

Audley Group

Representations to the Draft London Plan

This submission is made by the Audley Group. Audley specialises in providing retirement living accommodation. Audley operates eighteen retirement villages around the country, presently providing accommodation for nearly 2000 people. Audley has ambitious expansion plans, and wish to provide retirement accommodation to considerably more of our ageing population over the coming years, including in London, where they have just started work on their first ninety-four unit retirement village at Clapham.

Unfortunately, Policy H15 in respect of specialist older persons housing of the Draft London Plan - December 2017 is likely to frustrate both Audley's ambitions within the capital, and the Mayor's ambitions to provide more specialist accommodation for older people. Accordingly, the purpose of this representation is to object to this policy in its current form.

Fundamentally, this policy - in what is supposed to be a strategic planning document for London - seeks to undertake at Mayoral level a development control decision which should be made by the London borough councils in respect of individual planning applications in their boroughs.

More specifically, Policy H15C provides as follows:

'Sheltered accommodation and extra care accommodation is considered as being in Use Class C3. Residential nursing care accommodation (including end of life/hospice care and dementia care home accommodation) is considered as being Use Class C2'.

This one paragraph of the policy contains two fundamental flaws.

Firstly, it seeks to impose as a matter of policy in a strategic document the outcome of a decision which should properly be taken at the development control level by the individual London boroughs in respect of individual planning applications, based upon the specific facts before the borough councils in respect of each scheme.

Secondly, the supporting text makes clear that the policy is based upon a flawed interpretation of what constitutes C3 and C2 accommodation.

At paragraph 4.15.3, the text in the Draft London Plan defines 'sheltered accommodation', 'extra care accommodation' (and other related terms) and 'residential nursing home accommodation'. Within these definitions, the differentiation is clearly based upon whether the accommodation provided is 'self-contained accommodation' which is applied to sheltered accommodation and to extra care

accommodation, or 'non-self-contained residential accommodation' which appears in the C2 definition.

The officials who drafted the Draft London Plan appear to be adopting the erroneous approach that if accommodation is self-contained it cannot be C2 accommodation. That is, as politely as possible, simply wrong.

The definition of Class C2 accommodation appears in the Town & Country Planning (Use Classes) Order 1987 (as amended). We set it out here in full:

'Use for the provision of residential accommodation and care to people in need of care (other than use within Class C3 (dwelling houses)). Use as a hospital or nursing home. Use as a residential school, college or training centre'.

Please note that nowhere in that definition within the Use Classes Order is there any reference to the self-containment (or otherwise) of the accommodation.

'Care' is defined in the Use Classes Order as follows:

'Personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder ... and treatment'.

Again, there is no reference in the definition of 'care' as to whether the care is provided to people living in self-contained or non-self-contained accommodation.

The issue to be determined in connection with any future application submitted to any London borough when determining whether that application relates to C2 or C3 accommodation is a simple one of fact: namely whether in the proposed development, care will be provided to people in need of care.

If the Mayor wishes to give guidance to boroughs as to how they approach that decision, then that guidance should be criteria-based, and the criteria to be considered should relate to whether care is to be provided to people in need of care. Nowhere in the current Draft London Plan - December 2017 is there any such guidance, nor any justification at all, for the arbitrary decision to group all sheltered and extra care accommodation into the C3 class, and allow only residential nursing care accommodation to be considered as C2. This is simply the wrong approach.

This approach is not simply our own view. It is the approach that has been properly taken by local planning authorities all around the country. (Every one of Audley's retirement villages so considered has been judged to be a Class C2 use.) It is also the approach adopted by planning inspectors on

appeal, most recently in the case of Pegasus Life and East Devon District Council in respect of a proposed extra care assisted living community for older people at Sidmouth in Devon. That appeal was decided on 22 January 2018 (in respect of planning application reference: 16/0872/MFUL dated 31 March 2016; and given appeal reference: APP/U1105/W/17/3177340). A copy of the appeal decision is attached for ease of reference. The analysis of whether the development fell within the Use Class C2 or C3 appears in paragraphs 34 to 54 on pages 7 to 11 of the decision letter.

The accommodation in that case comprised 113 self-contained units. The units had a measure of provision to facilitate ease of living for elderly and disabled people. A range of communal and community facilities were provided. There was a care controller on site (but no note of on-site carer staff; carers were provided by an off-site agency) and there was a Section 106 obligation which required the units to be occupied by people aged over sixty, and in need of care, and being provided with a minimum of two hours a week of personal care. The care to be provided was broadly defined in the Section 106 obligation, but the inspector held that it was sufficient to make the development C2 accommodation.

We will not set out in this submission verbatim all the paragraphs of the inspector's judgement, since these are appended, but we would specifically highlight paragraphs 41 (which describes the accommodation) 42 (making clear that the facilities went beyond what would normally be found in C3 accommodation) 43 (highlighting the planning obligation referred to) 44 (dismissing the Council's criticism of the range of care covered by the planning obligation) 46 (referring to the operator's track record) 47 (referring to the nature of care provided) and 49 to 52 (the conclusions).

This is precisely the sort of forensic exercise which London boroughs should be undertaking over the 2018 to 2029 period to determine whether individual developments fall within Use Class C2 or Use Class C3. We submit that it is fundamentally wrong for the Mayor to seek by way of the strategic London Development Plan to usurp that development control function, and decisions by the London boroughs.

We suggest instead that the London Plan should include a criteria-based policy providing a non-exclusive list of matters which the boroughs might have regard to in determining whether development is C2 or C3 accommodation. Such a non-exclusive list might include the following:

- **The track record of the proposed operator:** this will help local planning authorities to distinguish between speculative applications by developers who are hoping to avoid an affordable housing requirement by badging their developments as C2 when what they are hoping to provide is C3 accommodation. If the application is made by a known operator with a track record of providing care to people in need of care, and it is willing to secure that the development operates in a like manner by means of either planning conditions or Section 106 obligations (as to which see below) then that should be a factor to be taken into account when

determining whether the proposed development is to be treated as Class C2 or Class C3 accommodation.

- **The level of care staff to be employed on site and/or other arrangements for the provision of care:** Audley trains all of its staff in the provision of care, and employs its own trained care staff on its sites within their communities. This is a very real (and expensive) commitment to providing care to people in need of care. Other operators may provide an adequate level of care using off-site agencies, but these may need closer scrutiny to ensure that the arrangements will endure. Plainly, simply providing a warden and an alarm button is not providing care, and such operators will struggle to suggest that they are not providing C3 accommodation.
- **Section 106 obligations/planning conditions:** London boroughs should look at what planning obligations the operators are willing to accept to ensure that the accommodation is only available to those in need of care and who will be receiving care. Audley, for example, carries out an assessment of each resident before they move in to determine the care package that they will require. Pegasus Life, in the appeal decision cited above, similarly entered into a Section 106 obligation to ensure that every resident of its scheme would be in need of and receiving at least two hours a week of care as defined in the Section 106 obligation. Both Section 106 obligations and planning conditions are readily enforceable by local planning authorities. There are powers of injunction available to councils in respect of breaches of a Section 106 obligation. Both breach of condition notices and enforcement notices can be served in respect of any breach of planning condition. There are criminal sanctions with very real penalties for breach of either.
- **Commitment to the future development:** Audley retains the freehold of all of its developments. That is part of its commitment to providing continuing care to all of its residents within its care communities. Other operators may seek either to dispose of the development once they have sold or leased the flats within them, or greatly to minimise their involvement. London boroughs should look to see what level of commitment to ongoing care provision is being made by the operator.
- **The level of care proposed:** this is fundamental. A care operator will be able to show a full range of care and support services to be provided to residents at each part of the latter stages of their life's journey. Audley commits to providing a whole tranche of services including nursing, toileting, feeding, and end of life care to allow persons in need of care to live in their communities. Many Audley residents move in suffering from clinically significant illnesses including cancer, mild dementia, and Parkinson's disease. Some Audley residents move in needing relatively little care, but use an increasing amount of care as they age within the

community. Within a proper care community, such care is always available. London boroughs should scrutinise applications closely to ensure that that will be the case.

- **Community facilities:** in genuine care communities, there will be a substantial level of communal facilities and provision of substantial community facilities. Merely providing a communal lounge does not illustrate that care is being provided. More sophisticated care communities provide a wide range of facilities including potentially hairdressing, on-site physiotherapy, gymnasiums, spas, hydrotherapy pools, and so forth. The provision of an extensive range of facilities does not mean that people do not need care. It does illustrate a commitment on the part of the operator to provide them with all facilities they might need as they age within the community.
- **The level of interaction between the operator and its staff and the residents:** in a genuine care situation, there will be considerable interaction between the carers and the residents to provide the correct level of care for the residents. Those developers who simply seek to post a warden on site will not be able to demonstrate that level of care or commitment.

Fundamentally, all of these criteria relate to the level of care being provided, and the residents' need for that care. Whether the residents' accommodation within the community is self-contained or not should not be a criterion. People can still be in need of care, and should be able to receive that care, without having to surrender their basic privacy (until or unless they are so incapacitated physically or mentally that that very privacy becomes a threat to their health). The overwhelming majority of elderly people in need of care need varying levels of care for a considerable period of time before it becomes necessary for them to lose their privacy owing to extreme infirmity. It would be unfortunate, to say the least, if the Mayor's strategic planning policy were to deny people the opportunity to receive care in a self-contained environment simply because of an ambition to achieve as much affordable housing as possible.

Even someone in need of such intimate help as dressing and undressing and having their meals provided and fed to them need not necessarily surrender their right to basic privacy and to self-contained accommodation at the times when those particular services are not actually being provided to them.

Similarly, it should be remembered that Class C2 covers not just care for the elderly, but the provision of care to people who are in need of care for other reasons. If, for example, one set up what was intended to be a C2 care home for disabled war veterans, in need of care as a result of combat injuries, it would be a nonsense if that were to be determined to be C3 accommodation simply because they were provided with self-contained apartments within the care home.

We also take issue with the suggestion in the final sentence of paragraph 4.15.3 that: 'care homes are unlikely to provide more than eighty bed spaces in total'. No practical or policy justification is provided for this. There is no reason why care cannot be provided in a care community of larger than eighty people. Indeed, there may be very good economies of scale reasons for doing just that. No-one suggests that a school ceases to be a school if it has more than a certain number of pupils (the writer was one of 1160 pupils at his school) or that a hospital ceases to be a hospital if has more than a specified number of patients. There is no reason in practice or in the Use Classes Order to suggest that the size of a care home or other residential institution should be limited by reference to an arbitrary number. What counts is not how many residents there are, but whether they are all in need of care, and whether they are all being provided with care.

As the policy is currently drafted, established providers of specialist older persons housing like Audley will be severely prejudiced within London. The need to provide both communal facilities and care support to residents inevitably increases greatly the cost of providing extra care/supported living or other care type accommodation to elderly people. If such accommodation is not excluded from the requirement to provide affordable housing, C2 operators will be wrongly badged as C3 providers, and unable to compete with genuine C3 providers to obtain suitable sites. The Draft London Plan correctly recognises that London's population is ageing, and that a considerable amount more of retirement accommodation and specialist C2 retirement accommodation is going to be needed (albeit you have fundamentally under-estimated the amount that is going to be required) and yet Policy H15C and supporting paragraph 4.15.3, if retained in their present form, will have the effect of effectively preventing genuine providers from operating within the capital.

Suggested Amendments to the Draft London Plan:

We ask that paragraph C of Policy H15 and paragraph 4.15.3 be deleted.

Paragraph C should be replaced with a provision along the following lines:

'Class C3 accommodation will be expected to provide affordable housing in accordance with policies elsewhere in the London Plan. Class C2 accommodation will be exempt from the requirement to provide affordable housing. London boroughs should carefully assess planning applications to determine whether they should be correctly classed as C2 or C3 accommodation. In making that decision, it is suggested that they should have regard to the criteria set out in paragraph 4.15.3 of this chapter'.

The replacement for paragraph 4.15.3 should be a criteria-based policy asking London boroughs to have regard, amongst others, to the criteria set out in the bullet points above in this submission.



Appeal Decision

Inquiry held on 28 - 30 November 2017 and 1 December 2017

Site visit made on 5 December 2017

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 January 2018

Appeal Ref: APP/U1105/W/17/3177340

The Knowle, Station Road, Sidmouth, Devon, EX10 8HL

- 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 PegasusLife against the decision of East Devon District Council.
 - The application Ref 16/0872/MFUL, dated 31 March 2016, was refused by notice dated 9 December 2016.
 - The development proposed is an assisted living community for older people comprising extra care units, staff accommodation and communal facilities, including a kitchen, restaurant/bar/café, a well-being suite comprising gym, treatment rooms and pool, a communal lounge and storage facilities; car parking for residents, visitors and staff of the assisted living community; comprehensive landscaping comprising communal and private spaces; and associated groundworks.
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Decision

1. The appeal is allowed and planning permission is granted for an assisted living community for older people comprising extra care units, staff accommodation and communal facilities, including a kitchen, restaurant/bar/café, a well-being suite comprising gym, treatment rooms and pool, a communal lounge and storage facilities; car parking for residents, visitors and staff of the assisted living community; comprehensive landscaping comprising communal and private spaces; and associated groundworks at The Knowle, Station Road, Sidmouth, Devon, EX10 8HL in accordance with the terms of the application, Ref 16/0872/MFUL, dated 31 March 2016, subject to the conditions contained in the attached Schedule.

Preliminary Matters

2. During the course of the planning application, the number of extra care units was reduced and amended plans were submitted to the Council. By the time of the appeal, the scheme comprised of 113 units. This is the basis on which the Council considered the proposal and I have done the same in considering the appeal.
3. In advance of the Inquiry, the appellant submitted a Daylight and Sunlight Assessment (30 May 2017) which considered potential impacts of the development on Hillcrest, the closest neighbouring property. Having had regard to this report the Council confirmed that it would not pursue this element of its case, accepting that the development would not unacceptably harm the living conditions of neighbouring occupants at Hillcrest or any other

residential property in respect of light. I have considered the appeal on this basis.

Main Issues

4. The main issues are the effect on the character and appearance of the area; the effect on neighbours' living conditions, with particular regard to loss of privacy and overbearing impact to Hillcrest and overbearing impact on Blue Hayes and Old Walls; whether the development should be categorised as a C2 (residential institution) or C3 (dwelling houses) use; and the effect on the adjacent grade II listed summerhouse.

Reasons

Character and appearance

5. The site accommodates a series of buildings that make up the existing offices and service depot of the Council. These buildings stand on the highest part of the undulating site with parking areas stepping downwards towards Station Road. Publically accessible sloping gardens and parkland surround the buildings to the south and east, accommodating numerous mature trees and forming a centrepiece for the town's Arboretum. Residential properties wrap around the site boundary on Knowle Drive and Broadway.
6. The existing buildings on the site would largely be demolished and whilst, with the exception of the modern brown brick extension to the Council Offices, these buildings have some architectural merit, they have been much altered. The Council raises no objection to their removal and indeed the site is allocated for redevelopment in the East Devon Local Plan (28 January 2016) (LP), including the areas of the curtilage that are not currently built upon. Subject to an appropriate scheme being introduced in replacement, I have no reason to take a different view.
7. The Planning, Design and Access Statement (March 2016), including the Revised Section 5 (August 2016) and Addendum (October 2016) set out in extensive detail a thorough consideration of the site context, constraints, opportunities and design rationale for the scheme. There is no attempt to replicate the Regency architecture of the existing seaside town. Instead, an unashamedly contemporary design is proposed that seeks to create its own sense of place and respond to the unique characteristics of the appeal site. A 'pavilion in the park' concept is referenced, aiming to introduce a group of buildings within a landscaped setting, opening up views between, towards the surrounding gardens and parkland, as well as the distant coastline.
8. The scheme comprises two distinct groups of buildings, low level timber clad buildings at the Dell (albeit with a taller gateway element) and taller flint based and render faced buildings at the highest point of the site, referred to as the Plateau. Whilst different in their design and appearance, both seek to respond to their surroundings, the Dell seeking to reflect its heavily treed context and the Plateau responding to the scale of existing buildings in this part of the site and opportunities to improve the current arrangement.
9. The scheme was subject of various consultation events with the public and other interested parties and was amended several times during the course of the planning application to respond to feedback. This includes extensive comments from the Devon Design Review Panel, used by the Council to provide

- professional advice on design matters. The proposed development has clearly evolved to take such views into account.
10. Notwithstanding that the proposed development was not intended to replicate other buildings in the town, it is right that the development makes reference to local vernacular. This would be achieved through the proposed use of flint, render and hanging tiles, providing some cohesion with the surrounding architecture. It is also notable that pitched roofs were introduced as the scheme evolved to better reflect the surrounding building style. The overall approach to design would achieve a high quality scheme embracing modern architecture. In my view, this is an appropriate approach, having regard to the site's relatively well contained nature, surrounded by mature landscaping. The scheme would present a positive visual influence that would complement, rather than compete with, the more traditional architecture of the town.
 11. Mr Blackshaw noted during the inquiry that some elements of the scheme would not be particularly characteristic of the area, such as the timber clad buildings, but did not question the overall design approach taken by the appellant. Rather, the Council's concerns related to the scale, height, bulk and massing of the development and its effect on the public gardens and parkland, as well as the street scene on Knowle Drive.
 12. Buildings D and E of the proposed scheme would protrude further into the parkland to the south than the existing buildings and they would be taller, although building D would only be around 1.5m above the height of the building to be replaced given the reducing ground levels on which it would be built. The buildings would be large and there is no doubt that they would be prominent in views from the parkland but I do not consider this to be harmful. The existing building is already prominent and I see no reason why any replacement should not be equally prominent, or even more so. The buildings would create a visual focal point incorporating a publically accessible orangery that members of the public might have a desire to visit.
 13. Views 4 and 5 of the Computer Generated Images (November 2016) provided by Professor Tavernor, demonstrate that the buildings would be readily incorporated into the surrounding trees and landscaping to be retained on the site and surrounding parkland. Whilst the buildings would be noticeably taller and exceed the height of some of the surrounding trees, they would continue to be effectively screened, particularly during summer months, given the number and density of trees surrounding the development and the topography of the site. In addition, the spaces between the buildings would provide an increased level of visual permeability and openness. I see no reason why the buildings should appear excessive in terms of their scale, height or massing given their spacious context and the use of the site topography to accommodate buildings of various height.
 14. With regards to the Knowle Drive street scene, the existing flat roofed modern Council building is currently visible beyond a wall on the corner adjacent to the west boundary of the site. The existing building does not follow the alignment of Knowle Drive and stands as a separate commercial entity. The proposed building would better address the public realm in this area and provide a more active residential elevation that is in keeping with the nature of the street.
 15. In this context, Buildings A and F are orientated so as to turn the corner and their greater height would facilitate an increased sense of street scene

enclosure, despite the much lower ground levels within the site. Again, the buildings would be taller than those existing, but the lower ground levels within the site would hide much of the lower levels from views along Knowle Drive and the upper storeys would not appear excessive in their scale, height or massing from the raised position of Knowle Drive. A series of architectural devices are employed to break up the massing of the building, including changes in roof height and design, and a clear break between Buildings A and F across the upper floors. In my view, these would successfully mitigate the sense of scale and bulk, ensuring that the building would not appear overly dominant or out of scale with the surrounding buildings, despite some being bungalows.

16. Mr Blackshaw suggested in evidence that the users of Knowle Drive and surrounding residents would likely be highly sensitive receptors and that the changes to the surroundings would be significant and adverse. However, when asked, little elaboration was given to justify this level of harm and Mr Blackshaw accepted that his approach did not fully accord with the principles of GLVIA3¹. The more transparently produced Townscape and Visual Impact Assessment (March 2016) (TVIA), including the Addendum and appendices (August 2016) find a very low magnitude of beneficial change, involving beneficial effects of minor significance on medium sensitivity viewers. In light of the above, and having regard to my own observations, I prefer the appellant's evidence and do not consider that the development would be visually harmful, either from Knowle Drive or elsewhere.
17. Other large buildings exist in the town, including St John's School and Powys House, both of which would be seen in context with the proposed development in long views, such as from the coastal path. The collection of buildings proposed, combined with their varied roof designs and height would visually fragment the development in such views so that it would sit comfortably within its heavily landscaped setting. This is effectively demonstrated by the TVIA and associated documents. These documents provide a reasonable representation of the likely views available, having been produced in accordance with GLVIA3. I find them to be more reliable than the images and photomontages provided by interested parties that are not produced in accordance with recognised methodology and in many cases have been zoomed and/or cropped. The site would not appear overdeveloped and the proposed buildings would not be overly prominent or incongruous.
18. The proposed buildings would be visible from a number of other vantage points, including in some areas where built development is currently absent. Again, the TVIA and associated documents consider the visual effects from a range of viewpoints and the Council does not take issue with the methodology or approach to this evidence, including the visualisations or the representativeness of the viewpoints. Mere visibility is not itself harmful. The development would stand within parkland and would be well screened or filtered by existing landscaping. Relatively few trees would be removed as a result of the development and any loss would be compensated by the proposed landscaping proposals. In my view, the development can be accommodated by the site, despite its size and scale.

¹ Guidelines for Landscape and Visual Impact Assessment, Third Edition, Landscape Institute and Institute of Environmental Management and Assessment (2013)

19. The development is much larger in scale than the immediately surrounding residential properties, but the proposed design appears to be a response to site circumstances, particularly the highly irregular topography. I have had regard to the high level of concern raised by interested parties and note that the contemporary approach adopted may not be to everyone's taste. However, I am satisfied that the appeal proposal has evolved through a thorough analysis of the site circumstances and that the development would, overall, make a positive contribution to the character and appearance of the area.
20. As such, I find no conflict with Strategy 6, Strategy 48 or Policy D1 of the LP, which support development within built-up areas where compatible with the site and its surroundings; seek to reinforce local distinctiveness, including through the use of local materials; and generally require high quality design, amongst other things.

Neighbours' living conditions

21. The closest residential properties to the site are located on Knowle Drive and the proposal would introduce a form of development quite different to that existing. A modern two storey brick extension of the Council offices currently stands at a low level within the site, relative to Knowle Drive and the closest residential properties, Hillcrest and Old Walls. Whilst it is clearly visible, it is hidden to a large extent from the street level and the flat roofed brown brick faced building is relatively subdued within the street scene.
22. A three storey building would be introduced, partly under a flat roof and then proceeding into a pitched roof as the building protrudes southwards. The building would be taller than that existing and would occupy some parts of the site that are not currently built upon. The closest property, Hillcrest, is located on significantly higher ground than the appeal site and is set back from the boundary behind a tall brick wall. Building A of the proposed development would incorporate a flat roof at the closest point and is again set away from the boundary, resulting in a separation distance of around 20.5 metres at the closest point.
23. The Council accepts that, as a general rule, this distance is sufficient to avoid overlooking and I consider it to be an appropriate distance in this case. This is particularly so given that the ground floor level of the proposed building is set below the ground level of Hillcrest such that the full extent of the building would not be perceptible.
24. In addition, the north elevation of Building A is angled away from Hillcrest and any windows proposed are small secondary openings where obscure glazing could be secured. Given the number of windows in the south facing elevation of Hillcrest and the orientation of the proposed building towards a private patio area, this would be necessary mitigation but this could be secured by condition. A number of balconies are proposed in the west elevation and, for the same reasons, it would be necessary to require the installation of privacy screens in their north facing side openings towards Hillcrest. Again, this could readily be secured by condition and would mitigate any actual or perceived overlooking to an acceptable level.
25. A number of windows within Hillcrest would face towards Building A, including a living room, dining room and kitchen. The existing Council offices are already visible from these rooms and the increased height of the development would

result in the proposed building being visible to a greater extent, although the flat roofed part of the building would only be around 1.5m higher than the existing building. Again, however, the orientation of the proposed building, its flat roofed design at the closest point, the significantly lower ground levels within the site and the good level of separation are such that the building would not appear dominant or overbearing on the occupants of Hillcrest. Views above and to the side of the proposed building would remain possible. Whilst outlook would be altered, the changed view would not be harmful to living conditions.

26. For the same reasons as above, I do not consider that the development would have any discernible impact on the levels of light received. The appeal is accompanied by a Daylight and Sunlight Assessment (30 May 2017) which supports this conclusion and demonstrates that the property would continue to receive light in accordance with BRE Guidelines². The Council does not dispute this evidence and whilst I note the concerns of the occupants of Hillcrest, I have seen no evidence that leads me to take a different view, particularly given my own observations.
27. The Dell portion of the development would be sited to the rear of Hillcrest, including the five storey Gateway building. According to the Council, this would be around 21.7m from the rear extension of Hillcrest. The Gateway building would again be built at a much lower ground level than Hillcrest and somewhat lower than Building A, to the extent that the lower floors would simply not be visible, much of them being below the ground level of the proposed access road in this part of the site.
28. The upper floors would face directly towards Hillcrest with numerous windows and balconies but, apart from being well separated, a substantial planting screen exists on the boundary at present. Even if this were not the case, the closest part of Hillcrest, contained within a rear extension, is described as a workshop where less privacy might be expected. The nearest habitable room would be further still from the proposed development and no overbearing impact or harmful overlooking would result. That said, the installation of privacy screens on the upper floor balconies would assist in avoiding any perception of overlooking.
29. Old Walls is located on the opposite side of Knowle Drive, at a distance of around 26.5 metres at the closest point (excluding the garage). A tall hedgerow and gates surround the property providing a good level of intervening screening but views of Buildings A and F would be available, particularly when the boundary gates are open. The mass of Buildings A and F is effectively broken by the separation at upper floor levels and views between would remain possible. The buildings would be more prominent than the existing building but the overall scale, mass and height relative to the ground level in Knowle Drive would not appear excessive or overbearing at the distance involved, despite the increased visibility. Given the separation distance, no harmful overlooking would result, including towards roof lights serving the main bedroom of Old Walls, particularly given the orientation and shallow angle of the roof lights.
30. All other properties are further still from the proposal, would have less direct views of the buildings and would have greater intervening space in which to accommodate landscaping, both new and retained, that would filter and soften

² Site layout planning for daylight and sunlight: a guide to good practice, Building Research Establishment (2011)

the visual impact of the development. As a result, no overbearing, overlooking or other harm would result to any other neighbouring occupants. This includes the occupants of Blue Hayes, which is additionally contained behind a tall brick boundary wall, and to a large extent behind Old Walls. I do not share the Council's concerns in respect of this property as any views of the development would be glimpsed only, certainly not overbearing or harmful.

31. Specific concern has been raised by the occupants of the Heathers about the location of the proposed bin store, adjacent to the rear garden boundary. It is likely that servicing the bins would result in a degree of noise and disturbance during collections but I heard that this was likely to be relatively infrequent and in line with other residential waste collections in the area, on a three weekly basis. The scale of the development may lead to a need for additional collections or the movement of waste to the bin store at other times from other parts of the site. However, this is no different to any other flatted residential scheme and need not necessarily be intrusive to neighbouring occupants.
32. The area close to where the bin store would be located is currently used as a service depot by the Council and so a degree of noise and disturbance is already likely in this part of the garden. In addition, a further garden area exists to the front of the house that provides private and enclosed space and so occupants' are not necessarily reliant on sole use of the area that would be closest to the bin store. In this instance, the parties agree that a Refuse Storage Area Management Strategy can be secured by condition and I am satisfied that this would be sufficient to mitigate the impacts of the bin store including in respect of cleanliness, odour and pest attack. A site-wide lighting scheme could also be secured by condition.
33. For these reasons, I conclude that the development would not harm the living conditions of neighbouring occupants. As such, I find no conflict with Policy D1 of the LP, in so far as it seeks to protect the living conditions of neighbouring occupants'.

Use class

34. There is disagreement between the parties as to whether the proposed development falls within use class C2 (residential institution) or C3 (dwelling houses) of the Use Classes Order³, the appellant favouring the former. The use class, in planning terms, is relevant in this case only to the extent that a C3 development would attract a requirement for affordable housing in accordance with Strategy 34 of the LP. It is agreed between the parties that there is no such requirement for C2 uses.
35. In advance of the Inquiry, the Council accepted that the proposed development would not be financially viable if an affordable housing contribution was required. As such, even if I were to determine that the proposed development was a C3 use, no contribution would be sought. However, it was agreed between the parties that an overage clause should form part of a planning obligation so that if the scheme was subsequently found to be capable of supporting a contribution, it would be paid.
36. The Use Classes Order defines a C2 use as "use for the provision of residential accommodation and care to people in need of care (other than a use within

³ Town and Country Planning (Use Classes) Order 1987 (as amended)

class C3 (dwelling houses)). Use as a hospital or nursing home. Use as a residential school, college or training centre.” Care is defined in the Order as “personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder and treatment.” The parties agree that there is no definitive means by which to establish the use class of Extra Care housing units or this specific appeal scheme. Ultimately, this is a matter of fact and degree in each individual case.

37. The RTPI Good Practice Note 8⁴ and Housing LIN⁵ deal specifically with Extra Care Housing and offer some guidance on possible distinctions between C2 and C3 Extra Care accommodation. These principles can be applied to the appeal proposal. Key to the distinction is the extent to which communal services are provided and the extent to which care is available to meet the needs of residents.
38. Both documents define Extra Care in line with the Department of Health’s Extra Care Housing Toolkit, as “purpose built accommodation in which varying amounts of care and support can be offered and where some services are shared.” The Exeter Housing Market Area Strategic Housing Market Assessment (2014/15), East Devon Infrastructure Planning Evidence Base Report (June 2013) and Commissioning Strategy for Extra Care Housing (March 2009) (Commissioning Strategy) provide local definitions. There is no dispute that the development is a form of Extra Care housing.
39. The latter outlines the Devon model and suggests that the optimum size for an Extra Care scheme is 50 apartments but the document is also clear that development should maximise economies of scale i.e. 50 plus units. This is a key argument of the appellant in that a critical number of units is necessary to support the level of care, services and facilities that would be provided by the scheme.
40. Fundamentally, the Commissioning Strategy is focused on delivering Extra Care housing for a very specific part of the community, those aged 75 and over with a limiting long term illness and living alone. The level of need anticipated by the Council is therefore much less than that demonstrated to be necessary in the wider community through the Care Housing Needs Assessment Report (October 2017) provided in support of the appeal, albeit that the report does not specifically look at need within Sidmouth. The Council did not challenge the methodology or findings of the report, which is also much more recent than the documents above, albeit that the Commissioning Strategy was refreshed in 2015⁶. Ultimately, Mr Blackshaw accepted during cross examination that there is a substantial need for Extra Care accommodation and a shortfall in necessary delivery to date.
41. In this case, the development would involve 113 self-contained apartments with their own front doors, private space and facilities. They would, however, be accessed via communal spaces in many cases and would have access to a range of communal areas and facilities such as a restaurant/bar/cafe serving food throughout the day, a well-being suite comprising a gym, treatment

⁴ RTPI Good Practice Note 8, Extra Care Housing: Development planning, control and management, Royal Town Planning Institute (2007)

⁵ Housing LIN, Planning Use Classes and Extra Care Housing, Housing, Learning and Improvement Network (2011)

⁶ Extra Care Housing, Refresh of the Commissioning Strategy for Extra Care Housing (2009) (August 2015)

- rooms and pool and a communal lounge. A staffed and supervised physiotherapy suite and a hydrotherapy pool would provide opportunities for exercise, maintaining fitness and maintaining mobility, as well as the potential for rehabilitation after surgery.
42. All of these facilities would be available to residents and are aimed at supporting independent living in a sociable and safe environment. These facilities would also be available to the general public, encouraging interaction with the outside world and a sociable existence. Importantly, this is also a level of provision that is likely to exceed that expected in other residential environments, though some flatted development might incorporate some facilities.
43. Crucially, in this case, the development would be subject to a planning obligation which restricts occupation of the units so that the primary occupier must be 60 or over and in need of at least 2 hours of personal care per week, established by a health professional. Personal care is defined in the planning obligation and provides for a very broad range of assistance, even to the extent of aiding the use of technology such as the internet or accompanying residents to various on-site activities. There are of course many more traditional means of care however, including assistance with personal hygiene, dressing, feeding and drinking.
44. I do not accept the Council's criticisms of this range, albeit broad. Whilst many of the activities listed might be taken for granted by most people, every one of them is likely to become more challenging in advancing years. Many residents might only require relatively limited personal care, perhaps the minimum amount of 2 hours per week, but there are also likely to be many who require substantially more than this. Furthermore, the age restriction associated with the development is such that the need for personal care will inevitably increase for many people with age. I accept that not all people will require the same level of care at the same point in their life, but what is important is that care is available to meet their individual needs as and when the time comes. That is what the scheme seeks to provide.
45. Although the minimum age of primary occupant's is 60, Mrs McNulty confirmed that the average age of residents at other schemes operated by the appellant was 76. There is no reason to believe that the age profile would not be similar in this case and there are obvious implications for the level of care likely to be needed at that age as opposed to the minimum age requirement. Many residents would no doubt be much older than this average.
46. The development would have a full-time Care Manager based on site who would be available to arrange the care needed for each resident. This may vary from time to time and, subject to the minimum care requirement being taken up and paid for through a service charge, the development would offer flexibility to residents so as to meet their individual care needs at any point in time. The larger apartments are designed to accommodate a private sleeping quarters for carers required to stay with residents overnight and there would also be an anteroom attached to the Care Manager's office to accommodate a carer should they need to stay on-site in other circumstances.
47. There would be no care team, save for the Care Manager, based permanently on the site but it is clear that carers are expected to be able to stay on-site when required. In addition, it is likely that carers, who I heard would be

- provided by a registered Care Quality Commission provider, would work in shifts so that a 24 hour provision could be made where necessary, regardless of whether the provider was based on the site. Neither the fact that care would be provided by an agency or that they would not be permanently based on the site weighs against the proposal in my view, nor does it indicate that the scheme is more akin to a dwelling house than a residential institution.
48. Each apartment would include a range of specialised features and adaptations such as wheelchair accessible doors, electric sockets, level threshold showers and a 24 hour emergency alarm system. All of these features are likely to improve the safety and comfort of the intended occupants and would not necessarily be found in other housing stock, albeit that Strategy 34 of the LP requires a small proportion of major housing developments to meet part M4(2) of the Building Regulations.
49. For all of these reasons, it is clear to me that the development is offering much more than a dwelling house. Independent living accommodation is one element of the scheme but that would be provided alongside a range of communal facilities that are inextricably linked to an expected way of life. The scheme is designed to meet the needs of the target occupants and facilitate assisted living as well as social well-being and interaction with the outside world. Care would also be provided, specifically tailored to the needs of the occupant. Whilst some primary occupants of the development might, upon taking up residence, require only the minimum level of personal care there is likely to be a mix of care needs at any one time and those with limited need may well require additional care in the future.
50. I can see no justification for disaggregating different elements of the proposal or seeking to separate the individual apartments from the remainder of the scheme. In my view, the situation here is quite different to the Church Commissioners case⁷ in which individual retail units were found to be planning units distinct from the shopping centre in which they were located. There is a clear functional relationship between the residential units and the wider assisted living complex and facilities in this case, which are interdependent on one another.
51. The appellant's unchallenged position is that the service charge associated with the development would be around two and a half times that of a standard retirement development and twice that of a general residential market scheme with concierge. Residents would be paying a premium for this type of accommodation, in no small part because of the associated facilities and care package available. This is likely to deter prospective occupants' who are not in need of such facilities. The planning obligation would provide certainty in restricting the age of primary occupants and ensuring that a minimum level of care is needed and taken up by future residents.
52. All of this leads me to conclude that the proposed development is properly to be considered a C2 use. As such, no affordable housing requirement exists in policy terms, there is no conflict with Strategy 34 of the LP and there is no requirement for a planning obligation in this respect.
53. A range of appeal decisions are before me where consideration has been given to the appropriate use class for Extra Care housing. I do not consider that any

⁷ High Court Judgement: *73 Church Commissioners for England v S.S.E. (14 June 1995)

of them directly reflect the circumstances in this case, for example the Southbourne decision⁸ involved a very different form of development and accommodation mix, was available to over 55's and only required 1.5 hours of care per week. In addition, the ultimate operator was unknown and so the detail surrounding the site's operation is unlikely to have been as comprehensive as in this case, which I have considered on its own merits.

54. I have had regard to the Mayor of London's Housing Supplementary Planning Guidance (March 2016), which suggests that Extra Care accommodation is normally a C3 use, notwithstanding that the document is not applicable in Devon. This does not alter my conclusions having had regard to the merits of this case.

Effect on listed summerhouse

55. A Grade II listed summerhouse stands just beyond the site boundary on a terraced lawn to the south of the proposed development. I am required to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses⁹. The National Planning Policy Framework (the Framework) states that when considering the impact of a proposed development on the significance of a heritage asset, great weight should be given to the asset's conservation.
56. There is agreement between the parties that the development would not alter the fabric of the listed building and so it is its setting that falls to be considered in this case. The significance of the summerhouse was considered in the submitted Heritage and Archaeology Statement (March 2016), the Additional Heritage Information Document (August 2016) and the Note on Development in Relation to Folly (October 2016) during the course of the planning application. Mr Roper-Presdee provides further analysis in support of the appeal and together, the evidence appears to be a thorough and proportionate analysis of the heritage asset and its significance.
57. It is unclear exactly when the summerhouse was built but it is expected that it might have been around the time that the site was occupied by Thomas Fish, who undertook extensive alterations to the house and gardens during the early 19th Century. The 1840 Tithe Map appears to indicate a structure in a similar position to that of the summerhouse. Whilst the Tithe Map is not intended to show great levels of detail and was primarily produced for land valuation purposes, some features are depicted and the marking adds weight to the view that the structure existed at this time.
58. The Tithe Map also indicates that the land associated with the Knowle was once more extensive and so the Summerhouse would have stood as a curiosity within large landscaped gardens. Concern is raised that the development would protrude over the existing terraced lawns to the south of the Council offices. However, I have seen no evidence that the terraces were formed at the time the summerhouse was built. In fact the illustrations available suggest the contrary, the prospectus of Mr Fish illustrating gently undulating lawns leading downwards towards the summerhouse.
59. Terraces are not shown in any illustrations until the time of Richard Thornton, who occupied the house from 1866 and also carried out extensive remodelling

⁸ APP/L3815/A/13/2198103 – Land north of Alfrey Close, Southbourne

⁹ S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

of the house and gardens, as well as incorporating additional land. Clearly, the terraces were not part of the originally intended design or setting of the summerhouse and I have seen no evidence that the presence of the terraced lawns contributes to the significance of the summerhouse in any way, even as part of the sites evolution. Furthermore, the terrace on which the summerhouse stands would be retained following the development.

60. Much of the land has subsequently been parcelled off and separated from the remaining site of the Knowle and extensive works during the late 19th Century to create the Knowle Hotel have diminished the relationship between the Summerhouse and the house, as it existed at the time when the summerhouse was built, which was subsumed by the later development. Subsequently, relatively few significant alterations took place until the Council purchased the site and developed the building for its offices in 1969.
61. There is little remaining functional or visual relationship between the summerhouse and the buildings at the Knowle or the former gardens which appear to have been heavily landscaped and hosted a range of exotic animals. Asides from the extensive remodelling of the buildings, what remains of the summerhouse is largely hidden amongst landscaping, including a large Yew tree. In any case there is nothing to suggest that inter-visibility between the Summerhouse and the house with which it was associated was intended or designed.
62. The summerhouse remains within a landscaped setting and despite its now ruinous appearance, maintains a practical function, accommodating a bench allowing views to the south across the parkland towards the coast. It is also one of the last remaining remnants of the Fish era. That would not change as a result of the development and the appellant proposes to provide an interpretation board that might better reveal the history to the asset for users of the parkland and the summerhouse itself. What remains important about the setting of the summerhouse today is its location in landscaped gardens and its original function as a curiosity, as well as a place from which to sit and quietly enjoy the surroundings, including views south towards the coast.
63. Although proposed Building E would be closer to the summerhouse and different in its design, scale, massing and siting than the existing buildings, a separation distance of around 16m would remain and the summerhouse would continue to be seen in its landscaped context, albeit with a much altered backdrop.
64. Having considered all of the above, I conclude that the significance of the heritage asset would not be harmed by the proposal. Thus, the building, its setting and any features of special architectural or historic interest would be preserved. As a result, I find no conflict with Strategy 26 or 48, or Policy EN9 of the LP in so far as they seek the conservation, enhancement and sensitive management of Sidmouth's heritage, retention of the town's intrinsic physical built qualities and avoidance of harm to heritage assets, whilst supporting development that better reveal the significance of an asset.

Other matters

65. Strategy 26 of the LP allocates the appeal site for a residential development of 50 homes. Strategy 36 confirms that proposals for Extra Care homes will be acceptable on sites allocated for residential development. The Council accepts

- the principle of development. However, the scheme involves 113 Extra Care units against an anticipated provision of 50 units in Sidmouth. I have already considered need to some extent above, but it is also pertinent that the Council itself recognised a need for 83 units in Sidmouth in 2015. This is against the narrow criteria for provision used by the Council and discussed above.
66. Mr Blackshaw accepted during cross examination that the figure of 50 units was not absolute and exceeding the figure would not be grounds for refusal. Nowhere in the development plan is the figure expressed as a minimum and Strategy 36 in fact suggests that specialist housing proposals should be accompanied by a Care Needs Assessment which justifies the proposal's scale, tenure and accommodation type. That assessment was undertaken for this proposal and has not been challenged by the Council. The evidence available suggests to me that there is a need for Extra Care units both across Devon and in Sidmouth. The Council also accept that efficient use of land is important and in the absence of any harm in respect of the main issues, it is clear that the site is capable of accommodating the number of units proposed. Consequently, I attach little weight to the anticipated number of units being exceeded in this case.
67. The proposed development, by its nature, would not attract young people to the area that might redress the concerns of an ageing population in Sidmouth. However, the Council accept that people moving into the scheme are likely to vacate other housing stock, many of which may be larger family homes. The scheme would, therefore, increase opportunities for younger people to occupy these homes. Many of the people occupying the scheme are likely to come from the local area, given that people tend to prefer to stay within their local community, a point stressed by the Council, and so I see no reason why the development should further increase the age profile of the town or exert undue pressure of local facilities such as healthcare. Indeed, the development may facilitate assisted living for residents that would otherwise require more formal health care.
68. I have had regard to concerns by local residents about the changed distribution of traffic movements but the Transport Assessment (March 2016) (TA) concludes that the development would result in a reduction in vehicle movements compared to the existing use on site and a net benefit in terms of the impact on the local highway network. Adequate parking is also found to be provided within the site and there is no reason to believe that access or manoeuvring facilities for service vehicles would be in any way problematic. Both the Local Highway Authority and the Council accept the conclusions of the TA and I have no reason to take a different view. Whilst the residential nature of the scheme might attract traffic outside the traditional office hours operating at present, the traffic would be distributed throughout the day and the development would not harm the living conditions of neighbouring occupants.
69. An Ecological Assessment (March 2016), Bat Survey Report and Mitigation Strategy (March 2016) and Additional Ecological Commentary (August 2016) consider the effects of the development on ecology. Subject to conditions securing the recommendations and mitigation measures identified, I am satisfied that the development would not harm ecological interests.
70. The site is located within 10km of the East Devon Pebblebed Heaths Special Area of Conservation (SAC) and Special Protection Area (SPA). The South East

Devon European Site Mitigation Strategy identifies that significant adverse effects are likely as a result of residential occupation within this distance, owing to the potential for recreational use of the SAC/SPA. The mitigation strategy, therefore, requires that financial contributions are sought from relevant schemes so as to mitigate these impacts, partly through the provision of alternative green spaces. East Devon District Council collects such financial contributions through its CIL tariff. A CIL liability does not occur for C2 development but the Council confirmed that contributions collected through its CIL tariff were available and would be used to mitigate the effects of this development in accordance with the mitigation strategy. As such, I am satisfied that the development would not result in significant effects on the SAC or SPA in this case.

71. It is common ground between the parties that a range of public benefits would arise from the development. These include the provision of Extra Care housing to meet the needs for such housing in the district; a number of on and off site jobs; retention and enhancement of Building B; provision of publically accessible facilities; retention and improvement of public access through the site; reduction in existing traffic movement; and the provision of a heritage interpretation board. All of these matters weigh in favour of the development and cumulatively, I attach them moderate weight.
72. There is no evidence to suggest that the development would have any adverse effect on local tourism.

Planning Obligation

73. A S106 agreement accompanies the appeal. Having determined that the proposed development falls within use class C2 of the Use Classes Order, only the provisions relevant to that use are relevant and I have had no regard to the provisions relating to a C3 use.
74. The obligation includes the important restrictions on the use of the development for Extra Care housing, including the age restriction and necessity for care discussed above. In addition to these matters, a public access contribution of £12,000 is secured, the cost anticipated by the Council of undertaking off-site improvements to the pedestrian access route from the parkland to the proposed orangery. A monitoring fee is also included. The parties agree that these contributions meet the requirements of CIL Regulation 122 and I am satisfied that this is the case. As such, I have taken the obligations relevant to the C2 use considered into account.

Conditions

75. The parties have agreed a number of conditions in the event that planning permission is granted. In addition to the standard time period for commencement of development, I have clarified the approved plans in the interests of certainty. For the same reason, and to ensure appropriate timing with respect to ecological interests, a phasing plan is needed.
76. The site contains numerous trees and landscaping and conditions are necessary to ensure protection of those trees to be retained or relocated and to ensure that the development is suitably landscaped so as to maintain the character of the area. In addition, details for the provision and maintenance of garden furniture are needed. Further, in the interests of character and appearance,

- details are secured in relation to proposed materials, climbing plants and various detailed building components.
77. As discussed above, I have secured appropriate ecological mitigation measures, including in respect of the bat colony on site. Specifically, a lighting scheme is required to minimise the impact on bats and to protect the character and appearance of the area. A heritage interpretation board is required as explained above.
78. I have found it necessary to secure obscure glazing for upper floor windows in the north elevation of Building A, along with privacy screens on the north facing elements of the balconies. In addition, privacy screens are needed on the upper floor of the Gateway building. These measures are necessary to protect neighbours' living conditions. In this respect, and in the interests of appearance, it is also necessary to secure details of the proposed boundary treatment surrounding the parking area to the south of the site.
79. Parking provision for vehicles and cycles should be made for individual units before they are occupied to ensure that vehicles and cycles can be suitably accommodated within the site. A Method of Construction Statement is necessary to minimise the impact on the surrounding area and ensure highway safety. The proposed highway improvement works are secured to facilitate appropriate and safe access to the development and redundant vehicular accesses from Knowle Drive are to be closed to general use. A Travel Plan is required to minimise reliance on private vehicles and promote sustainable modes of travel.
80. A Construction Management Plan and Refuse Storage Area Management Strategy should also be provided to protect the living conditions of neighbouring occupants. The scheme should be implemented in accordance with the submitted foul and surface water drainage details to avoid flooding and pollution.
81. I have altered the wording of the conditions as necessary to improve their precision and otherwise ensure compliance with the tests for conditions contained in the Framework.

Conclusion

82. I have found the development to fall within use class C2 of the Use Classes Order. It would not harm the character and appearance of the area, neighbours' living conditions or the setting of the adjacent grade II listed summerhouse. The proposal is in accordance with the development plan, taken as a whole, and should be granted planning permission.
83. In light of the above, and having considered all other matters, the appeal is allowed.

Michael Boniface

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ned Westaway, Counsel	Instructed by East Devon District Council
He called:	
Kate Baxter-Hunter BA(Hons) IHBC	Conservation Officer, EDDC
Peter Blackshaw BA(Hons) MRTPI	Principal Development Officer, Cornwall Council

FOR THE APPELLANT:

Simon Bird QC	Instructed by Aardvark Planning Law
He called:	
Christine McNulty BA(Hons) PGDipTP MRTPI	Planning Manager, PegasusLife
Nigel Appleton MA	Executive Chairman, Contact Consulting Ltd
Robert Tavernor BA DipArch PhD RIBA	Principal, Professor Robert Tavernor Consultancy Ltd
Simon Roper-Pressdee BSc(Hons) PG Cert PCIfA IHBC	Director, WYG
Matt Shillito BA(Hons) MSc DipUD MRTPI	Associate Director, Tibbalds

INTERESTED PERSONS:

Richard Thurlow	Sid Vale Association
Ian Barlow	Chairman, Sidmouth Town Council
Kelvin Dent	Local resident
Michael Temple	Local resident
Peter Atkinson	Local resident
Piers Brandling-Harris	Local resident
Barry Curwen	Local resident
Stephen Matthews	Local resident
Peter Nasmyth	Local resident
Deirdre Hounsom	Chair of Sid Valley Neighbourhood Plan Group
Edward Dolphin	Local resident
Robert Whittle	Local resident

Sandra Whittle	Local resident
Gwyrle Mossop	Local resident
Frances Deegan	Local resident
Stephen Jones	Local resident
George Alice	Local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Statement of Common Ground (26 November 2017)
- 2 Draft S106 agreement
- 3 Housing in later life, planning ahead for specialist housing for older people (December 2012)
- 4 The Building Regulations 2010, Approved Document M: Access to and use of buildings
- 5 Extract from PPG: Housing and economic land availability assessment
- 6 Extract from PPG: Conserving and enhancing the historic environment
- 7 Extract from PPG: Housing and economic development needs assessments
- 8 High Court Judgement: *73 Church Commissioners for England v S.S.E. (14 June 1995)
- 9 Drawing 584_P_119 with distances from Old Walls annotated
- 10 Plan showing relationship of Blue Hayes to Buildings A and F
- 11 Opening Statement on behalf of the appellant
- 12 Statement from Peter Atkinson
- 13 Copy of oral submissions by Kelvin Dent
- 14 Copy of oral submissions by Piers Brandling-Harris
- 15 E-mail submissions by Mr & Mrs Davis
- 16 Copy of oral submissions by Peter Nasmyth
- 17 Copy of oral submissions by Gwyrle Mossop
- 18 Copy of oral submissions by Rob Whittle
- 19 Copy of oral submissions by Edward Dolphin
- 20 Copy of oral submissions by Michael Temple
- 21 Copy of oral submissions for Sid Valley Neighbourhood Plan Steering Group
- 22 Cropped and zoomed P5 images
- 23 Large scale copy of the Tithe Map with table of apportionments
- 24 Note on the East Devon Pebblebed Heaths SAC
- 25 Closing Statement on behalf of the Council
- 26 Completed S106 agreement
- 27 Appellant's Closing Submissions

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 approved plans listed in the attached Schedule of Plans.
- 3) No development (including any demolition and site preparation works) shall take place until a revised phasing plan has been submitted to and agreed in writing. The plan shall detail site set up requirements, a programme for demolition and construction and landscaping works as necessary. It shall demonstrate a full regard for the requirements of the other conditions attached to this planning permission and importantly the ecological constraints on the site. The plan shall be adhered to for the duration of the development unless revisions are previously submitted to and agreed in writing by the Local Planning Authority.
- 4) Prior to the commencement of development or other operations being undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening, or any operations involving the use of construction machinery) a detailed Arboricultural Method Statement (AMS) containing a Tree Protection Scheme and Tree Work Specification based on the submitted report under reference 15378-AA-MW and accompanying plan BT2, shall be submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the agreed AMS. The AMS shall include full details of the following:
 - a) Implementation, supervision and monitoring of the approved Tree Protection Scheme.
 - b) Implementation, supervision and monitoring of the approved Tree Work Specification by a suitably qualified and experienced arboriculturalist.
 - c) Implementation, supervision and monitoring of all approved construction works within any area designated as being fenced off or otherwise protected in the approved Tree Protection Scheme.
 - d) Timing and phasing of Arboricultural works in relation to the approved development.
 - e) Provision for the keeping of a monitoring log to record site visits and inspections along with: the reasons for such visits; the findings of the inspection and any necessary actions; all variations or departures from the approved details and any resultant remedial action or mitigation measures.

On completion of the development, the completed site monitoring log shall be signed off by the supervising arboriculturalist and submitted to the Planning Authority for approval and final discharge of the condition.

In any event, the following restrictions shall be strictly observed:

 - (a) No burning shall take place in a position where flames could extend to within 5m of any part of any tree to be retained.

(b) No trenches for services or foul/surface water drainage shall be dug within the crown spreads of any retained trees (or within half the height of the trees, whichever is the greater) unless agreed in writing by the Local Planning Authority. All such installations shall be in accordance with the advice given in Volume 4: National Joint Utilities Group (NJUG) Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity to Trees (Issue 2) 2007.

(c) No changes in ground levels or excavations shall take place within the crown spreads of retained trees (or within half the height of the trees, whichever is the greater) unless agreed in writing by the Local Planning Authority.

- 5) No trees, shrubs or hedges within the site which are shown as being planted or retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the Local Planning Authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased within five years from the occupation of any building, or the development hereby permitted being brought into use shall be replaced with trees, shrubs or hedge plants of similar size and species unless the Local Planning Authority gives written consent to any variation.
- 6) Full details of the method of construction of hard surfaces in the tree protection areas (identified in the Tree Protection Scheme) of trees to be retained shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of any development in the relevant phase. The method shall adhere to the principles embodied in BS 5837:2012 and AAIS Arboricultural Practice Note 1 (1996). The development shall be carried out strictly in accordance with the agreed details.
- 7) The Ginkgo Biloba (maidenhair tree) identified as T68 on plan reference 15378 – BT2 shall have been fully relocated to an agreed location before development commences in respect of Building E (and for the avoidance of doubt this excludes demolition and site preparation works). The relocation shall be undertaken in accordance with a detailed method statement setting out all preparation works necessary, a prescribed timetable for the works and details of the recipient site including details of its preparation.

All preparation work shall be undertaken in accordance with the agreed method and timetable. For the avoidance of doubt the tree shall be subject of suitable protection as prescribed under Condition 4 until the point of its relocation and subject to any site preparation as identified as necessary.

- 8) No development (including any demolition and site preparation works) shall take place in any respective phase of development until a comprehensive landscaping scheme has been submitted to and approved in writing by the Local Planning Authority for each respective phase; such a scheme to include:
 - Hardworks Layout and specification (and where necessary samples)
 - Softworks layout and specification

- Details of finishes to all boundary and retaining walls
- Tree pit and hedge planting details
- Construction detail of no dig zones in root protection area
- Programme of management for all soft works

The landscaping scheme shall be carried out in the first planting season after commencement of the development in the respective phase unless otherwise agreed in writing by the Local Planning Authority and shall be maintained for a period of 5 years. Any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species unless otherwise agreed in writing by the Local Planning Authority.

- 9) Details of all garden furniture located outside of the areas that would function as private gardens on plan reference LL532-100-00014 R2 but otherwise identified within the site boundary shall be submitted to and approved in writing by the Local Planning Authority and installed prior to the first occupation of the relevant phase of development. The furniture shall be provided in accordance with the agreed details and shall be maintained for the lifetime of the development unless agreement to any variation is first obtained from the Local Planning Authority in writing.
- 10) No development (including demolition) shall commence until a comprehensive scheme detailing the number, position and type of bat boxes required as mitigation for the temporary loss of bat roost in Building A shown on the approved plans has been submitted to and approved in writing by the Local Planning Authority and has been implemented in accordance with the approved details. The provision shall remain for the lifetime of the development.

In addition and in full conformity with Chapters 5 and 6 of the submitted Bat Survey Report and Mitigation Strategy Update (Final report October 2016 (Issue P15/43 – 2D)) development shall only be undertaken whilst employing all mitigation, compensation and enhancement measures identified and in accordance with a phasing strategy and timetable which shall have been submitted to and agreed in writing by the Local Planning Authority prior to the commencement of any development (including any demolition and site preparation works).

- 11) In full conformity with Chapters 6 and 7 of the submitted Ecological Impact Assessment (Final report March 2016 (Issue P15/43 – 1D)) development shall only be undertaken whilst employing all mitigation, compensation and enhancement measures identified and in accordance with a phasing strategy and timetable which shall have been submitted to and agreed in writing by the Local Planning Authority prior to the commencement of any development (including any demolition and site preparation works).

For the avoidance of doubt this shall include the submission of an up to date badger survey (which shall be undertaken within a period of not more than 6 months prior to the date of the commencement of demolition) with all identified and necessary mitigation found with the report also bound by the terms of this condition being necessary to be implemented in full and maintained throughout entirety of the development process.

- 12) No development (including any demolition and site preparation works) shall commence on site until a fully detailed lighting scheme has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall include details of all means of external illumination, details of luminaries, bollards and all fitting and a resulting lighting plan demonstrating the degree of light spill and illumination. The development shall only take place in accordance with the agreed details and no other means of external illumination shall be installed without the prior written agreement of the Local Planning Authority.

In addition, and to minimise light spill, a scheme of internal lighting with associated specifications shall also be submitted to and agreed in writing by the Local Planning Authority prior to the first occupation of any of the development. The provision of internal lighting shall follow the scheme.

- 13) Prior to the first occupation of any apartment in Building E, a detailed scheme for the interpretation of the Folly (Summerhouse) shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details and design of any structure used for interpretation purposes, the design appearance and layout of information and siting/mounting of any approved structures. The scheme shall be provided in full in accordance with a detailed timetable which shall also be included within the submission.
- 14) Before development shall be commenced in any particular phase as established by the agreed phasing plan under condition 3 (and for the avoidance of doubt this excludes demolition and ground preparation works), a schedule of materials and finishes, and, where so required by the Local Planning Authority, samples of such materials and finishes, to be used for the external walls and roofs of the proposed development shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 15) Prior to the commencement of development in respect of buildings D and E on the plateau area, details of the climbing plants (including evergreen Magnolia and other species) shall be submitted to and agreed in writing by the Local Planning Authority. Details shall include timing and method of application/degree of integration into the built form of the development and the means by which the climbing plants shall be maintained and replaced if necessary. The climbing plants shall be planted in accordance with the agreed details and retained thereafter.
- 16) Before development shall be commenced in any particular phase as established by the agreed phasing plan under Condition 3 (and for the avoidance of doubt this excludes demolition and ground preparation works), large scale detailed drawings of the following components shall be submitted to and approved in writing by the Local Planning Authority.
- Window and external door details including typical sections through glazing bars mullions and transoms
 - Eaves soffit and fascia details
 - Balcony detailing
 - Timber screens

- Porch canopies
- Junctions between external facing materials

Development shall be carried out in accordance with the approved details.

- 17) Details of the final position, size and nature of all externally mounted vents, flues and meter boxes shall be submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development for each identified phase. The development shall only be undertaken in accordance with the agreed details.
- 18) The windows at first floor level and above on the north elevation of Building A (referenced on approved plan 584_P_312 (P)B) shall be fixed shut and obscurely glazed to a minimum height of 1.7m above the internal floor level prior to the first occupation of building A. These opening restrictions and glazing requirements shall be retained for the lifetime of the development.
- 19) The following elevations of identified balconies shall be fitted with a privacy screen, details for which shall have been submitted to and approved in writing by the Local Planning Authority:
 - i) West elevation of both fourth-floor balconies (situated above floor level 57.74AOD) of the Dell development.
 - ii) North elevation of the second-floor balcony of Building A (located above parking space 41) of the Plateau development.The screens shall be fitted in accordance with the approved details prior to the first use of the apartments which are served by the respective balcony and shall be retained for the lifetime of the development.
- 20) No parking of any residents' vehicles shall take place in the designated parking area to the south of the site until details of the means of boundary treatment have been submitted to and approved in writing by the Local Planning Authority and implemented in full.
- 21) Prior to the first occupation of each individual apartment at least 1 parking space and its associated vehicle access route shall have been properly formed, surfaced and be accessible for use by the respective occupiers. All parking spaces indicated on the approved plans together with the respective vehicle access routes to them shall be formed, finished and available for use prior to the occupation of the 100th apartment.
- 22) The development hereby permitted shall only take place in full accordance with the agreed foul and surface water drainage details submitted on the 16th November 2016. For the avoidance of doubt this relates to the Drainage Statement Rev K and associated appendices 1-10.
- 23) Details of covered cycle parking/storage shall be submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development in each phase. The cycle parking storage provision shall be delivered and made available for use prior to the first occupation in the respective phase of development. The provision shall thereafter be retained for that purpose.

- 24) A Construction and Environment Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to any development (including demolition and site preparation works) commencing on site. The scheme shall be implemented in full and remain in place throughout the development. The CEMP shall include full details of at least the following matters: Air Quality, Dust, Water Quality, Lighting, Noise and Vibration, Pollution Prevention and Control, and Monitoring Arrangements.

Construction working hours shall be 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays. There shall be no burning on site. There shall be no high frequency audible reversing alarms used on the site.

- 25) No development shall start until a Method of Construction Statement has been submitted to and approved in writing by the Local Planning Authority. The statement shall include details of:

- (a) parking for vehicles of site personnel, operatives and visitors;
- (b) loading and unloading of plant and materials;
- (c) storage of plant and materials;
- (d) programme of works (including measures for traffic management);
- (e) provision of boundary hoarding behind any visibility zones as detailed in the application.

The development shall be carried out in accordance with the approved statement.

- 26) Prior to the first occupation of any apartment hereby permitted the proposed improvements to existing bus stop facilities in the vicinity of the site access to Station Road, cycleways, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, shall be constructed and laid out in accordance with the application drawings.

- 27) Prior to the occupation of any part of the development the existing north-western access from Knowle Drive shall have been closed to motorised vehicles (with the exception of mobility scooters or electrically assisted bicycles) in a manner which shall previously have been approved in writing by the Local Planning Authority.

Prior to the occupation of any part of the development the existing southern access from Knowle Drive shall have been closed to motorised vehicles (with the exception of mobility scooters, electrically assisted bicycles, refuse collection vehicles and emergency vehicles), in a manner which shall previously have been approved in writing by the Local Planning Authority.

- 28) Prior to the commencement of the development a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall be prepared in accordance with the guidance contained in the Planning Practice Guidance and in general conformity with the 'Framework Travel Plan' document in the Transport Statement.

The approved Travel Plan shall be implemented before first occupation and for each and every subsequent occupation of the development and thereafter maintained and developed to the satisfaction of the Local Planning Authority.

- 29) Prior to the first occupation of any apartment, a Refuse Storage Area Management Strategy shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall address how risks of odour and pest attack shall be addressed and how the storage areas will be kept clean, tidy and secure. The approved strategy shall be implemented and retained for the lifetime of the development unless a variation to it is previously agreed in writing by the Local Planning Authority.

Schedule of Plans

LL532-100-1119 (R1)	584-P-310
584_P_312 (P)B	584-P-313
584-P-110 (P)A	584-P-100(P)B
584-P-300(P)C	584-P-101(P)B
584-P-301(P)C	584-P-102(P)C
584-P-302(P)B	584-P-103(P)C
LL532-100-1120	584-P-104(P)C
LL532-100-1121	584-P-105(P)B
LL532-100-1340	584-P-106(P)B
LL532-100-1316	584-P-210(P)A
LL532-100-111	584-P-211(P)B
LL532-100-1112	584-P-212(P)C
LL532-100-1113	584-P-213(P)A
LL532-100-1114	584-P-214(P)B
LL532-100-1115	584-P-215(P)B
LL532-100-1116	584-P-216(P)A
LL532-100-1117	584-P-311(P)B
LL532-100-1118	LL532-100-0001 R2
LL532-100-1313	LL532-100-0021 R2
584-P-200	LL532-100-0041 R1
584-P-201	LL532-100-0071 R1
584-P-202	LL532-100-0075 R1
584-P-203	LL532-100-1123
584-P-204	LL532-100-1313
584-P-205	LL532-100-1122
584-P-307	584_P_316 (P)A
584-P-308	584_P_314 (P)A
584-P-309	584_P_315