

CHURCHILL RETIREMENT LIVING LIMITED

**SECTION 78 PLANNING APPEAL INTO THE PROPOSED REDEVELOPMENT OF THE
FORMER POLICE STATION, LYMINGTON, HAMPSHIRE FOR THE PROVISION OF 32
RETIREMENT FLATS.**

PUBLIC INQUIRY – 26 APRIL TO 3 MAY 2022.

THE CASE IN OPENING FOR THE APPELLANT

1. The structure of this opening speech of the Appellant is as follows:
 - 1.1. Section 1 - Housekeeping matters.
 - 1.2. Section 2 - The Factual Background to this appeal:
 - 1.2.1. The Appellant
 - 1.2.2. The Appeal Site.
 - 1.2.3. The development plan
 - 1.2.4. The relevant chronology
 - 1.2.5. The proposal
 - 1.2.6. The consideration of the proposal by the LPA.
 - 1.3. Section 3 - The matters not in dispute with the LPA as established by the SoCG.
 - 1.4. Section 4 - The matters in dispute with the LPA.
 - 1.5. Section 5 - The relevant tests imposed by statute and policy.
 - 1.5.1. Section 38(6) of the TCPA 1990.
 - 1.5.2. NPPF 11 – The tilted balance
 - 1.5.3. NPPF 202.
 - 1.6. Section 6 - The proposal will be shown to pass all 3 tests by the evidence.
 - 1.7. Section 7 – There is a compelling need for the development.
 - 1.8. Section 8 – This proposal could not be more in keeping with the policy aspirations of the NPPF and the Development Plan

2. Section 1 - Housekeeping matters.

2.1. The Appellants Team:

2.1.1. Sasha White QC and Anjoli Foster – Instructed by Planning Issues and calling the following witnesses:

2.1.1.1. Mr Robert Jackson – Design Evidence

2.1.1.2. Mr Paul White – Heritage Evidence.

2.1.1.3. Mr Nigel Appleton – Need Evidence.

2.1.1.4. Mr Phil Brophy – Trees Evidence.

2.1.1.5. Ms Jessica Lloyd – Transport Evidence.

2.1.1.6. Mr Matthew Shellum – Planning Evidence.

4. Section 2 - The Factual Background to this appeal:

4.1. The Appellant:

4.1.1. The Appellant is a UK specialist purpose-built retirement developer.

4.1.2. The Company was founded in 1994.

4.1.3. It has now completed 169 developments which comprises 6798 units as of October 2021.

4.1.4. It has a hugely successful product built from a detailed and extensive understanding of its customer base and their needs and requirements and most importantly desires for their later years.

4.1.5. Once built the developments are managed by Millstream Management, a sister company, through their lifetime.

4.1.6. The average age of an occupier of a CRL development is 80 years old.

4.1.7. The average length of ownership is 8 years.

4.1.8. Apartment resales are part of the business.

4.1.9. The Appellant has secured the necessary interest in the site to build this development if planning permission is granted and would do so as a matter of urgency.

4.2. The Appeal Site.

4.2.1. The appeal site lies within the urban area of Lymington and comprises 0.22 hectares.

4.2.2. It actually lies within the Town Centre as defined by the LPA's own Lymington Local Distinctiveness SPD document which shows the site there on Page 28-29.

4.2.3. The Site lies adjacent, but not within, the Lymington Conservation Area.

4.2.4. The site has historically been used by the town's Police station which was built in 1952 and vacated in 2017. Alternative premises are now used by the Police.

4.2.5. There is a TPO covering some of the trees within the site.

4.2.6. The Site has no other designations in the development plan.

4.3. The development plan:

4.3.1. The key documents are the 2020 Part 1 Local Plan and the 2014 Part 2 Local Plan. Also of note but not critical to this appeal are some of the saved policies of the 2009 Core Strategy.

4.4. The relevant chronology

4.4.1. 1951 – Planning permission granted for a police station.

- 4.4.2. 1977 – Lymington Conservation Area designated. [3 subsequent additional areas added – 1988,1992 and 1999].
- 4.4.3.2002 – Publication of Lymington Conservation Area Appraisal.
- 4.4.4. 2005 – New Forest District Local Plan First Alteration adopted.
- 4.4.5. 2008 – Planning Appeal into the McCarthy and Stone Extra Care assisted living development on Southampton Road proposal granted permission.
- 4.4.6. 2009 – Local Plan Part 1 – Core strategy adopted.
- 4.4.7. 2011 – Farringford Court built by McCarthy and Stone.
- 4.4.8. 2014 – Local Plan Part 2 Sites and Development Management Development Plan adopted.
- 4.4.9. April 2015 – TPO made against the Trees on Northern and Eastern part of site. [TPO/0006/15/G2]
- 4.4.10. 2017 – Cessation of use by the Police of the site and the site is vacated.
- 4.4.11. January 2020 – Pre-application meeting with LPA.
- 4.4.12. July 2020 – Local Plan 2016-2036 adopted by LPA.
- 4.4.13. October 2020 – Second pre-application meeting with LPA.
- 4.4.14. 4-18 December 2020 – Online public consultation undertaken with local residents.
- 4.4.15. 8 June 2021 – Planning permission granted on appeal to 44 retirement living apartments on appeal by Renaissance Retirement Living in Stanford Hill, Lymington.
- 4.4.16. 18 June 2021 – Planning application for the demolition of existing buildings and redevelopment of the site submitted by Appellant.
- 4.4.17. 15 July 2021 – Planning application validated by LPA.
- 4.4.18. October 2021 – Historic England decline to add the police station to the statutory list.
- 4.4.19. 13 October 2021 – POR to the Planning Committee of the LPA with a recommendation for approval. Application deferred by members for consideration of an appropriate contribution to off-site affordable housing to be agreed between officers and Applicant.
- 4.4.20. 8 December 2021 – The application returns to the Planning Committee with again a recommendation for approval in the POR. Members resolve to refuse and impose 7 reasons of refusal on the application.
- 4.4.21. 10 December 2021 – Decision notice issued by the LPA refusing the application with R of R's relating to not providing a mixed and balanced community [1], impact

on CA [2], impact on trees [3], insufficient parking and on site turning for emergency vehicles [4], insufficient amenity space for residents [5], and no legal agreement dealing with SPA and SAC [6] and affordable housing [7].

4.4.22. 16 March 2022 – CMC held by Inspector in which LPA withdraw most of the first reason of refusal.

4.4.23. 5 April 2022 – Statement of Common Ground signed by the parties.

4.4.24. 26 April 2022 – Commencement of Public Inquiry by way of Section 78 of the TCPA 1990.

4.5. The proposal

4.5.1. The proposal is to do two things in essence:

4.5.1.1. Demolition of existing buildings.

4.5.1.2. Redevelopment to provide 32 retirement apartments (of which 21 will be one bedroom and 11 will be two bedroom) for older persons including communal facilities and associated landscaping and the provision of 12 car parking spaces.

4.5.1.3. It will also create a new access on Queen Elizabeth Avenue.

4.5.1.4. The existing access for vehicles on Southampton Road will be closed up.

4.6. The consideration of the proposal by the LPA.

4.6.1. The consideration of the proposal by the LPA is unconventional as shown by the chronology above.

4.6.2. The proposal first went to the Planning Committee on the 13 October 2021 with an officer recommendation for approval as set out in the Conclusion of that report.

4.6.3. The formal minutes of the meeting produced by the LPA show it was deferred in order for discussions to be held with the Applicant in relation to the quantification of an agreed contribution towards the off-site provision of affordable housing as the proposed contribution at the time was not considered by officers to be an appropriate contribution.

4.6.4. The application was then taken back to the Planning Committee on the 8 December 2021 with an update that the offer of the Appellant of £970,000 off-site affordable housing contribution was judged by Bruton Knowles (viability consultants to the LPA) to be the highest that could be viably sought. The officer re-iterated their recommendation for approval.

4.6.5. The minutes show that members raised numerous concerns not endorsed or previously raised by officers and decided to impose 7 reasons of refusal which are set out below.

5. Section 3 - The matters not in dispute with the LPA as established by the SoCG.

- 5.1. The site lies within the built-up area of Lymington which is in the top tier of the settlement hierarchy (Policy STR4) and identified as the most sustainable locations in the district.
- 5.2. The LPA cannot currently demonstrate a 5-year supply of housing as required by the NPPF. [SoCG 8.3]
- 5.3. The extent of the shortfall is agreed to be 809 dwellings amounting to a 3.07 years HLS shortfall [SoCG 8.3]
- 5.4. There is no in principle objection to the redevelopment of this site. [SoCG 8.2]
- 5.5. There is acceptance that this site is properly to be considered a brownfield site. [SoCG 8.2] and sits on the Brownfield Housing Land Register where the site is identified for 20 dwellings.
- 5.6. There would be no issues of amenity to neighbours of the site. [SoCG 8.18]
- 5.7. There is no issue on air quality.
- 5.8. There is no issue on noise.
- 5.9. There is no issue on flooding or proposed drainage.
- 5.10. There is no issue on the proposed land use.
- 5.11. The site lies in close proximity to the local centre

6. Section 4 - The matters in dispute with the LPA.

- 6.1. The application was refused on 10.12.21 for the following seven reasons¹ (the “**RfRs**”):
 1. *The proposed development would not deliver sustainable development and not create a mixed or balanced community and is thereby contrary to local plan policy HOU₁ of the Local Plan 2016-2036 Part One: Planning Strategy which seeks to create a mixed and balanced community by providing a mix and choice of homes by type, size, tenure and cost.*
 2. *The proposed development is of a scale and mass that is considered to be inappropriate and out of keeping with the area resulting in an adverse impact on the character of the surrounding area and the existing character of the adjacent Conservation Area. In these respects the proposal is considered discordant with local plan policy ENV₃ of the Local Plan 2016-2036 Part One: Planning Strategy and saved policy DM₁ of the Local Plan Part 2: Sites and Development Management.*
 3. *The proposed development, by reason of the proximity of the proposed apartments to the maturing protected trees on site, would not allow for these trees to grow into their natural*

¹ see the SOCG para 2.11

size and form. This is likely to result in the future unsympathetic pruning and potential loss of these trees which would be detrimental to the amenity of the area.

4. *The proposal makes insufficient provision for on-site parking to serve the development and inadequate turning on site to enable emergency service vehicles to turn on site and leave in forward gear. The development is likely to lead to additional pressure on on-street parking within the surrounding local area, to the detriment of amenity of the area.*
 5. *The proposed development has insufficient outdoor amenity space. Such a lack of outdoor amenity space would fail to meet the reasonable amenity needs and may consequently adversely impact the health and wellbeing of future residents, contrary to the provisions of policy ENV₃ of the Local Plan 2016-2036 Part One: Planning Strategy.*
 6. *To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that sufficient mitigation is provided against any impacts which might arise upon the designated sites. The proposal will result in new units of overnight residential accommodation which will potentially have an adverse impact through greater nitrates being discharged into the Solent catchment area thereby having an adverse impact on the integrity of the Solent Special Protection Area (SPA) and Special Areas of Conservation (SAC). A precautionary approach is required to be adopted and in the absence of a completed Section 106 Agreement an adverse impact on the integrity of the SPA and SACs cannot be ruled out. As such, the proposal does not accord with Regulation 63 of the Conservation of Species and Habitats Regulations 2017 in that at present there is inadequate mitigation in place. The proposal is therefore contrary to the provisions of the Conservation of Species and Habitats Regulations 2017, and New Forest Local Plan (2016-2036) Policy ENV₁.*
 7. *In the absence of a completed Section 106 Agreement to secure an appropriate contribution towards the provision of off-site affordable housing, the proposed development fails to accord with the provisions of policy HOU₂ of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside the New Forest National Park.*
7. There are some critical introductory points to be made now:
- 7.1. These reasons of refusal were not endorsed by officers on two occasions when presented to committee but there was a recommendation for approval twice.
 - 7.2. The first reason of refusal is no longer contended.
 - 7.3. It appears common ground that the sixth and seventh reason of refusal are now likely to be satisfied by the proposed section 106 agreement.
 - 7.4. Therefore the principal battleground remaining between the parties is set out in the four remaining reasons of refusal which are namely what is the effect of the proposal on character and appearance and the conservation area [2], the effect of the proposal on the trees on site [3], whether the proposal has adequate parking [4] and whether the proposal has adequate outdoor amenity space [5].

8. Section 5 - The relevant tests imposed by statute and policy.

8.1. Section 38(6) of the TCPA 1990 requires:

8.1.1. Identification of the relevant plans and policies. That is done in the SoCG at 4.1.

8.1.2. Then consideration needs to be given to whether the proposal complies or not with the relevant policies.

8.1.3. It is noteworthy that the LPA can only now contend that the policies in reasons of refusal 2-5 are breached which are in essence EMV₃ and DM₁.

8.1.4. It is also noteworthy that reasons of refusal 3 and 4 make no allegation that any development plan policy is breached.

8.1.5. There are numerous policies which are now supportive of the proposal as will be set out by Mr Shellum particularly HOU 3 where the LPA seek the provision of such uses.

8.1.6. It will be the strong contention of the Appellant that overall the proposal accords with the development plan.

8.1.7. Therefore then there will need to be consideration of whether there are any material considerations which outweigh the presumption in favour of the development plan.

8.2. NPPF 11 – The tilted balance

8.2.1. Turning to national policy, NPPF para. 11 contains the “tilted balance”. Where it is engaged, this requires permission to be granted for a proposal unless:

8.2.1.1. Application of policies in the NPPF which protect areas of assets of particular importance provide a clear reason for refusal (para 11(d)(i)), or

8.2.1.2. Any adverse impacts would significantly and demonstrably outweigh the benefits (para. 11(d)(ii)).

8.2.2. All parties agree that NFDC cannot demonstrate a 5YHLS.

8.2.3. Therefore it will be the strong contention of the Appellant that the tilted balance is in play in this case and it is incumbent on the LPA to show that the impacts relating to design, trees, parking and outdoor amenity space are so significant and demonstrable to justify refusal.

8.3. NPPF 202.

8.3.1. The LPA contend that paragraph 202 is not met and the public benefits of the proposal do not outweigh the harm.

8.3.2. This is a conclusion we fundamentally disagree with for the reasons set out below.

9. Section 6 - The proposal will be shown to pass all 3 tests by the evidence.

- 9.1. The benefits of this appeal are set out for you by Mr Shellum:
 - 9.1.1. The provision of residential accommodation in an area where there is a substantial unmet need.
 - 9.1.2. Meeting identified national and local housing needs for older persons accommodation.
 - 9.1.3. Redevelopment of previously developed land. This is a brownfield site.
 - 9.1.4. Compliance with the spatial strategy for redeveloping in sustainable locations. The site is on an established transport corridor, on a bus stop and close to the local centre of Lymington.
 - 9.1.5. Efficient and effective use of land. There is a limited supply of suitable land for specialised accommodation for older persons. Replacing a redundant police station with 32 retirement dwellings optimises the development potential for the site.
 - 9.1.6. Economic benefits. The scheme will house 50 odd residents, each using the shopping and other facilities in the local area. The academic commentary on these ‘silver saviours’ is plentiful, and set out for you by Mr Shellum.
 - 9.1.7. Social benefits. It is a specialised, age-friendly environment to meet a specific housing need. Contrary to suggestions by some objectors that the residents will over-stretch local resources, retirement living housing can actually reduce the burden on health and social services. The residents remain in better physical and mental health – feeling as good as someone 10 years younger when they move into specialised accommodation. It also means essential medical and other practitioners can visit several occupiers at once.
 - 9.1.8. Environmental benefits. In addition to redeveloping a brownfield site, the scheme would be designed to energy and water efficiency standards, use PV cells for energy generation, and restrict water consumption and provide electricity charging points.
 - 9.1.9. The release of under-occupied housing stock. Most residents who move into the development will free up a substantial family home. We’ve already talked about both the acute national and local housing need. This development not only builds houses, but frees up larger houses further up the chain.
10. Cumulatively these benefits are weighty and compelling.
11. Many of these benefits have already been considered in the **Fleet** decision just last year and given very substantial/substantial weight by another Inspector.
12. In contrast the four remaining areas of concern identified by the LPA do not justify weight.
 - 12.1. The alleged harm because of design:
 - 12.1.1. The proposal does not lie within a conservation area.

- 12.1.2. The LPA have not produced prescriptive policy guidance as to the correct solution on the site.
 - 12.1.3. The only issue remaining is to scale and mass.
 - 12.1.4. Many other factors of consideration relating to design are not contended to be in issue.
 - 12.1.5. When one focusses solely on scale and mass it is utterly rejected these elements are harmful.
 - 12.1.6. The scale and mass of the proposal is proportionate and comparative to other developments in this location.
 - 12.1.7. It is also contended that the proposal will simply not materially affect the significance of the Conservation Area. Setting is merely one element of the very comprehensive range of factors that contribute to significance. The LPA's evidence fundamentally fails to identify why the significance of the CA will be materially affected by the proposal.
 - 12.1.8. It is also rejected that the NPPF 202 benefits do not outweigh the non-existent harm in this matter. We simply do not accept any harm to the CA and therefore no disengagement of the tilted balance.
 - 12.1.9. Also we do not accept material harm to the NDHA which are not outweighed by the benefits.
 - 12.1.10. The LPA simply have not articulated why this proposal will be harmful frankly.
- 12.2. The alleged harm because of parking
- 12.2.1. The only allegation relates to amenity, not safety. That people will be disturbed by parking rather than danger to anyone's safety. It is an important distinction.
 - 12.2.2. The proposed level of parking is incredibly proportionate when one considers the occupiers of the development.
 - 12.2.3. The ratio of spaces to flats is comparative to other developments.
 - 12.2.4. The LPA simply cannot show why the Company are not best placed to judge the appropriate level of parking.
 - 12.2.5. In any event policy simply does not support anywhere the imposition of minimum standards for parking. This is a journey down memory lane to the mid 1990s when LPAs contended such matters were important.
 - 12.2.6. In any event Inspectors have looked at such issues previously and concluded no harm.
 - 12.2.7. Even if some parking was displaced, which we do not accept, the surrounding streets have significant capacity.

12.2.8. Even if some parking was displaced it is not accepted that any harm would accrue to anyone who lives nearby to the site.

12.2.9. This allegation of harm is without foundation and was never contemplated or raised by the Statutory Highway Authority in any discussions.

12.2.10. It is solely a member concern without any foundation.

12.3. The alleged harm because of outdoor amenity space:

12.3.1. The LPA have no policy standards or thresholds in the development plan or in any SPG. This is purely an assertion that what is provided is inadequate or substandard.

12.3.2. Again the Company are incredibly well placed to understand the needs of their residents based on over 169 developments. There is no evidence that what is provided in any other development has caused harm.

12.3.3. Remember these developments depend on being attractive and meeting their occupants needs. If they do not they would be empty. The opposite is true.

12.3.4. The allegation is very specific to external amenity areas alone. There is no concern on the internal amenity areas whatsoever. Therefore only one component of amenity areas is contended to be harmed.

12.3.5. The areas proposed are absolutely adequate and comparative with other developments in the vicinity as will be shown by Mr Jackson.

12.3.6. An attractive, well landscaped area will be provided outside. Additionally numerous flats have balconies and numerous flats have external patios.

12.3.7. The whole amenity area provision has to be considered in totality.

12.3.8. In any event the LPA have completely failed to show what actual harm there is.

12.4. The alleged harm because of the trees:

12.4.1. The LPA accept this ground does not allege loss of trees but purely an amenity point.

12.4.2. The idea that there will be actual and material harm to anyone because a tree does not display its full canopy is simply farcical and does not bear scrutiny.

12.4.3. That is the extent of the allegation that a tree will be reduced in its canopy and therefore not threaten its survival but merely people's amenity.

12.4.4. This really is poor where you have an LPA with a lamentable record in housing delivery.

12.4.5. In any event Mr Brophy will show that the effect of amenity will be negligible.

12.5. Consequently the LPA's concerns simply do not come close to significantly and demonstrably outweighing the benefits.

13. Section 7 – There is a compelling need for the development.

- 13.1. New Forest District Council area has a strikingly aged and ageing population.
- 13.2. Those 65 years of age and older already make up approaching 30% of the total population of the district and this is projected to increase to more than 37% by 2040. Make no mistake – the direction of travel in this district is only one of that segment of the population increasing.
- 13.3. Older people currently represent a higher proportion of the local population than is the average for England as a whole (29.70% in 2020 compared with the national average of 18.54%. 37.43% in 2040 compared with 23.75%).
- 13.4. Those 85 years of age and older will increase in absolute numbers by 6,100 people through the period to 2040 to make up almost 8% of the total population around double the national average.
- 13.5. This age profile and projected further ageing of the local population represents a challenge to health and social care authorities as the prevalence of chronic health conditions and functional incapacity in tasks essential to the maintenance of an independent life-style is closely related to chronological age.
- 13.6. One can pretend that this is not happening or actually take steps to meet the need.
- 13.7. Unlike the contentions of many local residents the reality is that there is a huge need for accommodation of this nature.
- 13.8. In the absence of appropriate, contemporary accommodation options pressures will increase on these higher-end services, such as Extra Care, Registered Care Homes providing Personal Care and Registered Care Homes providing Nursing Care.
- 13.9. The proposed development will both respond to need within the existing resident population and provide substantial public benefit.

14. Section 8 – This proposal could not be more in keeping with the policy aspirations of the NPPF.

- 14.1. It addresses the national housing crisis which identifies the need for 300,000 more houses annually in England. The proposal will meet a real need met by real people who currently are living in substandard accommodation or no accommodation at all. That crisis is reflected by the Government's objective of significantly boosting the supply of housing as set out in NPPF 60.
- 14.2. There is an ever-increasing need for specialist accommodation for the elderly which is identified as critical in the NPPG and by the Government seeking expressly that the needs for older people are met as set out in NPPF 62.

- 14.3. The site which has now been underutilised for close to five years is contrary to the Government's aspiration to use underutilised urban land especially when land supply is constrained as set out in NPPF 120D.
- 14.4. The LPA heavily constrained district should use brownfield sustainable sites and substantial weight is required to be given to the use of suitable brownfield sites within settlements for housing as set out in NPPF 120C.
- 14.5. The primary aim of the NPPF is for sustainable locations to be chosen to enable sustainable transport modes to be utilised as set out in NPPF 110A.
- 14.6. The Government seeks the efficient use of land as set out in NPPF 124.
- 14.7. The Government even goes to state that it wants to seek inefficient development refused in NPPF 125 C.

26 APRIL 2022

SASHA WHITE Q.C. and ANJOLI FOSTER
LANDMARK CHAMBERS
