



## Appeal Decision

Hearing Held on 8 and 9 June 2021

Site visit made on 10 June 2021

**by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23<sup>rd</sup> September 2021

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**Appeal Ref: APP/B1930/W/20/3259161**

**Chelford House, Coldharbour Lane, Harpenden AL5 4UN**

- 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 Jarvis Commercial Ltd and Porthaven No.3 Ltd against the decision of St Albans City & District Council.
  - The application Ref 5/19/1642, dated 24 June 2019, was refused by notice dated 10 March 2020.
  - The development proposed is the redevelopment including the demolition of the former Chelford House to a 63-bed care home (C2 Use Class), with amendments to access, parking, amenity space and associated infrastructure.
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### Decision

1. The appeal is allowed and planning permission is granted for the redevelopment including the demolition of the former Chelford House to a 63-bed care home (C2 Use Class), with amendments to access, parking, amenity space and associated infrastructure at Chelford House, Coldharbour Lane, Harpenden AL5 4UN in accordance with the terms of the application, Ref 5/19/1642, dated 24 June 2019, subject to the following conditions on the attached schedule A.

### Procedural Matters

2. A section 106 agreement dated 28 June 2021 concerns a travel plan and fire hydrants provision and contributions for public library facilities, travel plan evaluation and support. This seeks to address a Council reason for refusal of the proposal based on infrastructure matters. Additionally, a Unilateral Undertaking (UU) dated 24 June 2021 concerns the temporary provision of affordable care rooms with residents identified by the County Council. Such matters will be considered in the reasoning under obligations in this decision.
3. In 2011, an application for a Certificate of Lawfulness for A1 retail use for the premises was refused by the Council. Despite the time lapse since, there is a lack of supporting documentary evidence over the relevant time period to determine the lawfulness of the existing use. The relevance of this will be commented upon later in the decision, having regard to recent changes to the Town and Country Planning (Use Classes) Order (UCO) 1987.
4. On the 20 July 2021, a revised National Planning Policy Framework (the Framework) was published. Both main parties' chose not to submit any further correspondence on this matter.

## **Main Issues**

5. The main issues are (a) whether or not a non-B class use would be justified for the appeal premises, (b) the living conditions of the residents of the care home, having regard to outside amenity space provision, outlook, noise and disturbance, (c) the viability of neighbouring employment uses and (d) whether adequate capacity exists for public utility connections.

## **Reasons**

### *Local employment policy*

6. The appeal site comprises a commercial building which is occupied by a retail user specialising in soft furnishings. Within the site, there is also a permitted car wash alongside the building. Vehicular access is from Coldharbour Lane. Either side of the site, there are office and industrial buildings at 28-30 Coldharbour Lane and a newer, 'Waterside' office development. Opposite the site on Coldharbour Lane, there is substantial landscaping on an embankment and beyond this, the back gardens of residential properties. To the rear of the site, there is the River Lea and behind this, new office and residential developments. On Coldharbour Lane, there are further office and industrial buildings to the north of the site and Nos 28-30.
7. Coldharbour Lane is a designated employment area under the City and District of St Albans District Local Plan Review (LP) 1994 and the Harpenden Neighbourhood Plan (NP) (2018 -2033) 2018. The NP explanatory policy text states that the designated site is one of four that provide B class employment within the Harpenden area, with the exception of small offices in the town centre and indicates that their continued protection will ensure that the town retains a small but productive amount of employment floorspace. Within Coldharbour Lane, there is an Article 4 direction that prevents permitted changes of uses of business class buildings to dwelling houses, Class C3 use.
8. LP Policy 20 states that within this area, the Council will assess applications for housing as not acceptable and that B1 Use Class is the normally acceptable use. Given care homes are a form of housing, there would be a conflict with this LP policy. Under NP Policy ER2, a change of use to a non-B Class use within the employment area will not be supported unless it can be demonstrated that the premises are no longer suitable for business use or there is clear evidence that there is no prospect of a new commercial occupier being found.
9. The neighbouring building at 28-30 Coldharbour Lane is of similar age to the appeal building and given its industrial nature, has been assigned a 2-star CoStar rating under an Employment Needs Assessment (ENA)<sup>1</sup>. This denotes a property in need of significant refurbishment, having limited functionality and attracting low rent. The CoStar property rating system cannot rate the suitability of Chelford House due to its retail nature, but it is of a similar age and form which the ENA indicates denotes similar shortcomings.
10. The ENA identifies a considerable surplus of office and industrial floorspace within St Albans City and District Council area (SADCA) and a wider area, Primary Market Area (PMA), that covers the district and a number of neighbouring local planning authorities. Along with the Aitchison Raffety

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<sup>1</sup> Employment Needs Assessment, Chelford House, Harpenden, Savills, April 2021.

marketing report 2019 (ARMR), the ENA indicates that the Harpenden employment areas are considered to be of localised attraction, not as appealing as larger settlement locations in terms of location and quality. Both detail a steady decline in office/employment demand in this area and difficulties in marketing the neighbouring unit and that at Batford Mill in Harpenden, although both are now occupied.

11. Only one of the criteria in NP Policy ER2 has to be met but in applying the policy, both criteria focus on justification relating to the premises and in respect of whether there is a prospect of an occupier being found, the policy requires clear evidence.
12. In terms of suitability, there is no specific detailed evidence for the premises itself. Although not detailed, the ARMOR states the building is in reasonable repair. Not all new occupiers will find it essential to have high quality accommodation and there are other business users in the industrial estate making use of older style buildings. In terms of prospect of another user being found, the ENA evidence is generalised, and the indicated advertising does not refer to the appeal unit. Local policies encourage B1 use and therefore, there should be no impediment to the advertising of the premises, along with other focussed evidence on the prospect of an occupier being found for the unit.
13. The ENA details a viability analysis that shows site building demolition and redevelopment based on office or industrial use to be financially unviable. This viability analysis, based on professional guidance and national policy, and use of local comparative variables, including rent values, is comprehensive and the Council has also raised no objection to this analysis. Whilst this proves redevelopment for office and industrial on the site is unviable, it does not address whether the reuse of the building could not take place.
14. For all these reasons, the change of use of the site to a non-B Class use would conflict with LP Policy 20 and NP Policy ER2.

#### *Living conditions*

15. Outside amenity areas would be located around the new building, mainly adjacent to Coldharbour Lane, a hard surfaced area serving Nos 28-30 and the river. The areas would comprise smaller private terraces serving the ground floor units whilst the north west corner units would have balconies, as well as communal areas. Adjacent to the 'Waterside' development, there would be mainly vehicle parking, ambulance/transport drop off/pick up area, waste storage, access and collection area.
16. LP Policies 69 and 70 requires all development to be a high standard of design but neither policy sets area requirements for the provision of outside amenity areas. Although LP Policy 70 states that the size of private gardens should reflect the number of people, the range of activities and local residential character, the policy does not specifically deal with care home requirements.
17. The appellants' landscape design strategy details a series of themed landscaped spaces that, for example, relate to the river, people senses and horticulture. Through the implementation of a landscaping condition, outside areas could be attractively planted and laid out with areas for residents, to sit, relax and move around. Not all residents will be able to physically access the external space on a frequent basis due to age and mobility, but as part of the

- proposal, there would be shared lounge/dining areas, café, cinema and activity room within the building. Therefore, the extent of outside amenity area for residents would be acceptable given the nature of the proposal.
18. From the outside amenity areas and care home rooms, residents would view vehicle parking areas, both those serving Nos 28-30 and the care home itself, and road traffic on Coldharbour Lane. However, windows would be set back from the common boundary due to intervening areas of amenity space and the main communal sitting out area would be adjacent to the river. There would also be landscaping along the common boundary with the premises at Nos 28-30 and between the road and frontage of the care home, visually filtering out neighbouring built form and activity.
  19. The proposal would introduce a care home into a designated area for employment use. The neighbouring 'Waterside' development has two storey office uses above a ground floor used for parking whilst the other neighbouring unit at Nos 28-30 has a kitchen firm, architects' practice and temporary community foodbank. Local employment policy encourages B1 use for the industrial estate.
  20. Such uses would not generate significant levels of noise and disturbance through activities and operations, and in any case, care home residents would benefit from stimulus activity. At the hearing, the appellants detailed how noise and activity from outside would help the well-being of care home residents, especially those with dementia, because it gives them opportunities to observe daily activity in the wider world. Furthermore, the neighbouring units would not be of a larger enough size to generate excessive HGV movements, where significant noise and disturbance would be generated, and local employment policies do not encourage heavy industrial B2 Class uses for the area. The Council's Environmental Health Department (EHD) has raised no objections to the proposal subject to conditions seeking acceptable internal noise conditions.
  21. For all these reasons, the living conditions of the future residents would not be compromised, having regard to the provision of outdoor space and outlook, noise and disturbance, and there would be no conflict with LP Policies 69 and 70.

#### *Viability of neighbouring employment uses*

22. Paragraph 187 of the Framework states that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. The development would be of a high standard in terms of the provision of amenity space and outlook, and there would not be no detrimental impact arising from noise and disturbance generated by surrounding activities and operations. Along with the lack of objection from the Council's EHD, there has been no objections from neighbouring unit occupiers in the industrial estate. The occupiers of neighbouring units could change but LP Policy 20 encourages B1 Class uses and such uses by their definition can be located within residential areas without significant adverse effects.
23. In summary, there is no evidence to demonstrate that the operations and activities of neighbouring uses in the employment area would be adversely

affected. Given this, the proposal would not affect the viability of neighbouring and future employment uses within the industrial estate.

#### *Public utilities*

24. NP Policy SI11 states that major development proposals should be supported by robust evidence of capacity within the existing utilities network to accommodate the proposed development without a negative impact on existing residents and users. It also requires, where no confirmation has been provided by providers on capacity, that information on the impact studies of the extent, cost and timescale for any required upgrade works, and a commitment to work with relevant parties to secure those upgrade works be submitted.
25. Relevant utility companies have raised no objections in respect of the provision of foul, water and electricity services. Whilst there is no confirmation in respect of gas or broadband, the site is in existing use within an urban area and satisfying utility requirements would be essential for the developer to progress the scheme from a commercial point of view. Both the Council and appellants have accepted that a planning condition could satisfy policy requirements to overcome this issue. Accordingly, there are no grounds to object to public utility provision on capacity grounds, subject to a planning condition being imposed, and thus, the proposal would comply with NP Policy SI11.

#### *Obligation requirements*

26. LP Policy 143B requires development to make provision for infrastructure consequences. The s106 agreement provides contributions towards public library facilities, travel plan evaluation and support, and the provision of a travel plan and fire hydrants. The UU provides for up to seven bedrooms to be provided at a discounted rate for 24 months with the ability of the County Council to nominate potential residents for those affordable bedrooms.
27. A demand for the use of library facilities would be generated by residents of the care home and the library contribution has been calculated in accordance with a justified methodology under the Hertfordshire County Council's (HCC) Planning Obligations Toolkit 2008. It would be used to enhance the local library in Harpenden. Given the number of bedrooms, the care home would generate an amount of traffic requiring a travel plan under NP Policy T3 and this policy requires sustainable transport modes to be maximised to reduce pollution levels. HCC require a contribution sum for the evaluation, monitoring and ongoing support of the required travel plan, and has submitted supporting costings that are justified and reasonable.
28. Given the nature and scale of development, fire safety measures are required. Under the toolkit, the Fire and Rescue Service requires a water scheme to be submitted for approval that provides for the construction and maintenance of fire hydrants such that they are always suitable for use and eventual adoption by the Fire and Rescue Service. Under the obligation, any required hydrants are to be provided prior to occupation.
29. For all these reasons, these provisions and contributions would meet the statutory tests of the Community Infrastructure Regulations 2012 (as amended) and paragraph 57 of the Framework. In particular, the contributions are necessary to make the development acceptable in planning terms, directly

- related to the development and are fairly and reasonably related in scale and kind to it. The proposal would comply with LP Policy 143B and NP Policy T3.
30. In respect of affordable care home rooms under the UU, there is an unmet housing need, including care home accommodation within the area. There is need for affordable housing for all age and groups justifying the need for affordable care rooms. Furthermore, the South West Hertfordshire Local Housing Needs Assessment (LHNA) 2020 indicates local authority care homes are not being built and that it may be appropriate to continue to seek the provision of some affordable bedspaces within private developments to meet social care needs.
31. The County Council, the consultee on social provision of care home accommodation, has objected on the grounds of the quantity and affordability of the care rooms being provided under the UU. However, there are no planning policies or documentation before me stipulating the necessary requirements. Both LP Policy 7 and NP Policy H6 affordable housing requirement do not relate to the provision of affordable care home rooms. For all these reasons, all the evidence indicates a significant need for affordable care home rooms and the UU contributes to meeting the need, albeit on a small scale. Accordingly, the obligation would meet the tests set out previously and this would be a small benefit in favour of the proposal.

#### *Other matters*

##### *Housing supply and care home need*

32. The agreed position on housing supply is 2.4 years which is well below the requisite five-year supply and the latest Housing Delivery Test Result 2020 (published February 2021) is low at 63%. As part of housing supply, the Council includes care home accommodation developments using a ratio from the Housing Delivery Test Rulebook (HDTR). Based on this, the development would contribute towards much needed housing through the equivalent delivery of 35 dwellings, based on the HDTR. The development would deliver a range of specialist housing options for older people and would release currently occupied dwellings back into the housing stock.
33. LP Policy 62 and NP Policy H8 support care home accommodation in suitable locations. There are bed surpluses in neighbouring local planning authority areas but the LHNA identifies significant need for nursing home bedrooms within SADCA in the period up to 2036. The Carterwood Comprehensive Planning Needs Assessment (PNA) 2021 indicates that unmet need is even more acute if beds are defined as 'Market Standard' bed spaces, that include ensuite facilities.
34. Both the LHNA and PNA establish a rising demand for residential care in general, especially for specialist dementia care provided by the development, and even taking account of the lower need measurement of LHNA, the provision of 63 beds would make an important contribution towards meeting identified local need, and based on the information supplied, this would be likely within the next 3 years. Elderly people requiring care home accommodation are less able to wait than those in the general population needing accommodation because their needs are immediate. Accordingly, there is an urgency in meeting this unmet need and for all these reasons, significant weight is given to these housing and people care benefits.

35. In encouraging small community homes in suitable locations, LP Policy 62 requires homes to be dispersed within the community and not being located close to one another. Such criteria are not conflicted with here. NP Policy H8 supports specialist accommodation in sustainable locations, requires developments to be well integrated with communities and have safe and stimulating design. The proposal would be in sustainable transport location, especially with a travel plan, and the building and its external areas would be attractively designed and finished. The site's accessibility, care of residents from the area and local employment opportunities would ensure integration, and the development would be safe and stimulating in design.

*Alternative site assessment*

36. The Alternative Site Assessment (ASA)<sup>2</sup> has considered suitability, availability and achievability of other potential sites from a wide initial list which has been narrowed down. Significant areas of land within the identified market catchment area of the development site have been excluded but it is based on detailed search from multiple sources, including the Council's Strategic Housing Land Availability Assessment 2018, property websites and land agent enquiries, and takes into account planning constraints such as the Green Belt. Furthermore, the Council has not identified any other sites that could have been covered by the ASA.
37. Under the ASA, a key availability criterion is that sites can be developed within 3 years which is based on the appellants experience and need to meet an acute need. For suitability, a fixed plot size has been used which excludes smaller and larger sites. Smaller sites would necessitate less bedrooms or an additional fourth floor resulting in considerably greater building costs. Once operational, greater staffing costs would also be incurred because of the need for proportionately more staff due to more floors. For larger sites, negotiations with other parties would also inevitably delay the timeframe for development. The ASA's methodology does not follow the approach for assessing housing and economic land availability in Housing and Economic Land Availability section in the Planning Practice Guidance, but nor should it have to, as this relates to housing supply. Overall, the ASA is comprehensive, well-reached and demonstrates the difficulties of finding alternative sites which lends further weight in favour of the proposal.

*Employment and economy*

38. The proposed care home would generate 75 full time equivalent (FTE) employees in comparison with 18 FTE for the existing A1 occupier. In addition, the proposed care home provides a range of different job types, including higher grade management positions, care workers and ancillary staff, including catering and maintenance. The existing use of the site is A1 retail use whilst local employment policies encourage B1 business use, both of which fall within a new Class E. The appellants' Economic and Social Value Impact Assessment<sup>3</sup> demonstrates that the number of jobs that will be supported by the proposed development exceeds that supported by all other alternative uses under Class E and would represent a scenario with the potential to support the highest level

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<sup>2</sup> Alternative Site Assessment, Elderly Care home, Chelford House, Coldharbour Lane, Harpenden, Hertfordshire, AL5 4UN, Carterwood, March 2021.

<sup>3</sup> Economic and Social Value Impact Assessment, Chelford House, Harpenden, City & District of St Albans, Turley Associates, September 2020.

of employment for the site. Furthermore, the proposed development could generate an annual contribution of £4.4 million to the local economy.

39. The Council's South West Herts Economic Study (ES) Update (2019) has confirmed significant reduction in office and industrial floorspace over the last decade in the County. The Hertfordshire Local Partnership indicates that existing businesses are unable to expand due to the inability to find suitable floorspace. A local businessperson has objected that local premises are unavailable and that the Coldharbour Lane industrial estate has a high occupancy.
40. However, the ENA indicates that need for office and industrial land has been overestimated by the ES for the period 2018-2036 because of the influence of greater homeworking, even before the Corvid pandemic, higher employment floorspace densities, and use of a contingency allowance (safety margin). The latter results in inflated demand. The ENA indicates that the loss of the employment site would make little impact on the supply of employment land provision within the SADCA or wider PMA.
41. Indeed, the ratio of demand relative to office floorspace supply shows negative demand for the SADCA during the period 2020-2024 whilst the ratio for the PMA for the same period results in 15.2 years indicating considerable over supply. For industrial floorspace, the demand/ supply ratios are 11.8 and 9.3 years for SADCA and PMA for the same period which similarly indicates considerable over supply. Parties have agreed that Harpenden serves a localised demand, but the ENA details that nearby office and industrial clusters have currently substantial levels of available floorspace.
42. No substantiated evidence has been provided to support statements of shortage of business premises at the present time or challenge the conclusions of the ENS that postdates the ES. As a result, the ENA findings and the provision of the full time employment are more persuasive in demonstrating that the employment strategy of the LP and NP would not be adversely harmed though the redevelopment of this site.

#### *Other benefits*

43. For care home residents, there would be reduced loneliness through the provision of a care home with facilities and community interaction through community activities. In a well-designed and elderly friendly environment, there would be reduced falls. Together with the provision of beds reducing hospital bed blocking, this would generate cost savings to the NHS. Through implementation of an appropriate condition, there would be biodiversity improvements to the riverbank.

#### *Class E, flooding and drainage, highways*

44. The UCO changes have introduced a new Class E which permits greater flexibility for change of uses from A1 or B1 to non B1 uses contrary to the general aims and requirements of local employment policies. However, there is little evidence that this has occurred on a widespread basis and accordingly, such a consideration does not weigh in favour of the proposal.
45. The Environment Agency (EA) records show the site to be within fluvial Flood Zones 2 and 3 and Affinity Water (AW) details a nearby EA defined groundwater Source Protection Zone. However, the appellants more recent



flood modelling within a Flood Risk Assessment (FRA) show that most of the site is outside of the flood zones, the exception being small areas adjacent to the riverbank. The EA and the Lead Local Flood Authority have raised no objections to the FRA subject to conditions. Both the Council's EHD and AW have raised no objections to the proposal subject to appropriate conditions remedying any land contamination. On this basis, flooding and pollution concerns would be resolved though the imposition of planning conditions.

46. County Highways have raised no objection to the proposal, including in respect of vehicular and bicycle parking matters. There is no reason to disagree with their highway view in the absence of any contrary evidence. Cycle parking provision would be greater than that required by local transport policy. Although this policy is about 20 years old, such provision is acceptable given that the site's location within an area well served by walking and public transport.

### *Planning Balance*

47. Planning law requires applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework makes clear that the planning system should be genuinely plan-led.
48. Both employment and care home policies are central to the consideration of the proposal given its nature and location. However, there is a significant imbalance between employment and housing provision within the area. The Council has only 2.4 years housing land supply (HLS) and yet considerable office and industrial provision. To address housing supply, work has started on a new Local Plan 2020-2038 but this is at a very early stage limiting any weight to it.
49. Whilst the proposal would result in the loss of employment site for Class B uses, the proposal would not adversely affect the employment strategy of the LP and NP by reason of the overall supply of office and industrial floorspace within the SADCA and PMA. In terms of consistency with the Framework, both LP and NP policies are more restrictive than national policy in the Framework. Paragraph 81 of the Framework requires policies to create conditions in which businesses can invest, expand and adapt, but does not restrict this solely to B Class uses. As such, the weight to these policy conflicts should be reduced. Accordingly, greater weight should be given to the proposal's accordance with LP and NP care home policies than its conflicts with LP and NP employment policies and the proposal should comply with the development plan as a whole.
50. The tilted balance of paragraph 11. d) ii of the Framework would apply given the absence of 5 year HLS. The proposal would boost housing supply and address the needs of a group, elderly people, with a specific housing requirement in accordance with paragraph 60 of the Framework. A favourable decision here would not help a B class use to invest, expand and adapt but it would for a care home business that would employ people and provide financial benefits to the local economy. The Framework places significant weight on the need to support economic growth and productivity. As a result, the adverse impacts would not significantly and demonstrably outweigh the benefits of the proposal. The presumption in favour of sustainable development is a material consideration.

51. Even if I had concluded a departure from the development plan, the presumption in favour of sustainable development and other material considerations in favour are of sufficient weight to indicate that the decision should be taken otherwise than in accordance with the development plan and planning permission should be granted.
52. This proposal has been considered on its particular planning merits and therefore, this decision would not create a precedent for proposals elsewhere in the area, including instances where the harmful effects of proposals are not outweighed by their benefits.

### *Conditions*

53. Suggested conditions have been considered in light of the advice contained in Planning Practice Guidance. Some have been amended, shortened and amalgamated in the interests of clarity and precision taking into account the guidance. There are pre-commencement condition requirements for the approval of details where they are a pre-requisite to enable the development to be constructed. The appellants have agreed to these.
54. For the avoidance of uncertainty and to allow for applications for minor material amendments, a condition is necessary specifying the approved drawings. In the interests of character and appearance of the area, conditions are necessary to ensure satisfactory external building finishes, landscaping, management of the landscaping and the retention of existing trees and vegetation of merit. To protect and encourage biodiversity, conditions are necessary to require details of native planting and wildlife infrastructure and implementation of acceptable management. A condition is necessary to require details of utility connections to minimise disruption to relevant networks. Given the commercial use of the site, there is potential for contamination within the site and therefore, a planning condition is required to ensure any pollutants do not harm people, water resources and ecosystems.
55. To ensure acceptable drainage of the site, conditions are necessary to require the implementation of an acceptable surface water drainage and management plan. In the interests of highway safety, a condition detailing the implementation of a Construction Management Plan is required. To safeguard residents' living environment, conditions are necessary to demonstrate that appropriate noise levels can be maintained internally. To ensure acceptable vehicular parking and access, conditions are imposed to ensure that the development is implemented in accordance with relevant plans.

### **Conclusion**

56. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Jonathon Parsons*

INSPECTOR

## Schedule A

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1145PL-RDT-ZZ-XX-DR-A-0100 Rev PL1; 1145PL-RDT-ZZ-XX-DR-A-0101 Rev PL1; 1145PL-RDT-ZZ-GF-DR-A-0200 Rev PL1; 1145PL-RDT-ZZ-01-DR-A-0300 Rev PL1; 1145PL-RDT-ZZ-02-DR-A-0400 Rev PL1; 1145PL-RDT-ZZ-03-DR-A-0500 Rev PL1; 1145PL-RDT-ZZ-04-DR-A-0550 Rev PL1; 1145PL-RDT-ZZ-ZZ-DR-A-0600 Rev PL1; 1145PL-RDT-ZZ-ZZ-DR-A-0601 Rev PL1; 1145PL-RDT-ZZ-ZZ-DR-A-0602 Rev PL1 and 1145PL-RDT-ZZ-ZZ-DR-A-0603 Rev PL1.
- 3) No development shall take place above slab level until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No site clearance, preparatory work or development shall take place until a scheme for the protection of retained trees, including fencing, and appropriate working methods shall have been submitted to and approved in writing by the local planning authority. The approved scheme shall be strictly adhered to during the course of the works on the site. No unauthorised access or placement of goods, fuels or chemicals, soil or other materials shall take place inside the fenced tree protection area of the approved scheme.
- 5) No development shall take place above slab level until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority.

These details shall include:

- (a) schedules of plants noting species, plant supply sizes and proposed numbers/densities;
- (b) finished levels and contours;
- (c) boundary treatments/means of enclosure;
- (d) car parking layouts;
- (e) other vehicles and pedestrian access and circulation areas;
- (f) hard surfacing materials;
- (g) minor artefacts and structures, including furniture, refuse or other storage units, signs, and lighting);
- (h) proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc, indicating lines manholes, supports etc.);
- (i) retained historic landscape features and proposals for restoration where relevant;
- (j) existing trees to be retained;
- (k) existing hedgerows to be retained.

All hard and soft landscaping work shall be completed in full accordance with the approved details, prior to the first occupation of the development hereby permitted or in accordance with a programme agreed in writing with the local planning authority.

If within a period of five years from the date of the planting of any tree or plant, that tree or plant, or any tree or plant planted in replacement for it is removed, uprooted or destroyed or dies or becomes seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless otherwise the local planning authority gives its written consent to any variation. The tree or plant shall be planted within three months of felling/dying or if this period does not fall within the planting season by 31 January next.

- 6) No development shall commence above slab level until a biodiversity plan has been submitted to and approved in writing by the local planning authority. The plan shall include details of native planting and boxes for birds and bats. The biodiversity works shall be completed in full accordance with the approved details, prior to the first occupation of the development hereby permitted or in accordance with a programme agreed in writing with the local planning authority.
- 7) No development above slab level shall take place until a landscape and ecological management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens), shall be submitted to and approved in writing by the local planning authority.

The plan shall also include the following details:

- (a) details of any vegetation/trees to be cleared; associated ecological risks involved and suitable risk avoidance, such as timing of works;
- (b) how any invasive species found will be managed;
- (c) maintenance regimes;
- (d) any new habitat created on the site;
- (e) management responsibilities;
- (f) treatment of site boundaries and/or buffers around water bodies;
- (g) details of silt mitigation/management measures in preventing silt and debris entering the adjacent watercourse.

Following the first occupation of the development hereby permitted, the plan shall be carried out as approved, and any subsequent variations shall be agreed in writing by the local planning authority.

- 8) No development shall take place until a scheme has been submitted to and approved in writing by the local planning authority detailing the capacity and provision of existing utilities and proposed works to serve the proposed development and any necessary measures to safeguard existing residents and users of the utility network from disruption. Any required measures shall be carried out in accordance with the approved details when connections to relevant utilities are made.
- 9) No development shall commence until an assessment of the risks posed by any contamination within the site, including intrusive site investigation

as necessary, has been carried out, and the results have been submitted to and approved in writing by the local planning authority. The assessment shall include a survey of the extent, scale and nature of contamination and an assessment of the potential risks to human health, property (existing or proposed) including buildings, service lines and pipes, adjoining land, ground waters, surface waters, chalk groundwater table and ecological systems.

In the event that the assessment indicates that remediation is necessary, development shall not commence until a Remediation Statement has been submitted to and approved in writing by the local planning authority. The Remediation Statement shall include details of all works to be undertaken, proposed remediation objectives and criteria, a timetable for the carrying out of any necessary remediation works, and details of the verification or validation of those works. No part of the development hereby permitted shall be occupied until any necessary remediation scheme has been carried out and completed in accordance with the details thereby approved, and until any necessary verification or validation report has been submitted to and approved in writing by the local planning authority.

If any contamination is found during the course of construction of the approved development that was not previously identified, no further development shall take place until a scheme for the investigation and remediation of that contamination has been submitted to and approved in writing by the local planning authority. Any remediation works thereby approved shall be carried out and completed, and any necessary verification or validation report shall be submitted to and approved in writing by the local planning authority, before any part of the development is first occupied.

- 10) No development shall take place until a detailed surface water drainage and management plan for the site has been submitted to and approved in writing by the local planning authority. Such a plan shall be based on the Technical Note carried out by JBA Consulting, reference: 2018s0753 V2.0, dated: 17.01.2020 addendum to the previously submitted Flood Risk Assessment carried out by JBA Consulting, reference 2018s0753 version 4.0, dated February 2019.

The plan shall include;

- a) a detailed drainage plan including the location and provided volume of all SuDS features, pipe runs and discharge points into any storage features;
- b) detailed engineered drawings of the proposed SuDS features including cross section drawings, their size, volume, depth and any inlet and outlet features including any connecting pipe runs;
- c) appropriate SuDS management and treatment measures, such as permeable paving, rain gardens, bioretention planters etc. The aim should be to reduce the requirement for any underground storage;
- d) Provision of half drain down times less than 24 hours for proposed SuDS features;

- e) Detailed assessment of existing drainage system including CCTV survey to determine the full extent and details of the system including confirmation of the surface water and foul outfalls;
- f) Detailed management scheme setting out responsibilities, maintenance and adoption arrangements and any other arrangements to secure the operation of the scheme throughout its lifetime.

The approved scheme shall be fully implemented prior to the first occupation of the development hereby permitted.

- 11) No part of the development shall be occupied until a verification report for the implemented works, under the approved surface water drainage and management plan, has been submitted to and approved in writing by the local planning authority. The report shall be appended with substantiating evidence demonstrating the approved construction details and specifications have been implemented in accordance with the surface water drainage and management plan. It shall also include photographs of excavations and soil profiles/horizons, installation of any surface water structure (during construction and final make up) and control mechanism.
- 12) No development shall commence until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. Thereafter the construction of the development shall only be carried out in accordance with the approved CMP. The CMP shall include details of the:
  - (a) construction and storage compounds (including areas designated for car parking);
  - (b) siting and details of wheel washing facilities;
  - (c) cleaning of site entrances, site tracks and the adjacent public highway;
  - (d) timing of construction activities to avoid school pick up/drop off times;
  - (e) provision of sufficient on-site parking prior to the commencement of construction activities.
- 13) No development shall take place until full details, demonstrating that the internal noise levels for all habitable rooms within the care home shall comply with the internal noise level criteria set out in Table A and the requirement below it, has been submitted to and approved in writing by the local planning authority. The internal noise level criteria are to apply to all external noise sources including, but not limited to, traffic, industry and construction. The development shall thereafter be fully implemented in accordance with the agreed details prior to the first occupation and such agreed details shall thereafter be permanently retained.

**Table A**

Activity	Location	0700-2300 hours	2300 to 0700 hours
Resting	Living room	35 dB $L_{Aeq, 16 \text{ hour}}$	
Dining	Dining room/area	40 dB $L_{Aeq, 16 \text{ hour}}$	
Sleeping (daytime resting)	Bedroom	35 dB $L_{Aeq, 16 \text{ hour}}$	30 dB $L_{Aeq, 8 \text{ hour}}$

The  $L_{Amax,f}$  for night time noise in bedrooms should be below 45dBA.

- 14) Prior to the first occupation of the development hereby permitted, an acoustic report detailing the testing of noise levels in living rooms and bedrooms of all the flats, and the external amenity space has been submitted to and approved in writing by the local planning authority. Such a report shall demonstrate compliance with the internal noise level criteria contained within Table A and the requirement (below it) of the previous condition and be undertaken in accordance with standards set out within BS8233: 2014 Guidance on sound insulation and noise reduction for buildings (or in an equivalent British Standard if replaced). If the noise levels have not been achieved, the report shall detail what additional measures will be undertaken to ensure that they are achieved. These additional measures shall be implemented prior to the occupation of the building in accordance with the details so approved.
- 15) Prior to the first occupation of the development hereby permitted, vehicular parking, turning and loading/unloading shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved plans and retained thereafter available for that specific use.
- 16) Prior to the first occupation of the development hereby permitted, details of the construction of the vehicular access and associated kerb radii (shown on drawing number 19014/001 Rev B within Transport Statement, Milestone Transport Planning, May 2019) and arrangements for highway surface water disposal shall be submitted and approved in writing by the local planning authority. During the construction of the development hereby permitted, the access, kerb and drainage shall be completed in accordance with the approved details.

## **APPEARANCES**

### FOR THE APPELLANTS

Charles Banner QC	Keating Chambers
Mike Jones	Bidwells
Andy Williams	Define
Mark Powney	Savills
Robert Belcher	Carterwood
David Driscoll	Porthaven Care Homes Group
M Bashford	Chelford Fabrics

### FOR THE LOCAL PLANNING AUTHORITY

Shaun Greaves BA (Hons) DipURP MRTPI	Director GC Planning Partnership Ltd
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### DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

1. Appeal decision APP/B1740/W/20/3265937 Site of The Rise and Three Neighbouring Properties, Stanford Hill, Lymington, SO41 8DE PP.
2. Document titled Appendix H: Calculation of Travel Plan Evaluation and Support Contributions submitted 15 June 2021.
3. Head of Integrated Accommodation Commissioning & Workforce Development Adult Care Services comments on draft Unilateral Undertaking (setting out temporary provision of affordable homes) objection submitted 16 June 2021.
4. Unilateral Undertaking dated 24 June 2021.
5. Section 106 agreement dated 28 June 2021.
6. Agent response on the revised Framework dated 22 July 2021.
7. Local planning authority response on revised Framework dated 28 July 2021.