

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.

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THE CLOSING SPEECH OF THE APPELLANT

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1. These closing submissions have the following structure:
  - 1.1. Section 1 – This is a proposal which could not be more in accordance with the Government’s important policy commitments in the planning system.
  - 1.2. Section 2 – There is a compelling need for the development
  - 1.3. Section 3 - The proposal will not be harmful to the character and appearance of the area
  - 1.4. Section 4 – The proposal does not materially harm protected trees on the site
  - 1.5. Section 5 – The proposal will make adequate provision for on-site parking and turning areas for emergency service vehicles
  - 1.6. Section 6 – The proposal will provide suitable and quality amenity space for the living conditions of future occupiers
  - 1.7. Section 7 – The proposal will adequately address the effects on European designated sites in the New Forest and Solent and the contribution of off-site affordable housing through a planning obligation
  - 1.8. Section 8 – The proposal complies with the development plan and its policies
  - 1.9. Section 9 - The proposal complies with the NPPF; and
  - 1.10. Section 10 - The planning balance lies overwhelmingly in favour of the grant of planning permission.

Note of list of qualifications of Appellant team<sup>1</sup>

Sasha White QC and Anjoli Foster, instructed by Planning Issues

They called:

1. Robert Jackson BArch MArch RIBA ARB [Architect]
2. Paul White BA (Hons) MPhil MCIfA PIEMA [Heritage]
3. Nigel Appleton BA, MA (Cantab) [Need]
4. Phil Brophy HNDArb MArborA CEnv MICFor RCarborA [Trees]
5. Jessica Lloyd BSc MSc [Highways and Parking]
6. Matthew Shellum BA(hons) DipTP MRTPI [Planning]

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<sup>1</sup> As requested at the opening of the inquiry

**Section 1 – This is a proposal which could not be more in accordance with the Government’s important policy commitments in the planning system.**

2. There is an important noteworthy characteristic of the planning system which is that the Government seeks to influence strongly through the production of policy the types of development which are permitted.
3. The primary vehicles for telling the planning world what they want is through the policy set out in the NPPF and the NPPG. It gives a clear and unambiguous expression of the aims and aspirations of the Government.
4. It is the overarching submission of the Appellant in this matter that the proposal simply could not be more in keeping with those policy aims and aspirations because this is a development which will:
  - 4.1. Be in the most sustainable location possible in this district in the highest urban tier set out in the development plan as agreed by the LPA.
  - 4.2. Be a development which will be highly accessible by foot, public transport and cycle to those who wish to access in that manner as has been agreed by the LPA.
  - 4.3. Be re-using brownfield land which has been developed since 1952 as has been agreed by the LPA.
  - 4.4. Avoid the use of greenfield, undeveloped land.
  - 4.5. Be re-using a site which is patently underutilised since 2017 when vacated by the Police.
  - 4.6. Involve the use efficiently and involving the optimisation of the site with the quantum proposed.
  - 4.7. Assist in the regeneration and viability and vitality of the Town Centre as has been agreed by the LPA.
  - 4.8. Provide additional housing assisting in the desire to significantly boost the supply of housing as has been agreed by the LPA.
  - 4.9. Provide specialist accommodation for the elderly as has been agreed by the LPA.
  - 4.10. Provide for economic growth through construction and occupation.
  - 4.11. Provide Social benefits for those who occupy the development.
  - 4.12. Free up existing housing which is underutilised and far too big for the current occupants.
  - 4.13. Assist in the provision of affordable housing to help those most in need.
  - 4.14. Is of good quality design as evidenced by Mr Jackson and Mr White.
5. Also in introduction a criticism needs to be made of the LPA’s case which is their failure to deal in an even-handed way with the benefits of the proposal and the policies which are not breached or actually supportive of the proposal.
6. Both factors are marginalised and ignored which is contrary to the law and policy – This is encapsulated by MLF’s closing where yet again there is no audit or consideration of the policies which support the grant of permission which are numerous and weighty in paragraph 32 and benefits are dealt with in a very dilatory manner in paragraph 34.

## **Section 2 – There is a compelling need for the development**

7. The issue of need, and whether the proposal would contribute appropriately to addressing the diversity of housing needs of local people, is no longer contested by the LPA. The LPA sensibly agreed to no longer contest the first reason for refusal, and the LPA confirmed<sup>2</sup> that there is the existence of a need for this type of housing.
8. Surprisingly, this issue has still been contested by third parties. The argument by third parties that there is no need is hopeless.
9. The issue of need for this specialised accommodation for older people within the local area was addressed by Mr Appleton. The key points from his evidence were as follows:
  - 9.1. At a national level, the Government identify in the PPG that the need is “critical”. There is a national need for both housing and specialist residential accommodation for the elderly. There is a real danger in not meeting that need.
  - 9.2. The New Forest area in particular has a strikingly aged and ageing population. 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.
  - 9.3. Older people represent a higher proportion of the local population than is the average for England as a whole.<sup>3</sup> Further, 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.
  - 9.4. Mr Appleton explained that 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.
  - 9.5. The evidence set out in great detail in Mr Appleton’s Proof and appendices documents the levels of incidence of the functional and health challenges the older people of the New Forest are facing and will face in maintaining their independence and the need they will have for support and care services.
  - 9.6. It is important to understand that across a range of domains from health and functional capacity, to household composition, lifestyle and financial circumstances the population of older people is diverse and no one solution in terms of accommodation and care will meet all needs.

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<sup>2</sup> Through their advocate on Day 1 of the inquiry,

<sup>3</sup> 29.70% in 2020 compared with the national average of 18.54%. 37.43% in 2040 compared with 23.75%).

- 9.7. Since the early 2000s Government policy has encouraged housing-based solutions. More recently Government has recognised that a range of other forms of specialised accommodation can in many cases not only meet the needs of older people better than remaining in their existing dwelling but bring a variety of public benefits in mitigating increasing demand upon health and social care services and promote more efficient use of the existing housing stock by offering appropriate and attractive alternatives to older people.
- 9.8. The increasing recognition of the positive benefits for individuals and for the community of expanding the range and volume of specialised housing for older people is evidenced in the National Planning Practice Guidance of 2019, in the Adult Social Care White Paper of December 2021 and most recently in the Government's response to the report of the House of Lords' Built Environment Committee report of January 2022 on Meeting Housing Demand.
- 9.9. Taking tenures together and comparing with the whole population, levels of provision of specialised housing for older people are significantly below national averages in relation to social rented stock and above national averages in relation to retirement housing offered for market sale.
- 9.10. New Forest follows but exceeds by a wide margin the national trend toward owner-occupation as the dominant tenure for older people. Levels of owner-occupation among older people in the district are very significantly above national averages at 86.12% for those between 65 and 74 years of age. In the oldest age group the level of home ownership may be depressed by lack of options for owner-occupation in specialised accommodation but remains just below 82.56%.
- 9.11. There is a shortfall in the level of provision needed to achieve an adequate supply for older homeowners wishing to maintain their tenure when transferring to specialised accommodation. Mr Appleton's Proof, appendices and oral evidence addressed the supply and percentage of vacant properties (so far as he could ascertain) in the New Forest Area.
- 9.12. In relation to the narrower area of Lymington (if it is felt necessary to narrow supply in this way), Mr Appleton also produced his Note in response to the Lymington Society.
- 9.13. The Society's argument is that there are an excessive number of properties in the area similar to those proposed in the application which are unsold and that this is evidence of adequate current provision. This is a spurious argument and Mr Appleton explained how these assertions are not borne out on closer examination of the information on which they have relied. There is in fact a current deficit in provision of comparable properties as both the LPA and the appellant's evidence makes clear and this will provide a defective baseline from which to ensure that the projected increasing numbers of older people in the District over the coming years will find accommodation appropriate to their needs.

- 9.14. The provision of a more adequate supply of retirement accommodation of all kinds for homeowners will provide an environment of choice in which independence can be sustained and transfer to expensive Registered Care postponed or avoided.
- 9.15. 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. There is a real danger in not meeting this need.
- 9.16. The proposed development will both respond to need within the existing resident population, as is common ground with the Council, and it will provide substantial public benefit.
10. Accordingly, there is no basis to refuse the proposal on this issue. On the contrary, the issue of the proposal meeting a compelling need is a substantial benefit weighing in favour of the grant of planning permission.

**Section 3 – The proposal will not be harmful to the character and appearance of the area**

11. Mr Jackson, the appellant's architect, gave evidence on the design of the proposal. He explained that the appellant takes the responsibility of designing developments within built environments very seriously and carefully considers the local context to inform the proposed design. It is in the interests of the appellant to provide a high quality product which is attractive on completion and during its life. These are flats which have an average occupation of 8 years.
12. The production of a high quality product does not stop after construction. The appellant's sister company, Millstream Management, will continue to maintain and manage the proposal throughout its lifetime.
13. Mr Jackson helpfully explained that the design of the proposal was high quality and bespoke to the site context. The appeal site sits at a transition point, between the change of character within the town from the more suburban dwellings to the north to the more historic and urban terraces to the south. The Conservation Area ends just to the south of the site, acknowledging the different character of the site.
14. Larger plots are often associated with the corners of roads, and adjacent buildings are larger footprint flatted developments, clustered around the junction of Southampton Road and Avenue Road. The recent developments of Buckland House and Farringford Court are representative of the densification and optimisation that has taken place within recent years. The site itself is an existing former police station on the appeal site is a larger footprint building set within its plot.

15. The approach to the scale and massing of the proposal is described in the Design and Access Statement, and in Mr Jackson's Proof. This explains the detailed design process resulting in a building which is in keeping with the character of the area.
16. The proposal would be set back significantly from the highway, creating space for landscaping to the front. This is in keeping with the layout of the existing building, Farringford Court and the houses on the eastern side of Southampton Road to the north of the appeal site.
17. In addition, the wide nature of Southampton Road at this point allows a building of 3.5 storeys to sit comfortably in the street scene, and the step down in height to two storeys along Queen Elizabeth Avenue is an appropriate design response. As explained by Mr Jackson, the height of the building is plainly not excessive or discordant.
18. There is no allegation by the LPA in relation to materials and detailing in the reason for refusal. In any event, the evidence in the DAS and from Mr Jackson shows that the proposed material are contextually appropriate.
19. The design of the proposal complies with all the elements of paragraph 130 of the NPPF.<sup>4</sup> It is also a high quality design, that complies with the policy requirements in policy ENV3 and DM1.
20. The design equally complies with the imperative throughout section 11 of the NPPF to make effective use of land in meeting the need for homes, and making optimal use of brownfield sites, which this site undoubtedly is. This applies with particular force given the compelling need for specialised housing identified above, and the significant housing shortfall within New Forest (with a housing land supply of only 3.07 years).
21. If a development on the appeal site must be subservient to, or smaller than, the neighbouring Buckland House at all times (which appeared to be the thrust of the cross-examination of Mr Jackson) this would mean in a far smaller building on the appeal site. This would result in homes being built at low densities, not making optimal use of this brownfield site, which is precisely what the Government has encouraged against.
22. In relation to the effect on the significance of the Lymington Conservation Area, due to change within its setting (given that the site does not fall within the CA), Mr White's evidence is of great assistance. Mr White is the only witness to follow the steps in Historic England's GPA3, in assessing the significance of the CA, the contribution of setting to that significance, and the effect that the proposal within the setting has on significance.
23. Crucially, Mr Smith does not carry out any assessment of the significance of the CA, nor any assessment of the contribution that setting makes to this significance. He cannot make any sensible judgments about the effect of the proposal on the significance of the CA, without

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<sup>4</sup> See section 5.5 of Mr Jackson's Proof.

those important steps. It is also noteworthy that MLF as does not identify and set out why the significance of the CA will be harmed by this proposal.

24. It is a fatal flaw in the LPA's case – what needs to be shown is that the setting is a contributor to the significance and what is proposed to the setting will be harmful to its significance. It has not been done.
25. As a starting point, therefore, far more weight should be given to the considered evidence of Mr White on heritage matters.
26. Mr White in his Proof and the Heritage Statement, sets out the elements which contribute to the special character and appearance of the CA. Notably, none of the important views identified in the Conservation Area Appraisal include the Area Zone D, which is the closest part of the CA to the appeal site.
27. In relation to setting, it is the relationship of the town to the River that contributes to the significance of the CA. The appeal site, on the other hand, forms part of the wider modern urban setting. It represents twentieth century expansion and infill of the town, and does not make any meaningful or positive contribution to the significance of the CA.
28. The change to the appeal site as a result of the proposal would clearly not harm the significance of the CA, or adversely affect experience or appreciation of its heritage significance. The residential character of this area and urban setting of the assets would be retained and it would continue to form part of the wider townscape. This would be alongside the nearby residential redevelopment that has been taking place. The visibility of the proposal would not result in any harm whatsoever to the significance of the CA.
29. It follows that there will be no harm to designated heritage assets, and paragraph 202 of the NPPF is therefore not engaged.
30. With regard to the former police station, this is not identified as important within the Conservation Area Appraisal or the Lymington Design SPD. In addition, Historic England rejected the building to be included on the statutory list. Mr White accepts the former police station is a non-designated heritage asset.
31. The LPA has never once suggested to the appellant throughout the application process that the former police station should be retained in site, including in pre-application meetings, the response from the heritage officer, and in the two officer reports. Indeed, retention of the former police station would likely be at odds with the identification of the site for 20 homes on the LPA's own brownfield register.<sup>5</sup>
32. Moreover, the loss of the former police station (and any effect on the police house) does not form any part of the allegations of harm in the reasons for refusal. Officers were clear in their conclusion that the loss of a NDHA was justified given the lack of 5YHLS and the

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<sup>5</sup> ID6.

pressing need for specialised housing, and the reasons for refusal did not contradict these conclusions.

33. Mr Smith, who has become recently involved at appeal stage, is the only person to now allege that options for retaining the former police station should be considered.<sup>6</sup> He is the outlier on this issue, given the expert views of the Council's planning and conservation officers, and Mr Jackson and Mr White. Mr Smith's outlier status was reinforced by his views presented to the inquiry that the site should be included within the CA, and that the police house has a group value as a NDHA. Again, no other expert to consider this issue has come to these views.
34. As set out above, on heritage issues, it is submitted that far more weight should be given to Mr White's judgments. He explained that the police house is not a NDHA; and that even if a contrary view was reached, development on the appeal site does not harm appreciation of the police house. In relation to the former police station, he assigned low value to this as a NDHA.
35. He rightly identified that this does not prevent redevelopment of the site. Rather, paragraph 203 of the NPPF is engaged, which requires regard to be had to the scale of any harm or loss and the significance of the NDHA in reaching any balanced judgment. On any sensible interpretation, these are not the only factors to consider in reaching a balanced judgment. Regard must also be had to the benefits of the scheme, as acknowledged by Mr Gilfillan and Mr Shellum. As will be set out below, it is common ground that the judgment in the present case is the tilted balance as set out in paragraph 11(d) of the NPPF.

#### **Section 4 – The proposal does not materially harm protected trees on the site**

36. Mr Brophy gave clear and convincing evidence that the proposal will not have any adverse effect on protected trees on the site, which are protected by a TPO. The design team, together with advice throughout by Barrell Tree Consultancy, has considered trees in great detail in bringing forward this scheme.
37. There is a large amount of common ground on the issue of trees. Both Mr Brophy and Ms Chalmers agree that construction of the proposal will not harm any of the protected trees. Importantly, both also agree that any future pruning work to these trees will require TPO consent from the LPA.
38. The debate between the witnesses is at this latter stage of pruning works, throughout the life of the development. Ms Chalmers explained her fears based on a two-stage scenario that consent for future unsympathetic pruning works to the protected trees could occur, which could then in turn lead to consent for a later removal of the trees.

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<sup>6</sup> Even though no alternative scheme by the Council is put forward.



39. This fear is unreasonable, and no weight should be placed on this. The LPA has not presented any technical detail in support of their allegation that future pruning works will harm the amenity of the trees or have an impact on tree health.
40. Moreover, as Mr Brophy explained, the TPO consent procedure is a highly relevant framework to control works to the protected trees. Any such feared unsympathetic works to the protected trees could be refused consent by the LPA in the future. Indeed, any future minor pruning works to trees would be a repeat of management operations that have been undertaken in the past, prior to the site becoming vacant.
41. In any event, Mr Brophy outlined that if any future concerns of owners led to consented works to the protected trees, these concerns would be addressed by this first-stage of works. It is fanciful to envisage a scenario whereby a first stage of works would then lead to a need to remove the protected trees. Mr Brophy explained that this frankly would not happen. He explained that he is regularly involved in management of trees on sites, and it simply does not affect the existence of the trees.
42. Accordingly, there is no reasonable basis to refuse consent based on impact on trees. This view was shared by the LPA's officer, who in their report to committee concluded that it would be unreasonable to refuse to grant consent based on Ms Chalmers concerns.
43. Existing trees have been retained wherever possible, in line with paragraph 131 of the NPPF. Ms Chalmers confirmed that she did not rely on any local plan policies to justify her concerns. Nevertheless, even if ENV<sub>3</sub> and ENV<sub>4</sub> are considered of relevance, the proposal clearly complies with these policies, in that it creates a building which is sympathetic to landscape features and retains landscape features through sensitive design.

**Section 5: The proposal will make adequate provision for on-site parking and turning areas for emergency service vehicles**

44. Evidence on these issues was primarily presented by Ms Lloyd at the highways roundtable, as well as evidence in her Proof and the Transport Statement. As a starting point, it is important to note that there is no objection by the local highway authority.
45. Again, there is material common ground on a number of points here. The revised site layout plan, has now been adequately consulted on; the LPA do not allege any prejudice to any party and accept that this plan can be the subject of a Wheatcroft amendment; and the Inspector has accepted this as a Wheatcroft amendment.<sup>7</sup>
46. It is now agreed with the LPA that the revised site plan now shows an acceptable turning area for emergency vehicles, and the LPA no longer pursues this part of the objection within the reason for refusal.

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<sup>7</sup> Confirmed on Day 1 of the inquiry.

47. In relation to the type of on-site parking provision, a condition has been proposed to provide for 2 disabled parking spaces, within the 12 spaces on site, and this condition has been agreed with the LPA.
48. In relation to quantum of on-site parking, Ms Lloyd explained that the appellant had drawn on their own extensive experience of relevant existing sites, which identified an average parking demand of 0.28 spaces per apartment, which would indicate an average parking demand of 9 spaces to sufficiently serve this development, for owners, staff and visitors alike. In order to accommodate for situations above the average, 12 spaces are being provided on site.
49. By way of relevant background, Mr Shellum also explained that one of the key reasons<sup>8</sup> why occupants will move to this needs-based specialised accommodation is because they need to give up their vehicle; and that those occupants who do have a car will often find that the cost of a car is not worth it.
50. Far greater weight should be placed on this specific data gathered by the appellant, rather than the general data from the census which was relied upon by Mr Chimes which covered a significant geographic area and large parts of the National Park and thus not focussed on a highly sustainable town centre location which this is. As Ms Lloyd rightly pointed out at the roundtable, if there had been any problems with the appellant's provision of parking at existing sites, at these usual ratios, then the LPA could have identified these supposed problems. However, the LPA has not produced any evidence to this effect. The clear reason for this is because, as identified by Ms Lloyd and Mr Shellum, the parking ratios used by the appellant are entirely appropriate.
51. The evidence shows that the provision of 12 spaces on site, is wholly sufficient and adequate parking provision.
52. In any event, even if 12 spaces on site was not sufficient (which is not the appellant's case on the evidence), there would still be sufficient on-street parking available on nearby streets (within a 200m walking distance) to accommodate any overspill.
53. This was demonstrated by the parking survey commissioned by the appellant, and carried out by a third-party organisation in accordance with the Lambeth Style Parking Methodology, a nationally recognised parking survey methodology.<sup>9</sup> The survey showed that:
- 53.1. There are a total of 84 free kerbside spaces available within a 200m walking distance of the site, accommodating both unrestricted and single yellow line restrictions, and on the day with the most parking stress, only 12 of the 84 spaces were in use, with 72 spaces available.

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<sup>8</sup> Together with the experiencing mobility difficulties in existing larger properties, and the death of a partner.

<sup>9</sup> See Ms Lloyd Proof para 6.21-6.23 and Appendix C.

- 53.2. When the roads with no restrictions are considered only (i.e. excluding the single yellow line restriction on part of Queen Elizabeth Avenue), a total of 51 spaces are available to use, where 12 of them were in use on the busiest day, which would still leave 39 spaces available.
- 53.3. This shows that none of these roads experience material parking stress at the times when local resident demand would be greatest; and these would patently accommodate any overspill parking from the appeal site, even if this were needed.
54. Importantly, Mr Chimes did not question the methodology or results of the parking survey, and he accepted that there would be sufficient on-street parking to accommodate any overspill. On this basis, it is difficult to understand how the LPA can reasonably maintain any objection.
55. The LPA is clear that they are not alleging any highway safety concerns within their reason for refusal.<sup>10</sup>
56. Rather the only harm alleged in the reason for refusal is detriment to the amenity of the area. This allegation cannot withstand scrutiny, and is unevidenced. On-street parking on roads where on-street parking is already permitted and already part of the character of the area, will clearly not result in any harm to the amenity of the area.

**Section 6 – The proposal will provide suitable and quality amenity space for the living conditions of future occupiers**

57. The amenity space in the development is bespoke to the requirements for this specific demographic, whose average age is about 80. The appellant is well experienced in providing for the recreational needs of the elderly owners within its developments. They are clearly not going to promote a development that potential purchasers would find unacceptable in respect of available amenity space.
58. The amenity space in the proposal includes the Owners' Lounge, which is the focal point of amenity space, and provides an opportunity for chance encounters as owners enter, exit, and relax all in the same place.<sup>11</sup> The amenity space also included the patio areas, the private balconies in the flats which have them and the soft landscaping around the building, where owners can sit outside, and provides space for considered planting and landscaping.
59. Mr Jackson provided evidence that the percentage provision of external amenity space on the site is comparable to similar developments in the local area.
60. The amenity space is of course all passive. As Mr Shellum explained, this has been carefully planned taking into account the needs and desires of the general demographics of intended

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<sup>10</sup> Confirmed by the LPA's advocate in the roundtable.

<sup>11</sup> There is no concern from the LPA as to internal amenity space.

occupants. With owners typically being in their early 80s they use amenity space in a passive way.

61. The appellant's knowledge is that active use of external amenity space is relatively limited and mainly involves occasionally sitting out, or and perhaps tending a small flower border immediately outside of ground floor apartments where access is provided to individual apartments. In all instances, there is sufficient space around the building for owners to sit outside their living rooms, at communal ground floor level.
62. There is no requirement in policy for specific requirements for amenity space for any form of residential development, and particularly no requirements for amenity space for specialised accommodation for older people. The requirement in policy ENV3 is for a high quality design, and appropriately designed green spaces. In these circumstances, the provision of amenity space within the development wholly complies with policy.
63. It is notable that the LPA's allegations in relation to amenity space do not appear anywhere in either of the two planning officer reports notwithstanding having been raised by a local resident concern. They are solely concerns of members. This issue did not even merit a mention of any kind let alone as a concern.
64. The appellant is invested in the long-term occupants of the scheme the community that fosters, and providing adequate amenity space lies at the heart of creating a nice place to live.
65. Frankly, the suggestion that the appellant does not know what its users need is simply incredible and contrary to the detailed knowledge and experience that comes from providing suitable, attractive and commercially successful accommodation for thousands of occupants currently.

**Section 7 – The proposal will adequately address the effects on European designated sites in the New Forest and Solent and the contribution of off-site affordable housing through a planning obligation**

66. This issue is straightforward. The parties are agreed that that the effects of the proposal on European designated sites in the New Forest and Solent and the contribution to provision of off-site affordable housing are both matters capable of being addressed through the agreed planning obligation. Reasons for refusal 6 and 7 are thus no longer pursued by the LPA.

**Section 8 – The proposal fully complies with the development plan**

67. It is common ground between Mr Shellum and Mr Gilfillan that there are 16 policies<sup>12</sup> that are in play and relevant to the determination of whether this proposal complies with the development plan.
68. As clarified with Mr Gilfillan, the LPA realistically only relies on the breach of three policies, namely ENV<sub>3</sub>, DM<sub>1</sub> and consequently STR<sub>1</sub>. It is clear on reading policies ENV<sub>4</sub> and CCC<sub>2</sub> as a whole, that no conflict with these policies as a whole can be properly alleged, given the elements which are accepted to be complied with.
69. When assessing whether there is compliance with the development plan, regard must be had to the development plan as a whole, including the relevant policies which are accepted by both the appellant and the LPA to be supportive of the proposal and/or neutral to the proposal.
70. On the basis of the evidence at the inquiry, and as set out above, there are no breaches of policies ENV<sub>3</sub>, DM<sub>1</sub> (or consequently STR<sub>1</sub>). The design of the scheme is entirely suitable to the context of the appeal site, including the setting of the CA, and does not cause any material harm to the character of the area; and equally there will be no material harm to protected trees or potential loss of trees which would be detrimental to the amenity of the area. Further, there is no material harm or material policy breaches in relation to need, parking or amenity space.
71. As set out by Mr Shellum, there is compliance with all relevant policies of the statutory development plan, and compliance with the development plan as a whole. It follows that the determination in accordance with the development plan, as per the first part of section 38(6),<sup>13</sup> is to grant planning permission when proper strong weight is given to the key policies of the development plan such as STR 4, STR 5, HOU 1, HOU<sub>2</sub> and HOU<sub>3</sub>.

### **Section 9 – The proposal fully complies with the NPPF**

72. The next stage in the section 38(6) analysis is to determine whether material considerations indicate otherwise. In the present case, it is clear that material considerations further support the grant of planning permission.
73. It is not in dispute the tilted balance is engaged and that any harms must significantly and demonstrably outweigh any benefits. It is thus necessary to consider carefully the benefits which arise from the scheme, and the harms which are alleged against it. When that exercise is undertaken, there is only one sensible outcome from this appeal.
74. In relation to the benefits, many of these benefits find support in fundamental parts of the NPPF, which in essence tells us what needs to happen on sites such as this. Before turning to the specific benefits of this scheme, it is important to highlight these imperatives in the

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<sup>12</sup> See the Statement of Common ground, and cross-examination of Mr Gilfillan.

<sup>13</sup> Planning and Compulsory Purchase Act 2004.

NPPF. These were unfortunately not properly all taken into account by Mr Gilfillan in his evidence:<sup>14</sup>

74.1. Policy imperative 1: sustainable locations should be used for development (section 9 of the NPPF, and 6.27 of the local plan).

74.2. Policy imperative 2: brownfield land should be preferred to greenfield sites (paragraph 120(c) of the NPPF) and LPAs should be proactive in this regard (paragraph 121 of the NPPF). The important context in New Forest is that the District is 61% greenfield land.

74.3. Policy imperative 3: underutilised land and buildings should be used, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (paragraph 120(d) of the NPPF).

74.4. Policy imperative 4: land should be used efficiently and optimised (paragraphs 8(c), 119 and 125(c) of the NPPF).

74.5. Policy imperative 5: appropriate opportunities to promote sustainable transport modes should be taken up (paragraphs 8 and 110(a) of the NPPF). This applies particularly to sites very close to the town centre with sustainable access to an extensive range of shops and services.

74.6. Policy imperative 6: land must come forward to significantly boost the supply of housing (paragraphs 60 and 68 of the NPPF).

74.7. Policy imperative 7: provision must be made for specialised accommodation for the elderly (paragraph 62 of the NPPF). The PPG also identifies that there is a “critical need”, and this is similarly recognised for this District in the local plan part 1, policy HOU3 and paragraph 6.24).

74.8. Policy imperative 8: LPAs should seek to approve applications for sustainable development where possible.

74.9. Policy imperative 9: Significant weight should be placed on the need to support economic growth and productivity (paragraph 80 of the NPPF).

75. With the policy background of the NPPF set out, we can now turn to the specific benefits of this scheme, as were identified by Mr Shellum:

75.1. The provision of 32 residential dwellings in an area where there is a substantial unmet need. This carries significant/substantial weight given the LPA’s significant shortfall, and complies with paragraph 60 of the NPPF and policies STR5 and HOU1. This position

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<sup>14</sup> As taken through in cross examination.

was agreed by both planning witnesses. Mr Gilfillan in particular acknowledged that the housing need in general was strong, and that the district is heavily constrained, with no other sites currently coming forward to meet specialist need housing in Lymington.

- 75.2. Meeting identified national and local housing needs for older persons accommodation. This matter was addressed in further detail by Mr Appleton. This is a benefit which has very significant weight, and complies with paragraphs 60 and 62 of the NPPF, the strong imperative in the PPG for specialised accommodation, and policies HOU<sub>1</sub> and HOU<sub>3</sub>.
- 75.3. Redevelopment of previously developed land, which this site unquestionably is. This has substantial weight, as directed by paragraph 120(c) of the NPPF, and this weighting was agreed by both planning witnesses. This also complies with the aims of policies STR<sub>3</sub> and STR<sub>4</sub>.
- 75.4. 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. This has significant weight, and again complies with the aims of section 9 of the NPPF, and policies STR<sub>3</sub> and STR<sub>4</sub>. Again this weighting was agreed by both planning witnesses.
- 75.5. 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. This carries significant weight and complies with the policy imperatives of section 11 of the NPPF, including paragraphs 119, 120 and 124. Mr Gilfillan agreed that the site is currently underutilised.
- 75.6. The visual enhancement of the townscape. As explained by Mr Jackson and Mr White, this bespoke and high quality development sits comfortably in its context and suitably redevelops a currently vacant brownfield plot. Mr Jackson set out in detail the compliance with paragraph 130 of the NPPF in particular. There will also be compliance with policies ENV<sub>3</sub> and DM<sub>1</sub>.
- 75.7. Economic benefits. The scheme will house 50 odd owners, 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. These economic benefits attract significant weight, in accordance with the direction in paragraph 80 of the NPPF.
- 75.8. Social benefits. It is a specialised, age-friendly environment to meet a specific housing need. Contrary to suggestions by some objectors that the owners will overstretch local resources, retirement living housing can actually reduce the burden on health and social services. The owners 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. This has significant weight.

75.9. 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. This benefit carries moderate weight.

75.10. The release of under-occupied housing stock. Most owners 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. The weight of such a benefit is significant, and was identified by Mr Appleton and Mr Shellum. This benefit also complies with policies HOU<sub>1</sub> and HOU<sub>3</sub>.

76. Cumulatively, as outlined by Mr Shellum, these benefits are weighty and compelling. Mr Gilfillan accepted that overall significant weight should be given to these benefits.

77. It is important when considering weighting, that any and all benefits flowing from the scheme must be given weight. It is not a proper or legitimate approach to reduce weight because more benefits could come forward with an alternative scheme.

78. Many of these benefits have already been considered in the **Fleet** decision just last year and given very substantial/substantial weight by the Inspector.

79. In considering the benefits and planning balance, it was also clear that the decision in **Stanford Hill** was also highly material. Of course that decision should be read in full. In summary, it is key to note that the Inspector in that decision found very strong need, that housing need was a very significant benefit of the proposal, that the provision of specialist elderly accommodation had very significant weight, and rejected the LPA's contention that the CA would be harmed in that case.

80. By contrast, the alleged harms of the scheme are extremely limited. The alleged harms in relation to character and appearance (including to a NDHA), trees, amenity space and parking are either not made out on the evidence, or attract limited weight.

81. There are two potential planning balances to consider, which is explained as follows:

81.1. It is agreed that paragraph 11(d) of the NPPF is engaged.

81.2. If there is harm to designated heritage assets, i.e. the Lymington CA, then this brings paragraph 202 into play, which could theoretically provide a clear reason for refusal in paragraph 11(d)(i) NPPF and disengage the tilted balance.



81.3. As set out in the appellant's evidence, there is no harm to the significance of the CA, and therefore paragraph 202 is not engaged and there is no clear reason for refusal in paragraph 11(d)(i). Accordingly, one moves to the tilted balance in paragraph 11(d)(ii).<sup>15</sup>

81.4. However, even if one were to find harm to the significance of the CA, the public benefits of the scheme would comfortably outweigh the heritage harm. On this basis there would be no clear reason for refusal in paragraph 11(d)(i), and one would move to the tilted balance in paragraph 11(d)(ii).

81.5. On the tilted balance in paragraph 11(d)(ii), it must be determined whether the harms significantly and demonstrably outweigh the benefits. (This consideration of harms will include regard had to the effect on NDHAs, in compliance with paragraph 203 of the NPPF).

81.6. In the present case, the alleged harms at most carry limited weight. These alleged harms come nowhere close to significantly and demonstrably outweighing the substantial weighty benefits.

82. It follows that the NPPF further supports the grant of planning permission.

### **Section 10 – The proposal overwhelmingly complies with the planning balance**

83. There is a massive problem in this LPA of finding housing sites, and in particular those for older people.

84. The policy imperative is to solve this problem now. Not later, but now.

85. This proposal is on a site where the principle of redevelopment by the LPA is supported, it is previously developed land, it is currently underutilised, it is sustainable, and complies – we say – with all of the relevant policies in the local plan and the NPPF.

86. The proposal has the potential to transform the lives of those who will live there in a dramatic and life changing way. They can move from over-occupied homes, no longer fit for their purposes, into well designed, safe places, surrounded by others of their demographic.

87. It will also free up properties further down the chain, helping countless more families find their homes.

88. That is not an advocate's hyperbole, it is the truth.

89. Drawing all these threads together, the evidence is clear. The substantial benefits of the scheme plainly outweigh the harms done. This was the conclusion twice reached by the planning officers of the LPA after much thought and consideration. Mr Gilfillan confirmed

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<sup>15</sup> Paragraph 203 of the NPPF and effect on non-designated heritage assets cannot provide a clear reason for refusal within paragraph 11(d)(i).

that both planning officer reports recommending approval had been reviewed by senior planning officers at the LPA.

90. The NPPF supports the grant of permission for this scheme, as does the development plan and the material considerations support both those judgments.
91. For those reasons, we respectfully ask you to grant permission for this much-needed, sustainable proposal.

**3 May 2022**

**SASHA WHITE Q.C.  
ANJOLI FOSTER  
LANDMARK CHAMBERS**

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