



# Town of Underhill

## Development Review Board

### Final Subdivision Findings and Decision

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**COMBINED PRELIMINARY & FINAL SUBDIVISION REVIEW APPLICATION OF WILLIAM R. & DEBBIE M. DAVIS  
FOR A 2-LOT SUBDIVISION**

In re: Williams R. & Debbie M. Davis  
51 Page Road (PG051)  
Underhill, VT 05489

Docket No. DRB-18-01

**Decision:** Approved with conditions (see Section IV – Decisions and Conditions of Approval)

#### **I. INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding concerns the combined preliminary & final subdivision review application submitted by William R. & Debbie M. Davis regarding a 2-lot subdivision of property they own located at 51 Page Road in Underhill, Vermont.

- A. On December 12, 2017, Brad Holden, on behalf of William R. & Debbie M. Davis, filed a sketch plan review application for the abovementioned project. A sketch plan review meeting for the project was held on January 22, 2018 and a letter of acceptance was issued on February 5, 2018. As part of that sketch plan review letter, the Development Review Board waived preliminary subdivision review.
- B. On February 26, 2018, Brad Holden, on behalf of William R. & Debbie M. Davis, filed a combined preliminary and final subdivision review application for the abovementioned project. Planning Director & Zoning Administrator, Andrew Strniste, received the application and determined that it was complete shortly thereafter. A hearing date was scheduled for 7:05 PM at Underhill Town Hall on March 19, 2018.
- C. On March 2, 2018, notice regarding the combined preliminary & final subdivision review hearing was mailed via certified mail to the following property owners adjoining the property subject to the application:
  1. CK050 – Randall H. Clark, P.O. Box Underhill, VT 05489
  2. D0121 – C. Wallace & Patricia W. Stone, 11 Doon Road, Underhill, VT 05489
  3. IS493 – John & Carol Pendris, Charles & Carol W. Moran, 238 Sherman Hollow Road, Hinesburg, VT 05461
  4. PG039 – Rodney & Terrina Page, 39 Page Road, Underhill, VT 05489
  5. D0017 – Brian P. Lyster, 17 Doon Road, Underhill, VT 05489
  6. D0020 – Anton R. & Yona Yellin, 20 Doon Road, Underhill, VT 05489
  7. IS541 – Matthew C. Kolon & Patricia E. Hudak, 541 Irish Settlement Road, Underhill, VT 05489

8. PG040 – Peter A. & Pamela F. Bates Trustees, P.O. Box 42, Underhill, VT 05489
  9. PG050 – Richard A. & Benjamin Wilcox, 152 Weed Road, Essex Junction, VT 05452
  10. PG060 – Richard, Laurie S. & Benjamin Wilcox, 152 Weed Road, Essex, VT 05452
  11. PH428 – Joseph J. Kushner Trustee & Kerra S. Desseau Trustee, 428 Poker Hill Road, Underhill, VT 05489
  12. Applicant: PG051 – William R. & Debbie M. Davis, 36 Hill Crest Lane, Underhill, VT 05489
  13. Consultant: Brad Holden, 60 Covey Road, Underhill, VT 05489
- D. During the week of February 25, 2018, notice of the public hearing for the proposed Davis combined preliminary & final subdivision review hearing was posted at the following places:
1. The Underhill Town Clerk’s office;
  2. The Underhill Center Post Office; and
  3. The Underhill Flats Post Office.
- E. On March 3, 2018 the notice of public hearing was published in the *Burlington Free Press*.
- F. The combined preliminary & final subdivision review hearing began at 7:14 PM on March 19, 2018 at the Town of Underhill Town Hall, 12 Pleasant Valley Road, Underhill, Vermont.
- G. Present at the combined & final subdivision hearing were the following members of the Development Review Board:
1. Board Member, Charles Van Winkle, Chairperson
  2. Board Member, Matt Chapek
  3. Board Member, Daniel Lee
  4. Board Member, Karen McKnight
  5. Board Member, Penny Miller
  6. Board Member, Stacey Turkos
- Also in attendance was Staff Member, Andrew Strniste, Planning Director & Zoning Administrator.
- Others present at the hearing were:
1. Applicant, William R. Davis (36 Hill Crest Lane, Underhill, VT 05489)
  2. Applicant’s Consultant, Brad Holden (60 Covey Road, Underhill, VT 05489)
- H. At the outset of the hearing, Chair Van Winkle explained the criteria under 24 V.S.A § 4465(b) for being considered an “interested party.” Those who spoke at the hearing were:
1. Applicant’s Consultant, Brad Holden
- I. In support of the combined preliminary & final subdivision application, the following exhibits were submitted to the Development Review Board:
1. Exhibit A – Davis Preliminary & Final Subdivision Review Staff Report
  2. Exhibit B – PG051 Davis Preliminary & Final Subdivision Hearing Procedures
  3. Exhibit C - Application for Final Subdivision

4. Exhibit D - Preliminary & Final Subdivision Checklist
5. Exhibit E - Burlington Free Press Notice
6. Exhibit F - Certificate of Service
7. Exhibit G - Easement & Road Maintenance Language
8. Exhibit H - MMU Ability to Serve Letter
9. Exhibit I - Survey
10. Exhibit J - Site Plan

No other exhibits were submitted prior to the start of the hearing. During the hearing, however, the following exhibit was submitted into the record:

11. Exhibit K – Vermont Habit Blocks and Habitat Connectivity: An Analysis using Geographic Information Systems

The exhibits submitted as part of the sketch plan application, except as amended above, are also incorporated into this decision.

All exhibits are available for public review in the PG051 Davis Combined Preliminary & Final Subdivision Review file (PG051 / DRB 18-01) at the Underhill Zoning & Planning office.

## **II. FACTUAL FINDINGS & CONCLUSIONS**

The Minutes of the March 19, 2018 meeting, written by Andrew Strniste, are incorporated by reference into this decision. Please refer to the Minutes for a summary of the testimony.

Based on the submitted application, testimony, exhibits, and evidence, the Development Review Board makes the following findings under the requirements of the 2018 *Underhill Unified Land Use and Development Regulations* (ULUDR):

### ***PROJECT SYNOPSIS***

The applicants, William R. & Debbie M. Davis, record owner of the property located at 51 Page Road in Underhill, VT, are seeking a two lot subdivision. The property is located in the Rural Residential and Soil & Water Conservation districts as defined in Article II, Tables 2.4 & 2.7 of the 2018 Underhill Unified Land Use & Development Regulations.

### ***ARTICLE II – ZONING DISTRICTS***

#### **A. ARTICLE II, TABLE 2.4 – RURAL RESIDENTIAL DISTRICT**

The Board finds that the proposed subdivision will occur entirely within the Rural Residential District. The applicants propose to build a single-family dwelling on the new four (4) acre lot. The lot conforms to district requirements and the purpose of the Rural Residential District.

#### **B. ARTICLE II, TABLE 2.7 – SOIL & WATER CONSERVATION DISTRICT**

The Board finds that the proposed new lot and development will not occur in the Soil & Water Conservation District. Therefore, review and analysis under this Section is not required.

### ***ARTICLE III – GENERAL REGULATIONS***

#### **A. SECTION 3.2 – ACCESS**

The Board finds that the applicants have already obtained a final access permit from the Selectboard. The original permit received on August 29, 2017 (Access Permit #: A-17-13) was administratively amended and approved on October 24, 2017 (Access Permit #: A-17-13R) to

reflect actual construction. If modifications to the approved and constructed driveway are required, further review by this Board is not required so long as those modifications are consistent with this decision, as determined by the Zoning Administrator.

**B. SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS**

The Board finds that the proposed lots will each contain one principal use or structure: Lot 1 will contain the existing sugaring house and be used for agricultural purposes and Lot 2 will contain the proposed single-family dwelling for residential purposes.

Both lots will not meet the frontage requirements per the 2018 *Underhill Unified Land Use & Development Regulations*; however, the Board waives this requirement under Sections 3.2.A.1.a, 3.7.E.3.a and 8.6.A.2.a, which allows the Board to waive the requirement for minor subdivisions accessed by a shared driveway. All other dimensional requirements are satisfied, noting that the single-family dwelling depicted on the site plan and submitted survey are for illustration purposes only and may be altered during the building permitting process.

**C. SECTION 3.13 – PARKING, LOADING & SERVICE AREAS**

The Board finds that there is sufficient evidence to believe that the applicants will meet the parking requirement of two spaces as required per Table 3.1.

**D. SECTION 3.17 – SOURCE PROTECTION AREAS**

The Board finds the existing property is not within any source protection areas, and therefore, review and analysis under this section is not required.

**E. SECTION 3.18 – STEEP SLOPES**

The Board finds that the existing lot contains areas of steep slopes (15-25%) and very steep slopes (>25%); however, the applicants' proposed building envelope is outside of these areas.

**F. SECTION 3.19 – SURFACE WATERS & WETLANDS**

The Board finds that an unnamed stream generally parallels the northern property boundary of Lot 2. Proposed structures and impervious surfaces are setback at least 25ft from the channel centerline as required under this section.

**G. SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS**

The Board finds that the applicants have already obtained and recorded a Wastewater System & Potable Water Supply Permit from the State of Vermont, Department of Conservation on September 11, 2017 (Permit #: WW-4-3462-1). The permit is for the construction of a three-bedroom, single-family dwelling with an onsite mound wastewater system and drilled water supply. Both the locations are identified on the site plan.

**ARTICLE VI – FLOOD HAZARD AREA REVIEW**

The Board finds that there are no floodplains on the existing lot, and therefore, review and analysis under this Article is not required.

**ARTICLE VII – SUBDIVISION REVIEW, ARTICLE VII**

**A. SECTION 7.2 – APPLICABILITY**

The Board finds that the applicants' proposed subdivision is subject to the requirements of the 2018 *Underhill Unified Land Use & Development Regulations* per § 7.2, and was classified as a "minor subdivision" during the sketch plan review meeting and in the decision letter issued on

February 5, 2018.

**B. SECTION 7.3 – SKETCH PLAN REVIEW**

The Board finds that the applicants adequately satisfied the conditions of approval provided in the Sketch Plan Review Letter issued on February 5, 2018, as explained below.

**C. SECTION 7.5 – PRELIMINARY SUBDIVISION REVIEW**

The Board finds that it waived preliminary subdivision review upon request during the January 22, 2018 sketch plan review meeting. The applicants submitted a combined preliminary & final subdivision review application on February 26, 2018. This combined application addressed the requirements of preliminary subdivision review.

**D. SECTION 7.6 – FINAL SUBDIVISION REVIEW**

As part of the combined preliminary & final subdivision review application, the applicants addressed the comments and concerns identified in the sketch plan review letter. Therefore, the Board finds that the applicants satisfied the intent of this section and provided the necessary materials to make a determination on the final subdivision review application.

***SUBDIVISION STANDARDS, ARTICLE VIII***

**A. SECTION 8.1 – APPLICABILITY**

The Board finds that no technical review was needed for this proposed project. The Board also finds that the applicants requested one waiver:

1. A waiver under Sections 3.2.A.1.a, 3.7.E.3.a and 8.6.A.2.a, waiving the frontage requirement for both lots.

**B. GENERAL STANDARDS, SECTION 8.2**

**SECTION 8.2.A – DEVELOPMENT SUITABILITY**

At this time, The Board does not require the applicant to set aside land as open space. The Board recognizes that Lot 1 is enrolled in Current Use.

**SECTION 8.2.B – DEVELOPMENT DENSITY**

The Board finds that the proposed subdivision meets the density requirements per this section.

**SECTION 8.2.C – EXISTING CONDITIONS**

The Board finds that the existing lot contains areas of prime agricultural soils. The proposed Lot 2 contains a large portion of prime agricultural soils; however, given the slope/topography concerns in the vicinity, locating the lot in another area is more burdensome. Additionally, the Board finds that the layout appears to conserve the natural topography and drainage patterns.

**SECTION 8.2.D – UNDERHILL TOWN PLAN & DEVELOPMENT REGULATIONS**

The Board finds that the proposed subdivision & development conform to the *Underhill Town Plan* and the *Underhill Unified Land Use and Development Regulations*.

**SECTION 8.2.E – DISTRICT SETTLEMENT PATTERNS**

The Board finds that the proposed subdivision & development are consistent with the characteristics of the rural zoning districts as described in Section 8.2.E.2.

**SECTION 8.2.F – LOT LAYOUT**

With the incorporation of the frontage waiver under Section 8.6.A.2, the Board finds that the proposed subdivision meets the requirements of this subsection. Furthermore, the proposed configuration of Lot 2 does not inhibit future subdividing or development elsewhere on Lot 1.

**SECTION 8.2.G – BUILDING ENVELOPE**

The Board finds that the applicants have depicted a *primary dwelling building envelope* on Lot 2 for the purpose of constructing the primary, single-family dwelling. This self-imposed building envelope is significantly reduced from what is permitted under the 2018 *Underhill Unified Land Use & Development Regulations*. The Board does not observe a policy reason for the more restrictive building envelope, and therefore, permits the Zoning Administrator to modify the *primary dwelling building envelope* under Section 7.8.1.b, so long as the modification is consistent with this decision and the zoning regulations in effect at the time of the proposal. Additionally, the Board finds that the building envelope for all other structures is the least restrictive building envelope as permitted under the regulations in effect at the time of the proposed building permit.

**SECTION 8.2.H – SURVEY MONUMENTS**

The Board finds that proposed property monumentation shall be installed as defined in the recordable Mylar.

**SECTION 8.2.I – LANDSCAPING & SCREENING**

The Board anticipates the proposed development will meet the intention of this subsection.

**SECTION 8.2.J – ENERGY CONSERVATION**

The Board finds that the applicants have proposed a house site that is positioned in a favorable location as to take advantage of the south and west aspects to provide natural solar gain.

**C. SECTION 8.3 – NATURAL & CULTURAL RESOURCES**

**SECTION 8.3.A – RESOURCE IDENTIFICATION & PROTECTION**

The Board finds both cultural and natural resources/features on Lot 1 and the Board is satisfied with the mitigation measures.

**SECTION 8.3.B – SURFACE WATERS, WETLANDS & FLOODPLAINS**

The Board finds that Lot 1 contains an unnamed stream. As no development is planned on Lot 1, there will be no impact on the surface water. The required setbacks, identified in section 3.19, for the development taking place on Lot 2 shall adequately protect the surface water.

**SECTION 8.3.C – ROCK OUTCROPS, STEEP SLOPES, HILLSIDES & RIDGELINES**

The Board finds that the subdivision had been configured to minimize impact to areas of steep slopes and very steep slopes.

**SECTION 8.3.D – NATURAL AREAS & WILDLIFE HABITAT**

The Board finds that priority level 6/7 habitat block is located on the property. The Board finds that development will have a minimal impact on the habitat block.

**SECTION 8.3.E – HISTORIC & CULTURAL RESOURCES**

The Board finds a historic stone wall on the property. The applicants are using this historic resource to identify a property boundary.

**SECTION 8.3.F – FARMLAND**

The Board finds that areas of the lot contain prime agricultural soils, and that the proposed single-family dwelling will likely be located in this area; however, given the slope/topography issues in the vicinity, locating the lot in another area is more burdensome.

**SECTION 8.3.G – FORESTLAND**

The Board finds that the applicants will be disturbing a portion of the forestland that currently exists on the property; however, due to the vastness of the existing lot, the impact to forestland will be negligible, comparatively speaking.

**D. SECTION 8.4 – OPEN SPACE & COMMON LAND**

**SECTION 8.4.A – OPEN SPACE**

The Board finds that the applicants have not proposed to designate any land as open space; however, the applicants intend to keep Lot 1 in the Vermont Current Use Program, which functions similarly as open space, but does not retain the land in a state of perpetuity where it cannot be developed.

**SECTION 8.4.B – COMMON LAND**

The Board finds that the applicants have not proposed to designate any land as common land.

**SECTION 8.4.C – LEGAL REQUIREMENTS**

The Board finds that this subsection does not apply since the applicants have not designated any land as open space or common land as part of the proposed project.

**E. SECTION 8.5 – STORMWATER MANAGEMENT & EROSION CONTROL**

The Board finds that the applicants shall conform to the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control, published by the Watershed Management Division of the Vermont Department of Environmental Conservation when performing excavation and site work. The Board also finds that the proposed development will have minimal impact on stormwater runoff and does not require an additional treatment plan.

**F. SECTION 8.6 – TRANSPORTATION FACILITIES**

**SECTION 8.6.A – ACCESS & DRIVEWAYS**

The Board finds that the applicants propose to have two residences serviced by a shared driveway with access to Page Road. Per Section 6.4.A of the Road Ordinance, the part of the driveway serving both residences shall be 14 feet wide, and the part serving only one residence shall be 12 feet wide. Since the shared drive will only serve two lots, only the standards of Sections 3.2 & 8.6.A apply.

**SECTION 8.6.B – DEVELOPMENT ROADS**

The Board finds that this subsection does not apply since the access way will only serve two lots at this time.

**SECTION 8.6.C – PARKING FACILITIES**

The Board finds that no parking facilities, other than those to be expected with single-family residences, are proposed.

**SECTION 8.6.D – TRANSIT FACILITIES**

The Board finds that no transit facilities are proposed.

**SECTION 8.6.E – PEDESTRIAN ACCESS**

The Board finds that this section does not apply, and therefore, review under this Section is not required.

**G. SECTION 8.7 – PUBLIC FACILITIES & UTILITIES**

**SECTION 8.7.A – PUBLIC FACILITIES**

The Board finds the proposed subdivision will not create an undue burden on the existing and/or planned public facilities. The Board finds there will be no adverse impact on the school district.

**SECTION 8.7.B – FIRE PROTECTION**

The Board finds that the proposed subdivision will not create an undue burden on the ability of the Underhill-Jericho Fire Department to provide fire protection services. The Board encourages the applicants to provide a turnaround large enough to satisfy the Fire Department’s concerns reflected in their ability to serve letter.

**SECTION 8.7.C – WATER SYSTEMS**

The Board finds that the applicants have already obtained a Wastewater System and Potable Water Supply Permit (Permit #: WW-4-3462-1), and that a drilled well has been identified on the site plan.

**SECTION 8.7.D – WASTEWATER SYSTEMS**

The Board finds that the applicants have already obtained a Wastewater System and Potable Water Supply Permit (Permit #: WW-4-3462-1), and that the wastewater system has been identified on the site plan.

**SECTION 8.7.E – UTILITIES**

The Board finds the applicants shall depict the location of the utilities and submit an updated site plan reflecting those locations.

**H. SECTION 8.8 – LEGAL REQUIREMENTS**

The Board finds that the applicant shall incorporate, or incorporate by reference, all proposed easements into the deeds. Additionally, the Board finds that the applicants shall record the Road Maintenance Agreement, which should include issues such as snow removal and maintenance.

**III. WAIVERS, MODIFICATIONS & SUPPLEMENTATIONS**

The Board grants the following waivers/modifications:

1. Per Sections 7.8.B.2 and 10.7.F.5, the Development Review Board may authorize administrative review by the Zoning Administrator to make subsequent changes or amendments to an approved project as outlined in the referenced Section. The Board does not find an overwhelming policy reason for the *primary dwelling building envelope* to remain as depicted indefinitely, and therefore, authorizes the Zoning Administrator to

amend the Lot 2 building envelope so long as it is consistent with this decision and conforms to the regulations in place at the time of the proposed modification.

- a. **Note:** the Board finds that the building envelope for all other structures is the least restrictive building envelope as permitted under the regulations in effect at the time of the proposed building permit.
2. The Board waives the frontage required for both lots under Sections 3.2.A.1.a, 3.7.E.3.a and 8.6.A.2.a as the lots do not have any frontage along a town highway or development road.
3. The applicants are not required to come before the Board if they wish to relocate the driveway or relocate associated parking areas within the building envelope. The Board recognizes that the identified location on the engineering plans submitted as a part of this application is for illustration purposes only.
4. The applicants are not required to come before the Board if they wish to relocate the single-family dwelling within the building envelope. The Board recognizes that the identified location of this structure on the engineering plans submitted as a part of this application is for illustration purposes only and does not reflect the final footprint of the single-family dwelling.

#### **IV. DECISIONS AND CONDITIONS OF APPROVAL**

The Board is satisfied with the level of investigation, engineering, and evaluation conducted in the application submittal and review process concerning the above-mentioned project. The Board thoroughly reviewed all aspects of the proposal under the evaluation of the 2018 *Underhill Land Use & Development Regulations*, and concludes that based on the evidence submitted and the above findings, the proposed subdivision and development generally conforms to the aforementioned Regulations.

Based upon the findings above, and subject to the conditions below, the Development Review Board grants final subdivision approval for the project presented in the application and at the hearing with the following conditions:

1. No transfer, sale, or long-term lease, of title to property as defined under 32 V.S.A. § 9601 of any portion of an existing lot, predevelopment site work, or issuance of zoning permits to develop a subdivided lot shall occur until final subdivision has been approved from this Board, and the final Mylar (the subdivision plat) has been recorded in the Underhill Land Records per Section 7.2.C
2. Per Section 7.2.B, no land shall be subdivided until final subdivision approval has been obtained from this Board and the approved subdivision plat is recorded in the Town of Underhill Land Records.
3. The Board requires the project to be constructed in accordance with the drawing set submitted as part of the review process and as amended accordingly to address the changes herein and which are to be recorded, listed as follows:
  - a. Final Plat, Two Lot Subdivision Property of William R. & Debbie M. Davis (Prepared by Bradford L. Holden and Dated February 20, 2018), or subsequent revision to the extent required as part of this approval.
  - b. Site Plan, Wastewater System & Water Supply, William R. & Debbie M. Davis (Prepared by Willis Design Assoc., Inc. and Dated August 22, 2017, Amended February 20, 2018), or subsequent revision to the extent required as part of this approval.

4. The Board requires the applicants to record the abovementioned plans (Under Condition 3) as Mylars in the Underhill Land Records:
  - a. The Survey Plat shall contain the following features:
    - i. Property lines;
    - ii. Any applicable easements;
    - iii. Existing and proposed monumentation;
    - iv. Parcel Codes
  - b. The Subdivision Site Plan shall contain the following features:
    - i. Property lines;
    - ii. Any applicable easements;
    - iii. Building envelope;
    - iv. Parcel Codes
5. The Board requires the that abovementioned plans be updated in conformance with this decision, and that to-scale hard copies, in addition to digital copies, be submitted to the Zoning Administrator to be filed in the corresponding zoning files.
  - a. The Board finds the applicants shall depict the location of the utilities and submit an updated site plan reflecting those locations.
6. The E-911 Codes for the lots shall be posted per the Underhill-Jericho Fire Department specifications prior to the issuance of a Certificate of Occupancy permit.
7. The final plat shall include parcel codes and shall be submitted for recording within 180 days of the date of this approval (23 April, 2018) in accordance with Section 7.7 of the *2018 Underhill Unified Land Use & Development Regulations*.
8. All subdivision and recording fees must be paid in full prior to recording a subdivision plat in accordance with Section 7.7.B of the *2018 Underhill Unified Land Use & Development Regulations*.
9. Prior to the issuance of a Certificate of Occupancy, the applicants shall provide a certification letter from a Vermont Licensed Professional Engineer or qualified consultant indicating that all infrastructure improvements identified in the subdivision plans under Condition 3 above, and what is required by this decision, have been constructed according to what was proposed as part of this review.
10. The applicants shall conform to the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control, published by the Watershed Management Division of the Vermont Department of Environmental Conservation when performing excavation and site work.
11. New property boundary monumentation referenced on the survey plat shall be installed as a condition of approval.
12. The board delegates authority to the Zoning Administrator to make decisions based on any ongoing jurisdiction issues, said decisions can be appealed by the aggrieved to the Development Review Board (DRB).
13. Notwithstanding the conditions above, prior to issuing a building permit, the applicant shall comply with applicable aspects of the Underhill Land Use and Development Regulations in effect at the time of the application

Dated at Underhill, Vermont this 23<sup>rd</sup> day of April, 2018.

*Charles Van Winkle*

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Charles Van Winkle, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environment Court by an interested person who participated in the proceedings before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings. Appeal period ends 23 May 2018.