certificate.

Article 5 of the order requires the local planning authority, if requested to do so by the owner of an interest in the land, to inform him whether an application for a certificate has been made, and if so by whom, and to supply a copy of any certificate that has been issued. Article 6 provides for applications and requests for information to be made electronically.

261. What information should be contained in an application for a certificate?

In an application under section 17, the applicant may seek a certificate to the effect that there either is any development that is appropriate alternative development for the purposes of section 14 (a positive certificate) or that there is no such development (a nil certificate).

If the application is for a positive certificate the applicant must specify each description of development that he considers that permission would have been granted for and his reasons for holding that opinion. The onus is therefore on the applicant to substantiate the reasons why he considers that there is development that is appropriate alternative development.

Acquiring authorities applying for a 'nil' certificate must set out the full reasons why they consider that there is no appropriate alternative development in respect of the subject land or property.

The phrase 'description of development' is intended to include the type and form of development. Section 17(3)(b) requires the descriptions of development to be 'specified', which requires a degree of precision in the description of development.

The purpose of a certificate is to assist in the assessment of the open market value of the land. Applicants should therefore consider carefully for what descriptions of development they wish to apply for certificates. There is no practical benefit to be gained from making applications in respect of descriptions of development which do not maximise the value of the land. Applicants should focus on the description or descriptions of development which will most assist in determining the open market value of the land.

An application under section 17 is not a planning application and applicants do not need to provide the kind of detailed information which would normally be submitted with a planning application. However, it is in applicants' interests to give as specific a description of development as possible in the circumstances, in order to ensure that any certificate granted is of practical assistance in the valuation exercise.

Applicants should normally set out a clear explanation of the type and scale of development that is sought in the certificate and a clear justification for this. This could be set out in a form of planning statement which might usefully cover the following matters:

- confirmation of the valuation date at which the prospects of securing planning permission need to be assessed
- the type or range of uses that it considers should be included in the certificate including uses to be included in any mixed use development which is envisaged as being included in the certificate
- where appropriate, an indication of the quantum and/or density of development envisaged with each category of land
- where appropriate an indication of the extent of built envelope of the development which would be required to accommodate the quantum of development envisaged
- a description of the main constraints on development which could be influenced by a planning permission and affect the value of the land, including matters on site such as ecological resources or contamination, and matters off site such as the existing character of the surrounding area and development
- an indication of what planning conditions or planning obligations the applicant considers would have been attached to any planning permission granted for such a development had a planning application been made at the valuation date
- a clear justification for its view that such a permission would have been forthcoming having regard to the planning policies and guidance in place at the relevant date; the location, setting and character of the site or property concerned; the planning history of the site and any other matters it considers relevant

Detailed plans are not required in connection with a section 17 application but drawings or other illustrative material may be of assistance in indicating assumed access arrangements and site layout and in indicating the scale and massing of the assumed built envelope. An indication of building heights and assumed method of construction may also assist the local planning authority in considering whether planning permission would have been granted at the relevant date.

262. Is there a fee for submitting an application for a certificate of appropriate development?

A fee is payable for an application for a certificate of appropriate alternative development. Details are set out in [Regulation 18 of the The Town and Country Planning \(Fees for Applications, Deemed Applications, Requests and Site Visits\) \(England\) Regulations 2012](#) (as amended).

263. What should a certificate contain?

The local planning authority is required to respond to an application by issuing a certificate of appropriate alternative development, saying what planning permissions would have been granted if the land were not to be compulsorily acquired. [Section 17\(1\)](#) requires the certificate to state either that:

- a) there is appropriate alternative development for the purposes of section 14 (a

'positive' certificate); or

- b) there is no development that is appropriate alternative development for the purposes of section 14 (a 'nil' or 'negative' certificate)

Section 17(4) of the Land Compensation Act 1961 requires the local planning authority to issue a certificate, but not before the end of 22 days from the date that the applicant has, or has stated that he or she will, serve a copy of his or her application on the other party directly concerned (unless otherwise agreed).

Section 17(5) requires (a) that a positive certificate must specify all the development that (in the local planning authority's opinion) is appropriate alternative development, even if it is not specified in the application and (b) give a general indication of any reasonable conditions; when permission would reasonably have been granted (if after the relevant valuation date); and any reasonable pre-condition, such as a planning obligation, that could reasonably have been expected.

Section 17(6) provides that for positive certificates, only that development specified in the certificate can be assumed to be appropriate alternative development for the purposes of section 14 and that the conditions etc apply to the planning permission assumed to be in force under section 14(3).

Local planning authorities should note that an application made under s17 is not a planning application. The authority should seek to come to a view, based on its assessment of the information contained within the application and of the policy context applicable at the relevant valuation date, the character of the site and its surroundings, as to whether such a development would have been acceptable to the Authority. As the development included in the certificate is not intended to be built the local planning authority does not need to concern itself with whether or not the granting of a certificate would create any precedent for the determination of future planning applications.

If giving a positive certificate, the local planning authority must give a general indication of the conditions and obligations to which planning permission would have been subject. As such the general indication of conditions and obligations to which the planning permission could reasonably be expected to be granted should focus on those matters which affect the value of the land. Conditions relating to detailed matters such approval of external materials or landscaping would not normally need to be indicated. However, clear indications should be given for matters which do affect the value of the land, wherever the authority is able to do so.

Such matters would include, for example, the proportion and type of affordable housing required within a development, limitations on height or density of development, requirements for the remediation of contamination or compensation for ecological impacts, and significant restrictions on use, as well as financial contributions and site-related works such as the construction of accesses and the provision of community facilities. The clearer the indication of such conditions and obligations can be, the more helpful the certificate will be in the valuation process.

264. Should a certificate be taken into account in assessing compensation?

A certificate once issued must be taken into account in assessing compensation for the

compulsory acquisition of an interest in land, even though it may have been issued on the application of the owner of a different interest in the land. But it cannot be applied for by a person (other than the acquiring authority) who has no interest in the land.

265. Should informal advice be given on open market value?

Applicants seeking a section 17 certificate should seek their own planning advice if this is felt to be required in framing their application.

In order that the valuers acting on either side may be able to assess the open market value of the land to be acquired they will often need information from the local planning authority about such matters as existing permissions; the development plan and proposals to alter or review the plan. The provision of factual information when requested should present no problems to the authority or their officers. But sometimes officers will in addition be asked for informal opinions by one side or the other to the negotiations. It is for authorities to decide how far informal expressions of opinion should be permitted with a view to assisting the parties to an acquisition to reach agreement. Where they do give it, the Secretary of State suggests that the authority should:

- a) give any such advice to both parties to the negotiation
- b) make clear that the advice is informal and does not commit them if a formal certificate or planning permission is sought

It is important that authorities do not do anything which prejudices their subsequent consideration of an application.

266. How are appeals against certificates made?

The right of appeal against a certificate under [section 18 of the Land Compensation Act 1961](#), exercisable by both the acquiring authority and the person having an interest in the land who has applied for the certificate, is to the Upper Tribunal (Lands Chamber). It may confirm, vary or cancel it and issue a different certificate in its place, as it considers appropriate.

[Rule 28\(7\) of the Upper Tribunal Rules, as amended](#), requires that written notice of an appeal (in the form of a reference to the Upper Tribunal) must be given within one month of receipt of the certificate by the planning authority. If the local planning authority fail to issue a certificate, notice of appeal must be given within one month of the date when the authority should have issued it (that date is either two months from receipt of the application by the planning authority, or two months from the expiry of any extended period agreed between the parties to the transaction and the authority) and the appeal proceeds on the assumption that a 'nil' or 'negative' certificate had been issued.

The reference to the Tribunal must include (in particular) a copy of the application to the planning authority, a copy of the certificate issued (if any) and a summary of the reasons for seeking the determination of the Tribunal and whether he or she wants the reference to be determined without a hearing. The Upper Tribunal does have the power to extend this period (under [Rule 5](#)), even if it receives the request to do so after it expires. Appeals against the Upper Tribunal's decision on a point of law may be made to the Court of Appeal in the normal way.