

DRAFT LONDON PLAN

REPRESENTATIONS ON BEHALF OF LIFECARE RESIDENCES

POLICY H15 – SPECIALIST OLDER PERSONS HOUSING

INTRODUCTION

1. Strutt & Parker are instructed by LifeCare Residences (LCR) to submit representations in response to Policy H15 of the draft London Plan.
2. LCR is a long-established developer and operator of retirement villages, originally in New Zealand but also now in the UK. It has one such development already operating in London (Battersea Place), with another proposed for a site in Gondar Gardens, West Hampstead. The overriding objective of their care services concept is to enable older people, whether individuals or couples, to live in their own accommodation but within a safe purpose-built environment with care and communal amenities provided. An integral part of this concept is the immediate availability of care if required. The lease requires tenants to meet a minimum age of 65 years and for a health care assessment to be carried out for each purchaser including, where necessary, a full clinical assessment by a member of the care team. All of the apartment accommodation is registered for domiciliary nursing care throughout and nursing care is also provided through an on-site nursing home.

POLICY H15

SECTION A – HOUSING NEED

3. LCR support the overall objectives of Policy H15 (section A), namely to encourage the London Boroughs to positively address the housing and care needs of London's older population and to identify suitable sites for specialist housing provision. The need for this form of accommodation is set out in the accompanying text to Policy H15 and reflects a significant projected increase in the growth of London's older population.
4. LCR further supports the inclusion of the indicative benchmarks set out in the draft Plan and would encourage Boroughs to take these forward into their own Local Plans based on a local evidence base, which is to be reviewed regularly and monitored against pipeline developments.
5. In respect of the tenure of specialist older person's housing, LCR seek to ensure that Policy H15 facilitates the delivery of market standard specialist housing accommodation across all tenures, but particularly for private sale or rent. As set out in the London Strategic Housing Market Assessment 2013, there were an estimated 57,000 specialist elderly accommodation homes in London in 2013, of which the significant majority (46,000) were social rented with much smaller numbers of intermediate and private sale units. The need to address this imbalance is set out in Table A5.1 of the adopted London Plan, which indicates that of the annualised benchmark target of 3,900 units, 2,620 units should be for private sale (73%). LCR therefore question why the tenure split set out within the adopted Plan is not retained within the draft Plan. If this tenure split is to be removed, the supporting text at paragraph 4.15.4 must be strengthened to acknowledge that the most pressing need is for private sale units. Without this inclusion, the emphasis of the Plan as currently drafted appears to be primarily on a requirement for affordable specialist housing units, which the evidence does not support as the most pressing need.

POLICY H15
SECTION B – INCLUSIVITY

6. In respect of Section B (1) of Policy H15, LCR do not object to the recommendation that specialist housing schemes falling within Use Class C3 might contribute to the delivery of affordable units. However, LCR are strongly of the view that the Policy as currently drafted does not provide the level of flexibility that is necessary to address issues of local need in individual Boroughs. Nor does the policy address significant differences across the specialist housing sector in respect of use class and the level of care and support provided. This, in turn, may impact upon the viability of providing affordable accommodation.
7. Having regard to local needs, Table 5.1 of the adopted London Plan sets out an annualised benchmark of zero affordable rented units in 18 of the 32 London Boroughs and a requirement for 20 or fewer affordable rented units per annum in 28 of the 32 London Boroughs. In other words, applying the affordable housing thresholds and tenure splits set out in Policies H6 and H7 of the Draft Plan, as the current wording of draft Policy H15 suggests, does not reflect the latest evidence base.
8. Moreover, as set out below in response to Section C of Policy H15, LCR are very strongly of the opinion that not all extra care accommodation, as defined, falls within Use Class C3. There are significant variations amongst specialist housing operators in respect of the level of care and support provided to residents. This has implications for the use class within which a scheme falls and also impacts upon the overall viability of any given proposal. Put simply, a scheme providing a significant proportion of its floorspace for communal spaces and offering high levels of care and support may not be able to contribute to affordable housing in the same way as might a scheme with limited non-sales floorspace and offering limited care.
9. In light of the above, LCR support the principle in Criterion B (1) that only specialist housing falling within Use Class C3 should be required to contribute to affordable housing. At the same time, LCR proposes that any affordable housing requirements set out within Policy H15 should revert to the tests set out in Policy 3.12 of the adopted London Plan; namely to encourage the maximum reasonable amount of affordable housing subject to a consideration of current local needs, the need to encourage rather than restrain residential development and the specific circumstances of individual sites and schemes. This approach would be consistent with paragraph 3.7.19 of the GLA's Housing GPG (2016) which states that *'...Boroughs should carefully consider local needs and viability concerns in taking decisions about the use of planning obligations.'*
10. LCR support points 2 to 5 of Section B relating to accessible housing, inclusive design and the provision of suitable storey facilities for buggies, all of which are in accordance with best practice design principles.
11. To simplify Policy H15, it is recommended that point 1 of Section B be deleted and that any affordable housing requirements from specialist older persons housing be addressed in Section C of the Policy (see commentary below).

POLICY H15
SECTION C – USE CLASS

12. The GLA has produced a Topic Paper on Specialist Older Person's Housing (November 2017). The purpose of this Paper is to support London Plan policy in providing a consistent approach in terms of the planning Use Class applied to specialist older persons housing, to assist developers and providers, as well as those trying to access specialist older persons housing. The Topic Paper concludes that all extra care schemes should fall within Use Class C3.
13. LCR strongly contest the Council's assertion that extra care accommodation, as defined in paragraph 4.15.3 of the text supporting policy H15, falls within Use Class C3. There is both a legal and a planning basis to this objection as set out below.

Legal Considerations

14. Whilst LCR would welcome a consistent approach to the question of use classification, this cannot be done by, in effect, seeking to amend the Use Classes Order through the London Plan.
15. Attached to these representations at **Appendix 1** is a legal opinion prepared by Gwion Lewis of Landmark Chambers. This opinion concludes that draft policy H15 would be unlawful, if published in its current form. LCR therefore recommends that Policy H15 be amended before the Draft LP is published to avoid a legal challenge. In particular, the attempt in the draft policy to prescribe all “extra care accommodation”, as defined, as being in C3 use (“Dwellinghouses”), has no lawful basis in the Town and Country Planning (Use Classes) Order 1987. By attempting to recast the 1987 Order in this way, in a policy document that applies only in London, the Mayor is proposing to usurp a power that, in law, can only be exercised by the Secretary of State by making an order under s. 55(2)(f) of the Town and Country Planning Act 1990.
16. In light of this advice, the statement that extra care accommodation falls within Use Class C3 (as claimed in Policy H15(C) and paragraph 4.15.3 of the supporting text), must be removed. It is further suggested that Policy H15(C) be amended to specifically address the engagement of Policies H5 and H16 only where specialist older persons housing falling within Use Class C3 is proposed.

Planning Considerations

17. Article 2 of the Use Classes Order defines ‘care’ as ‘the provision of 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*’. To satisfy the definition, and for a use to fall within Class C2, firstly some form of care has to be provided and secondly the recipient of the care has to be in actual need of it. By virtue of factors outlined below, and with reference to precedent appeal decisions and other best practice guidance relating to extra care housing (including recent schemes determined by the GLA), we consider that those extra care schemes providing a defined level of care and support to its residents will fall within Use Class C2.
18. One of the main distinguishing features between a residential use (C3) and a care use (C2) is the degree of personal care for the person living in the accommodation. This point is supported by the Royal Town Planning Institute’s (RTPI) Good Practice Note 8 ‘*Extra Care Housing development planning, control and management*’. This states that: “*the delivery of the domiciliary care component to individual residents is registered by the CQC. For planning purposes, this should clarify whether the development is regarded as a residential institution or a group of ‘ordinary’ dwellings.*”
19. The issue is also looked at closely in the Housing Learning and Improvement Network (LIN) Viewpoint 20 paper – Planning Use Classes and Extra Care (November 2011) and is also referred to in HAPPI 2 published by the All Parliamentary Group on Housing and Care for Older People (November 2012). The Housing LIN Viewpoint Paper suggests on page 4 that local planning authorities should ask themselves the following relevant questions when considering whether a development falls within Class C2:
 - Are 24 hour care services available to all residents according to their needs?
 - Can residents receive/purchase care from the on-site team?
 - Has the developer opened similar schemes in other parts of the country? If so, what is the average age on entry, and how much care per week was purchased during the first year of operation?
 - What efforts have been made to link the scheme to the local community?
20. On page 6 the Paper lists features which may point to a C2 classification as follows:

- *'The units are not for sale on the open market but are restricted by a S106 obligation requiring occupants to be either in need of a specified level of care or in receipt of a specified minimum package of care services and/or above a specified minimum age.*
- *Applying eligibility criteria and undertaking an initial assessment of care needs with regular reviews and monitoring can reinforce this.*
- *Given the additional costs involved in paying for care and accommodation, it makes sense for the units to be occupied by those in genuine need of care.*
- *The distinguishing feature of C2 establishments is the provision of personal care for those who need it. Where extra care units are restricted to those in need of care by reason of old age, this would fall within the definition of Use Class C2.*
- *The provision of care is directly linked to the extra care unit, which cannot be occupied unless certain criteria are met.*
- *The involvement of a registered Care Quality Commission care provider in the delivery of care.*
- *The availability of care rather than an absolute requirement to receive a predetermined package may be sufficient, especially relative to older persons where a degree of future inevitable decline can reasonably be built into the model.*
- *In the case of larger schemes providing a range of accommodation and care such as Continuing Care Retirement Communities (CCRC), the degree of integration of the various elements of the scheme into a wider total community.'*

21. In 2015 the Housing LIN published 'Extra Care Housing – What is it in 2015?' This defines 'extra care' housing as *'housing with care primarily for older people where occupants have specific tenure rights to occupy self-contained dwellings and where they have agreements that cover the provision of care, support, domestic, social, community or other services.'*

22. Until the publication of the current draft London Plan, the GLA have accepted the position that individual units within extra care schemes may have their own front door, but that functionally they are effectively C2 uses (paragraph 3.7.18 of the GLA's Housing SPG 2016 refers). The SPG rightly acknowledges that some extra care schemes (with a limited provision of care) might appear to be on the cusp of conventional C3 housing, but this is certainly not the case for all extra care uses as the analysis within the Housing SPG concludes. Ultimately, it is a matter of fact and degree in each individual case.

23. There have been many appeal decisions which have explored the use class of extra care schemes and which fall in favour of a Class C2 use. Whilst LCR acknowledge that every scheme must be assessed on its own merits, the following two appeal decisions issued within the past 12 months are relevant in the general conclusions that they provide:

Balcombes Hill, Goudhurst (2017)

24. In July 2017 the Inspector accepted that a proposal for 22 extra care apartments would fall within Use Class C2. The appeal decision is provided as **Appendix 2**. In describing the nature of the proposed use, and with particular reference in this specific case to a limited range of communal facilities being offered, the Inspector stated at paragraph 47 as follows:

'The units would be occupied by persons aged over 65 years old who had been assessed as needing 1.5 hours per week care as a minimum. The appellant confirmed that it would be a requirement of the terms of occupation that occupiers had an assessment of their needs and that they would contract to pay for, and accept, the level of assessed care. Staff would be on call 24 hours a day and each unit would have an alarm system and the residents would be able to use the communal facilities in the apartment block. Although this would be restricted to a small lounge area and be of little practical use, I am mindful that the Use Classes Order does not require any communal facilities to be provided.'

25. The Inspector's conclusions on the Use Class matter are significant and are set out in full below:

48. There are a large number of terms used to describe this type of provision including extra care housing, enhanced sheltered housing and assisted living and the Use Class in which

they fall depends on the facts and circumstances of each case. I cannot imagine there would be many potential residents who were not in need of, or not anticipating being imminently in need of, at least a modicum of regular care. Moreover, reinforcement of the premises-specific culture of care and support would be affected by the terms of occupation based on minimum age and minimum take-up of care services (albeit limited in terms of hours).

49. Furthermore, the service charges are likely to be well beyond those that might reasonably be expected in non-institutional accommodation. The illusion of independent living would come through the physical self-containment and saleability (to qualifying occupiers) of the individual units, whereas the reality would probably be one of a tightly knit community unified by access to a dedicated enterprise of specialist care and security for the elderly.

50. I also see no reason why the location of care provision off site at Ticehurst is determinative, not least because this provides operational efficiencies whilst ensuring a dedicated responder service is available. Furthermore, in response to the Council's concerns the appellant clarified that it is his intention to recruit a local registered manager and to register the domiciliary care business with the Care Quality Commission or to identify a suitable local domiciliary care provider. The details of which could be secured by condition, as agreed by the parties.

51. These characteristics, when combined with the scope to secure them through the use of a planning condition (which was agreed by the parties during the course of the Hearing in light of the failure to agree the content and form a legal agreement) leads me to conclude that, on the evidence before me and in this particular case, the proposal is properly classified as within the C2 use class.

Station Road, Sidmouth (2018)

26. Planning permission was granted at appeal (following a public inquiry) for an assisted living community and where the Inspector held that the use would fall within Use Class C2. A copy of the appeal decision is provided as **Appendix 3**. The Inspector concluded at paragraphs 49-52 as follows:

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...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 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...and there is no requirement for a planning obligation in this respect.

GLA precedent

27. In the case of the St Mary's Hospital Site in Sidcup (London Borough of Bromley, LPA Ref: 13/00593/FULM) the GLA's Stage 2 report dated 20 November 2013 considered the 'front door' test in detail at paragraphs 7 to 10 and concluded as follows:

'The applicant has confirmed that the extra care units are self-contained units, each with their own individual address point, and will be liable for Council Tax, which when considered against the 'front door' test as detailed in paragraph 3.1.41 of the Mayor's Housing SPG would indicate that they fall within the residential use class C3. However, the paragraph goes further to recognise that in some cases this assessment may require some refinement to take appropriate account of the components of care and support such as those associated with some extra care schemes where units may have their own front door but functionally are effectively C2.

In light of this, an increasing body of case law and precedents set by recent appeal decisions would suggest that the form and level of support services associated with the units and the level of care required by the occupants are key determining factors when considering whether a development falls within C2 or C3 use class. In recognition of this, the applicant has provided further clarification on the components of care and support associated with the proposed extra care component of the scheme that indicate towards the units falling within Class C2. In summary, while the extra care units have the appearance of self-contained C3 dwelling units, the primary purpose of the overall development is to meet the individual care needs of the residents. These will be met onsite by the provision of a communal lounge, communal dining room and kitchen, function room, guest suite, hair salon, day staff rest room and serviced laundry. These communal facilities are accessible to all residents and represent 35% of the floor space, when compared to 10% conventional C3 apartment buildings, or 20-25% for category II sheltered apartments.

In addition, the applicant has confirmed that in order to be eligible for an extra care unit any prospective resident must require a basic minimum care package of two hours per week which is determined by Anchor in a care needs assessment and reviewed on a regular basis. This is paid for in addition to the monthly service charge of £230. In addition to requiring the basic minimum care package, occupancy or sale of the extra care units are also restricted to persons aged sixty or older.

In light of the provision of the further detailed information outlined above, it is considered that the higher than average proportion of communal facilities accessible to all residents, the level of service charge and the conditions regarding age and care needs that restrict the occupation of the extra care units, suggest a C2 residential institution function for the extra care element of the scheme. Officers note that the eligibility restrictions regarding age and minimum care have been secured by planning condition which is supported. Therefore, given the specific circumstances of this proposal, it is accepted that London Plan policy regarding affordable housing is not applicable to this application and no contribution is required in this instance.'

28. A subsequent section 73 application relating to this scheme was considered by the GLA as recently as 30 August 2017. The GLA did not suggest that reducing the minimum number of hours of care being provided as part of the C2 consent (to 1 hour of care per week) meant that the C2 use classification no longer applied.
29. A further C2 assisted living scheme recently referred to the GLA is that of Jubilee House in Stanmore (London Borough of Harrow) on which the GLA provided Stage 1 and Stage 2 reports on 28 April 2016 and 20 June 2017 respectively. Paragraph 27 of the Stage 1 Report is relevant to the use classification and concludes as follows:

'The applicant states that occupation would be age restricted, provide 24 hour nursing and emergency support, with extensive communal facilities totalling 1,630 sq.m. (GIA), or 11% of the floor area. This suggests a C2 use is appropriate, and these requirements should be appropriately secured in the section 106 agreement, including the terms of occupancy, buyer

eligibility restrictions, and re-sale controls, which will ensure that the facility will remain as C2 Use.'

30. LCR are confident that their own schemes provide a level of care and support to residents that is, as a minimum, akin to the schemes referred to in respect of the following:

Age of Residents

31. There is a minimum qualifying age restriction of 65 years which applies to at least one of the occupiers in each unit. The average age of residents within the most recent LCR scheme is currently 81, with average age of entry at 80 years of age.

Communal Facilities

32. LCR schemes include an extensive range of communal facilities that are managed and operated as an integral part of the care concept to encourage social interaction. Facilities include:

- Lobby
- Restaurant
- Bar
- Lounge/café area
- Multi-purpose activity rooms
- Cinema
- Library
- Hair Salon
- Gym/ physical therapy
- Treatment rooms (for on-site GP, physiotherapy and other health related appointments)
- Nurse stations
- Swimming pool and hydrotherapy
- Courtyard gardens

33. In addition, and unlike the other C2 schemes referred to above, the LCR model incorporates a nursing home providing 24-hour end-of-life care that is available to both existing residents and the wider community. The expertise of the specialist care home staff is also made available to all residents within the development, adding to the care-oriented environment.

On-Site Care Services

34. Care is provided to all residents through:

- (a) the services and facilities (including on-site emergency call response) provided under the landlord's obligations under the lease (with a majority of the service charge cost attributable to on-site staffing); and
- (b) on-site nursing domiciliary care services which are registered with the Care Quality Commission to meet additional individual needs of residents.

35. At entry each resident undergoes a clinical assessment by a CQC-registered care provider in order to understand their personal and clinical needs and to agree a bespoke service package appropriate to their aspirations and abilities.

36. Each care community is registered for domiciliary nursing care. This allows LCR to provide acute nursing care into individual apartments as well as within the full-service nursing home on site. This distinguishes the LCR model from the majority of other extra care providers.

Minimum Care Provision

37. The established level of care within existing LCR developments exceeds the 'minimum' level of provision on many other C2 extra care schemes.

38. The essence of the care model is that care levels can be increased as the needs of residents may change and there is no limit to the level of care that can be offered.
39. In light of the information provided above, LCR maintain that their own extra care use falls firmly within Use Class C2. Moreover, for the reasons outlined, there is not considered to be a sound legal or planning basis to support the GLA's statement that all extra care schemes fall within Use Class C3. For these reasons, it is strongly recommended that the statements to this effect in Policy H15(C) and paragraph 4.15.3 of the supporting text be deleted. It is instead recommended that a clause H15(C) be included within the plan to make it clear that only where the particular type of specialist older persons housing proposed is considered to fall within Use Class C3 will policies Policy H5 and H6 (relating to affordable housing) be engaged.

OPINION

Introduction

1. I am asked to advise LifeCare Residences on policy H15 of the Draft London Plan 2019-2041 (“**the Draft LP**”). LifeCare Residences is a long-established developer and operator of retirement villages, originally in New Zealand but also now in the UK. It has one such development already operating in London (Battersea Place), with another proposed for a site in Gondar Gardens, West Hampstead.
2. In the properties operated by LifeCare Residences, residents live in self-contained apartments, but are also provided with a level of care and support that is appropriate to their stage of later life. All apartments are registered for domiciliary nursing care and there is an on-site nursing home. All properties also have extensive communal facilities for residents.
3. The Draft LP is currently subject to consultation ahead of a public examination. Given the nature of its business, LifeCare Residences has particular interest in draft policy H15 entitled ‘Specialist older persons housing’.
4. **In summary, I have concluded that draft policy H15 would be unlawful, if published in its current form.** It must therefore be amended before the Draft LP is published to avoid a legal challenge. In particular, the attempt in the draft policy to prescribe all “extra care accommodation”, as defined, as being in C3 use (“Dwellinghouses”), has no lawful basis in the Town and Country Planning (Use Classes) Order 1987. By attempting to recast the 1987 Order in this way, in a policy document that applies only in London, the Mayor is proposing to usurp a power that, in law, can only be exercised by the Secretary of State by making an order under s. 55(2)(f) of the Town and Country Planning Act 1990. This is unlawful. I expand on this reasoning below.

The law

Legal basis for the London Plan

5. Section 334 of the Greater London Authority Act 1999 requires the Mayor of London to prepare and publish a document known as the “spatial development strategy” which includes “his general policies in respect of the development and use of land in Greater London”: s. 334(1), (3). This strategy must deal “only with matters which are of strategic importance to Greater London”: s. 334(5). The Draft LP is the emerging “spatial development strategy” for Greater London.

Use classes

6. The Town and Country Planning (Use Classes) Order 1987 (“**the UCO**”) was made under s. 22(2)(f) of the Town and Country Planning Act 1971. The corresponding provision is now s. 55(2)(f) of the Town and Country Planning Act 1990 (“**the TCPA 1990**”). Section 55(2) generally prescribes various operations and uses of land which are not to be taken for the purposes of the Act as involving “development” requiring planning permission. These include, at s. 55(2)(f):

"in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the building or the other land, for any other purpose of the same class."

7. The UCO is an “order” to this end. Schedule 1 to the UCO classifies and defines various uses of land for planning purposes. The two use classes that are relevant to policy H15 of the Draft LP are class C2 (“Residential institutions”) and class C3 (“Dwellinghouses”). They are defined as follows in the UCO:

“Class C2. Residential institutions

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C3. Dwellinghouses

Use as a dwellinghouse (whether or not as a sole or main residence) by—

- (a) a single person or by people to be regarded as forming a single household;
- (b) not more than six residents living together as a single household where care is provided for residents; or
- (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within class C4).

Interpretation of Class C3

For the purposes of Class C3(a) “*single household*” is to be construed in accordance with section 258 of the Housing Act 2004.”

Relevant draft policy

8. Policy H15 of the Draft LP states (*emphasis added*):

“A. Boroughs should work positively and collaboratively with providers to identify sites which may be suitable for specialist older persons housing taking account of:

- 1. local and strategic housing needs information and the indicative benchmarks set out in Table 4.4
- 2. the need for sites to be well-connected in terms of contributing to an inclusive neighbourhood, access to social infrastructure, health care and public transport facilities
- 3. the increasing need for accommodation suitable for people with dementia.

B. Specialist older persons housing (*Use Class C3*) provision should deliver:

- 1. affordable housing in accordance with Policy H5 Delivering affordable housing, and Policy H6 Threshold approach to applications
- 2. accessible housing in accordance with Policy D5 Accessible housing
- 3. the highest standards of accessible and inclusive design in accordance with Policy D3 Inclusive design
- 4. suitable levels of safe storage and charging facilities for residents’ mobility scooters
- 5. pick up and drop off facilities close to the principal entrance suitable for taxis (with appropriate kerbs) minibuses and ambulances.

C. 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 in Use Class C2.”

9. In the usual way, draft policy H15 is supported by explanatory text. Paragraph 4.15.3 of this text states (***emphasis added***):

“In some circumstances, older people may choose to seek alternative, more tailored **specialist accommodation**. There is a range of specialist accommodation options and the following definitions should be applied in London:

- ***sheltered accommodation and extra care accommodation should be considered as C3 housing:***
- **sheltered accommodation** (also referred to as supported housing) is self-contained accommodation specifically designed and managed for older people (minimum age of 55 years) who require no or a low level of support. Schemes normally include additional communal facilities such as a residents’ lounge and a scheme manager, warden or personal alarm/telecare system
- **extra care accommodation** (also referred to as assisted living, close care, or continuing care housing) is self-contained residential accommodation and associated facilities, designed and managed to meet the needs and aspirations of older people, and which provides 24-hour access to emergency support. A range of facilities are normally available such as a residents’ lounge, laundry room, a restaurant or meal provision facilities, classes, and a base for health care workers. Domiciliary care will be available to varying levels, either as part of the accommodation package or as additional services which can be purchased if required
- **residential nursing care accommodation** (including end of life/ hospice care and dementia care home accommodation) **should be considered as C2** as it provides non-self contained residential accommodation for people who require additional personal or nursing care. Rooms may be private or shared and may provide an ensuite bathroom. Communal facilities are likely to include a dining room and residents’ lounge, with meals and personal services routinely provided to all

residents. Personal or nursing care is a critical part of the accommodation package at residential/nursing care accommodation. Care homes are unlikely to provide more than 80 bed spaces in total.”

Discussion

10. In my judgment, it would be unlawful to adopt draft policy H15 of the London Plan in its current form. By prescribing in paragraph B that “Specialist older persons housing” is in “Use Class C3”, and then stating in paragraph C that “Sheltered accommodation and extra care accommodation is considered as being in Use Class C3”, the draft policy is, in effect, seeking to amend the UCO when that is a power given only to the Secretary of State under s. 55(2)(f) of the TCPA 1990.
11. The current definition of Class C3 in the UCO does not mention “extra care accommodation”. The development of the concept postdates the definition and not all those who might fall under the broad umbrella of providing “extra care accommodation”, as defined by paragraph 4.15.3 of the Draft LP, provide care to the same degree. It follows that, applying the UCO in its current form, a judgment needs to be made on the facts of each case whether the degree of care provided is such as to bring a development within use class C2 (“use for the provision of residential accommodation and care to people in need of care”), or whether the degree of care provided is low enough to warrant the conclusion that the use is within class C3. LifeCare Residences is clear that the degree of care provided in all its schemes warrants their classification as C2 developments, but its objection to draft policy H15 is more fundamental. As currently drafted, draft policy H15 would, in effect, interpose a new definition of the C3 class across London to include “extra care accommodation”, as defined, generally. The Mayor has no legal authority to make this change.
12. A faithful application of this unlawful policy in determining individual cases, either by the GLA or the London Boroughs, would lead to further unlawfulness. Decision-makers would be fettered in their judgment as to whether a scheme falls, as a matter of fact and degree, within class C2 or class C3 because they would consider themselves bound by the unlawful instruction in the policy.
13. The Mayor will probably say that draft policy H15 is a proper attempt to improve the consistency of decisions made in London about “extra care accommodation”, as defined. The

Mayor might point to decision-makers, including inspectors, coming to different judgments about the correct use classification for apparently similar schemes. However, if the current definitions of use classes C2 and C3 in law are not precise enough to promote consistent decision-making in this area, that is an argument for the Secretary of State to update those legal definitions: it does not justify an *ultra vires* recasting of use class C3 in a policy document.

14. It is trite that “the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it”: ***Council of Civil Service Unions v Minister for the Civil Service*** [1985] A.C. 374, 410, per Lord Diplock. Moreover, “while respect must be accorded to agencies entrusted by Parliament with the task of administering legislation, it would not be conformable with the rule of law for them to be given free rein, subject only to an irrationality challenge, to interpret the legislation in whatever manner they wished”: ***R (Unison) v Monitor*** [2009] EWHC 3221 (Admin). In this vein, it is not for the Mayor unilaterally to prescribe, in his own policy document, a recasting of the statutory definition of use class C3, as it applies in Greater London. The definition of use class C3 in the UCO applies across England: it would be unacceptable if the objective construction of this definition were different in Greater London than elsewhere, based on an unlawful policy instruction by the Mayor.
15. Whilst a decision-maker is entitled to ignore or act contrary to a policy which misstates the law (see ***R v. Secretary of State for the Environment, ex p. Tower Hamlets LBC*** [1993] Q.B. 632), the proper approach is to prevent an unlawful policy from being adopted in the first place. To avoid the unlawfulness, paragraphs B and C of draft policy H15 should be reworded as follows:

“B. Specialist older persons housing should deliver:

1. accessible housing in accordance with Policy D5 Accessible housing
2. the highest standards of accessible and inclusive design in accordance with Policy D3 Inclusive design
3. suitable levels of safe storage and charging facilities for residents’ mobility scooters
4. pick up and drop off facilities close to the principal entrance suitable for taxis (with appropriate kerbs) minibuses and ambulances.

C. Where the particular type of specialist older persons housing proposed is considered to fall within Use Class C3, Policy H5 Delivering affordable housing, and Policy H6 Threshold approach to application, are engaged.”

16. In light of these amendments, paragraph 4.15.3 of the explanatory text to draft policy H15 should either be deleted, or at least amended to state as follows:

“In some circumstances, older people may choose to seek alternative, more tailored **specialist accommodation**. There is a range of specialist accommodation options and the following definitions should be applied in London:

- **sheltered accommodation** (also referred to as supported housing) is self-contained accommodation specifically designed and managed for older people (minimum age of 55 years) who require no or a low level of support. Schemes normally include additional communal facilities such as a residents’ lounge and a scheme manager, warden or personal alarm/telecare system
- **extra care accommodation** (also referred to as assisted living, close care, or continuing care housing) is self-contained residential accommodation and associated facilities, designed and managed to meet the needs and aspirations of older people, and which provides 24-hour access to emergency support. A range of facilities are normally available such as a residents’ lounge, laundry room, a restaurant or meal provision facilities, classes, and a base for health care workers. Domiciliary care will be available to varying levels, either as part of the accommodation package or as additional services which can be purchased if required
- **residential nursing care accommodation** (including end of life/ hospice care and dementia care home accommodation) provides non-self contained residential accommodation for people who require additional personal or nursing care. Rooms may be private or shared and may provide an ensuite bathroom. Communal facilities are likely to include a dining room and residents’ lounge, with meals and personal services routinely provided to all residents. Personal or nursing care is a critical part of the accommodation package at residential/nursing care accommodation. Care homes are unlikely to provide more than 80 bed spaces in total.”

17. If draft policy H15 and its supporting text are not amended along these lines to avoid the unlawfulness described above, I advise LifeCare Residences to issue a statutory challenge to the plan in the High Court within 6 weeks of its publication.

GWION LEWIS

Landmark Chambers

London

1 March 2018

Appeal Decision

Hearing held on 16 May 2017

Site visit made on 16 May 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 14th June 2017

Appeal Ref: APP/M2270/W/16/3161379
Balcombes Hill, Goudhurst, Cranbrook, Kent TN17 1AT

- 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 Mr Gary Reeve-Wing (c/o Carless & Adams Partnership) against the decision of Tunbridge Wells Borough Council.
 - The application Ref 15/510395/FULL, dated 16 December 2015, was refused by notice dated 29 April 2016.
 - The development proposed is erection of proposed C2 housing with care for the elderly.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. At the Hearing the Council produced 7 Ordnance Survey mapping extracts and I was also provided with two illustrative drawings showing computer generated images of the proposal¹. In both cases the parties agreed that such evidence was integral to the main issues and confirmed that in both cases it was information that they had previously been aware of. No adjournment was therefore required and there would be no prejudice to any party from my consideration of these documents in determining the appeal and I have therefore taken them into account.
3. Following the hearing I sought the views of both main parties in relation to the Supreme Court judgements in *Suffolk Coastal District Council v Hopkins Homes Ltd and another; Richborough Estates Partnership LLP and another v Cheshire East Borough Council [2017] UKSC 37* insofar as they may be relevant to the appeal. I have taken into account the comments made by both parties in my determination of this appeal.

Main Issues

4. The main issues are:
 - The effect on the character and appearance of the Goudhurst Conservation Area and the setting of nearby listed buildings.

¹ A-595/CGI 1 and A-595/CGI 2.

- The effect on the character and appearance of the High Weald Area of Outstanding Natural Beauty, including effects on existing trees and landscaping.
- The effect of the proposal on the living conditions of the occupiers of Fairmead, Laurels and future occupiers of the proposal, with particular regard to privacy.
- Whether or not the proposal falls within Use Class C2 or C3 and the implications of that for the provision of affordable housing.
- The effect of the proposal on highway safety, with particular regard to visibility and pedestrian access.

Reasons

Heritage Assets

5. The appeal site is an undeveloped parcel of open scrubland located outside of the Limits to Build **Development ('LBD') of Goudhurst, within the High Weald Area of Outstanding Natural Beauty ('AONB')** and the Goudhurst Conservation **Area ('GCA')**. The site slopes down towards Tiddymotts Lane, a narrow rural lane that contains a row of small, 2 storey former rural workers cottages and a detached residential bungalow. The lane is set down the slope and on lower land than the appeal site.
6. The starting point for dealing with such matters is the Planning (Listed Buildings and Conservation Areas) Act 1990. Section 72(1) of the Act sets out that in the exercise of planning functions, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Paragraph 132 of the **National Planning Policy Framework ('the Framework')** makes it clear that when considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the **asset's conservation**.
7. The Goudhurst and Kilndown Conservation Area Appraisal 2006 (**'GKCAA'**) identifies that the significance of the GCA lies partly in its hill top location which gives a sense, in distant views, of a compact and singular settlement. There is a variety of plot patterns and sizes, with the compact village centre juxtaposed with the village pond and open areas of rural and amenity space which provide a contrast to the built form and helps merge the village into the rural and wooded landscape that surrounds it.
8. In architectural terms, there is a clear hierarchy with the style and density of buildings providing clear differentiation between the historical centre and peripheral residential areas which slope away from the historic core and are of a lower density. The rich and varied historical core contains 15th to 19th century buildings set within an intricate pattern of roads, paths, alleyways and **built form centred on St Mary's Church. The prevailing palette of materials** consists of clay tiles, on both roofs and elevations, red brick, render, glazed brick ends and timber framing. Buildings have decorative windows, doors and openings and there is a variety of roof profiles and pitches that overlap

resulting in a *'picturesque jumble of red tile slopes that is a principal characteristic of the area'*².

9. The appeal site forms one such open space that provides a transition between the rural areas to the south and the historic core of the GCA to the north. Despite the tight urban grain that exists in the core and on the opposite side of Balcombes Hill, the appeal site is a good example of how this grain is interspersed with open spaces and gardens and set within mature landscaping.
10. It was clear from my site visit that it provides important visual and spatial relief and forms an integral part of the character and appearance of the area, positively contributing to the significance of the GCA. Furthermore, the significant mature landscaping along the western and southern boundaries of the site, in combination with the topography, provide a dramatic approach into the village and the site is an important and integral part of this open, green and landscaped approach to the village.
11. The buildings would sit below the tree line and the height of the Old Parsonage to the north. Despite this the overall scale, form and height of the proposed apartment block, in such close proximity to the boundary with Balcombes Hill would be conspicuous, particularly so when the deciduous planting along the boundary would not be in leaf for a large part of the year.
12. Although some new landscaping is proposed, the buildings would also be sited uncharacteristically close together which would unquestionably change the character and appearance of the site, appearing essentially suburban in style. Furthermore, sub-divided into small plots and with large amounts of hard elements such as the buildings, hard surface parking areas and roads, set around the periphery of the site, it would present a much harder edge to Balcombes Hill and Tiddymotts Lane. It would set itself apart from adjoining development and would not integrate well with it, appearing as an unduly dominant and overly prominent addition to the streetscene on this important approach.
13. The proposal would also result in an extension of the village onto a site which has historically been free from significant development. Whilst I accept that change is not necessarily harmful, the proposal would detract from the historic layout and pattern of development of the village. Furthermore, it would substantially diminish the perception of spaciousness and openness of the appeal site and consequently, its contribution to the significance of the GCA.
14. I also note that the GKCAA identifies more modern development on the opposite side of Balcombes Hill as detracting from its setting and to my mind, the proposal would introduce a similar form of modern development that would appear in harmful contrast to the more historic built form towards the village centre and on Tiddymotts Lane.
15. In terms of the appearance of the building I am satisfied that appropriate materials could be secured and that those proposed reflect, to a degree, the prevailing palette of materials within the GCA. However, I also share the **Council's** concerns that the large expanse of flat roof area on the buildings, the large projecting balcony features, porches and fenestration would be uncharacteristic and not entirely in keeping with the prevailing vernacular.

² Goudhurst and Kildown Conservation Area Appraisal 2006.

16. Although the appellant contends the roof form of the apartment block would not be evident from ground level, the requirement for development proposals to preserve or enhance the character or appearance of the GCA applies with equal force whether or not the proposal, or part of it, is prominent or in public view. To my mind, the fact that a traditional roof form has been indicated as being inappropriate because of the resultant height³ signifies that the design of the proposal is not an entirely appropriate design response to this sensitive location.
17. For these reasons, the proposal would fail to preserve or enhance the character and appearance of the GCA. It would conflict with Policies 4, 5 and 14 of the Tunbridge Wells Core Strategy 2010 ('CS') and Policies EN1, EN5 and EN25 of the Tunbridge Wells Borough Local Plan 2006 ('LP'). Amongst other things, these require the locally distinctive **sense of place, character and the Borough's** heritage assets to be conserved and enhanced, including the preservation and enhancement of spaces, pattern of existing development, landscape setting and vegetation within conservation areas.
18. In the context of the Framework both parties agree that the harm would be less than substantial. I agree with this assessment and in accordance with Paragraph 134 of the Framework the weighing of public benefits against this harm is a matter to which I return to below.
19. At the Hearing the Council and interested parties also contended that the proposal would also harm the setting of listed buildings within the GCA, namely **St. Mary's Church, a Grade I listed building** but also Spieways and The Star and Eagle Hotel. **Although not forming part of the Council's reason for refusal, I** have a statutory duty to have special regard to the desirability of preserving the building or its setting in accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
20. The Framework states that the setting of a heritage asset is the surroundings in which it is experienced and that this can be more extensive than its curtilage. Heritage assets are clearly influenced by the comprehension of external factors and development within their setting, the extent of which is not fixed and can evolve over time.
21. At the site visit I was able to view the appeal site and its surroundings from the top of the church tower and from Back Lane which provides a physical boundary with the core of the village and gives access to a number of listed buildings that front onto High Street. The rooftops of the proposal would be glimpsed from the top of the church tower and fleetingly, from parts of back Lane but they would be viewed in the context of other rooftops within the village core and beyond Balcombes Hill.
22. Overall, there would be a very minimal perception of the proposal when viewed from these buildings and their curtilages. This lack of prominence and presence of landscaping to the northern and eastern boundaries would result in no harm to the significance of the aforementioned buildings as a designated heritage asset, in terms of their setting. In this respect, there would be no conflict with the relevant policies of the CS, the LP of the Framework insofar as the setting of listed buildings and the preservation of such heritage assets is concerned.

³ 6.1.10 of Strut and Parker Statement.

Area of Outstanding Natural Beauty

23. The surrounding rural area is typified by intricate patchworks of fields and hedgerows with wooded streams and lanes scattered with farm buildings and large country houses, including oast houses and ancient timber-framed Wealden hall houses. The visual prominence of Goudhurst and its dramatic hill top location makes it a particularly important landscape of the High Weald and the appeal site is an integral part of the open and wooded countryside setting that also contains areas of semi-improved grassland.
24. There are also a significant number of protected mature trees along its boundaries that are visible in short and longer views from Bedgebury Road. I found that in combination with the undeveloped nature of the site it has a strong connection to the open countryside and a rural character and appearance that positively contributes to the AONB.
25. This is also consistent with **the GKCAA which notes that the '*landscape in this area is generally one of undulating ridges and gentle valleys, lying between the North and South Downs*'**. Paragraph 1.19 goes on to say that the wider landscape setting is important to the character of both Goudhurst and Kilndown Conservation Areas, '*Goudhurst's visual prominence makes it a particularly important part of the landscape of the High Weald in this area*'.
26. At the local level, **the Council's Landscape Character Assessment 2011 ('LCA') identifies the character type as 'Fruit Belt' and the appeal site forms part of the 'Goudhurst Fruit Belt'**. This details the area as being '*intensively managed and intricate rural landscape of orchard, hop gardens and fields which are highly visible in views over undulating slopes of this high ridge, which climbs up from the Teise Valley*'.
27. Although the Council referred me to a revised version of the LCA, it is clear that this has not been adopted by the Council and I therefore attach limited weight to it. Nevertheless, insofar as the extract that was provided with is concerned, **it does demonstrate a continuing concern regarding Goudhurst's special and unique relationship with the topography of the High weald.**
28. I have also been provided with a Landscape and Visual Impact Appraisal⁴ ('LVIA'). **At the Hearing and prior to** the determination of the application, the **Council's Landscape and Biodiversity Officer** raised a number of concerns relating to the robustness and coverage of the LVIA. In particular that an outdated AONB Management Plan⁵ had been cited and that there is no consideration of the objectives of it. Furthermore, that there is a lack of any detailed consideration of the GKCAA, paragraphs 115 and 116 of the Framework and that the methodology and conclusions are unclear.
29. **I share the Council's concerns** in relation to the LVIA which I found somewhat confusing in terms of its categorisation of the effects of the proposal in landscape and visual terms. It also appears to omit important visual receptors such as the High Weald Landscape Trail and contains limited explanation of the methodology and scales used, for example, in not explaining the difference between a 'low effect' and an 'effect'.

⁴ Hilary Martin Integrated Design, December 2015.

⁵ 2nd Ed as opposed to 3rd Ed, March 2014 for period 2015-2019.

30. Nonetheless and despite the retention of a number of existing mature trees the encroachment of such an amount of development would, by reason of its elevated position and prominence, be at **odds with the designated area's** generally open and undeveloped character around this peripheral area of the settlement. Although the appellant contends that there is a natural boundary, **the 'squaring off' of the village in such an artificial manner would** detract from the organic evolution and qualities of the landscape character of this part of the AONB.
31. In visual terms, although the site is screened by vegetation this would not be the case all year round and whilst this would limit the presence of development from viewpoints further afield, in short terms views surrounding the appeal site there would be significant changes. Whilst additional planting is proposed this would take a substantial amount of time to grow and views would be filtered through the planting opposed to it providing a screen, in particular along the boundaries with Balcombes Hill and Tiddymotts Lane.
32. In the context of such a designated landscape, which is afforded the highest status of protection I find that the visual impacts would be harmful to the appreciation of this nationally and locally valued landscape in both short and to a much lesser degree, longer views.
33. I am mindful that the topography would limit some views as would the significant boundary landscaping. However, the Council also objects to the effect of the development upon unprotected trees surrounding the proposed buildings, particularly in terms of a post development pressure to fell or prune and the consequent effect upon the character and appearance of the area. The Council framed its second reason for refusal accordingly. The **Council's** concerns were expressed not only in terms that relate to the trees and the influence that they have upon the character and appearance of the locality but also in terms of the future living conditions of the residents of the houses proposed from shading.
34. I am conscious that any such request for tree works would require the formal consideration and consent of the Council and in such circumstances the Council would be required to assess the amenity value of the trees against the justification of the proposed works, whether felling or pruning.
35. Be that as it may, it was evident from my visit that the apartment block would be sited very close to the trees, encroaching under the canopies. In my experience this means that it would be highly likely that pressures for significant works to the trees would arise from future occupiers. I consider that it would be difficult for the Council to reasonably resist these works given the extent of the curtailment of the light that the trees would likely create.
36. I am mindful there would also be pressure due to other nuisance associated with the proximity of the trees to the apartment block, including falling debris. To my mind, any such works or removal would further diminish the visual contribution of the trees to the character and appearance of the area and increase the visibility of built form.
37. As a result there is a substantial risk and likelihood of further harmful change in the character and appearance of the site and area and how the natural beauty and nature of this part of the landscape is perceived. The LVIA also **acknowledges that appropriateness of development depends on an 'acceptance**

that the density, scale and pattern suit that particular part of the village'. For reasons already given above, I have found that not to be the case and the appellant's finding that the scheme would cause '*limited harm to the setting of the High Weald AONB*' somewhat underestimates the effect.

38. I am mindful that some of **the Council's concerns relate to the failure to satisfy** the tests set out in paragraph 116 of the Framework, given that they consider the proposal is for major development within the AONB. However, the site is visually contained, is in proximity of existing development and in this context I consider a development of the scale proposed and associated infrastructure would not amount to major development in the AONB. Paragraph 116 of the Framework is not therefore engaged.
39. Nevertheless, the proposal would fail to conserve or enhance the natural beauty of the AONB and the harm could not be overcome by the imposition of planning conditions for additional landscaping. Accordingly, the proposal would conflict with Policies 4 and 14 of the CS, Policies EN1 and EN25 of the LP and the LCA. When read as a whole, these require the locally distinctive sense of place, character and landscape value to be conserved and enhanced, that development should have a minimal impact on landscape character, no detrimental impact on the landscape setting of settlements and would not result in the loss of related spaces or trees that are important to the character of the landscape.
40. **Given the harm that would arise within the AONB and the 'great weight' to be** attached to conserving landscape and scenic beauty in AONBs, the proposal would also conflict with Paragraph 115 of the Framework.

Living conditions

41. Fairmead and Laurels is a pair of substantial semi-detached dwellings located immediately to the rear of where plots 20-22 are proposed. Having viewed both properties at the site visit it was evident that they had short rear gardens within close proximity of the boundary with the appeal site and sat on higher ground. The rear boundary with the appeal site was formed by a substantial hedgerow and fencing but from the upper floor windows of both properties the rear elevations of these plots would be conspicuous.
42. Despite a lack of any adopted standard to inform appropriate back to back distances, the Council suggested that the distance would be 19m, whereas the appellant contends it would be slightly more at 20m. Mr Kierley also contended that Policy EN1 only refers to significant harm to the residential amenities of adjoining occupiers in terms of privacy. To my mind, the term significant should be taken in its ordinary definition of being something which is sufficiently great or important to be worthy of attention.
43. Given the topography of the land there would be mutual overlooking between the properties in question. The additional landscaping proposed, in combination with the retention of the hedgerow along the boundary would partially mitigate overlooking from the first floor rear facing windows of plots 20-22 into the upper floor windows of Laurels and Fairmead. However, such landscaping would take a not insubstantial amount of time to mature to have any noticeable effect and may not be desirable to occupiers of both properties if it resulted in overshadowing and loss of light to rear gardens.

44. The windows in the rear first floor elevation and roof space of Laurels and Fairmead would directly overlook the rear private garden areas and because of the distance between them there would also be direct overlooking into the rear facing bedroom windows of plots 20-22. This would be sufficiently great to be noticeable by future occupiers and there would be a strong perception of being overlooked. Given that the occupiers of the plots could be reasonably expected to spend a significant amount of time within the properties, the proposal would result in a loss of privacy for future occupiers of those plots and to a lesser extent the occupiers of Laurels and Fairmead.
45. For these reasons, the proposal would cause sufficient harm to the living conditions of existing and future occupiers in terms of privacy to be regarded as significant for development plan purposes. Accordingly, the proposal would conflict with Policy EN1 of the LP insofar as it requires a proposal to not cause significant harm to the residential amenities of adjoining occupiers in terms of privacy.

Use class and affordable housing

46. If the Council is correct in its assertion that the proposed development would fall within the C3 Use Class (Dwelling Houses) then a substantial contribution to, or provision of, affordable housing units would be required. Both parties agreed that if this were the case there would be conflict with the development plan but if I were to find it was C2 (***Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses))***) then no such provision would be necessary.
47. The units would be occupied by persons aged over 65 years old who had been assessed as needing 1.5 hours per week care as a minimum. The appellant confirmed that it would be a requirement of the terms of occupation that occupiers had an assessment of their needs and that they would contract to pay for, and accept, the level of assessed care. Staff would be on call 24 hours a day and each unit would have an alarm system and the residents would be able to use the communal facilities in the apartment block. Although this would be restricted to a small lounge area and be of little practical use, I am mindful that the Use Classes Order does not require any communal facilities to be provided.
48. There are a large number of terms used to describe this type of provision including extra care housing, enhanced sheltered housing and assisted living and the Use Class in which they fall depends on the facts and circumstances of each case. I cannot imagine there would be many potential residents who were not in need of, or not anticipating being imminently in need of, at least a modicum of regular care. Moreover, reinforcement of the premises-specific culture of care and support would be effected by the terms of occupation based on minimum age and minimum take-up of care services (albeit limited in terms of hours).
49. Furthermore, the service charges are likely to be well beyond those that might reasonably be expected in non-institutional accommodation. The illusion of independent living would come through the physical self-containment and saleability (to qualifying occupiers) of the individual units, whereas the reality would probably be one of a tightly knit community unified by access to a dedicated enterprise of specialist care and security for the elderly.

50. I also see no reason why the location of care provision off site at Ticehurst is determinative, not least because this provides operational efficiencies whilst ensuring a dedicated responder service is available. Furthermore, in response **to the Council's concerns** the appellant clarified that it is his intention to recruit a local registered manager and to register the domiciliary care business with the Care Quality Commission or to identify a suitable local domiciliary care provider. The details of which could be secured by condition, as agreed by the parties.
51. These characteristics, when combined with the scope to secure them through the use of a planning condition (which was agreed by the parties during the course of the Hearing in light of the failure to agree the content and form a legal agreement) leads me to conclude that, on the evidence before me and in this particular case, the proposal is properly classified as within the C2 use class.
52. However desirable affordable housing might be as a matter of principle or, as put to me by the Council and interested persons at the Hearing, to be locally appropriate, I conclude that there is no requirement for the proposal to provide any and the lack of affordable housing in this case does not weigh against the proposal.

Highway safety

53. Local residents made a number of representations, both in writing before the Hearing and orally at the Hearing regarding concerns over highway safety. **These were generally in support of the Council's position, although they also** raised the question of hazards and safety at the junction of the A262 and Balcombes Hill.
54. Although vehicles were parked on one side of Balcombes Hill, close to the junction with the A262, there is no evidence before me of any particular highway safety issues associated with on-street parking or visibility in the locality. From my observations, which were taken during the early evening, vehicles approaching the junction were doing so predominantly at a low speed and I did not find that those cars leaving the junction had any particular problems with visibility in either direction.
55. I did not find that the existing low timber retaining wall and bank impeded visibility and I observed that the necessary visibility splays could be achieved without any significant alterations to the existing timber wall or bank. Although the Council and Mrs Parker, on behalf of Kent County Council as highway authority, raised concerns regarding whether such splays could be secured, the letter from 'asblaw' dated 4 October 2016 confirms that the appellant has sufficient rights over the land where the necessary visibility splay is required, to ensure it could be implemented.
56. The Council did not provide any substantive evidence to the contrary and I am therefore satisfied that insofar as visibility splays are concerned there is a clear prospect that the action in question would be performed within the time limit imposed by the permission and could therefore be secured by a Grampian condition, were I minded to allow the appeal.

57. Turning to access for future occupants, the footway running along the western side of Balcombes Hill was narrow and I heard from Mr Bates, a local resident, that the vegetation overhanging the footway is the subject of infrequent pruning and management. Although future occupants would be elderly that does not mean to say that they would necessarily be infirm or unable to traverse the short distance to services and facilities.
58. The proposal also includes provision of an extended footway to create an upgraded crossing point which would be a clear improvement to the existing situation. Future residents would have to cross the road again near to the junction with the A262 but this junction was wide and had good visibility. Furthermore, traffic speeds were low entering and exiting the junction and consequently this would not create an unacceptable safety issue for pedestrians.
59. Mrs Parker also confirmed that whilst not an adopted public right of way, access was possible through the GP surgery grounds to Back Lane. Whilst this may not be adopted it provides an alternative option, especially in inclement weather or during the winter months and no evidence was put to me to suggest such a route would be made unavailable in the future.
60. For these reasons and subject to conditions, the proposal would not cause harm to highway safety. It would not therefore conflict with Policy CP3 of the CS or Policies TP3 and TP4 of the LP which, when taken as a whole, require proposals to provide the necessary infrastructure, provide convenient and safe links to key destinations and to not harm highway safety. I find these policies consistent with the Framework and consequently, the proposal would not conflict with the Framework insofar as highway safety is concerned.

Other Matters

61. The submitted Unilateral Undertaking ('UU') aims to secure a financial contribution towards meeting the need for additional facilities and services arising from the development. The Council has justified the sum for the Libraries contribution which would be used towards additional book stocks required because of new borrowers. I consider that the measures in the UU are necessary, related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework.
62. The UU however is not signed and therefore it cannot be relied upon to secure the contribution. I explained at the Hearing that if this was a matter which I required to be resolved prior to making my decision, I would write to the parties. However, as I intend to dismiss the appeal for other reasons, I have not pursued this matter further as it would not have resulted in the appeal being allowed and would have caused the appellant further unnecessary expense.

Planning balance and conclusion

63. I am required to decide this appeal in accordance with the development plan, unless material considerations indicate otherwise. The starting point therefore is that the proposal would conflict with Policies 4, 5, 14 of the CS and Policies EN1, EN5, EN25 of the LP in terms of its effect on the GCA, the AONB and the

- living conditions of future and neighbouring occupiers. There is no dispute that these policies are consistent with the Framework. I share this view and afford them full weight.
64. However, there is also no dispute that the Council cannot demonstrate a five year supply of deliverable housing sites and that this was agreed as being 2.5 years supply. The Council also confirmed that the new Local Plan is at an early (Issues and Options) stage.
65. The Framework is a significant material consideration and because less than substantial harm has been identified to the significance of a designated heritage asset, before considering whether Paragraph 14 and the presumption in favour of sustainable development applies this harm should be weighed against the public benefits of the proposal.
66. The Planning Practice Guidance states that public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in Paragraph 7 of the Framework. Public benefits should flow from the proposed development and should be of a nature or scale to benefit the public at large and should not just be a private benefit.
67. The public benefits of the proposal and need for the development were helpfully set out by the appellant at the Hearing. The development would make a small but valuable contribution to the lack of supply and would bring forward housing for elderly residents with care needs. There is an increasing need for such accommodation locally and this has been acknowledged by the County Council. Given the extent of the shortfall I attach substantial weight to the proposal in terms of meeting such needs.
68. Construction would result in employment opportunities, and local spending, both during construction and thereafter by occupiers which would contribute to the local economy. The proposal would also result in the creation of 7.5 Full Time Equivalent jobs plus part time and associated positions such as maintenance, although an exact figure for the latter could not be confirmed. Paragraph 18 of the Framework makes it clear that the Government is committed to securing economic growth in order to create jobs and prosperity and in that context and given the scale of the proposal, these benefits weigh moderately in favour of it.
69. Taking everything together, the public benefits do not outweigh the considerable importance and weight that I give to the desirability of preserving or enhancing the character and appearance of the GCA.
70. Although in the context of a lack of a 5 year housing land supply both parties have referred me to the presumption in favour of sustainable development, in accordance with the requirements of Paragraph 14 and footnote 9 of the Framework, I have found that specific policies in the Framework indicate that development should be restricted⁶. As such, the presumption in favour of sustainable development does not apply.
71. For the reasons set out above, although there would be compliance with some aspects of the development plan, the proposal would conflict with the development plan, when read as a whole and the Framework. Material considerations do not indicate that a decision should be made other than in

⁶ Designated heritage assets and Area of Outstanding Natural Beauty.

accordance with the development plan and having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Adrian Kearley	Strutt and Parker
Mr Gary Reeve-Wing	Appellant
Mr M Bunyan RIBA	Carless & Adams Partnership
Ms S Davidson MSc IHBC	Heritage Collective
Mr Stephen Wadsworth	Landscape Collective
M Magee	Carless & Adams Partnership

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Marie Bolton	Tunbridge Wells Borough Council
Mr David Scully CMLI	Tunbridge Wells Borough Council
Mr Dan Docker	Tunbridge Wells Borough Council
Mrs Margaret Parker CMILT	Kent County Council
Mrs Debbie Maltby IHBC	Tunbridge Wells Borough Council
Mrs S Lewis	Tunbridge Wells Borough Council

INTERESTED PARTIES:

Mr Sean Gilder	Local resident
Mr Edward Bates	Local resident and CPRE
Mr Paul Woolwich	Local resident
Mr & Mrs J Shenton	Local residents
Mr David Bolton	Local resident

DOCUMENTS AND PLANS SUBMITTED AT THE HEARING

1. Current and historical Ordnance Survey mapping extracts.
2. Computer Generated Images - A-595/CGI 1 and A-595/CGI 2.



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.
-

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

Sandra Whittle	Local resident
Gwylie 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 Gwylie 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