



Appeal Decision

Inquiry Held on 11,12, 18, 19, 20 and 24 May 2021

Site visit made on 21 May 2021

by G J Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th June 2021

Appeal Ref: APP/B1740/W/20/3265937

**Site of The Rise and Three Neighbouring Properties, Stanford Hill,
Lymington, SO41 8DE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Renaissance Retirement Limited against the decision of New Forest District Council.
 - The application Ref 20/10481, dated 1 May 2020, was refused by notice dated 14 October 2020.
 - The development proposed is the demolition of existing buildings and the erection of 44 sheltered apartments for the elderly with associated access, mobility scooter store, refuse bin store, landscaping and 34 parking spaces.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and the erection of 44 sheltered apartments for the elderly with associated access, mobility scooter store, refuse bin store, landscaping and 34 parking spaces at the site of The Rise and Three Neighbouring Properties, Stanford Hill, Lymington, SO41 8DE in accordance with the terms of the application, Ref 20/10481, dated 1 May 2020, subject to the conditions set out in the schedule below.

Procedural Matters

2. The application that led to this appeal was refused by the Council on a number of grounds including its effects to biodiversity (both offsite and on-site) and its effects to the living conditions of the occupants of 14 and 15 Bucklers Mews. However, during the course of the appeal, the Council withdrew its objections in relation to these aforementioned matters on the basis that the proposed development could be made acceptable in these terms through the use of planning obligations or conditions.
3. Whilst these matters do not therefore form main issues in this appeal, I am the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). Consequently, the Habitats Regulations require me to carry out an appropriate assessment of the appeal scheme in circumstances where it would be likely to have significant effects on European sites, alone or in combination with other plans or projects – I return to this issue below. Moreover, I will deal with the

other matters covered by the Council's original reasons for refusal, where appropriate, elsewhere in this decision.

4. During the Inquiry, it emerged that the Council had recently adopted¹ a Mitigation for Recreational Impacts on New Forest European Sites Supplementary Planning Document (the Mitigation SPD), which supplants the guidance² that was relevant at the time of the decision on the application that led to this appeal. The Mitigation SPD was provided as an Inquiry document and adequate time was available for its implications to be captured in the appellant's finalised planning obligation related to this matter. Consequently, I consider that no prejudice would occur to the interests of any parties as a result of me taking the Mitigation SPD into account in my assessment of the appeal's planning merits.
5. Following the closure of the Inquiry, I received finalised planning obligations relating to a number of matters, which are covered in my reasoning below.

Main Issues

6. I consider the main issues in this case to be firstly, the effects of the proposed development on the significance of Lymington Conservation Area, and the Grade II Listed Buildings at Highfield (No 1(Hill House) No2; Nos 3 and 4 (Down House); and Nos 5 and 6 (Highfield Ridge)); and secondly, the effect of the appeal scheme on the character and appearance of the area.

Reasons

Site, surroundings and proposed development

7. The appeal site comprises four relatively deep residential plots currently occupied by detached houses of varying scale and character. These existing dwellings are set back from Stanford Hill behind a considerable amount of hard standing bounded by hedges, and short walls in a mix of materials. Close to the town centre, the appeal site is just outside the boundary of the Lymington Conservation Area. Bucklers Court, a building mainly of three-storeys, and of a relatively deep plan, with a long, but articulated front elevation addressing the curve of Stanford Hill, lies to one side of the appeal site set at a higher level due to the underlying topography of the area. To the other is Concord, a detached dwelling in a deep plot. To the rear of the appeal site are detached houses in relatively deep plots, which address Belmore Road. The comparatively denser development of Bucklers Mews also lies to the rear of part of the appeal site. Situated across Stanford Hill from the appeal site are the mature trees and broad landscaped area to the rear of Rowans Park. Further up the hill, situated behind a landscape element referred to by parties as a "green" the substantial properties of Highfield, which are of considerable aesthetic quality, provide an obvious focal point.
8. The appeal scheme would entail the demolition of the existing buildings on the site and the development of a larger single building of mainly three storeys, which would provide 44 sheltered apartments for older people. A portion of the proposed development would also include a lower ground floor. Of a broadly "T" shaped footprint, the appeal building would comprise a number of distinct

¹ On 5 May 2021

² *Mitigation Strategy for European Sites: Recreational Pressure from Residential Development Supplementary Planning Document* (Adopted June 2014) (CD4.6)

elevational elements of varied overall heights and set-backs from the highway. The proposed building's rear wing would project more deeply into the plot than the existing buildings. Vehicular access and egress from the site would be provided via two highway crossovers, and the remaining existing crossovers would be removed which would create a more consolidated boundary across the front of the appeal site than exists at present. The boundary would incorporate hedges and railings. A landscaped strip, including tree planting, would be placed between the front boundary and the appeal scheme's parking and access arrangements. Further parking would be provided on the portion of the site adjacent to Bucklers Court and Bucklers Mews. To the rear and side boundaries additional tree planting would accompany the retained trees in the site, which include one identified as an "important tree" in the Lymington Local Distinctiveness Supplementary Planning Document (adopted February 2011) (the Distinctiveness SPD).

Listed Buildings and Conservation Area

9. It is common ground between the main parties that the appeal site is within the setting of both the Conservation Area and No 1 (Hill House); No 2; Nos 3 and 4 (Down House); and Nos 5 and 6 (Highfield Ridge), Highfield, which are all Grade II Listed Buildings (the Highfield Listed Buildings).
10. The Highfield Listed Buildings are pairs of properties, which vary in terms of their elevational treatment and the materials employed but are consistent in terms of their scale. The overall symmetry of each pair, and the classical proportions of their facades are also clear similarities shared by the Highfield Listed Buildings. Occupying an eminent position at the brow of Stanford Hill, the Highfield Listed Buildings are high-status structures which mark an entry point into the historic town, with windows and other features at their fronts orientated towards Stanford Hill.
11. Consequently, insofar as is relevant to the appeal, the significance of these buildings derives, to a considerable degree, both from this marked architectural quality; and from their historic interest in terms of the evidence they yield about the development of Lymington, particularly in terms of their status as a visual entry point to the town centre and their position at the western extent of its historic core. In this latter respect, I also note the Council's view of their relationship to the emergence of Lymington as a resort in the 19th Century. As high-status buildings situated at the brow of the Hill and orientated towards it, views to and from them are elements of the setting that contribute to their significance in these respects.
12. The Listing Descriptions for the Highfield Buildings contain the annotation "GV", which indicates that their Group Value is of note, both in terms of their relationships with each other and with other nearby Grade II Listed Buildings at Stanford Road and Priestlands Place. It is clear that the Highfield Listed Buildings' relationships with these other structures is also a matter relevant to the consideration of the contribution made to the significance by their setting.
13. Historic mapping³ supplied by both parties shows that most of the area broadly to the south of Highfield, aside from the "green" has changed considerably since the Listed Buildings were originally constructed – with extensive residential development taking place over the course of the 20th Century.

³ In the Council's *Conservation Proof of Evidence Appendix 2* (CD8.10) and the appellant's *Heritage Proof* (CD8.18)

Whilst the density of much of this development allows for landscaping and mature trees, the predominantly domestic character of much of the land, and the buildings on it, is readily perceived in views from Highfield – meaning that any ‘designed views’ that may have existed when the Listed Buildings were constructed have already been fundamentally altered.

14. The proposed building would be of a greater scale than the dwellings currently on the appeal site, and its footprint would extend across the existing plots. However, the proposed building would be set well back from Stanford Hill, behind tall trees. Taken together, these aspects of the appeal scheme’s design would help it to assimilate with the generally leafier and more spacious pattern further down the hill. The appeal scheme would not therefore, appear as an alien feature within this setting, which already includes buildings and landscaping. Moreover, the appeal site is set at a considerably lower level than Highfield. As a result, taken together with its set back and landscaping proposals, the appeal scheme would not constitute a dominant feature in views available from Highfield. In my judgement therefore, the proposed development would not materially erode any ‘designed views’ from the Highfield Listed Buildings and would thus avoid harm to their significance in this respect.
15. The location of the Highfield Listed Buildings on the brow of the hill and their scale, taken together with the set-back of the proposed development, the level of its site and the landscaping proposals to its front, would also ensure that the Listed Buildings remain the pre-eminent structures marking the entry point to the historic town, in views toward them from lower down Stanford Hill. Accordingly, the aforementioned aspects of the architectural and historic significance of the Highfield Listed Buildings would not be eroded as a result of the appeal scheme.
16. No 7 Highfield House and No 8 Highfield are not included on the statutory list, and neither are they identified in *Lymington: A Conservation Area Appraisal* Supplementary Planning Guidance (adopted July 2002) (the CAA) as “Key / Important Unlisted Buildings”. The Council confirmed at the Inquiry that they do not appear on a local list. Nevertheless, the Council consider them to be non-designated heritage assets. Be that as it may, for the reasons set out above in terms of the appeal site’s relationships to Highfield, I consider that the proposed development would not cause a harmful effect to any significance that those non-designated properties may possess.
17. The appeal site is situated to the side of Bucklers Court, a substantial structure, which would effectively screen it from the Grade II Listed Buildings on Priestlands Place and Stanford Road. As a result, the proposed development would not interrupt the relationship that these structures have with the Highfield Listed Buildings and would not diminish their group value.
18. The Conservation Area has a legible medieval street pattern in its core, with 18th Century and later expansion at its periphery. These aspects contribute to the significance of the Conservation Area in its architectural and historic senses – as does the resultant harmonious, but nonetheless varied, nature of its built form.
19. Bucklers Court marks the boundary of the Conservation Area in relation to the appeal site, and effectively severs inter-visibility between the site and the historic core of the town – albeit the appeal site is inter-visible with the

Highfield properties. I accept that there is a marked change in character and scale between Bucklers Court and the appeal site's properties. It is clear that the change in scale from Bucklers Court to the predominantly 20th Century dwellings further down the hill would become more gradual and transitional as a result of the proposed development.

20. However, the proposed development would clearly read as a modern building and not a traditional one, and due to its site level, set-back and landscaping at its front, it would not appear overly assertive. Moreover, these aspects of the proposed development, taken together with the more assertive positioning of Bucklers Court, and the high quality architecture of the Highfield Listed Buildings set at the brow of the Hill, would ensure that the existing entry to the Conservation Area and the town's historic core would remain readily understandable. Consequently, the proposed development would not undermine the legibility of the town and would not erode the historic and architectural significance of the Conservation Area.
21. Accordingly, for the reasons set out above, I conclude on this main issue that the proposed development would avoid harm to the significance of the Conservation Area, and to the Grade II Listed Buildings No 1(Hill House) No2; Nos 3 and 4 (Down House); and Nos 5 and 6 (Highfield Ridge) Highfield. In these respects, the proposed development would accord with Policy DM1 of the New Forest Local Plan Part 2 (adopted April 2014) (the Part 2 Plan) and the National Planning Policy Framework (the Framework). Taken together and amongst other things, these policies seek to ensure that heritage assets are conserved in a manner appropriate to their significance; and that development should pay particular regard to setting, historic significance and context of heritage assets. In arriving at this view, I have taken fully into account the relevant Historic England good practice and related advice⁴.
22. In light of the above, and mindful of my duty under s66(1) of the Planning (Listed Buildings and Conservation Areas Act) 1990, I conclude that the proposed development would preserve the setting of the Grade II Listed Buildings No 1(Hill House) No2; Nos 3 and 4 (Down House); and Nos 5 and 6 (Highfield Ridge) Highfield.
23. Whilst I have been supplied with the CAA, that document makes clear⁵ that it provides guidance on "the subject of the design of development *in* Lymington's central conservation area" (with my emphasis). The appeal site would thus be outside the scope of this document in terms of its design principles.

Character and appearance

24. For the purposes of the Distinctiveness SPD, the appeal site is located within Character Area 6 - South Lymington. According to the Distinctiveness SPD⁶ this area has several key defining elements including the similar scale and mass of neighbouring dwellings, the presence of large trees, large garden settings (including rear garden islands), common set-backs, build-up of plot widths and low front boundaries. As currently developed, the site broadly conforms to these key defining features.

⁴ GPA2 *Managing Significance in Decision-Taking in the Historic Environment* (CD7.13); GPA3 *Setting and Views* (CD7.14); Historic England Advice Note 1 – *Conservation Areas* (CD7.16); Historic England Advice Note 12 – *Statements of Heritage Significance* (CD7.17)

⁵ At paragraph 1.2

⁶ At page 95

25. Nevertheless, the Distinctiveness SPD, makes it clear⁷ that the guidance contained within the document “should inform the necessary thorough research into the context of individual sites. It is for the ... developer or the designer to investigate the finer nuances of the place and how they can inform the design of new development.” In these regards it is relevant that the appeal site is situated at the boundary of Character Area 6, close to Character Area 1 – the Town Centre, and Character Area 7 – Yaldhurst Purlieu. In this context, it is also relevant that the Framework⁸ sets out that SPDs relating to design matters should allow a suitable degree of variety where this would be justified.
26. I readily accept that there is a clear distinction between Bucklers Court and the dwellings present at the appeal site in terms of their massing, scale, set-back density and the build-up of their building lines. I am also mindful of the design intentions set out in previous planning policy/guidance relating to the Bucklers Court site, which identified an “opportunity to ‘round off’ the town centre with a high quality residential scheme”⁹. Nevertheless, I saw that, due to its immediate proximity to the appeal site, Bucklers Court provides a clear context, and unlike the majority of dwellings in Area 6, which are in the main situated on quieter residential streets and cul-de-sacs, those on the appeal site directly address the A337 (Stanford Hill). To my mind, these aspects of the appeal site, and its relationships with its immediate surroundings could reasonably be considered finer nuances of this part of Area 6 which clearly distinguishes it from the wider area, which lacks such immediate contextual relationships. For this reason, I do not share the Council’s view that the design evolution of the appeal scheme, as expressed in the Design and Access Statement and other submissions, is based on erroneous conclusions about the appeal site’s context.
27. The design of the proposed development has responded to this site-specific context and would see a building which would, instead of the marked change in character that now exists, provide a more transitional approach. This would be achieved through a building which would step down in scale from its northern edge to its southern, and would incorporate distinct elevational elements, which would be set further back from the highway than Bucklers Court. The proposed building would be set in from its boundaries and landscaping would be provided adjacent to these. These elements of the appeal scheme’s design would ensure that the proposed building, despite its scale and massing, would not appear as an overly assertive feature. For these reasons too, it would not compete with the ‘rounding off’ role of Bucklers Court, or interfere with a contextual understanding of where the town centre and Conservation Area begins. Neither would the proposed development dominate Concord, the dwelling to its other side.
28. The front of the proposed building would incorporate four distinct elevational elements, which would provide articulation and modelling to this street-facing elevation. I saw within the appeal site’s wider surroundings (including at Highfield) examples of dormer windows, canopies, parapets, and flat-roofed elements. The proposed building would also clearly reference the range of facing materials present in nearby structures.

⁷ At paragraph 1.3

⁸ At paragraph 126

⁹ Included in Appendix 4 of the Council’s *Conservation Proof of Evidence* (CD8.12)

29. Some aspects of the elevational treatment would differ from those of some of the traditional buildings in the area. For example, I note views that the elevations may not achieve the precise classical proportions, particularly under the pediment, in contrast to the Highfield Listed Buildings and Bucklers Court; and its dormers would be in a broadly "landscape" rather than a "portrait" orientation unlike a great deal (although not all) of dormers present on buildings within the Conservation Area. Moreover, the front elevation, whilst incorporating symmetrical elements (such as the rendered element with dormer windows), taken as a whole would be asymmetric – and also incorporate asymmetric individual elements. I am mindful also that, unlike Bucklers Court, the proposed development would incorporate more extensive areas of flat roofing. Nevertheless, the appeal site is outside of the Conservation Area, and the proposed development would be a modern building, which would clearly read as such, albeit with references to traditional elements. Furthermore, due to the roof-level design, which includes parapets and pitched features, the flat roof elements would be largely invisible in the majority of available views of the appeal scheme. Accordingly, the proposed development's design would not appear incongruous in these terms.
30. The appeal scheme would introduce a more consolidated front boundary than exists at present with associated landscaping and tree planting and in this respect would be a considerable improvement on the current arrangement of highway crossovers. In these terms, the proposed development would clearly meet with the Distinctiveness SPD's design advice relating to the garden setting for built development¹⁰. Moreover, this aspect would greatly assist the proposal to assimilate with its surroundings.
31. In other respects, the proposed development would not meet the Distinctiveness SPD's guidance of most relevance to the character area within which it sits – in terms of its build-up of building line and its plot width. Whilst I accept that this would close the gaps currently present between the houses on the site, these gaps are only perceptible in a limited range of views, and in any event ancillary structures are present in a number of them. Consequently, the current contribution of the gaps between the appeal site's existing dwellings to the streetscene is, in my view, limited and their loss would be mitigated by the implementation of the proposed landscaping scheme. Moreover, the articulation of the proposed front elevation would also serve to break up the building line into visually discrete elements.
32. I note also that the rear wing of the proposed building would extend over the rear gardens currently at the appeal site, and that this element of the scheme would be visible in gaps from Belmore Road. Nevertheless, a considerable proportion of the rear garden would remain and existing trees would be accompanied with new planting. Taking these aspects of the proposed development together with the depth of neighbouring gardens and the maturity of their existing vegetation, I consider that the rear 'garden island' would not be harmfully eroded, and that intervening landscape elements would screen and soften views through to the rear of the proposed development.
33. The Framework sets out that planning decisions should promote an effective use of land in meeting the need for homes¹¹; and that where there is an existing shortage of land for meeting identified housing needs (a matter of

¹⁰ Set out on page 95

¹¹ At paragraph 117

common ground between the parties in the current case), it is especially important that planning decisions ensure that developments make optimal use of the potential of each site¹². To my mind, the site-specific design response of the appeal scheme would ensure that this is the case, and, taken together with the lack of material harm that would be caused in townscape terms, justifies a departure from the advice of the Distinctiveness SPD in this case insofar as its guidance regarding the build-up of building line and plot width is concerned.

34. For the reasons set out above, the appeal scheme would clearly not constitute an example of poor design, and thus would not conflict with the Framework¹³ in this regard. Accordingly, these considerations taken together with my conclusions regarding the effects of the proposed development on the significance of heritage assets, lead me to the conclusion on this main issue that the appeal scheme would avoid harm to the character and appearance of the area. In these respects, the proposed development would accord with Policy ENV3 of the New Forest Local Plan (adopted July 2020) (the Local Plan), insofar as (amongst other things) it expects new development to create buildings, streets and spaces which are sympathetic to the environment and their context in terms of layout, landscape, scale, height appearance and density and in relationship to adjoining buildings, spaces and landscaping features. For these reasons too, I find no conflict with the Government's priorities for well-designed places as expressed in the National Design Guide.

Other Matters

Housing Supply Position

35. It is common ground that the Council cannot demonstrate a five-year supply of deliverable housing land. Although I accept that the Council's recently adopted Local Plan includes a strategy to meet its requirement over the plan period – delivery of its strategic site allocations is not progressing at the rate previously anticipated. The Council is currently engaging with developers to support an updated housing supply position to be published later this year. However, the fruits of that labour are not yet available – and I am mindful of the Council's statement that, as this work is still in progress, "it is not possible to take a definitive position on whether or not the Council has a five-year housing land supply at this present point in time and to attempt to do so through this Appeal Inquiry would not be practical or worthwhile"¹⁴. Consequently, at the Inquiry no substantive evidence was forthcoming sufficient to undermine the appellant's conclusion¹⁵, based on robust and credible analysis, that there is only around a 2.5 year supply of specific deliverable housing sites – a position that they characterise as an "optimistic view"¹⁶ of the situation.
36. Moreover, I have found that no harm would occur to the significance of heritage assets as a result of the proposed development, and that in this respect, policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusal. In such circumstances the Framework indicates¹⁷ that the tilted balance is engaged. In arriving at this

¹² At paragraph 123

¹³ At paragraph 130

¹⁴ Paragraph 4.10 of Appendix 4 of the Council's *Proof of Evidence* (CD8.6)

¹⁵ Per paragraph 10.2 *Draft Proof of Evidence: Housing Land Supply*, included as Appendix 1 to the Appellant's *Planning Proof of Evidence* (CD8.29)

¹⁶ Ibid at paragraph 10.2

¹⁷ At paragraph 11(d)

view, I acknowledge that the Council has met the most recent Housing Delivery Test – however, the Framework is clear¹⁸ that this consideration would not disengage the tilted balance, where a five year supply of deliverable housing sites cannot be demonstrated.

37. Whilst the Council and appellant's assessments differ on this point, both indicate a significant need¹⁹ for specialist housing for older people in the District over the plan period. During the course of the appeal, I have been supplied with no substantive evidence which suggests that there are any deliverable sites, other than the one subject to this appeal, which would make a meaningful contribution to the supply of sheltered housing in the short-to-medium term. Furthermore, the Government's Planning Practice Guidance (PPG) advises²⁰ that the need to provide housing for older people is critical.
38. I am mindful of views of interested parties²¹ referring to the availability of older people's properties in Lymington and the perceived slow sales of some of the available stock -including one development, which appears to have completed in late 2019. Some consider that the level of parking provided and other matters such as the tenure arrangements involved in such housing may have contributed to slower than usual sales rates for the recently completed scheme. Nevertheless, social distancing measures pursuant to the COVID-19 pandemic have been in place for a considerable period of time following the completion of that scheme – and these may well have affected sales rates. I am conscious also that the market for age-restricted housing is necessarily smaller than that for general needs housing subject to no age restrictions – this is clearly another factor which could influence sales rates for such dwellings.
39. Some consider that housing, such as that proposed in this case could attract occupants from outside of the District. However, the demographic projections on which the Council's needs assessments are based includes an allowance for in-migration – and I am mindful of the material presented by the appellant in relation to one of its recently completed schemes²² located in Brockenhurst, which demonstrates that a considerable proportion of its occupants moved from properties within the immediate locality. Although this material relates to an individual scheme, and is thus a limited sample, I have been supplied with no substantiated evidence that would refute this or that demonstrates that higher proportions of in-migration have occurred in respect of other schemes.
40. Accordingly, these matters do not materially undermine either the appellant's or Council's assessments in terms of the underlying need for this type of accommodation over the plan period.
41. Furthermore, in enabling older people to 'down-size' to smaller accommodation, which nonetheless would meet their needs, the proposed development would free up larger housing elsewhere, including a proportion in the District, which would also have beneficial housing supply effects.
42. Against this background, and taking into account the Court judgements and appeal decisions provided by the parties²³, the appeal scheme's delivery of

¹⁸ At Footnote 7

¹⁹ Per paragraph 6.24 of the Local Plan

²⁰ *Housing for Older and Disabled People* at Paragraph: 001 Reference ID: 63-001-20190626 Revision date: 26 June 2019

²¹ Including Lymington and Pennington Town Council (ID3) and the Lymington Society (ID11)

²² At Appendix 3 of the appellant's *Planning rebuttal to proof of evidence by Mr James Gilfillan* (CD8.35)

²³ *Hallam Land Management Ltd v Secretary of State for Communities*

specialist housing for older people would deliver benefits that weigh very significantly in its favour.

Other Benefits of the proposed development

43. Due to its adjacency to the town centre, its positioning within a settlement boundary, and its ready access to services, the appeal site is manifestly a sustainable location – a matter of common ground between the parties. In these ways, the proposed development would accord with the Local Plan's intention for older persons' housing to be located close to local facilities and services²⁴.
44. Moreover, a considerable proportion of the appeal site also constitutes previously developed land – and I am mindful that some 61% of the District's area is what the Local Plan describes as "Greenfield with NPPF 2012 footnote 9 constraints"²⁵. In the light of these considerations, the Framework's support for the effective²⁶ and efficient²⁷ use of land is particularly relevant. For these reasons, taken together with my findings on housing supply matters, I consider that the proposed development would also contribute to the Government's objective of delivering the right homes in the right places²⁸.
45. The PPG sets out²⁹ that offering older people a better choice of accommodation to suit their changing needs can help them live independently for longer, feel more connected to their communities and help reduce costs to the social care and health systems. Research has been drawn to my attention by the appellant³⁰, which finds that provision of housing of the type proposed could yield substantial savings to health and social care budgets.
46. The proposals would deliver a biodiversity net gain (BNG) on the site, which would be secured by a planning condition, of over 10%. Although Policy STR1 of the Local Plan requires BNG, it sets no specific percentage gain, and legislation enshrining a requirement is not yet in place. In any event, the BNG provided would be a clear benefit of the appeal scheme.
47. During its construction phase the proposed development would create direct employment, of some 20 roles per annum over an 18 month build programme³¹ – and over that time the appeal scheme would also have a positive effect on economic activity in the wider construction supply chain. When completed, the adjacency of the appeal site to the town centre would likely lead to a considerable increase in spending at local businesses. These

and Local Government and Eastleigh Borough Council [2017] EWHC 2865 (Admin); *Cheshire East Council v Secretary of State for Communities and Local Government and Rowland Homes Ltd* [2014] EWHC 3536 (Admin); *Phides Estates (Overseas) Limited v Secretary of State for Communities and Local Government, Shepway District Council and David Plumstead* [2015] EWHC 827 (Admin); APP/B1740/W/17/3174028; APP/B1740/W/17/3180586; APP/H2265/W/18/3202040; APP/R3650/W/18/3211033; APP/B1740/W/18/3198347; APP/F2605/W/18/3194045; APP/A0665/W/18/3203413; APP/B1740/W/18/3212419; APP/C3810/W/19/3242332; APP/C3810/Y/19/3242340; APP/W1145/W/19/3238460; APP/Q3115/W/19/3230827; APP/C1570/W/19/3242550; APP/A1530/W/19/3223010; APP/N1730/W/20/3261194; APP/G5180/W/20/3257010.

²⁴ Expressed at paragraph 6.27 of the Local Plan

²⁵ At Figure 2.5

²⁶ At paragraph 117

²⁷ At paragraph 122

²⁸ Set out in *Fixing our broken housing market* Cm9352 CD7.8

²⁹ *Housing for Older and Disabled People* at Paragraph: 001 Reference ID: 63-001-20190626 Revision date: 26 June 2019

³⁰ *Healthier and Happier: an Analysis of the fiscal and wellbeing benefits of building more homes for later living*, Produced by WPI Strategy, September 2019 included as Appendix 15 to the appellant's Statement of Case

³¹ Per the appellant's *Planning Proof of Evidence* at paragraph 9.1 CD8.29

would be clear benefits in the economic sense – and in these terms the Framework makes clear that significant weight should be placed on the need to support economic growth³².

48. Accordingly, for these reasons, the proposed development's clear social, environmental and economic benefits taken together would attract very significant weight in the overall planning balance.
49. Although some would prefer to see development of family housing, given the proportion of older residents already in the District, an alternative scheme to provide such dwellings is not before me in this appeal, and in any event, for the reasons set out above, the proposed development would meet clear needs and secure a number of benefits.

European Sites

50. The Statement of Common Ground³³ and the appellant's Proof of Evidence in respect of Ecology and Nature Conservation³⁴ highlight the following European sites in close proximity to the appeal site:
- the New Forest Special Area of Conservation (SAC);
 - the New Forest Special Protection Area (SPA)
 - the Solent and Isle of Wight Lagoons SAC;
 - the Solent Maritime SAC;
 - The Solent and Southampton Water SPA and RAMSAR.
51. Where plans or projects, either alone or in combination with others, would be likely to cause significant effects to European sites, the Habitats Regulations requires the competent authority to carry out an appropriate assessment before granting such consent. For the purposes of the Habitats Regulations, I am the competent authority in respect of this appeal and will proceed on this basis.
52. In short, the internationally important interest features of the New Forest European sites derive from the heathland, water and meadow features, and the habitats they provide for, amongst others, the European honey buzzard, the hen harrier, the Eurasian hobby, the European nightjar, the woodlark, the Dartford warbler and the wood warbler. The internationally important special interest features of the Solent European sites, are, in summary, and amongst other things, the coastal lagoon, sandbank, mudflat, annual and perennial vegetation of drift lines and stony banks, shifting dunes and salt meadow features. These European sites provide a habitat for Desmoulin's whorl snail, the sandwich tern, the common tern, the little tern, the roseate tern, the dark-bellied brent goose, the Eurasian teal, the ringed plover, the black-tailed godwit, and the Mediterranean gull.

Likely Significant Effects

53. The increase in residential development that would occur as a result of the appeal scheme would be likely, in combination with other plans and projects, to

³² At paragraph 80

³³ CD7.12 at paragraph 3.8

³⁴ CD 8.27

have a significant effect on the New Forest and Solent European sites as a result of recreational disturbance. Furthermore, an increase in occupation and related transport movements is also likely, in combination with other plans and projects to lead to air quality implications that could lead to significant effects on the New Forest SAC. Moreover, in terms of the Solent European sites, the proposed development is likely to have significant effects in terms of the increase in nitrates arising as a result of the additional wastewater that would be discharged from the site.

Recreational Pressure and Air Quality

54. Recreational pressures arising from the proposed development would be likely to include disturbance of wintering birds feeding and roosting along the Solent coastline. Similarly, the disturbance of ground nesting birds in the New Forest European sites as a result of increased recreational activity arising from the site would also be likely to lead to adverse effects. Other effects could include trampling, nutrient enrichment and increased risk of wildfires as a result of increased recreational activity. In these ways, the proposal, in combination with other plans and projects, would adversely affect the integrity of the European sites.
55. There is a degree of uncertainty at this stage as to whether or not the air quality impacts of proposed developments in the New Forest District would lead to significant effects to the integrity of European sites. Nonetheless, it is necessary to apply the precautionary principle in relation to this matter, and it is not possible to establish conclusively at this stage that no adverse effects would arise to the integrity of the European sites as a result of its air quality implications.
56. It follows that, in terms of recreational pressure and air quality, the proposed development could clearly cause an adverse effect to the integrity of the relevant European sites and their conservation objectives. However, I have been supplied with a lawfully executed planning obligation pursuant to s106 of the Town and Country Planning Act 1990 (as amended), which would secure mitigation measures in accordance with the Council's Mitigation SPD and its *Developers' Contributions to Air Quality Monitoring on New Forest Habitats* note of 2 March 2021³⁵. I am also mindful of Natural England's position³⁶ on these matters, which is that appropriate financial contributions, in line with the Mitigation SPD, would provide acceptable mitigation in these terms. I consider that the unambiguous content of Natural England's consultation response in these regards means that the requirement³⁷ for consultation on this matter in terms of my appropriate assessment has been met.
57. The obligations in these regards are clearly necessary to make the proposed development acceptable in planning terms, are directly related to the proposed development, and are based on an established methodology which ensures that they are fairly and reasonably related in scale and kind to the development. Accordingly, the obligations meet the relevant legal³⁸ and national policy tests³⁹. In these terms, I am satisfied that I can take these planning obligations into account and that they would provide an effective mechanism

³⁵ CD7.18

³⁶ Set out in its consultation response on the planning application dated 24 June 2020

³⁷ Established by Reg 63(3) of the Habitats Regulations

³⁸ Per Regulation 122(2) of the Community Infrastructure Regulations 2010 (as amended)

³⁹ Per paragraph 56 of the Framework

for ensuring that adverse impacts to the integrity of the relevant European sites in terms of air quality and recreational pressure would be effectively mitigated.

Nitrates

58. Evidence produced by the Partnership for South Hampshire, which supported the production of the Local Plan, found that the majority of Solent water bodies had in most cases, less than good ecological status for elements such as dissolved inorganic nitrogen, and that wastewater treatment works in the area would reach capacity early in the plan period⁴⁰. Consequently, developments in the New Forest Plan Area which would lead to increased discharges of wastewater would be likely to cause an adverse impact to the integrity of the Solent European sites in terms of nutrient enrichment. I am also cognisant that Natural England has advised the council that development which would result in increased overnight stays in certain parts of the District (including Lymington), should achieve nitrate neutrality to avoid any likely significant effects⁴¹ to water quality in the Solent. Taking these things together, leads me to the view that without mitigation to achieve nitrate neutrality the proposed development, due to the increased wastewater discharge that it would create, would lead to an adverse effect to the integrity of the Solent European sites.
59. The appellant proposes an offsite mitigation package (the Heaton Scheme) based at a site in the Isle of Wight. In short, the Heaton Scheme would involve land being removed from active agricultural use to be planted with woodland. In doing so, the outflow of nitrates from the Heaton Scheme would reduce. The appellant would buy credits for the appropriate amount of land to be taken out of agricultural use to offset the proposed development's nitrates output. Contributions would also be included to secure monitoring of the Heaton Scheme by Isle of Wight Council.
60. Natural England confirmed⁴² that the proposed mitigation land subject to the Heaton Scheme would be appropriate to offset nitrogen from developments which would discharge to the Pennington Wastewater Treatment Works, such as the one proposed in this case. Moreover, Natural England provided a site-specific response⁴³ on this point, which confirmed that the Heaton Scheme would be an appropriate location to provide mitigation in respect of the proposed development. Given the clear position of its representations generally in terms of the Heaton Scheme taken as a whole, and specifically in relation to the proposed development, I consider that this fulfils the requirement⁴⁴ for consultation with Natural England in respect of my appropriate assessment.
61. Natural England's site-specific response emphasises the necessity for any planning obligation relating to nitrates mitigation to secure the appropriate amount of land in the Heaton Scheme. Material submitted with the appeal, including the draft overarching agreement relating to the Heaton Scheme, and a nitrogen balance calculation for the proposed development based on the

⁴⁰ Per paragraph 3.10 of the Council's *Interim Position Statement on Nutrient Neutral Development* of 4 September 2019, included as Appendix 2 of the appellant's *Planning Proof of Evidence* (CD8.29)

⁴¹ Ibid paragraph 3.13

⁴² In a letter of 21 April 2020 included at Appendix 24 of the appellant's *Planning Statement of Case* (CD7.24)

⁴³ Dated 26 November 2020 and included as Appendix 25 of the appellant's *Planning Statement of Case* (CD7.24)

⁴⁴ Established by Reg 63(3) of the Habitats Regulations

methodology established by Natural England, clearly demonstrate that the appropriate amount of land would be secured.

62. The appellant has submitted a unilateral planning obligation to secure the measures related to the Heaton Scheme, which would relate only to the area of land necessary to mitigate the proposed development's effects. However, I am mindful that neither of the parties promote this measure as their preferred option. Instead, securing the mitigation as part of the emerging overarching agreement relating to the wider Heaton Scheme as a whole would be preferred, not least as Isle of Wight Council would be a signatory to the overarching agreement and would thus be bound by its terms insofar as the responsibility for monitoring is concerned. I concur that there would be advantages in these terms of securing the mitigation via the overarching agreement rather than by the submitted unilateral undertaking.
63. The overarching agreement is not yet finalised – however, the Council indicated that it is due imminently. Consequently, the parties propose a Grampian condition, which would prevent the proposed development from being occupied prior to the mitigation measures pursuant to the Heaton Scheme being in place. This approach would be in-step with the Council's *Position Statement on Nutrient Neutral Development – Interim Nitrogen Mitigation Solution* (4 September 2019)⁴⁵, which advocates the use of such conditions.
64. As set out above, the Council cannot currently demonstrate a supply of specific deliverable sites to provide a minimum of five years' worth of housing against their adopted requirement. In this context, the requirement to enter into proposal-specific arrangements in relation to nitrates agreements in the absence of a strategic package such as that which is to be subject to the overarching agreement, could act as a further impediment to securing permissions and completions – placing the delivery of the District's housing requirement at risk. For these reasons, I am of the view that exceptional circumstances exist which would justify the imposition of a condition which requires the appellant to enter into a planning obligation, and that this approach would therefore accord with the PPG⁴⁶ in these regards.
65. In arriving at this view, I am mindful that the proposed development could commence, but that only its residential occupation would be dependent on the measures being in place, as it is from this aspect of the proposal that the nitrates impacts would arise. I am content that the principal terms of the obligation are clear from the material before me, and that its imposition would clearly meet the three legal and policy tests⁴⁷. Moreover, given that the completion of the overarching agreement is imminent, I consider that proceeding on the basis of the suggested Grampian condition would not unreasonably delay either the delivery of the development or its residential occupation. Taking these things together leads me to the view that the use of a Grampian condition in these circumstances would clearly accord with the advice set out in the PPG. For these reasons, I consider that the planning obligations contained in the unilateral undertaking related to this matter to be

⁴⁵ Included as appendix 2 of the appellant's *Planning Proof of Evidence* (CD 8.29)

⁴⁶ *Use of Planning Conditions Paragraph: 010 Reference ID: 21a-010-20190723 Revision date: 23 07 2019*

⁴⁷ Per Regulation 122(2) of the Community Infrastructure regulations 2010 (as amended); and paragraph 56 of the Framework

unnecessary in this case, and they therefore carry no weight in my assessment of the appeal's merits⁴⁸.

Appropriate Assessment

66. For the reasons set out above, the proposed development would be likely to give rise to adverse effects to the integrity of European sites in terms of its recreational, air quality and nitrates impacts. However, the combination of the planning obligation which secures policy compliant mitigation in terms of recreational and air quality impacts; and the imposition of a condition requiring nitrate mitigation prior to the first occupation of the proposed development would ensure that the appeal scheme would not adversely affect the integrity of the relevant European sites. Consequently, I conclude that the proposed development would be acceptable in these terms, and would accord with Policy ENV1 of the Local Plan, insofar as it requires developments to avoid adverse effects to the integrity of European sites.

Optional Technical Standards

67. The Council suggested a condition which would require the proposed dwellings to meet the optional technical standard for wheelchair adaptable housing and cited Policy IMPL2 of the Local Plan as a justification for this. Although the Council withdrew this suggested condition during the course of the Inquiry, I am nevertheless mindful that s38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) requires me to determine applications in accordance with the development plan unless other material considerations indicate otherwise. Policy IMPL2 requires sheltered housing to be built to the wheelchair adaptable dwelling standard of Part M4(3)2a of the Building Regulations. The proposed development would not meet this standard, a matter not disputed by the appellant. Consequently, in this respect the appeal scheme would conflict with the Local Plan insofar as this policy is concerned.
68. It is important to note that the appeal is pursuant to an application for full planning permission, rather than an outline scheme, and thus the internal arrangement of the proposed development would be fixed per the approved plans should permission be forthcoming – meaning that a condition requiring these standards would be likely to render the scheme unimplementable. I am mindful also that the design of the appeal scheme seeks to achieve the M4(2) Optional Building Regulations standard for accessible and adaptable dwellings⁴⁹ – albeit that without a condition specifying this, I accept that the Council could not enforce this standard. In any event, the proposed development would cater for a range of occupants, and not only those with impaired mobility. Consequently, I am not persuaded that a requirement for the higher optional standards to be deployed in all of the proposed dwellings would be either reasonable or necessary in this case.
69. Accordingly, taking these matters together with the benefits of the proposed development that are set out above, it is my view that any harm that would occur as a result of the appeal scheme's variance with Policy IMPL2 of the Local Plan does not significantly and demonstrably outweigh the proposed development's benefits – matters to which I accord very significant weight. In

⁴⁸Clause 6.6 of the unilateral undertaking indicates that in such a circumstance, the relevant obligations cease to have effect from the date of this decision

⁴⁹ *Rebuttal to the Proof of Evidence of Mr Gilfillan*, Contact Consulting, 30 April 2021 at paragraph 6 (CD 8.38)

arriving at this view, I am cognisant that the Council does not cite Policy IMPL2 in any of its reasons for refusal, and I have not been made aware of any material which indicates that compliance with the higher optional standard was sought prior to the appeal stage.

Highway Safety and Parking

70. The submitted plans depict works in the highway which would entail a dedicated right-turn lane from Stanford Hill to the access to the proposed development – and this measure could be secured by a condition – as could appropriate visibility splays from the proposed access. Consequently, whilst traffic movements associated with the site would undoubtedly increase as a result of the proposed development, these measures would ensure that its highway safety implications would be acceptable.
71. The appeal site is also in an accessible location in close proximity to the town centre and related bus routes and makes provision for mobile scooter parking and charging. Taken together, these aspects of the appeal site and the proposed development would allow its future occupants to use alternative transport modes and reduce the reliance on the private car. So, whilst I note views that the proposed development would not supply an adequate amount of car parking, I consider the provision it makes would not lead to any harmful overspill parking on adjacent streets. I am mindful also that the local highway authority has no objections to the proposed development in highway safety or parking terms.

Living Conditions

72. An electricity substation would be located in the corner of the site adjacent to 14 and 15 Bucklers Mews. The principal windows of these properties are in their front elevations, which are orientated away from the appeal site and the proposed substation, with only smaller windows at ground floor on other elevations – which the approved plans⁵⁰ for the Bucklers Mews properties indicate relate to kitchens and shower rooms. Moreover, I am mindful that the noise report submitted by the appellant⁵¹, finds that the noise effects of the substation would be negligible. Additionally, a condition, which would restrict the noise generated by the sub-station could be attached, and this would secure acceptable limits in these terms – a matter with which the Council agrees. Although I am mindful of comments relating to health and safety aspects of the proposed substation, I am satisfied that it will meet the relevant regulatory standards for such installations which are matters outside of the scope of planning control.
73. I acknowledge that due to their height and orientation of some of the proposed windows and balconies that these could lead to some overlooking of neighbouring properties. However, the installation of obscure glazing could be secured by condition and this, taken together with existing and proposed landscaping, would ensure that the proposed development would not materially reduce the level of privacy available to the occupants of neighbouring properties.

⁵⁰ Included as Appendix 27 of the appellant's *Planning Statement of Case* (CD7.24)

⁵¹ According to the *Statement of Case on Noise* included as Appendix 27 of the appellant's *Planning Statement of Case* (CD7.24)

74. As set out above, the proposed building would be taller than the dwellings currently at the appeal site, and the footprint of the rear wing would extend over an area of what is currently garden space. Nevertheless, the proposed development would be adequately separated from the appeal site's rear boundaries, and further still from the dwellings which address Belmore Road. Moreover, existing and proposed landscaping both within the appeal site and in the properties to its rear would screen views through from the Belmore Road properties to the appeal site. I saw also that the closest properties at Bucklers Mews are orientated in a way which present no direct views of the appeal site from its windows.
75. For these reasons I consider that, whilst undoubtedly more visible than the dwellings currently on the appeal site from some adjacent dwellings, the proposed development would not harmfully reduce the outlook available from the properties to its rear. Moreover, the distance achieved by the proposed building from the boundaries of its site would ensure that the amount of daylight and sunlight available to the occupants of adjacent dwellings would not be materially reduced as a result of the appeal scheme. Similarly, the proposed development's distance from, orientation to, and the lower level of the appeal site in comparison with the properties on Highfield would mean that the outlook available from the latter buildings' front windows would not be reduced to any meaningful extent. These relationships between the Highfield properties and the proposed development would also mean that adequate privacy would remain (and be provided for) their occupants.
76. These considerations therefore lead me to the conclusion that the proposed development, subject to the conditions that I have mentioned, would cause no adverse effects to the living conditions of the occupants of adjacent dwellings
77. Some consider that the density of the proposed development may not secure adequate living conditions for its future occupants, citing social distancing measures pursuant to the COVID-19 pandemic in support of this view. However, the proposed development would provide adequate amounts of internal and external space, and as a result I consider that it would secure a high standard of amenity for its future occupants.

Affordable Housing

78. The application that led to the appeal was supported by a viability statement, which was independently reviewed⁵² on behalf of the Council. The independent review found, for site and proposal-specific reasons, that an affordable housing contribution would not be viable. I concur with the independent review that the appellant's viability evidence is reasonable. Moreover, for the reasons set out above, the proposed development would deliver specialist housing for older people for which there is a clear need. Consequently, the lack of provision of affordable housing, either on-site or in the form of a commuted sum is justified in this case, and would accord with Policies IMPL1 and HOU2 of the Local Plan insofar as taken together, and amongst other matters, they require the viability of development to be taken into account in decisions relating to the provision of affordable housing. In arriving at this view, I am cognisant that the Council raised no objections to the proposed development in these terms.

⁵² CD2.18

Health Considerations

79. At the application stage, the Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust sought a contribution from the proposed development to support the provision of its services during the first year of the proposed development's occupation to fill the gap that would occur until general funding available to the Trust increases in line with any overall increases in population. However, there is no specific Local Plan policy requiring such a contribution, and the viability material provided indicates that the proposed development would not be able to provide this in any event.
80. Moreover, I am mindful of the aforementioned research provided by the appellant⁵³, which indicates that each person living in a home for later living such as those proposed in this case would benefit from reduced risks of health challenges, which could lead to circa £3,500 savings per occupant per annum to the NHS and social services. To my mind, this gives further evidential weight to the PPG⁵⁴, insofar as it states that offering older people a better choice of accommodation to suit their changing needs can help reduce costs to the social care and health care systems. Also as set out above, based on sales of another comparative property in Brockenhurst, a considerable proportion of the proposed development's occupants would be likely to come from the existing catchment area for the NHS Foundation Trust – albeit I readily accept that some population increase could potentially occur both as a result of some in-migration to the proposed dwellings, and as a result of larger homes made available through the appeal scheme's future occupants down-sizing.
81. Nevertheless, these site and proposal specific reasons lead me to the view on this matter that the obligation sought by the Foundation Trust would not be necessary to make the development acceptable in planning terms and thus would not meet the requirements of the Community Infrastructure Levy Regulations 2010 (as amended)⁵⁵ or the Framework⁵⁶ in this respect. Consequently, the unilateral undertaking submitted by the appellant to address this matter carries no weight in my assessment of the appeal's merits⁵⁷.
82. Furthermore, given the potential for specialist older people's housing to reduce health risks, and thus pressure on related services, taken together with the likelihood that a considerable proportion of the occupants of the appeal scheme would come from the District, I consider that the proposed development would not give rise to any unacceptable additional pressure on local health services.

Flood Risk

83. The appeal site is located in Flood Zone 1 which means that there is a low probability that river or sea flooding would affect it⁵⁸. Conditions requiring the implementation and maintenance of an appropriate drainage system have been

⁵³ *Healthier and Happier: an Analysis of the fiscal and wellbeing benefits of building more homes for later living*, Produced by WPI Strategy, September 2019 included as Appendix 15 to the appellant's Statement of Case (CD7.24)

⁵⁴ *Housing for Older and Disabled People* at Paragraph: 001 Reference ID: 63-001-20190626 Revision date: 26 June 2019

⁵⁵ Regulation 122(2)

⁵⁶ At paragraph 57

⁵⁷ In such a circumstance, Clause 6.4 of the submitted unilateral undertaking sets out that the relevant obligations cease to have effect from the date of this decision

⁵⁸ Per the PPG *Flood Risk and coastal change* Paragraph: 065 Reference ID: 7-065-20140306 Revision date: 06 03 2014

sought and can be imposed. I am also mindful that the Lead Local Flood Authority has raised no objections to the scheme subject to such conditions. Accordingly, I am of the view that the proposed development would be acceptable in these terms and would not lead to increased flood risk on the appeal site or elsewhere.

Planning Balance

84. Although the proposed development would not secure housing which would meet the M4(3)2a optional technical standard and would thus be at variance with Policy IMPL2 of the Local Plan in this respect, the very significant benefits it would yield combined with the other material considerations referred to above (including the operation of the tilted balance, as set out in the Framework) would justify a decision other than in accordance with the development plan in this instance.
85. Furthermore, taken together, the above-matters also lead me to the view that the proposed development would accord with Policy STR1 of the Local Plan insofar as it expects, amongst other things, all new development to make a positive social, economic and environmental contribution to community and business life in the Plan Area. In my judgement, the appeal scheme would in all other respects accord with the development plan.
86. Whilst some consider that the appeal scheme could create a precedent for further development in the area, I have considered this site-specific proposal on its own merits. My decision in this case would not therefore create a precedent for proposals elsewhere in the area, or for instances where the harmful effects of proposals are not outweighed by their benefits.

Conditions

87. The Framework sets out⁵⁹ that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have considered the suggested conditions on this basis. In the conditions I have attached, I have made minor amendments to their wording in the interests of clarity⁶⁰. Where conditions require compliance with them prior to the commencement of the proposed development, the appellant has supplied their written agreement⁶¹ to their terms⁶².
88. In the interests of certainty, it is necessary to attach a condition that specifies the approved plans.
89. A condition is imposed which requires the submission of a construction management plan to the Council for its approval prior to the commencement of development on the site. As the construction management plan will set out the measures to be adhered to during the appeal site's development phase, elements of the condition of necessity require compliance prior to the commencement of development. For these reasons, I consider the imposition of this condition to be clearly justified.

⁵⁹ At paragraph 55

⁶⁰ Condition numbers 3, 4, 5, 8, 10, 12, 13, 14, 16, 17, 18, 19

⁶¹ ID9 *Agreement to pre-commencement conditions*

⁶² Per s100ZA of the Town and Country Planning Act 1990 (as amended)

90. In the interests of biodiversity, as well as the character of the site and its surroundings, and to ensure that existing trees that are due to be retained are adequately protected, a condition is attached which requires compliance with the appellant's submitted *Arboricultural Assessment and Method Statement*⁶³ and related details. Given the criticality of protecting the trees during the construction phase of the development there is clear justification for requirement for these measures to be in place prior to the demolition of the houses currently on the appeal site.
91. A condition is attached, which requires details of the materials to be used in the external construction of the appeal scheme to be submitted to the Council prior to their use. This condition is necessary in the interests of the character and appearance of the site and its surroundings.
92. As set out above, the proposed landscaping elements of the appeal scheme are integral to its overall townscape quality. It is for this reason that a condition is attached which requires timely implementation of the landscaping proposals in accordance with the approved plans – and requires replacement of trees should this be necessary within 5 years of the proposed development's completion. For substantially similar reasons, a condition is attached which requires the implementation of the front boundary treatment and planting as depicted in the plans prior to the first occupation of the proposed development.
93. In the interests of highway safety, a condition is attached which requires visibility splays in line with those shown on the submitted plans to be provided, and to remain free from obstruction. I am of the view that any restriction of permitted development rights that this condition could entail would be clearly justified in the interests of highway safety. The same condition would also ensure that the proposed development would provide adequate amounts of car and scooter parking, including charging points.
94. Also in the interests of both highway safety and of the character of the streetscene a condition is attached which requires details of the highways works that would be required to facilitate the dedicated right turn and highway crossovers and the removal of redundant crossovers to be submitted and approved prior to the commencement of the development. The condition requires these measures to be implemented prior to the first occupation of the proposed development.
95. Given the criticality of these measures to ensure the highway safety of the development in its day-to-day use a pre-commencement condition is clearly justified in this case. I have made a minor modification to the suggested condition to ensure that it is relevant to planning insofar as the details of the local highway authority's approval are to be supplied to the Council prior to the commencement of the development. The local highway authority raises no objection to the scheme subject to the implementation of the highway works set out in the condition. A Grampian condition in this instance is therefore clearly justified as there is a reasonable prospect that those highway works would be carried out in a timely fashion.
96. In the interests of the residential amenity of the occupants of adjacent dwellings conditions requiring the installation and retention of obscure glazing

⁶³ Produced by Barrell Tree Consultancy, Dated 17 April 2020

- in identified windows and balustrades are clearly justified and are accordingly imposed.
97. To ensure that the appeal scheme would provide housing to meet the needs of older residents in accordance with the description of development given in the banner heading, a condition is attached which restricts the occupancy of the proposed dwellings to those aged 60 or above and their spouses or partners.
98. To ensure that the proposed development would provide adequate drainage and that development of the appeal site would not increase flood risk elsewhere, a condition is attached which requires the implementation of a drainage system in accordance with previously submitted details. Moreover, to ensure that the drainage infrastructure remains effective over the lifetime of the development, a condition is imposed which requires details and schedules of protection measures and maintenance arrangements for the surface water drainage system to be submitted to the Council for its approval and implemented in accordance with the approved details. I have made minor modifications to the suggested wording of this condition in the interests of precision and enforceability.
99. As set out above, in order to ensure that the noise created by the proposed electricity substation would cause no material harm to the living conditions of the occupants of 14 and 15 Bucklers Mews a condition is attached to ensure that acceptable limits are placed on this in line with the relevant British Standards, and as set out in the appellant's noise report⁶⁴.
100. A condition is included to secure a biodiversity net gain on the site to ensure that the development would accord with Policy DM2 of the Local Plan in this regard, and to secure the benefit anticipated in documents submitted with the appeal. For substantially similar reasons, a condition is attached requiring the implementation and maintenance of the green roof. Also in the interests of biodiversity, and to ensure that any bats present on the site are adequately protected during construction and related activity, a condition is attached which requires details of appropriate licences for relevant works to be supplied to the Council prior to the commencement of any activities which may have an effect on their roosts.
101. I set out above the specific justification for including a Grampian condition which requires the submission of a mitigation package in respect of the proposed development's nitrates output. Accordingly, a condition to this effect is attached as it is necessary in the interests of the integrity of European sites. The condition imposed includes some minor amendments to the wording supplied by the Council, in the interests of enforceability and precision; and to ensure that the drafting conforms with the PPG advice relating to such conditions – particularly that they should be negatively worded⁶⁵.

Conclusion

102. For the reasons set out above, and taking fully into account all other matters raised, I conclude that the appeal should succeed.

G J Fort

INSPECTOR

⁶⁴The *Statement of Case on Noise* included as Appendix 27 of the appellant's *Statement of Case* (CD7.24)

⁶⁵ *Use of Conditions* Paragraph: 009 Reference ID: 21a-009-20140306 Revision date: 06 03 2014 and Paragraph: 010 Reference ID: 21a-010-20190723 Revision date: 23 07 2019

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Topographical Survey 2810-SV-1
 - Existing Floor Areas 2810-SV-2
 - Location Plan 1913 30
 - Site Plan 1913 31
 - Site Plan First Floor 1913 32
 - Lower Ground Floor 1913 33
 - Ground Floor Plan 1913 34
 - First Floor Plan 1913 35
 - Second Floor Plan 1913 36
 - Roof Plan 1913 37C Rev C
 - Proposed Elevations 1913 38
 - Proposed Elevations 1913 39
 - Indicative Street Scene and Site Section 1913 40
 - Section A-A 1913 41
 - Section B-B 1913 42
 - Section C-C 1913 43
 - Section D-D 1913 44
 - General Landscape Arrangement 1632-GA-100 REV K
 - Graphic Landscape Plan 1632-GP-101 REV K
 - Section A and B 1632-GP-102 REV A
 - Section C 1632-GP-103 REV A
 - Planting Plan 1632-PP-300 Rev L
 - Planting Schedule 1632-PP-301 Rev L
 - Tree Protection Plan 19028-BT2
- 3) No development shall take place, (including any works of demolition), until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved CMS shall include scaled drawings illustrating the provision for:
 - 1) The parking of site operatives' and visitors' vehicles;
 - 2) Loading and unloading of plant and materials;
 - 3) Management of construction traffic and access routes;
 - 4) Details of construction access and construction vehicle tracking;
 - 5) Storage of plant and materials used in constructing the development;
 - 6) Details of the method of cleaning wheels and chassis of all HGVs, plant and delivery vehicles leaving the site and the means of keeping the

site access road and adjacent public highway clear of mud and debris during site demolition, excavation, preparation and construction.

The agreed CMS shall then be adhered to for the duration of construction of the development hereby permitted.

- 4) Prior to demolition of the existing houses at the site, the tree protective measures recommended by the Barrell Tree Consultancy *Arboricultural Assessment and Method Statement* (reference:19028-AA-PB dated 17 April 2020) and the Tree Protection Plan (reference: 19028-BT2) shall be installed and thereafter retained for the duration of the construction period for the development hereby approved. No fires, building operations, storage of goods including building materials, machinery and soil, or discharge of any chemical substances, including petrol and diesel, shall be undertaken within the tree protection zones or within the canopy spreads, whichever is the greater, nor shall any change in soil levels or routing of services within those defined areas be carried out.
- 5) Prior to their use, details of all materials to be used in external facing walls, roofs, doors, windows, balustrades and hard surfaces shall be submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details.
- 6) All external hard and soft landscape works shall be carried out in accordance with the approved plans and details within one year of the first residential occupation of development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) Prior to occupation of the development hereby approved the parking spaces, accesses, manoeuvring space, visibility splays and motorised scooter store (with electric charging points) shown on the approved plans shall be provided. The parking spaces shall be retained and kept available for the parking of residents and their visitors only. The visibility splays shall be kept clear of any obstructions over 0.6m in height.
- 8) Prior to occupation of the relevant flats, the windows on the south elevation shown to be obscure glazed on the plan ref: Proposed Elevations 1913-38, shall be obscurely glazed, top hung and shall not open outward more than 200mm and shall be retained as such.
- 9) Prior to occupation of the relevant flats, the 1.8m high obscure glazed balcony screens, shown on the approved plans, shall be installed and thereafter retained as such.
- 10) Prior to first residential occupation of the development hereby approved the boundary treatment as shown on the approved plans shall be planted, implemented and installed, as appropriate, and thereafter maintained and retained.
- 11) The sheltered apartments comprising the development hereby permitted shall only be occupied by persons of sixty years or over, and the spouse or partner of such a person and in the event of the death of such person,

the spouse or partner of such person shall be permitted to remain within the retirement apartments irrespective of whether they are aged sixty years or over.

- 12) Development shall not take place until details of the works in the highway to provide:
- The access and egress pavement crossovers and the right turn lane on the A337, as shown in principle on drawings PBA 107.0008.006 Rev C (included in the *Stanford Hill Lymington Transport Statement produced by Paul Basham Associates*) and Site Plan 1913.31; and
 - Removal of the existing pavement crossovers serving High Bank, Silver Birches and Hill View from the A337 and reinstatement of the kerb, pavement and verge;

Shall have been submitted to the local highway authority for approval for the purposes of s278 of the Highway Act 1980; and evidence of the local highway authority's s278 approval shall have been provided to the local planning authority.

The development hereby permitted shall not be occupied until the works in the highway have been constructed in accordance with the approved details.

- 13) Prior to the occupation of the development hereby approved, the drainage system shall be constructed to achieve the proposed discharge rate of 5.0 l/s, in accordance with the designs and details set out in *Hydraulic Modelling Calculations for 44 Unit Scheme Stanford Hill, Lymington produced by Arch Associates DRAINAGE STRATEGY LAYOUT*; Project No: AAL160; Drawing No: 502; Revision: P2; dated: APRIL 2020, received 17/09/20 unless otherwise agreed in writing with the local planning authority.
- 14) Details for the long-term maintenance arrangements for the surface water drainage system shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development hereby approved. The submitted details shall include:
- a. Maintenance schedules for each drainage feature type and ownership;
 - b. Details of and timescales for implementation of protection measures;
- The agreed maintenance and protection measures shall be implemented thereafter in accordance with the approved details, schedules and timescales.
- 15) The rating noise level from the proposed substation, determined in accordance with the requirements of BS 4142: 2014 + A1:2019 *Methods for rating and assessing industrial and commercial sound* shall not exceed the prevailing representative background noise level by more than minus 10 dB in any external amenity space or at the nearest habitable room window (under free-field conditions) at numbers 14 and 15 Bucklers Mews at any time.
- 16) Any works that impact on the bat roosts (day roost for common pipistrelle at Silver Birches (garage) and day roost for brown long-eared at High Bank as identified in the Phase 2 Bat Survey Report undertaken by Abbas Ecology (Dated August 2019)) shall not in any circumstances

commence unless the local planning authority has been provided with either:

a) a licence issued by Natural England authorising the specified activity/development to go ahead; or

b) a statement in writing from the relevant licensing body to the effect that it does not consider that the specified activity/development will require a licence.

17) No construction works above damp proof course level shall take place until a Biodiversity Net Gain (BNG) Management Plan has been submitted to and approved in writing by the local planning authority (covering a minimum period of 30 years). The management plan should include:

- Methods and timetable for delivering BNG;
- Responsibilities for delivering BNG – during and after construction;
- Description of the habitats to be managed;
- Clear timed and measurable objectives in the short, medium, and long-term for BNG - Detail objectives for all habitats (target condition);
- A commitment to adaptive management in response to monitoring to secure the intended biodiversity outcomes;
- Details for a formal review process when objectives are not fully reached / roles and responsibilities;

The agreed BNG and management plan shall be implemented and maintained in accordance with the agreed timescales and schedules unless otherwise agreed in writing with the local planning authority.

18) The roof of the development hereby permitted shall not be constructed until full details and specification of the biodiverse extensive (green/brown) roof(s) as shown on the approved plan have been submitted to and approved in writing by the local planning authority. The biodiverse roof(s) shall be implemented in accordance with the details approved and shall be maintained as such thereafter.

19) The development hereby permitted shall not be occupied until:

- A water efficiency calculation in accordance with the Government's National Calculation Methodology for assessing water efficiency in new dwellings has been undertaken which demonstrates that no more than 110 litres of water per person per day shall be consumed within the development, and this calculation has been submitted to, and approved in writing by, the local planning authority; all measures necessary to meet the agreed waste water efficiency calculation must be installed before first occupation and retained thereafter;
- A mitigation package addressing the additional nutrient input arising from the development has been submitted to, and approved in writing by, the local planning authority. Such mitigation package shall address all of the additional nutrient load imposed on protected European Sites by the development when fully occupied and shall allow the local planning authority to

ascertain on the basis of the best available scientific evidence that such additional nutrient loading will not have an adverse effect on the integrity of the protected European Sites, having regard to the conservation objectives for those sites; and

- The mitigation package shall include a timetable for implementation and measures for retention and maintenance of that mitigation package.

The mitigation package shall thereafter be implemented, maintained and retained in accordance with the approved timetable.

*****End of Conditions Schedule*****

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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He called:

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INTERESTED PARTIES:

Councillor Andrew Peter Ash-Vie

Chair of the Lymington and
Pennington Town Council Planning
Committee

Don Mackenzie

Deputy Chair, The Lymington
Society

DOCUMENTS SUBMITTED AT THE INQUIRY:

- ID1 – Appellant’s Opening
- ID2 – Council’s Opening
- ID3 – Lymington and Pennington Town Council Statement
- ID4 – Note to the Inspector on the overarching agreement and the unilateral undertaking
- ID5 – Secretary of State Decision Letter on APP/P1133/W/18/3205558 Land at Wolborough Barton, Coach Road, Newton Abbot TQ12 1EJ
- ID6 – Mitigation for Recreational Impact on New Forest European Sites Supplementary Planning Document
- ID7 – List of Suggested Conditions
- ID8 – Note on the current availability of Market Retirement Accommodation in New Forest District Council
- ID9 – Appellant’s agreement to pre-commencement conditions
- ID10 – Appeal Decision APP/N1730/W/20/3261194
- ID11 – Statement of the Lymington Society
- ID12 – Chris Cox Rebuttal Clarification
- ID13 – Closing Submissions on behalf of the Council
- ID14 – *Hallam Land Management Ltd v Secretary of State for Communities and Local Government and Eastleigh Borough Council* [2017] EWHC 2865 (Admin)
- ID15 – Closing Submissions on behalf of the appellant

DOCUMENTS SUBMITTED BY AGREEMENT AFTER THE INQUIRY:

- 1 - Unilateral Undertaking relating to Nitrates Mitigation: Dated 20 May 2021
- 2 - Unilateral Undertaking relating to Health Contributions: Dated 20 May 2021
- 3 - Section 106 planning obligations relating to mitigation of recreation impacts and air quality: Dated 26 May 2021