
Appeal Decision

Inquiry Held on 6-8 November 2018 and 29 January 2019

Site visit made on 9 November 2018

by Harold Stephens BA MPhil DipTP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 22 March 2019

Appeal Ref: APP/N1730/W/18/3199797

The Bailey, Branksomewood Road, Fleet GU51 4JU

- 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 Renaissance Retirement Ltd against the decision of Hart District Council.
 - The application Ref 17/00330/FUL, dated 9 February 2017, was refused by notice dated 21 November 2017.
 - The development proposed is demolition and redevelopment to form 14 sheltered apartments for the elderly, including communal facilities, access, car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for demolition and redevelopment to form 14 sheltered apartments for the elderly, including communal facilities, access, car parking and landscaping at The Bailey, Branksomewood Road, Fleet GU51 4JU in accordance with the terms of the application, Ref 17/00330/FUL, dated 9 February 2017, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. The application was supported by a number of reports and technical information including an Arboricultural Assessment and Method Statement, a Built Heritage Statement, an Extended Phase 1 Habitat Survey and Protected Species Surveys, a Design and Access Statement, a Drainage Strategy, a Planning Statement, a Supporting Consultation Statement, a Phase 1: Environmental Risk Assessment, a Phase 2: Site Investigation Report, Bat Activity Surveys and Mitigation Proposals for Protected Species and a Transport Statement.
3. The appeal takes place against the background of the change in the law brought about by the *People Over Wind* decision. The parties agree that it is for the Inspector to form a view as Competent Authority as to whether the appeal proposals for 14 retirement flats would or would not have an adverse effect on the Thames Basin Heaths Special Protection Area (SPA). In line with the current law that process involves an Appropriate Assessment here.

4. The parties agree that there are two components which enable the Inspector, subject to consultation with Natural England (NE), to conclude that the appeal proposals would not have any adverse effect on the SPA to the required standard of proof. They are:
 - (a) a contribution to the Strategic Access, Management and Monitoring project (‘the SAMM contribution’) and
 - (b) a mechanism for ensuring that the cumulative effects of the appeal proposals would be offset by access to a compliant area of Suitable Alternative Natural Greenspace (SANG).I return to both the SAMM and SANG contributions later in this decision.
5. A Revised Statement of Common Ground (Revised SoCG)¹ between the Appellant and Hart District Council (HDC) was agreed and has been signed by both parties. The Revised SoCG includes the following matters: (i) plans to be considered in the determination of the appeal, (ii) the planning policy background, (iii) the undisputed issues, (iv) the points at issue and (v) suggested conditions.
6. The main parties agreed the list of plans on which the appeal should be determined. These are set out at paragraph 2.2 of the Revised SoCG and there is no need for me to repeat that information here. Other plans including 4956/001Rev A (Visibility Splay), 4956/204 (Swept Path Analysis), 1822-1001 (Landscape Strategy), 16278 BT2 (Tree Protection Plan) and 16278-BT4 (Tree Protection Plan) were submitted for ‘illustrative’ purposes.

Main Issues

7. In the light of the above I consider the main issues are: -
 - The effect of the proposed development on the character and appearance of the North Fleet Conservation Area and its heritage significance;
 - The effect of the proposed development on the living conditions of the occupants of nearby properties with particular reference to overlooking and loss of privacy; and
 - The effect of the proposed development on the Thames Basin Heaths Special Protection Area (SPA).

Reasons

The proposed development and appeal site

8. The appeal site is located at the junction of Branksomewood Road and Church Grove within the built up area of Fleet. The site is a short distance from Fleet Town Centre with good access to shops and services. The appeal site is located within the North Fleet Conservation Area.
9. The appeal site has an area of about 0.29 hectares and is currently occupied by a detached three-storey (two storey with loft accommodation) dwelling and associated pool house and single storey outbuildings. The surrounding area is

¹ INQ3

primarily residential in nature comprising detached two-storey dwellings in the immediate vicinity and blocks of flats and terraced dwellings elsewhere and the Lismoyne Hotel immediately to the east of the site.

10. The appeal proposal relates to the demolition of the existing dwelling and the majority of the outbuildings, comprising two garages, a shed and a chicken pen and the redevelopment of the site to provide a detached three-storey building comprising 14 two-bedroom sheltered apartments for the elderly. In addition, a detached mobility scooter store building and a detached bin store building would be provided in the eastern corner of the site and an existing bunker would be retained and converted into a wine cellar. External materials would comprise red brickwork, slate effect roof tiles and painted render.
11. The scheme would provide 14 parking spaces, 10 of which would be housed within two detached buildings along the northeast boundary of the site. The development would use the existing vehicular access from Branksomewood Road and the existing pedestrian access to Church Grove would be retained. Communal gardens would be provided around the new building.
12. The proposed building would accommodate six two-bedroom flats at ground floor with a seating area by the entrance of the building, a plant room and a corridor. The first floor would also accommodate six two-bedroom flats (flat 9 is split level), a communal seating area and central core leading to the entrances of the flats. The third floor would accommodate two substantial two-bedroom flats, the living area of the split level flat 9, a communal seating area and central core. The staircase at this level would also provide access to a communal outdoor area at roof level.

Planning policy

13. For the purposes of this appeal the statutory development plan includes the following documents: (i) the saved policies of the Hart District Local Plan (Replacement) 1996-2006; (ii) the saved policies of the First Alteration to the Hart District Local Plan 1996-2006 and (iii) Policy NRM6: Thames Basin Heaths Special Protection Area of the South East Local Plan. The policies which are relevant to this appeal are listed at paragraph 3.2 of the Revised SoCG and are not repeated here.
14. Other relevant policy documents include the following:
 - North Fleet Conservation Area Character Appraisal and Management Proposals (2008)
 - Hart Five Year Housing Land Supply Position Statement (1 April 2018)
 - Housing Numbers and Spatial Strategy (August 2018)
 - The Hart, Rushmoor, and Surrey Heath Strategic Housing Market Assessment 2014-2032 (2016)
 - Updated criteria as agreed by the Joint Chief Executive in Consultation with the Portfolio Holder for Services 6 October 2017
 - Clarification of the Council's position with regard to access to Council owned or controlled SANG – 6 December 2018 Cabinet meeting Paper G and Minutes

- Thames Basin Heaths Delivery Framework
 - Thames Basin Heaths Interim Avoidance Strategy
15. The Council is in the course of preparing a new Local Plan – The Hart Local Plan Strategy and Sites 2016-2032. The Proposed Submission Version of this emerging Local Plan was submitted for examination on 18 June 2018. An examination was held from 29 November -13 December 2018. The emerging plan will guide development in the District up to 2032. The plan contains planning policies and site allocations, including where new housing and employment would take place in the Hart District up to 2032. Given the stage that the Plan has reached in the development plan process the emerging policies carry limited weight in the context of this appeal. The emerging Local Plan policies relevant to this case are listed at paragraph 3.5 of the Revised SoCG.
16. A Fleet Neighbourhood Plan is currently being prepared (FNP). The Draft FNP was published in March 2018 for a 6-week consultation. The public consultation exercise (Regulation 14) closed on 15 June 2018. Responses received as a result of the public consultation are being analysed to identify any potential modifications to the FNP. The Plan will then be submitted to Hart District Council for a further period of consultation followed by examination by an independent Examiner. There is no date yet for the FNP to be submitted to Hart District Council for the public consultation exercise (Regulation 16). Whilst the FNP is important to local people it is still in its early stages so the weight that can be attributed to it is limited.

First Issue – Character and Appearance of the Conservation Area

17. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. Paragraph 193 of the NPPF 2019 states 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 (and the more important the asset the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
18. The appeal site is located within the settlement boundary of Fleet and is also located within the North Fleet Conservation Area which was designated in 1987. The Council adopted the North Fleet Conservation Area Character Appraisal and Management Proposals (NFCAA) in December 2008. This document identifies the key characteristics of the Conservation Area and divides the area into 8 character sub areas, of which the appeal site is in Character Area 3: Victoria Hill Road, Branksomewood Road, Church Grove and Church Road (south).
19. The NFCAA tells us that the topography is generally flat, with a notable change created by a steep hill to the east of Reading Road North. Within the Conservation Area there is a prevailing residential character, either in a grid pattern at its south-western extent, or along gently curving roads at its north-eastern extent. Buildings predominantly date between 1890-1922, with several streets not being completed until the 1930s. The NFCAA records that there is an abundance of trees and mature shrubbery and buildings are detached family houses, generally of two storeys in height, domestic scale, often hidden from

view by planting and set in spacious plots resulting in lower densities. The key positive characteristics of the Conservation Area are summarised at paragraph 1.2 of the NFCAA.

20. I consider the significance of the Conservation Area derives from its enclosed nature reflecting the fact that it is a heavily treed and verdant area of housing with buildings usually hidden in whole or in part. The predominant built form is residential – large, sometimes in flatted blocks - which has developed in phases. The road system and the grid are highly perceptible, but the plots are not homogenous. Whilst most of the plots are relatively substantial, they vary in size considerably, as therefore does the amount of open space around them. The buildings are 2-3 storeys in height, set back from the street behind mature trees and other planting. It is this sylvan quality, allied to some unmade roads, grass verges and (in places) undulating topography which gives the Conservation Area its special character. While there are varying architectural styles from successive phases of development, there is a general appliance of features and detailing associated with the interwar period.
21. Paragraph 6.1 of the NFCAA identifies the key characteristics of Character Area 3:
- Location close to the town centre, so parts of this Character Area are more urban than rural;
 - Incorporates part of H W Brake’s grid pattern layout;
 - Contains a high proportion of pre-1900 buildings, ranging from modest cottages in Victoria Road to some of the largest buildings in the Conservation Area such as All Saints Church and Lismoyne Hotel (built in the 1880s and converted into a hotel in 1932);
 - Churchyard is an attractive open space, one of only two such spaces in the Conservation Area;
 - Victoria Road and Branksomewood Road are both wide, straight streets with fewer trees in general;
 - Northern section of Church Road is more typical of the Conservation Area as a whole with the curve of the road around the former site of Peatmoor being of special note;
 - Trees on boundaries and in gardens providing the skyline.
22. This character area incorporates part of the grid pattern by H W Brake and there is a high proportion of late 19th century buildings that range from modest single storey cottages to larger scale detached villas. Materials are typically red or brown brick elevations, casement windows and clay tiled hipped roofs. However, the character of the area is mixed with a wide range of buildings from the second half of the 20th century. Looking along Branksomewood Road the intensity of the tree and vegetation cover masks the buildings to varying degrees thus generally permitting glimpses only through this vegetation. It is noteworthy that more recent developments here include Silverwood Court which is a 3 storey elderly persons development; next to it, Orchard Fields also comprises 3 storey apartments but set far back at the head of a gated cul de sac flanked by a pair of Lodges. Both of these developments lie within the Conservation Area. As does Lefroy Park which is a 2 and 3 storey development of apartments on the opposite side of the road. I consider these developments are viewed as integral elements in this part of the Conservation Area. The Bailey is not identified in the NFCAA as making a positive contribution to the Conservation Area, nor is it locally listed on the basis of such a role.

23. Turning in more detail to The Bailey, the appeal site contains a substantial two storey detached dwelling dating to the interwar period (c.1938) in a secluded plot at the junction of Church Grove and Branksomewood Road. The building is set well back from the street scene with spacious front and rear gardens which contain dense tree planting. Defining the western and southern site boundaries is a high red brick wall, the former fronting directly onto Church Grove. The building is constructed of brown brick elevations with casement windows and steeply pitched tiled hipped roof with three hipped roof dormers and prominent brick stacks. The main elevation faces north east, away from Branksomewood Road, where the existing drive and turning area are located. A later extension and pool house to the west was approved in 1992, which is constructed in a similar style of brown brick with a hipped roof.
24. The Council, supported by Bell Cornwell LLP and local residents, argues that the property is a significant building and a non-designated heritage asset within the Conservation Area indicating that the architectural features of the house are of merit and archetypal of the type and style of dwelling of the 1930's period. It claims that the features and characteristics of the building take cues from the arts and crafts tradition with good quality brick cladding steeply pitched tiled roofs and a symmetrical front elevation enlivened by an arched porch. Mention is made of the two somewhat grand chimney stacks which project from each side of the hipped roof and to the single storey orangery on the rear elevation at ground floor with parapet wall roof detail and full height arched 'French' doors. Further, it claims that the building together with its neighbours, forms part of a discrete group whose character contributes positively to the character and appearance of the Conservation Area. It states that the building maintains a high degree of integrity and remains relatively unaltered. I disagree.
25. In my view the building is a pleasant building, but it is not a particularly noteworthy example of its time. It is a perfectly fair building of the 1930's but it is not a Listed Building nor is it of 'listable' quality. Architecturally it is relatively plain and has been altered in key ways: (i) very substantial and intrusive dormers have been inserted which are visible from the street (ii) the original windows have been removed and replaced with ill-suited modern ones and (iii) a pool house has been added on to the house, affecting its symmetry and the way it addresses the space around it; the pool house is not insubstantial and has a highly visible hipped roof.
26. English Heritage's Guidance 'Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment' (2008) outlines the organisation's approach to the sustainable management of the historic environment. The guidance describes a range of heritage values being *evidential, historical, aesthetic and communal*. The definition pre-dates the definition of significance set out in the NPPF 2019 but remains relevant in current guidance.
27. The NPPF 2019 defines significance in Annex 2: Glossary as: '*The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.*'
28. The Council highlights that the property is the work of a highly regarded local architect, Arthur Stedman. The evidence suggests that the builders of The

Bailey were a local Fleet building company called Mardles and Co.² Drawings of the building by Arthur Stedman indicate that the property was designed for Col Edward Ogilvie. It is argued that the property was built for a local person of some note by a local architect. It is said that the property is a key example of the final stage of Stedman's career that helps to illustrate "an important transition in British architecture from a pre-modern to a modern era."

29. However, I consider that none of the persons associated with the dwelling can really be claimed to be of high value. The apparent builders `Mardles`, the architect Stedman and the owner Col Edward Ogilvie are not national or regional figures. It is difficult to elevate their status beyond the purely local. As the Stedman Blower letter says, the "ordinary architects of any local community are too often lost to history" – but that is because they are ordinary. Otherwise we would prevent current and future needs being met on the basis that something rather ordinary from the past should be preserved. It is noteworthy that the reference in the letter to Mr Stedman's golden period is plainly a reference to a period of successful business, after the post WW1 slump, rather than a purported aesthetic judgment. The fact that this was a relatively old-fashioned house designed by an architect whose work would "find no place in 1950's Britain" does not make it special even locally.
30. With regard to the appeal site, its contribution to the above values and significance of the Conservation Area is limited to the *aesthetic* and *evidential* value of the tall boundary wall and established vegetation to Branksomewood Road and Church Grove. The house, even if unaltered would have been of low aesthetic value. Its alterations and extensions have eroded this value further to the point that it no longer makes any material contribution to the significance of the Conservation Area. The contribution made by the house to the Conservation Area lies in its built presence, as a significant red brick residential form, nestling in the mature vegetation and behind a fine boundary wall which I note from the historic map progression was a survivor of Lismoyne's boundary wall.
31. There was some discussion at the Inquiry as to whether evidence should have been presented in relation to the reuse of The Bailey itself. However, there is no policy justification that would support such an approach. It is not a designated heritage asset and paragraph 196 of the NPPF 2019 does not apply to it. It is self-evidently too small for the use proposed and beyond that the suggestion has no force whatever.
32. The character of the sub area more widely is similar to that in the Conservation Area with perhaps a little more variety in terms of large flatted blocks some of which are much larger than the appeal proposal. Again, the overall character and appearance is of a verdant, suburban area, populated with houses, some blocks of flats and the odd other use such as the Lismoyne Hotel.
33. Turning to the impact of the proposal it is clear to me from the Design and Access Statement and the appeal drawings that the proposed building is a good contextual design which meets the operational requirements of a specialist scheme – single building, level floors, areas for community activities and socialisation, a modest but high quality garden and limited on-site parking. It would also fit in with the surroundings:
 - Its overall height is not dissimilar to the prevailing heights in the area and

² LPA1

the massing follows the established local principle of two storey buildings with pitched roofs over. The roof space would be used in a unique way and the three storey elements would add architectural interest and break the perceived massing.

- Its primary scale would be larger than most if not all of the family housing in the immediate area of the site, though obviously not of the Lismoyne Hotel, which also lies in close proximity; however, that primary scale is sensitively handled – the way the built form would be disposed on the site would prevent any views of the entire building. There would be a series or sequence of glimpsed and clearer views of parts of the building. This is entirely in keeping with the area as it exists.
 - The effect of those views would be contextual – a large building, with tiled pitched roofs and pronounced gables, set in a large plot with mature landscaping masking it from some directions and allowing partial views from others. Again, that is the way the existing houses in the area are perceived.
34. In my view the proposed development would be a very high quality building that would meet the needs of a sub-set of the community. The architectural quality of the overall composition and what it would lend outside the site would be marginally improved.
35. Turning to the heritage aspect of this issue, Mr Clemons accepted in cross examination that the scheme would lead to: (i) the loss of a family house; (ii) a density in excess of 17dph, and (iii) the loss of an original building with local associations. Whilst these points are acknowledged, they make little difference to the Conservation Area overall or in this sub-area that the large family house would be replaced by a flatted scheme. The forms of the building have been expressed contextually – gables, bays, window sizes. There is nothing which would be incongruent in the residential context.
36. The Council points out that the proposed density would increase to 48.3 dph but density is not the only factor to be considered when assessing the impact of a proposal. I note that the amount of space around the building would be similar to the amount of space around existing buildings in the immediate area, and there would in public views exist a palpable sense of space around the building. This is important because the way the appeal building is disposed on the site, particularly in relation to the mature landscaping and the roads, means that one would not have the opportunity to see the entire building. I consider that the building would be set comfortably within the plot with a tall mature tree screen. Although the proposed building would have a larger footprint than the existing building it is sized proportionately to the size and shape of the plot which I note is significantly larger than surrounding residential plots.
37. The principal architectural interest and aesthetic value in the Conservation Area is contained within its earliest buildings, those that are listed and those of the late 19th and early 20th centuries. The appeal property does not date from the early 20th century but from the interwar period. There have been sufficient alterations and extensions to the original house and the site which have reduced its intrinsic and local contextual value. The alterations and extensions have eroded the aesthetic and evidential value so that the appeal site no longer makes any material contribution to the significance of the Conservation Area.

38. Drawing all of these threads together a number of points can be made. The grid, sense of enclosure and trees, residential character, contribution of the boundary wall, glimpses and views of a substantial red-brick residential building with gables and tiled roof, would all stay the same. Instead of The Bailey, there would be the appeal scheme, meeting the needs of the 21st century in a carefully-considered way within the Conservation Area. The overall effect of the building would not be different in type; the change in terms of degree would also be relatively limited. It would not be a markedly taller or more prominent building jarring into the public domain; it would be a well-mannered residential component framed in mature landscaping and with a tall boundary wall.
39. There is nothing in the NFAA which would be markedly changed or harmed. The statutory duty under Section 72 (1) of the 1990 LBCA Act would be discharged – there would be no harm to which to give “significant importance and weight”. The site’s contribution to the significance of the Conservation Area is limited to the high boundary wall and the established vegetation. The appeal proposals would retain these features and therefore maintain the contribution that the site makes to the significance of the Conservation Area.
40. The existing building does not contain any significant *evidential* value or *communal* value so there would be no loss of value to the Conservation Area in terms of these components. The site’s *historical* value is restricted to being part of the original grid layout by Brake, illustrated most clearly by the boundary features, which would be unaffected by the proposal. The site’s contribution to the *aesthetic* value of the Conservation Area is the high boundary wall and established vegetation, re-enforcing the arcadian appearance of the area. The new building would maintain that arcadian character. The contribution that the development would make to the *aesthetic* value of the Conservation Area would be increased.
41. I conclude on the first issue that there would be no harm caused to the character and appearance of the North Fleet Conservation Area and its heritage significance as a result of the appeal proposals. The proposals would as a minimum ‘preserve’ the character and appearance of the Conservation Area. Indeed, my view is that the proposals would enhance it. Whilst the proposal would not accord with guideline density figure in Policy URB18(iii) it would accord with the requirements of Policy GEN4 and Policy CON13 of the Hart District Local Plan, together with Policy NBE 9 of the emerging Local Plan, Section 72 (1) of the LBCA Act 1990 and the NPPF 2019.

Second Issue - Effect on living conditions of nearby occupants

42. The Council argues that the proposed development would result in a material loss of amenity for the occupiers of three nearby properties comprising Branksome House, Kilfinnan and Woodmancote through overlooking and loss of privacy. The Council’s evidence in this regard is echoed by the neighbouring residents themselves.³ It is not the Council’s case that there should be no overlooking between the proposed development and nearby properties but that the level of change would not be acceptable.
43. At my site visit I was able to see at first hand the relationships between the proposed development and the nearby properties. I accept that the residential

³ Written representations produced on their behalf by Bell Cornwell LLP, July 2018

use of the appeal site would intensify, that there would be an increase from a single household using the building to 14 households and that the future occupiers of the building would pass through the communal parts more frequently. Nevertheless, I cannot agree that there would be a material loss of amenity for occupiers of the aforementioned dwellings for the following reasons.

44. Firstly, it is noteworthy that there are no adopted standards in Hart District which the Council alleges would be broken by the scheme. Secondly, there is an established rule of thumb which is often employed by LPAs which identifies a set off distance of 21m between residential buildings as a benchmark for acceptability. The rule of thumb was detailed by the case officer in his recommendation to the Committee. It does not take into account site specific features, including boundary treatments, line of sights and existing separation distances. All of these factors culminate in further mitigation in addition to the separation distances alone.
45. Thirdly, the assessment by the case officer at the application stage was that the relationships were acceptable, and all of the properties would be located in excess of 21m from the proposed new building, with the exception of Branksome House. However, this dwelling would be orientated obliquely to the new development and would be effectively screened from view by existing trees within the appeal site which are indicated to be retained and are subject to protection due to their location within a conservation area.
46. Fourthly, as for Kilfinnan, the atrium of the proposed building would lie some 27 metres away⁴, with further distance to any position within the building at an elevated level. There would be obscuring of glass in the windows on the first and second floors facing Kilfinnan and the terrace access would be removed. Mature vegetation on Kilfinnan's side of the boundary would also filter any views.
47. Fifthly, Woodmancote lies 25 metres away at its nearest point from the corner of the proposed building. There is a high hedge, some trees and the boundary wall between the two properties, and due to the position of Woodmancote there are large areas of its garden which are screened from the appeal site by the house itself. I accept that Branksome House is closer, at 17m to the nearest corner, but as already noted the oblique orientation of the building means that there are ample opportunities for screening and the impact is relatively small.
48. Overall there would be no harmful overlooking or loss of privacy such as to warrant planning permission being withheld. The site lies in a residential area where a degree of intervisibility is entirely normal and should not be thought of as harmful. The specialist elderly accommodation proposed is a good neighbour in terms of noise and low car movements. On the second issue I conclude that the proposed development would not give rise to adverse impacts on the living conditions of the occupants of nearby properties, with particular reference to overlooking and loss of privacy and therefore it accords with Policy GEN1(iii) and URB12 (iv) of the Hart District Council Local Plan and Policy NBE10 of the emerging Local Plan.

Third Issue – Effect on Thames Basin Heaths SPA - Habitats Regulations Assessment

⁴ See plan showing distances of proposed building to neighbouring properties in question at page 47 of Mr McFarlane's proof of evidence

Assessment of Likely Significant Effects

49. The appeal site is located in proximity to the Thames Basin Heaths Special Protection Area (SPA), within the 5 kms SPA Buffer Zone but outside of the 400m inner 'exclusion zone' identified within the Hart District Local Plan. The SPA is designated in accordance with the Habitats Directive as transposed in the UK by the Conservation of Habitats and Species Regulations 2017. The SPA comprises a network of heathland sites which support internationally important numbers of bird species including woodlark, nightjar and Dartford warbler. These birds are particularly vulnerable to disturbance impacts from walkers, dog walkers and cat predation as they nest on or near the ground.
50. The conservation objectives for the SPA are to 'Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring the extent and distribution of the habitats of the qualifying features; the structure and function of the habitats of the qualifying features; the supporting processes on which the habitats of the qualifying features rely; the population of each of the qualifying features, and, the distribution of the qualifying features within the site.' I have had regard to these objectives in undertaking my duties in accordance with the Conservation of Habitats and Species Regulations 2017.
51. The characteristics of the proposed development coupled with its proximity to the SPA present an increased risk of disturbance to its qualifying features. This risk is due to increased visitor pressure arising from the increase in residents on the appeal site (21) and likely increase in dog ownership (0.5). There was not considered to be any other likely significant effects on the SPA from the appeal proposal. It is acknowledged that without mitigation the proposals present a likely significant effect, particularly when the impacts are considered in-combination with other developments located between the 400m and 5kms Buffer Zones to the SPA. Therefore, the information provided with the appeal demonstrates that it is not possible to conclude that the development would not have a likely significant effect on the SPA. This is a position also agreed with the parties to the appeal. As a consequence, it is necessary for me to undertake an Appropriate Assessment (AA).

Appropriate Assessment

52. This AA is necessary to comply with Regulation 63 (1) of the Conservation of Habitats and Species Regulations 2017. It is accepted by the parties that the characteristics of the proposed development coupled with the proximity to the SPA present a likely significant effect in-combination to its qualifying features. The parties also agree that an appropriate Avoidance Strategy which involves the provision of Suitable Alternative Natural Greenspace (SANG) and a financial contribution towards the SPA wide Strategic Access Management and Monitoring (SAMM) project would be necessary and sufficient to address the impacts from the proposed development.
53. It is understood that the SANG would be provided at Bramshot Farm Country Park, which has a 43 vehicle space car park with access from Bramshot Lane and is about 3kms from the appeal site. Bramshot Farm Country Park provides

some 36.83 hectares of informal grassland and woodland for dog walking and outdoor activities. The access required to the Council's own area of SANG at Bramshot Farm falls outside the ambit of CIL Regulations. The Council has resolved to govern access to the SANG by means of a Land Transaction under its general Local Government powers. Its Cabinet decision of the 6 December 2018 clarified the applicable criteria which it will employ to allow access to the SANG where the development proposal has been determined on appeal to be acceptable save for the absence of SANG provision. In this case the Appellant is willing to enter into a Land Transaction agreement in respect of a SANG contribution of £134,416.80.

54. The SAMM contribution has also been agreed, consisting of £9,352 and is dealt with by means of a Section 106 Planning Obligation⁵. The Council does not include SAMM provision within its definition of 'infrastructure' and therefore the pooling restrictions do not apply here. In my view, all the provisions set out in the Planning Obligation are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests set out in CIL Regulations 122 and 123 and should be taken into account in the decision. The Planning Obligation is signed and dated 29 January 2019 and is a material consideration in this case.
55. I consider that the proposed SANG and SAMM mitigation is likely to be effective, especially given that a visitor survey of the Thames Basin Heaths SPA carried out in 2012 found no evidence of change in visitor numbers since a similar visitor survey was undertaken in 2005 despite a significant increase in the local population. As SANG was specifically designed to persuade visitors away from the SPA, SANG would appear likely to be the main cause of visitor numbers apparently not increasing between the visitor surveys. It is reasonable to conclude that SANG is effective as mitigation and dwellings consented within 5kms of the Thames Basin Heaths SPA with accompanying SANG are not resulting in an increased number of visitors to the SPA. I consider the amount of SANG proposed in this case is more than adequate to mitigate for the expected contribution of the proposal to the combined visitor pressure impact on the integrity of the SPA.
56. The parties agree that the Inspector as Competent Authority can and should in this case find that development proposals would accord with the Habitats Directive and the Habitats Regulations on the basis that: (i) a Grampian style condition is imposed on the grant of permission which would restrict commencement of the appeal development unless and until the Appellant has secured access to the Bramshot Farm SANG by entering into a Land Transaction agreement in the form attached at APP7 and (ii) the SAMM payment is made.
57. The parties recognise that it is exceptional to use a Grampian style condition in this context. However, in the unusual circumstances of this appeal, they agree that there would be no legal bar to use a condition in this way and the general advice in the PPG would not be offended. The Council considers that at 29 January 2019 there exists sufficient capacity at Bramshot Farm to mitigate any harm from the appeal proposals. In this case I have found that the appeal scheme is otherwise acceptable (by reference to the first two issues) were it not

⁵ APP7

for the absence of SANG provision and therefore it is appropriate to consult Natural England accordingly.

58. On 8 February 2019 a consultation with Natural England was undertaken in accordance with the Habitats Regulations. The response from Natural England confirms its opinion that the proposed SANG mitigation secured by a Section 106 Planning Obligation is acceptable. Natural England also confirms that subject to the Grampian style condition being enforced that the SANG mitigation, secured by the Land Transaction agreement, is also acceptable to address the anticipated effects of the development. This response is consistent with Natural England's earlier consultation response provided for the appeal, in which it is stated that its objection would be removed if a SANG solution was found.
59. Natural England states that it would like to see that occupation of the development is prevented until such time that the SANG is opened to the public. However, the agreed condition⁶ is more restrictive than 'prior occupation' and the wording prevents 'commencement' of the development. Moreover, the SANG in question has already been opened to the public and is operational. I consider this provides absolute certainty that the SANG mitigation would be secured long before occupation.
60. Having had regard to the views of Natural England and taking into account that I have found all other matters to be acceptable (by reference to the first two issues) I am content that with the necessary and sufficient measures secured the proposed development would not adversely affect the integrity of the European Site and its relevant features. Natural England also confirms that it is content that the mechanisms in place to secure monies collected through the Land Transaction and the Community Infrastructure Levy (CIL) are adequate to secure the deliverability of the measures. Given that this mechanism is monitored by Natural England I have no reason to take a different view.
61. I am also satisfied on the following matters. Firstly, that relying on the Grampian style condition in these circumstances would be lawful. The tests for legality of conditions – that they are necessary, related to planning and to the development proposal, and otherwise reasonable – are all met. Secondly, there is agreement over the SANG contribution and it is dealt with lawfully by the Section 106 Planning Obligation and lies outside the CIL infrastructure list. Thirdly, there is an identified, prepared, Council-owned SANG at Bramshot Farm, to which the Council has confirmed it will permit access for mitigation purposes if permission is to be granted by the Inspector; the mechanism for securing access is set out in adopted policy by the Council and involves a Land Transaction outside the planning system (under the Local Government Act). Fourthly, the form of that transaction has been used by the Council before, and there are no technical impediments to it being used in this case. Fifthly, the Council is content that if the Inspector indicates that permission is otherwise likely to be granted on the appeal, then it would execute the Land Transaction; the Appellant is able and willing to pay the amount that the Council seeks and undertakes to pay it.
62. Finally, there is no evidence to suggest that the capacity (for nearly 10 times the number of units involved here) which exists at Bramshot Farm, is likely to

⁶ Condition 12

vanish before the transaction takes place, the condition would therefore enable the SANG mitigation to take place and ensure that the development does not affect the SANG and finally the condition proposed would ensure that the proposal would not give rise to adverse effects to the integrity of the SPA.

63. For all of these reasons therefore I am satisfied that the mitigation described above can be appropriately secured and that it would be sufficient to prevent harmful effects on the integrity and interest features of the Thames Basin Heaths SPA so there would be no conflict with the Habitats Directive and the Habitats Regulations. Moreover, there would be no conflict with Policies CON1 and CON2 of the Hart District Local Plan or Policy NRM6 of the South East Plan.

Other Matters

64. I have taken into account all other matters raised including the representations from interested persons and the statement prepared by Bell Cornwell LLP on behalf of neighbouring residents. The proposed development has generated a significant amount of public interest and many of the representations which have been submitted relate to the impact on the North Fleet Conservation Area and privacy issues which I have dealt with under the main issues.
65. Concern has been expressed about the lack of need for retirement housing. However, it has been agreed in the Revised SoCG at paragraphs 4.1-4.6 that there is a need for retirement housing within the District.⁷ There has been a significant under delivery of sheltered housing and the proposal would free up under occupied housing elsewhere in the District.
66. Some local residents are concerned that permitting retirement housing on this site would set a precedent for additional retirement housing within the District. However, permitting retirement housing development on this site would not, in principle, automatically set a precedent for future retirement housing. Any future application for retirement housing would be assessed against the development plan and other material considerations.
67. Comments have been expressed about the increased need for younger families housing. The existing and emerging Local Plan recognise the need for both younger families and accommodation for older persons. The location of the appeal site close to a primary shopping area and other facilities lends itself to being suitable to support retirement living development. It would also facilitate the release of family homes throughout the Hart District.
68. Concern has been expressed that the scheme represents overdevelopment of the site. However, the proposed increase in density has been achieved without prejudicing the overall design of the site, without prejudicing any public or private amenities or prejudicing the character or appearance of the North Fleet Conservation Area.
69. Some local residents express comments about adverse traffic impacts. However, the Council's Highway Officer raised no objections to the proposal subject to the imposition of appropriate conditions. It has been agreed in the Revised SoCG at paragraphs 4.19-4.22 that there would be no adverse traffic impacts.⁸ The proposal would provide 14 parking spaces which is acceptable. I

⁷ INQ3

⁸ INQ3

consider that the proposal would accord with Policies GEN1 and T14 of the Hart District Local Plan.

70. Concerns have also been raised about loss of light, light pollution and noise pollution. I have already dealt with impacts of the proposed development on residential amenity in terms of overlooking and loss of privacy under the second main issue. It has been agreed in the Revised SoCG at paragraphs 4.13-4.16 that there would be no impacts upon the amenity of neighbouring residents in terms of loss of light, light pollution or noise pollution.⁹
71. I have considered and taken into account the various planning appeal decisions drawn to my attention by all parties in connection with this appeal.

Planning Balance

72. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan, unless material planning considerations indicate otherwise. The proposal is in overall accord with the development plan and there are no material planning considerations including the emerging Local Plan and the emerging FNP which indicate otherwise. The proposal would preserve the character and appearance of the Conservation Area. It would preserve the reasonable residential amenity of neighbours and the mitigation that can be appropriately secured would be sufficient to prevent harmful effects on the interest features of the Thames Basin Heaths SPA. Moreover, the appeal scheme would meet in part an outstanding unmet housing need and it would bring a set of other substantial benefits, to which substantial weight can be given.
73. Even if I had reached contrary conclusions on harm to the Conservation Area and to The Bailey as a non-designated heritage asset, the harm to the Conservation Area's significance for the purposes of the NPPF 2019 would be at the low end of the spectrum of less than substantial harm. In that context I recognise that paragraph 193 of the NPPF 2019 requires that great weight should be given to the conservation of any designated heritage asset, irrespective of whether the potential harm to its significance amounts to total loss, substantial harm or less than substantial harm. In my view the following public benefits evidenced by Mr McFarlane would comprise the '*clear and convincing justification*' requirement set out in paragraph 194 of the NPPF 2019. The clear public benefits of this scheme are:
- Provision of sheltered housing in an area with a recognised unmet need
 - The release of under occupied properties
 - Reduction in the need to travel by car
 - Short and long terms economic benefits for local business.

Planning Conditions

⁹ INQ3

74. A list of agreed conditions was submitted at the end of the Inquiry (INQ4). I have considered the conditions suggested by the Council¹⁰ in the light of the advice in paragraphs 54 and 55 of the NPPF 2019, the model conditions retained at Appendix A of the cancelled Circular 11/95 and the Government's PPG on the use of planning conditions. The Appellant has agreed in writing to the suggested pre-commencement conditions.
75. Condition 1 imposes a shorter timescale than the normal three years, but this is justified in order to prioritise delivery of housing given the limited supply of Sites of Alternative Natural Greenspace in the District. Condition 2 is necessary to ensure that the development is carried out in accordance with the approved plans and documents. Condition 3 is required to protect the character and appearance of the North Fleet Conservation Area, to ensure that the external appearance of the buildings is satisfactory and to satisfy Policies GEN1 and CON13 of the Hart District Local Plan. Condition 4 is necessary to ensure appropriate surface water drainage provision and to satisfy Policy GEN11 of the Hart District Local Plan.
76. Condition 5 is necessary to ensure the protection of species protected by law and to comply with the requirements of Policy CON5 of the Hart District Local Plan. Condition 6 is required in the interests of health and safety and to comply with Policy GEN9 of the Hart District Local Plan. Condition 7 is necessary in the interests of residential amenity and highway safety and to accord with Policy GEN1 of the Hart District Local Plan. Condition 8 is necessary in the interests of residential amenity and highway safety and to accord with the Policies GEN1 and T14 of the Hart District Local Plan. Condition 9 is required to ensure the adequate protection of existing trees located within or adjoining the site and to accord with Policy CON8 of the Hart District Local Plan.
77. Condition 10 is necessary to accord with the terms of the application to ensure the proposal provides for the needs of elderly persons seeking to reside within the District. Condition 11 is required in the interests of residential amenity and to protect the character and appearance of the North Fleet Conservation Area, in accordance with Policies GEN1, CON8 and CON13 of the Hart District Local Plan. Condition 12 is necessary in the interests of the integrity of the Thames Basin Heaths Special Protection Area, in accordance with saved policies CON1 and CON2 of the Hart District Local Plan and Policy NRM6 of the South East Plan 2006-2026 and the NPPF.

Conclusion

78. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. The appeal is therefore allowed subject to the conditions set out in the attached Schedule.

Harold Stephens

INSPECTOR

¹⁰ INQ4

SCHEDULE OF PLANNING CONDITIONS (1-12)

- 1) The development to which this permission relates shall be begun no later than the expiration of one year beginning with the date on which this permission is granted.
- 2) The development hereby approved shall be carried out in accordance with the following drawing numbers and documents:

Drawings:

1648 01 (Location Plan), 1648 02 (Block Plan), 1648 03C (Site Plan), 1648 04A (Ground Floor Plan), 1648 05B (First Floor Plan), 1648 06 (Second Floor Plan), 1648 07 (Third Floor Plan), 1648 08A (Front Elevation), 1648 09B (Rear Elevation), 1648 10B (Side Elevation), 1648 11B (Side Elevation), 1648 12 (Car Port 1), 1648 13 (Car Port 2), 1648 14 (Mobility Scooter Store), 1648 15 (Bin store), 1648 16B (Street Scene), 1648 17 (Materials).

Documents:

Arboricultural Assessment & Method Statement (16278-AA3-PB) (26 April 2017), Built Heritage Statement (A101417) (January 2017), Extended Phase 1 Habitat Survey and Protected Species Surveys (November 2016), Design and Access Statement (January 2017), Drainage Strategy (March 2017), Planning Statement (February 2017), Supporting Consultation Statement (February 2017), Phase 1: Environmental Risk Assessment (November 2016), Phase 2: Site Investigation Report (December 2016), Bat Activity Surveys and Mitigation Proposals for Protected Species (July 2017) and Transport Statement (ITR/MT/4956/TS.1) (January 2017).

- 3) Notwithstanding the submitted information, no development (excluding demolition) shall take place until full details and samples of all external surfaces, including roofing materials, have been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved details.
- 4) The development hereby approved shall be carried out fully in accordance with the recommendations contained within the submitted Drainage Strategy, produced by Arch Associates (RRL028) (March 2017).
- 5) The development hereby approved shall be carried out fully in accordance with the recommendations and mitigation measures detailed in the submitted Bat Activity Surveys and Mitigation Proposals for Protected Species report (July 2017).
- 6) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before development is resumed or continued.

- 7) Prior to the commencement of development, a Demolition/Construction Method Statement shall be submitted to and approved in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the demolition and construction period. The Statement shall include details of:
- i. The parking of vehicles of site operatives and visitors;
 - ii. Loading and unloading of plant and materials;
 - iii. Storage of plant and materials used in constructing the development;
 - iv. The erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
 - v. Wheel washing facilities and facilities for the dispersal of water;
 - vi. Measures to control the emission of dust and dirt during construction;
 - vii. Details of the site office/compound;
 - viii. A construction traffic management plan, to include details of how the site will be accessed and from which point(s), any works required to provide new access or upgrading of existing access routes within the site, parking and turning provision to be made on site, measures to prevent mud from being deposited on the highway and a programme for construction;
 - ix. Site waste management; and
 - x. Details of the control measures for air quality, biodiversity, waste management and lighting.

The Statement should demonstrate that best working practices in terms of noise, vibration and dust control will be employed and will follow the principles set out in BS5228-1&2:2009 + A1 (2014) Code of Practice for Noise and Vibration Control on Construction and Open Sites. Times of audible operations should be restricted, suitable working methods selected, and community liaison should all form elements of the submitted Statement.

- 8) The on-site car parking facilities indicated on the approved plan shall be provided prior to the first occupation of the development hereby approved and shall thereafter be retained free of any impediment to their intended use at all times.
- 9) The development hereby approved shall be carried out and completed in accordance with the details contained within the Arboricultural Assessment & Method Statement (16278-AA3-PB) (26 April 2017) and Tree Protection Plan (drawing number 16278- BT4).
- 10) The development hereby approved shall only be occupied by persons over the age of 60.
- 11) Notwithstanding the details contained within the approved Landscape Management Plan and amended proposals, details indicating the removal of the cypress trees T49, T51 and T53 and their replacement with appropriate large tree species, which could include dawn redwood (*Metasequoia glyptostroboides*), DED-resistant elms (*Ulmus* sp.) and/or small-leaved lime (*Tilia cordata*), shall be submitted to and approved in writing by the Local Planning Authority. Once approved, the development shall be carried out in

accordance with the submitted details and any replacement planting should be carried out in the first planting season following completion of the development. Any trees or plants which, within a period of five years after approved completion, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced as soon as reasonably practicable with others of similar species, size and number as originally approved.

- 12) The development hereby permitted shall not be commenced until an allocation of SANG capacity at Bramshot Farm has been secured.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Heather Sargent of Counsel

Instructed by Shared Legal Services,
Basingstoke and Deane BC and Hart DC

She called:

Beverley Mogford Dip BldgsCons (RICS), PGCE,
DPIM, IHBC

Conservation Officer Hart DC

Miguel Martinez BA (Hons) MSc

Principal Planning Officer Hart DC

FOR THE APPELLANT:

Rupert Warren QC

He called:

Laurie Marlow BA (Hons) Arch PG Dip Arch, ARB, RIBA

Director, David James Architects

Jason Clemons BA (Hons) MA MSc MRTPI IHBC

Director and Head of Heritage Planning,
Savills

Simon McFarlane BA (Hons) DipTP MRTPI

Associate Director Renaissance
Retirement Ltd

INTERESTED PERSONS:

Rob Carter

Local Resident

Christopher Riley

Local Resident

Bob Schofield

Local Resident and Chairman of Fleet
Town Council

Sandy Gray

Local Resident

Philip Burton

Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY:

INQ1 Notification Letter

INQ2 Letters of Representation

INQ3 Revised Statement of Common Ground

INQ4 Agreed Planning Conditions

DOCUMENTS SUBMITTED BY THE LPA:

- LPA1 Clip of material relating to the architect of The Bailey, provided by the Council's heritage witness Beverley Mogford
- LPA2 Appeal Decision dated 24 October 2018 - APP/B1740/W/18/3198282
- LPA3 Opening Statement on behalf of the Council
- LPA4 Consultation response from the Council's Conservation Officer on Planning Application 17/00330/FUL
- LPA5 Extracts from the Council's emerging Local Plan - Hart Local Plan: Strategy and Sites 2016-2032 Proposed Submission Version February 2018
- LPA6 Statement in respect of the Fleet Neighbourhood Plan
- LPA7 Letter dated 23 November 2018 from the Council's Chief Executive Daryl Phillips to Holly Dutton at PINS
- LPA8 Proof of Evidence of Emma Whittaker (23 November 2018)
- LPA9 Clip of documents relating to the 6 December 2018 Cabinet Meeting (Agenda, "Paper G" and Minutes)
- LPA10 Closing on behalf of the Council

DOCUMENTS SUBMITTED BY THE APPELLANT:

- APP1 Appeal Core Documents (A3 format)
- APP2 *Valuing Retirement Housing*, The Strategic Society, August 2016
- APP3 Opening Statement on behalf of the Appellant
- APP4 Rebuttal Proof of Evidence of Simon McFarlane (December 2018)
- APP5 Second Rebuttal Proof of Evidence of Simon McFarlane (January 2018)
- APP6 Letter from the Appellant to Councillor Neighbour dated 24 January 2019
- APP7 Bundle of documents comprising Joint SPA Statement
- APP8 Closing Statement on behalf of the Appellant
- APP9 Letter from the Appellant dated 7 February 2019 agreeing the wording of the pre commencement conditions

INTERESTED PERSONS' DOCUMENTS:

- IP1 Statement by Rob Carter
- IP2 Statement by Christopher Riley
- IP3 Statement by Bob Schofield
- IP4 Statement by Sandy Gray
- IP5 Statement by Philip Burton
- IP6 Letter dated 22 January 2019 from Bell Cornwell re APP/L3815/W/17/3182257