



## Appeal Decision

Inquiry Held on 22, 23 and 24 January 2019

Site visit made on 24 January 2019

**by Harold Stephens BA MPhil DipTP MRTPI FRSA**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 April 2019**

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**Appeal Ref: APP/B1740/W/18/3198347**

**PC Building Supplies, 2 South Street, Hythe SO45 6EB**

- 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 Churchill Retirement Living against the decision of New Forest District Council.
  - The application Ref 17/11646 dated 27 November 2017, was refused by notice dated 14 March 2018.
  - The development proposed is 1 block of 43 retirement apartments; communal facilities; access; parking and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for 1 block of 43 retirement apartments; communal facilities; access, parking and landscaping, at PC Building Supplies, 2 South Street, Hythe SO45 6EB in accordance with the terms of the application, Ref 17/11646, dated 27 November 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 several documents including an Affordable Housing Statement, a CCTV Report, a Flood Risk Assessment, a Drainage Strategy Report, a Preliminary Ecological Appraisal, a Phase 2 Bat Assessment, a Heritage Statement, a Landscape Strategy, a Geo-Environmental Desk Study Report, a Transport Statement, a Planning Statement, a Retirement Living Explained Report, 3 Computer Graphic Images and a Design and Access Statement (DAS).
3. The application was refused by notice dated 14 March 2018 for two reasons. The first reason relates to the impact of the building on the character and appearance of the area, having special regard to its location on the edge of the Hythe Conservation Area and to the setting of nearby Listed Buildings. The second reason relates to the absence of a contribution to affordable housing. In respect of the second reason for refusal, the Appellant submitted an updated viability assessment which the Council accepted as demonstrating that the scheme would not be viable if a contribution to affordable housing were to be made. The Council did not pursue and did not provide any evidence to support the second reason for refusal.

4. A Statement of Common Ground (SoCG)<sup>1</sup> between the Appellant and New Forest District Council was agreed and has been signed by both parties. The SoCG includes the following matters: (i) a description of the appeal site and surrounding area, (ii) the planning history of the appeal site, (iii) a description of the appeal proposals, (iv) relevant planning policy and related strategies, (v) the undisputed issues and (vi) the points at issue.
5. At the outset of the Inquiry, the Appellant asked that I consider amended plans as part of the appeal in substitution for the submitted drawings. These are explained at paragraphs 9.3 and 9.4 of Mr Burgess's proof evidence. The Council said that there was one additional amendment shown on the amended plans which was not included in Mr Burgess's list, which is the removal of the single undercroft parking space on the main entrance elevation with the area being incorporated into the building and forming a store. This reduces the number of car parking spaces to 14. The LPA confirmed that it had no objections to the appeal being determined on the basis of the amended plans.<sup>2</sup>
6. Having reviewed the Appellant's amended plans I consider that the changes illustrated are relatively minor in nature and do not fundamentally change the nature of the submitted scheme. I note that a public consultation exercise has been undertaken by the Appellant.<sup>3</sup> From the evidence before me, I consider that no party would be prejudiced by the substitution of the amended plans in place of the submitted plans. The main parties agree that the list of plans on which the appeal should be determined is as follows:  
  
10085HY-PLOC; 10085HY-PA2-01C; 10085HY-PA2-02 rev B; 10085HY-PA2-03 rev A; 10085HY-PA2-04; 10085HY-PA2-05; 10085HY-PA2-06; 10085HY-PA2-07A; 10085HY-PA2-08A; 10085HY-PA2-09; 10085HY-PA2-10;  
  
The main parties also agree that plan 10086HY - Landscape Strategy - Rev A should be regarded as being for illustrative purposes only.
7. 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 absent mitigation, a significant effect on European sites cannot be excluded. It follows that it is necessary for the Inspector to form a view as competent authority as to whether the appeal proposal for 43 retirement apartments would or would not have an adverse effect on European sites. In line with the current law that process involves an Appropriate Assessment under the Habitats Regulations in this case.<sup>4</sup>
8. The information to inform such an Appropriate Assessment has been provided<sup>5</sup> and the parties agree that on the basis of that information and based upon a financial contribution being made to fund access and visitor management and monitoring, as secured by a Unilateral Undertaking dated 22 January 2019, a conclusion can be drawn that there would be no adverse impact on the integrity of the European sites. However, as the Competent Authority, the Inspector is required to consult with Natural England.<sup>6</sup> I return to this matter later in this decision.

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<sup>1</sup> LPA2

<sup>2</sup> LPA7

<sup>3</sup> APP6

<sup>4</sup> Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017

<sup>5</sup> Mr Burgess's Appendix 11 and Mr Straw's Appendix 14

<sup>6</sup> Regulation 63(3) of the Conservation of Habitats and Species Regulations 2017

## **Main Issue**

9. In the light of the above I consider the main issue in this case is the impact of the proposed development on the character and appearance of the Conservation Area including its setting and on the setting of Listed Buildings.

## **Reasons**

### *The proposed development and appeal site*

10. The appeal site is located on the eastern edge of the centre of Hythe village, at the junction of South Street and St John's Street. The site currently comprises a large 2-storey commercial building, formerly occupied by PC Building Supplies for office, storage, retail and showroom uses. The building contains two residential flats on the upper floor. The building is double piled with the frontage block comprising a linear building with tiled gambrel roof, with weather-boarded gables and red facing bricks at ground floor level. The rear range is of simpler form with pitched tiled roof and brick faced walls. The elevations have casement and dormer windows and doors. The site lies near to shops and services within the village. Local public transport is also close to the site and offers a range of connections to the surrounding area.
11. Vehicular access to the appeal site is gained from South Street, which leads to a parking forecourt in front of the building's main entrance. There are areas of hardstanding formerly used for open storage of building materials to the rear and side of the building adjacent to St John's Street and an open paved area adjacent to the footpath on South Street.
12. The appeal site is located adjacent to but outside the Hythe Conservation Area save for a small part of the site which is proposed for parking spaces to the rear of 10 South Street and the access drive to the site. There are Grade II Listed Buildings in close proximity to the site at 37-44 Sir Christopher Court and 1 and 3 Shore Road. The surrounding area is predominantly residential in nature.
13. To the south east of the site are the residential properties of South Street and Dominy Close, both with a mixture of existing one, two and two and a half storey residential development. To the south west are neighbouring two storey residential properties of South Street and beyond several three storey commercial/retail buildings within the South Street Centre.
14. To the north west is a former public car park which is under redevelopment as a Lidl supermarket and associated car parking. To the north east there are two, two and a half and three storey existing dwellings and civic /community buildings on St John's Street.
15. The planning history of the site is set out at Section 3 of the SoCG. Suffice it to say that planning permission was granted on 11 May 2017 for 1 block of 36 sheltered apartments; communal facilities; access parking and landscaping.<sup>7</sup> Planning permission was also granted for the conversion of the existing building into 9 flats on 15 October 2018.<sup>8</sup>
16. The proposed development would provide 43 units of private retirement living accommodation for older people comprising 28 x 1 bed and 15 x 2 bed units. The proposed development also includes 14 car parking spaces and it would

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<sup>7</sup> Ref 16/11639

<sup>8</sup> Ref 18/10307

include communal facilities. The proposed apartments would be provided within a single building that would be part two-storey and part three-storey. The building would have a frontage onto both South Street and St John's Street. The proposal involves areas of soft landscaping to the main street frontages as well as seeking to provide a communal amenity space within a courtyard setting to the rear of the site.

17. The proposed accommodation is for the type known as retirement living or sheltered housing often described as "Category II" housing. Sheltered housing may be defined as:

*"Housing which is purpose-built or converted exclusively for sale to elderly people with a package of estate management services and which consists of grouped, self-contained accommodation with an emergency alarm system, usually with communal facilities and normally with a warden"*

18. The apartments would be sold with a lease containing an age restriction which would ensure that only people of 60 years or over, or those of 60 years or over with a spouse or partner of at least 55 years can live in the development.

#### *Planning policy*

19. For the purposes of this appeal the statutory development plan includes the following documents: (i) Core Strategy (CS) (2009) and (ii) Local Plan Part 2: Sites and Development Management (LP) (2014).
20. CS policies which are relied upon by the Council in the first reason for refusal are CS2 and CS3. Other CS policies referred to include CS10, CS13, CS15, CS17, CS20 and CS25. Policy CS2 concerns design quality and requires new development to respect the character, identity and context of the area's towns villages and countryside and to contribute to local distinctiveness. Policy CS3 provides that development proposals must protect and, where possible, enhance sites of recognised importance for heritage conservation; it does not include the balancing exercise set out in national policy at paragraph 196 of the NPPF 2019.
21. LP Policy DM1 is relied upon in reason for refusal one. It does include a balancing exercise referred to in the NPPF 2019. Policy DM1 provides that development proposals and other initiatives should conserve and seek to enhance the historic environment and heritage assets, with particular regard to local character, setting, management and the historic significance and context of heritage assets. Other LP policies referred to include NPPF1, DM10, DM16 and HYD4.
22. Other relevant policy documents include the following:
- SPG – Hythe - A Conservation Area Appraisal
  - SPD – Mitigation Strategy for European Sites
  - SPD – Parking Standards
  - SPD – Housing design, density and character
23. In November 2018 the Council submitted a Local Plan Part 1 Review to the SoS for the purposes of Examination (Regulation 22). The Local Plan Review is primarily concerned with identifying strategic housing sites in order to significantly increase the supply of housing over the next 20 years. Given the

stage that this emerging Local Plan has reached in the development plan process the emerging policies carry limited weight in the context of this appeal.

24. The Hythe and Dibden Parish Council is preparing a Neighbourhood Plan. Following initial consultation, a Pre-Submission Draft Neighbourhood Plan has been published for consultation (Regulation 14). Whilst the emerging Neighbourhood Plan is important to local people it is still in its early stages so the weight that can be attributed to it is limited.

**Main Issue – Impact on Heritage assets**

25. The principle of developing the appeal site for residential purposes is acceptable. The main parties agree that the main building on the site is unattractive and not considered to be of sufficient merit, either architecturally or historically to warrant protection. The site is within the village of Hythe. Hythe is one of the main villages in the District and offers a wide range of employment, facilities and services.
26. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. A small part of the appeal site lies within the Conservation Area – that part of the site is proposed to be used for car parking. The Council accepts that the development which is proposed within the Conservation Area would have a neutral impact. As a result, insofar as the statutory duty imposed by section 72 of the LBCA is engaged, there is no dispute that its objective of preserving the character or appearance of the Conservation Area is satisfied.
27. Section 66(1) of the LBCA also applies. It requires that special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
28. 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.
29. Whilst there is no statutory protection for the setting of conservation areas, paragraph 194 of the NPPF 2019 requires that consideration be given to any harm to or loss of significance of a designated heritage asset.
30. Paragraph 196 of the NPPF 2019 provides that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
31. The NPPF 2019 defines significance (for heritage policy) 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...'*

32. In Conservation Principles<sup>9</sup> Historic England uses slightly different terms when describing values, namely, *evidential, historical, aesthetic and communal*. I note that the main parties agree that any archaeological or evidential value would be unaffected and therefore I do not consider that value any further. However, the Council argues that the Conservation Area and Listed Buildings have *historical* and *aesthetic* value. The historical value is said by Mr Morris to be both illustrative and associative, and to be related to the growth of Hythe and its connections with boat building.

#### *Significance of the Hythe Conservation Area*

33. The Hythe Conservation Area Appraisal (HCAA)<sup>10</sup> tells us about the significance of the Conservation Area. It states that the principal characteristic of the Conservation Area is its intimate village feel despite the increased size of the settlement. However, this village feel is noted in the HCAA as focussed on the historic core of the settlement centred around High Street rather than other areas of the Conservation Area and Hythe settlement<sup>11</sup>. The long elongated shape and flat topography of the Conservation Area reflect the extent and spread of the old settlement and multiple nuclei along the edge of Southampton Water. This topography and linear character afford relatively open views especially along St John's Street and around the Church. Another prominent characteristic of the Conservation Area is the long narrow plots of land running inland from the shore which reflects the past and current importance of boat building and repair industry in the development of Hythe.
34. Given its morphology, the buildings in Hythe vary in terms of date, form, scale, appearance, uses and materials. The buildings within the Conservation Area are predominantly small, both in size and scale. They are generally two-storey, but some are three-storey such as 39 St John's Street in the vicinity of the appeal site. The underlying and predominant facing material for buildings within the Conservation Area is brick, the result of the availability of local clay used in their production. Red brick is the primary brick colour, although some of the later buildings use another local brick, which is a pale buff colour. Roofing materials are primarily clay tile on the earlier properties and slate on the later ones.
35. The setting of the Conservation Area is a contributor to its overall significance. It is defined by its location by Southampton Water and the relationship and ease of access to Southampton which played a key role in the development of the settlement and the emergence of a thriving boat building and repair industry within the settlement. The setting of the Conservation Area can be extended to include the later suburban expansion of the settlement to the north, south and west. Many buildings within the setting directly influence the appreciation of the Conservation Area.
36. The appeal site does not lie within the identified historic core of the settlement although the Listed Buildings at the junction of Shore Road/St John's Street/South Street are identified as a good grouping of Listed Buildings.<sup>12</sup> Furthermore, the HCAA identifies the building currently occupying the appeal

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<sup>9</sup> APP 4

<sup>10</sup> CD2

<sup>11</sup> CD2 paragraph 2.4

<sup>12</sup> CD2 paragraph 4.5.1 bullet 7 "A good grouping of listed buildings occupies the junction of St John's Street and Shore Road, part of a nucleus of older buildings at the lower end of South Street, although selective vision is needed to disregard several all-too-obvious big and undistinguished buildings hereabouts."

site and describes it as a site which "...contributes very badly to the character of the wider area"<sup>13</sup>. The HCAA also identifies the redevelopment of the appeal site as an opportunity to make an improved contribution to appearance".<sup>14</sup> In my view the development of the appeal site can properly be regarded as an opportunity to remove buildings which do not contribute to the significance of the Conservation Area.

### *Significance of Listed Buildings*

37. The first reason for refusal alleges that harm would be caused by the proposed development to 37-44 Sir Christopher Court (previously known as 37 and 39 St John's Street) and 1 and 3 Shore Road. Details of the listing descriptions are set out in the evidence of both heritage witnesses. The Listed Buildings are considered to have architectural and historic interest deriving from their age and the rarity of the surviving physical fabric. They form a staggered street frontage which reflects the curvature of the road. The buildings are located within the Hythe Conservation Area and are considered to hold considerable group value.
38. The Listed Buildings at the junction of South Street/St John's Street /Shore Road serve as a focus for historical development which was of a greater mass and scale than other buildings found in the surrounding area. These Listed Buildings are recognised as being prominent on the approach along South Street and St John's Street. However, in views from Shore Road to the junction it is difficult to obtain views which would allow one to appreciate these Listed Buildings as a group.
39. The heritage value of the Listed Buildings is both historic and architectural/aesthetic. Views of 39 St John's Street are of particular prominence when looking north along South Street and when looking east along St John's Street. The aesthetic/architectural value of the Listed Buildings can be appreciated in those views. Some historic value has been diminished as a result of development between the buildings and the waterfront, but they remain as illustrations of the expansion of Hythe in the early 19<sup>th</sup> century.
40. The Listed Buildings and the relationship between the properties and the road, in the settlement's historic development, add to the historic interest of the heritage assets. Overall the setting is considered to make a positive contribution to the understanding and appreciation of the heritage assets, although the setting is significantly eroded by the building currently occupying the appeal site. The appeal site in its current form is a negative feature within the setting of the designated heritage assets.

### *Impact of the proposal*

41. The appeal scheme is for the redevelopment of the appeal site, which is currently occupied by a builder's merchant, into a single U-shaped building comprising 43 apartments for the elderly and would include communal facilities, access, car parking and landscaping. The proposed building would front South Street and St John's Street and would comprise of two and three storeys in height. The range along South Street would be a combination of two, two and a half and three storeys, with a cranked two storey block to the corner of South Street and St John's Street with two and a half to three storey range along St John's Street. The proposed scheme would be double depth incorporating a

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<sup>13</sup> CD2 paragraph 4.8.1

<sup>14</sup> CD2 paragraph 4.13.1

combination of pitched and hipped roofs with valley gutters.

42. The Council considers that the proposed development would be of a design that would not be sympathetic to its context, in particular it is argued that the scale and massing of the building would jar significantly within the historic setting and the detailed design and appearance of the building would be poor, having regard to the character and qualities of the surrounding area and causing harm to adjacent heritage assets. I disagree with this view for several reasons.
43. I accept that within the Conservation Area, development near the appeal site is predominantly of two storey buildings in scale towards the junction of South Street and St John's Street, where there is a single three storey building. I note that the proposed scheme would be predominantly two and a half storeys increasing to three storeys on the St John's Street frontage and central range of South Street. The relative floor heights of the proposal would be greater than those of surrounding development, resulting in an eaves and ridge height that would be generally higher than most other development in the area. I consider that the proposed scheme would cause some limited harm to the significance of the Conservation Area as a result of introducing a building which, in part, has higher eaves and ridge heights than the existing buildings in South Street.
44. Although the building would have a large footprint, the facades would use a combination of building heights and articulation of elevations to produce a design that responds well to the character and appearance of the adjacent Conservation Area. This comprises a regularity of fenestration with subtle detail around windows formation. The main elevations are separated by recessed bays that would give the impression of a row of separate houses. In my view, the proposed building would be domestic in scale and free of embellishments – as a result its appearance (save for height) would cause no harm to the aesthetic value of the Conservation Area. The variations in the elevations, in window sizes and patterns, and the recessed elements, adds to interest and is consistent with the general character of the area.
45. The fact that the proposed building contains features which are not found in the Conservation Area, such as a pyramidal roof form and undercroft parking does not lead to the immediate conclusion that there is some harm to significance- the effect of those design features on the values which contribute to significance must be considered. The use of the pyramidal roof form would reveal no greater proportion of the roof, which lies behind the pyramidal structure, than was considered acceptable for the 36 unit scheme as is apparent by comparing drawings D2/10 and D3/09<sup>15</sup>. The undercroft parking is used on one element of the entrance elevation - it would not be seen in long views up South Street and would only be seen in limited views, mainly from the appeal site itself and from points not within the Conservation Area. I consider the two spaces would cause no diminution of the values which give the Conservation Area its significance.
46. The material treatment of elevations draws upon the fabric and appearance of other historic buildings within the streetscape including the Listed Buildings and the buildings of local interest situated adjacent to the appeal site. The principle materials would comprise cream and blue painted bricks, multi-stock brick, buff brick and peach render for the elevations and grey natural slate and red clay tiles for the roof. The use of differing material treatment to the elevations and stepped roofs helps to break up the uniformity and overall mass of the building

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<sup>15</sup> McCarthy in Re-Examination

and would divide the building into smaller units representative of the surrounding streetscape. The street frontage would be bounded by a dwarf brick wall and metal railings; the latter are a predominant feature of the streetscape and are seen on buildings opposite the appeal site. The proposed building would be set back slightly from the road frontage behind a low boundary wall.

47. The ability to appreciate and understand the illustrative and associative value of the Conservation Area and the Listed Buildings, whether in association with the former boat building industry or with past settlement patterns, would be undiminished. The Listed Buildings and the Conservation Area would continue to illustrate the expansion of Hythe in the early 19<sup>th</sup> century and of past lives led.
48. Similarly, there will be little or no impact on the architectural/aesthetic significance. The Listed Buildings at 37 and 39 St John's Street would retain their prominence - they would be seen in views along South Street and St John's Street, whether from the left or right hand sides of the road. Given the effect of perspective, closer buildings, including those of modest height, would be perceived as being taller than those which are further away. The varied height of the South Street elevation of the appeal proposal would not undermine or diminish that prominence so as to adversely affect the aesthetic/architectural value; there would be an improved corridor of view.
49. In terms of the extent of any harm, Mr Morris in his oral evidence was asked to place the level of harm on a scale of 0 (no harm) to 10 (substantial harm), with 1-9 being degrees of less than substantial harm. He placed the level of harm to the Conservation Area at 2-2.5/10 and to the Listed Buildings at 2.5-3/10. That evaluation places the level of harm to significance in the bottom third or lower end of the range. Mr Morris' evidence does not support the view of Council officers (on which the decision to refuse to grant planning permission was based) that the level of harm was at the higher end of the spectrum<sup>16</sup>.

### *Conclusions*

50. From the evidence that is before me I conclude that there would be some less than substantial harm to the aesthetic/architectural significance of the Conservation Area. This harm would be at the lower end of the scale of less than substantial harm. I conclude there would be no harm to the significance of the Listed Buildings.
51. The PPG makes plain that for the purposes of applying the policy in paragraph 196 of the NPPF that public benefits could be anything that delivers economic, social or environmental progress as described in the NPPF<sup>17</sup>.
52. The public benefits of the proposal, examined and evaluated in detail within this decision, comprise:
  - Removal of the existing 'ugly'<sup>18</sup> buildings on the site, and consequent reduction in traffic movements.
  - Provision of housing in an area where the Council is unable to demonstrate a five-year supply of deliverable housing sites and where the current supply is only 0.5 years<sup>19</sup>.

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<sup>16</sup> Mr Burgess Appendix 2 paragraph 14.9

<sup>17</sup> Paragraph: 020 Reference ID: 18a-020-20140306

<sup>18</sup> CD2 paragraph 4.14.1 bullet 6

<sup>19</sup> Straw PoE 6.9

- Provision of sheltered market housing in a local authority area where there is an identified need for homes for older people.
- Social benefits<sup>20</sup> (i) by providing appropriate accommodation for older people and thereby reducing demands on healthcare and other services and (ii) by freeing up family housing.
- Economic benefits<sup>21</sup>, including increased spending in local shops.
- Environmental benefits, in particular by making efficient use of land to provide housing close to services and facilities<sup>22</sup>.

### *The Balance*

53. I find that the proposal would deliver significant social and economic benefits which are capable of outweighing harm to the significance of heritage assets. Indeed, the Council itself made such a finding when determining the 36 unit scheme<sup>23</sup>. I consider very little reliance can be placed on the Council's evaluation of the balance as explained by Mr Shaw. His assumption as to the level of harm to the significance of heritage assets is not supported by Mr Morris' evidence. In addition, Mr Straw has under-estimated the extent of the benefits.<sup>24</sup>
54. There is a *clear and convincing justification* for the scheme.<sup>25</sup> There is a need for housing, and for retirement housing. There is a completely inadequate supply of deliverable sites to meet the general housing need. The fact that there is only 0.5 years supply demonstrates that there are insufficient sites available to meet the need. There are no alternative sites identified by the Council, in Hythe and Dibden or elsewhere, on which the need for retirement housing can be met. The 36 unit scheme is not deliverable, and the benefits cannot be achieved with some lesser scheme to that proposed in this appeal.
55. Moreover, the Council, in undertaking a balancing exercise, has given too much weight to the harm and insufficient weight to the benefits. The Council's analysis cannot stand. There is no dispute that some limited harm to the significance of the Conservation Area would occur, but that harm would be at the lower end of the scale of less than substantial harm.
56. In my analysis I have found that the proposal would 'preserve' the character and appearance of the Conservation Area under section 72 (1) of the LBCA. In accordance with paragraph 193 of the NPPF 2019 I have given great weight in respect of the less than substantial harm to the significance of the Conservation Area from the proposed development within its setting. I have also given considerable weight and importance to the desirability of preserving the settings of each of the four Listed Buildings and found no harm. It is clear to me that the public benefits far outweigh the less than substantial harm to the significance of the Conservation Area.
57. The fact that there is an inadequate supply of sites to meet the identified need for housing (and for retirement housing in particular) leads to the conclusion

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<sup>20</sup> Burgess PoE 8.125 to 8.128

<sup>21</sup> Burgess PoE 8.119 to 8.124

<sup>22</sup> Burgess PoE 8.129

<sup>23</sup> Burgess Appendix 16 paragraph 14.15

<sup>24</sup> See APP10 paragraph 36

<sup>25</sup> Paragraph 194 of the NPPF 2019

that there is a *clear and convincing justification*<sup>26</sup> for the harm - unless the less than substantial harm is accepted the housing cannot be delivered on this site and there are insufficient sites elsewhere to allow for the need to be met. The need is such that the less than substantial harm must be accepted.

## **Habitats Regulations Assessment**

### *Assessment of Likely Significant Effects*

58. The appeal site is located in close proximity to the following European sites:
- the Solent and Southampton Water European site (Solent and Isle of Wight Lagoons SAC, Solent Maritime SAC, Solent and Southampton Water SPA and Ramsar sites)
  - the New Forest European site (the New Forest SAC, SPA and Ramsar sites)
  - The River Avon SAC, SPA and Ramsar
  - Dorset Heathlands SAC, SPA and Ramsar
59. The Solent and Southampton Water SPA/Ramsar site lies at its closest 110m north-east of the proposed development, the Solent Maritime SAC lies 675m south-east and the New Forest SPA/SAC/Ramsar site lies 2.4kms south-west.
60. The conservation objectives of the identified European sites are set out in Appendix 2 of the Habitats Regulations Assessment of the New Forest Local Plan Part 2 dated August 2013. They are also available on the Natural England website at the following link:
- <http://publications.naturalengland.org.uk/category/6528471664689152>
- I have had regard to these objectives in undertaking my duties in accordance with the Conservation of Habitats and Species Regulations 2017.
61. The proposed development would comprise 43 new residential units, which is likely to result in additional recreational visits to European sites, in particular the Solent and Southampton Water SPA site that lies 110m from the proposed development. Although pet ownership would not be allowed under the Appellant's lease agreements, residents with existing pets would be allowed to bring them and therefore there is a potential short to medium term impact from increased dog walking activity affecting European sites as well as from residents alone. Recreational visits for personal recreation and for dog walking may lead to the disturbance of ground nesting birds, overwintering waders and wildfowl which are features of these designated European conservation sites. There is also a potential for increased recreational pressure to impact habitats and species at the New Forest SAC and Ramsar sites, Solent and Southampton Water Ramsar and Solent Maritime SAC. It is therefore acknowledged that when considered alone and in combination with other plans and projects, there is the potential for the proposed development to result in likely significant effects due to increased recreational pressure and disturbance impacts.
62. The Appellant has proposed mitigation in accordance with the Council's Mitigation Strategy for European Sites SPD (2014) to address the likely

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<sup>26</sup> Op. cit.

significant effects from recreational pressure and disturbance. However, the *People Over Wind* judgment established that the assessment of likely significant effects on the European sites cannot take into account measures to avoid or reduce the effects of a proposed development. Therefore, it is necessary for the competent authority (the Inspector) to undertake an Appropriate Assessment (AA) under the Habitats Regulations<sup>27</sup>. The information to inform such an assessment has been provided<sup>28</sup>.

### *Appropriate Assessment*

63. The AA is necessary to comply with Regulation 63 (1) of the Conservation of Habitats and Species Regulations 2017. In undertaking the AA, I must be certain that the proposed development would not result in adverse effects to the integrity of the relevant European sites. The parties to this appeal have engaged with the requirements of the Conservation of Habitats and Species Regulations 2017 providing information to support this assessment and they agree that subject to compliance with the Council's Mitigation Strategy SPD there would be no adverse effect on the integrity of the European sites.
64. The Council's Mitigation Strategy provides greater detail on measures required to enable development that could lead to likely significant effects on the European sites and includes mechanisms to ensure delivery. Section 6 provides details of the specific mitigation proposals for each area of the District including estimates of costs, a description of works, a project overview and relevant plans. The mitigation includes the provision of new areas of open space (SANGS) and enhancements to existing public open space and recreational walking routes. Section 6 also details the non-infrastructure related mitigation measures which comprise increased ranger services to assist visitors and access management measures. Section 7 gives details of how such measures will be implemented and funded specifying the contribution sought which is applicable to the number of houses proposed.
65. The Council's Mitigation Strategy contemplates that the necessary infrastructure elements of habitat mitigation (in the form of SANGS) will be provided by applying funds collected by CIL which do not therefore require a Section 106 Agreement<sup>29</sup>. However, the Habitats (Access Management and Monitoring) Contribution, which is not considered to be infrastructure, will be funded by contributions from individual developments, secured by a planning obligation<sup>30</sup>.
66. The principle of requiring all new development to contribute to mitigation measures in proportion to its likely impact on the European sites is set out in development plan Policies CS3, CS25 and DM3. In particular, Policy DM3 (Mitigation of Impacts on European Conservation Sites) of the LP sets a framework for protection of the New Forest and Solent European sites from increased disturbance and recreational pressure.
67. The Appellant has entered into a Section 106 *Planning Obligation* to secure the necessary payment of the Habitats Mitigation (Access Management and Monitoring) Contribution of £31,346. I note that Regulation 122 (2) of the CIL Regulations 2010 states that planning obligations must only be sought where they meet all of the following conditions: (a) necessary to make the

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<sup>27</sup> Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017

<sup>28</sup> Mr Burgess Appendix 11, Mr Straw Appendix 14

<sup>29</sup> Mr Straw Appendix 13A paragraph 5

<sup>30</sup> Mr Straw Appendix 13E paragraph 7.30 – page 187

development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.

68. In relation to (a) I consider that the planning obligation is necessary because without a mechanism to secure an appropriate level of mitigation it cannot be safely concluded that the proposed development would not result in adverse effects to the integrity of the European sites. The necessary level of mitigation in this case is in my view that set out in the Council's Mitigation Strategy. Appropriate mitigation includes a proportionate financial contribution towards the delivery of access and visitor management and monitoring measures. These measures are delivered through the employment of Rangers that operate within the European sites to influence the way the sites are used for recreational purposes.
69. In relation to (b) the proposed development lies in proximity to the European sites and is likely to lead to visits to these areas for recreation by occupants. Therefore, the measures are necessary to address the impacts directly related to the proposed development.
70. In relation to (c) the amount of contribution sought has been calculated in order that it reflects the number of additional visits by the proposed numbers of residents and the costs involved with delivering the necessary mitigation. In my view the contribution is fairly and reasonably related in scale and kind to the proposed development.
71. Section 123 of the CIL Regulations 2010 concerns further limitations on the use of planning obligations. An obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of "*relevant infrastructure*". Moreover, an obligation may not provide for funding or provision of an infrastructure project or type of infrastructure and where 5 or more separate obligations which provide for the funding or provision of that project or type of infrastructure have been entered into before the date that the obligation was entered into.
72. The Appellant's planning obligation would not provide for the funding of "*relevant infrastructure*" as a contribution towards access and visitor management and monitoring is not included on the Council's Regulation 123 List approved in April 2015.<sup>31</sup> There is therefore, no conflict with the provisions of Regulation 123 as the planning obligation does not provide for the funding or provision of an infrastructure project or for the funding or provision of a type of infrastructure. The Council's Mitigation Strategy also makes plain that the access and visitor management measures and monitoring elements fall outside the definition of infrastructure.<sup>32</sup> On that basis I am content that the pooling restrictions do not apply.
73. In my view, all of the provisions set out in the Section 106 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. Furthermore, on the basis that the access and visitor management measures

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<sup>31</sup> LPA15

<sup>32</sup> Mr Straw Appendix 13E paragraph 7.30 - page 187

and monitoring is secured by the planning obligation, I am satisfied that the financial contribution towards the agreed schemes is in line with the Council's Mitigation Strategy and secures the deliverability of required mitigation measures.

74. I note the requirement to consult and have regard to Natural England's representations as the appropriate nature conservation body where an AA is being carried out. On 19 February 2019 a consultation with Natural England was undertaken in accordance with the Conservation of Habitats and Species Regulations 2017. The response from Natural England confirms that, provided no other adverse effects are identified in the AA, it is content that measures proposed in the Council's Mitigation Strategy for European Sites SPD, are sufficient to address adverse impacts from recreational pressure and disturbance on the international sites in proximity to the proposed development and that adverse effects on the integrity of the designated sites and features will not occur. No other adverse impacts have been identified throughout the course of the appeal.
75. I am content therefore that the Appellant has proposed adequate mitigation to address the potential adverse effects of the development on the European sites. From all the evidence that is before me I am certain that the measures proposed will address the anticipated impacts, guaranteeing beyond all reasonable doubt that the project will not adversely affect the integrity of the European sites. There would also be no conflict with development plan Policies CS3, CS25 and DM3.
76. I am also satisfied that there will be no adverse impact on the Hythe to Calshot Marshes SSSI which is a component part of the European sites.

### **Other Matters**

77. I have taken into account all other matters raised. I have considered the various planning appeal decisions drawn to my attention. The Hythe and Dibden Parish Council expressed concern about the impact of the proposals on highway capacity. However, I note that the traffic likely to be generated by the appeal proposal is at a level far below that generated by use as a builder's merchant<sup>33</sup>. There is no legitimate cause for concern on this ground and it is not surprising that Hampshire County Council, as highway authority, does not raise this point. This is not a case where there would be unacceptable impact on highway safety or where the residual cumulative impacts on the road network would be severe<sup>34</sup>. Indeed, there is no substantive evidence of any materially harmful impact on safety, or on capacity.
78. Concern was also expressed about the amount of car parking space. The proposed development would provide 14 parking spaces at a ratio of about 0.32 spaces per apartment. The ratio for the approved scheme is 0.33. Bearing in mind that the appeal site has good access to facilities and services in the Hythe centre, I consider that the provision of car parking spaces would be adequate.
79. Councillor Wade raised matters relating to overlooking, loss of light and flood risk. The Council's officers considered the impact of the proposal on residential amenity and drainage considerations and advised members that those matters

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<sup>33</sup> Transport Statement 4.1- existing permitted use 380 trips over 12 hours. Proposed use 53 trips over 12 hours.

<sup>34</sup> NPPF paragraph 109

did not justify refusal of planning permission<sup>35</sup>. There is no reason to disagree with that analysis.

### **The Planning Balance**

80. 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 Council relies upon three policies in reason for refusal 1: Policy CS2, Policy CS3 and Policy DM1. Policy CS3 must be read together with Policy DM1. Policy DM1 contemplates that if harm is caused to (the significance of) a heritage asset, it is capable of being overcome by public benefits. Policy CS3 is contained in the Core Strategy 2009. Policy DM1 is contained in a DPD which was adopted in 2014. To the extent that Policy DM1 conflicts with Policy CS3 in that Policy CS3 does not contain a provision requiring the public benefits of a proposal to be weighed with less than substantial harm the later policy must prevail<sup>36</sup>.
81. The Council accepts that the appeal proposal accords with the spatial strategy and housing objectives of the development plan.<sup>37</sup> Provision of housing in Hythe meets the spatial development objectives of the development plan set out in Policy CS10(a) and Policy CS9. The proposal is also consistent with the objective of providing housing which meets the needs of older people - Policy CS13(e). From all the evidence that is before me the proposal complies with Policy DM1. The balance between public benefits and less than substantial harm comes down firmly in favour of the appeal proposal and therefore Policy DM1 is complied with, as is the development plan when considered as a whole.
82. In terms of the NPPF 2019 this is not a case where the Appellant relies on the Council's inability to demonstrate a five year supply of deliverable housing sites to outweigh the indication given by the development plan. An Appropriate Assessment has been carried out and this has concluded that the appeal proposal would not adversely affect the integrity of habitats sites. Accordingly, in the light of paragraph 177 of the NPPF 2019, the presumption in favour of sustainable development set out at paragraph 11 of the NPPF applies here.
83. However, the Council's housing land supply position is relevant to the application of NPPF policies. In the circumstances which apply in this case, paragraph 123 indicates that proposals are to make optimal use of the site - the appeal proposals do just that and gain further policy support as a result. The resolution of the main issue turns on the application of the policy in paragraph 196 in the NPPF. That comes down in favour of the development. For all those reasons the proposals meet all the relevant NPPF policy tests.
84. The proposal meets the objective of Policy 18 in the emerging Local Plan<sup>38</sup>. In the present housing land supply situation and the Council's inability to demonstrate an adequate supply the provision of housing must be given significant weight. Given the acknowledged need for housing for older people and the suitability of the appeal site to accommodate specialist housing to meet their needs, the provision of retirement housing must also be given significant

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<sup>35</sup> Mr Burgess Appendix 2 - Neighbour Amenity paragraph 14.10-14.11 and Flood Risk paragraph 14.14

<sup>36</sup> Section 38(5) Planning and Compulsory Purchase Act 2004 ("PCPA 2004"):

"(5) If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document [to become part of the development plan]"

<sup>37</sup> Mr Straw XX

<sup>38</sup> Mr Straw Appendix 9 page 85

weight. The other material considerations including the emerging Local Plan and the emerging Neighbourhood Plan, do not indicate otherwise, they confirm the indication given by the development plan, namely that planning permission should be granted.

### **Planning Conditions**

85. A list of agreed conditions was submitted at the end of the Inquiry<sup>39</sup>. I have considered these conditions 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 pre-commencement conditions.<sup>40</sup>
86. Condition 1 is required to comply with statutory timescales. Condition 2 is necessary for the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans. Conditions 3-5 are required to ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off site receptors in accordance with Policy CS5 of the Core Strategy and Policy DM4 of the Local Plan.
87. Condition 6 is necessary in the interests of residential amenity and highway safety. Condition 7 is required to ensure an acceptable appearance of the development, and to safeguard the character and appearance of the Hythe Conservation Area in accordance with Policy CS2 and Policy CS3 of the Core Strategy and Policy DM1 of the Local Plan. Condition 8 is necessary to ensure that the development takes place in an appropriate way and to comply with Policy CS2 of the Core Strategy. Condition 9 is required to ensure that the drainage arrangements are satisfactory and to comply with Policy CS2 and Policy CS6 of the Core Strategy. Condition 10 is necessary to ensure adequate parking provision is made in the interest of highway safety and in accordance with Policy CS2 and CS24 of the Core Strategy.
88. Condition 11 is required to ensure an acceptable appearance of the development, and to safeguard the character and appearance of the Hythe Conservation Area in accordance with policies CS2 and CS3 of the Core Strategy and Policy DM1 of the Local Plan. Condition 12 is necessary to ensure the appearance and setting of the development is satisfactory and to comply with Policy CS2 of the Core Strategy. Condition 13 is required to ensure that potential noise impacts from the adjacent proposed retail service yard are reasonably minimised to safeguard residential amenities and to comply with Policy CS2 of the Core Strategy. Condition 14 is necessary to ensure the favourable conservation status of the common pipistrelle bats species at the site. Condition 15 is required to ensure adequate parking provision is made in the interest of highway safety and in accordance with Policy CS2 and CS24 of the Core Strategy.
89. Condition 16 is required to safeguard biodiversity in accordance with Policy CS3 of the Core Strategy and Policy DM2 of the Local Plan. Condition 17 is necessary because the level of on-site parking being provided would only be acceptable on

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<sup>39</sup> LPA14

<sup>40</sup> APP9

the basis that the occupation of the proposed development is age restricted. If the development were not to be age restricted, there would be an unmet parking requirement that would be detrimental to highway safety and contrary to Policy CS24 of the Core Strategy. Condition 18 is necessary to ensure that the development takes place in an appropriate way and to avoid a risk of flooding in accordance with the recommendations of the Flood Risk Assessment by Peter Brett dated November 2017 and in accordance with Policy CS2 and Policy CS6 of the Core Strategy.

### **Conclusion**

90. 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

## **SCHEDULE OF PLANNING CONDITIONS (1-18)**

### **Standard time limit condition**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

### **Details and drawings subject to which the planning permission is granted**

- 2) The development permitted shall be carried out in accordance with the following approved plans: 10085HY-PLOC; 10085HY-PA2-01C; 10085HY-PA2-02 rev B; 10085HY-PA2-03 rev A; 10085HY-PA2-04; 10085HY-PA2-05; 10085HY-PA2-06; 10085HY-PA2-07A; 10085HY-PA2-08A; 10085HY-PA2-09; 10085HY-PA2-10;  
The development permitted shall be carried out in broad accordance with the details illustrated on 10086HY - Landscape Strategy - Rev A.

### **Pre-commencement conditions**

- 3) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175; Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CRL 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
  - (i) a survey of the extent, scale and nature of contamination;
  - (ii) the potential risks to:
    - human health,
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
    - adjoining land,
    - groundwaters and surface waters,
    - ecological systems,
    - archaeological sites and ancient monuments.
- 4) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an appraisal of remediation options, identification of the preferred options(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part 11A of the Environmental Protection Act 1990 in relation to its

intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the Local Planning Authority before the development is occupied.

- 5) 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 the development is resumed or continued.
- 6) No development shall take place, including any works of demolition, until a construction method statement has been submitted to and approved in writing by the Local Planning Authority. The statement shall provide for:
  - a) the parking of vehicles of site operatives and visitors;
  - b) loading and unloading of plant and materials;
  - c) storage of plant and materials used in constructing the development;
  - d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - e) wheel washing facilities;
  - f) measures to control the emission of dust and dirt during construction;
  - g) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - h) delivery, demolition and construction working hours.

The approved construction method statement shall be adhered to throughout the construction period for the development.

- 7) Before development commences other than demolition, ground clearance and underground works, sample panels of brickwork showing the brick, bond, mortar and joint details shall be made available on site for the inspection and approval by the Local Planning Authority. Development shall only take place in accordance with those details that have been approved.
- 8) Before development commences (other than demolition, ground clearance and underground works) a scheme of hard and soft landscaping of the site shall be submitted for approval in writing by the Local Planning Authority. This scheme shall include:
  - (a) a specification for new planting (species, size, spacing and location);
  - (b) areas for hard surfacing and the materials to be used;
  - (c) the treatment of the boundaries of the site and all other means of enclosure to include detailed drawings of the site's front boundary treatment;
  - (d) a method and programme for its implementation and the means to provide for its future maintenance.

No development shall take place unless these details have been approved and then only in accordance with those details.

- 9) Before the commencement of development of the approved new building other than demolition, ground clearance and underground works, a detailed surface and foul water drainage design for the development, based on the submitted Peter Brett Associates Drainage Strategy dated November 2017 shall be submitted to and approved in writing by the Local Planning Authority. The detailed drainage design shall include:-
- (a) evidence that runoff exceeding design criteria has been considered;
  - (b) calculations and plans to show where above ground flooding might occur and where this would pool and flow;
  - (c) details on who will be responsible for undertaking the maintenance of the different drainage features.

Development shall only proceed in accordance with the approved drainage details.

### **Pre-occupancy or other stage conditions**

- 10) The development hereby permitted shall not be occupied until the spaces shown on the approved plans for the parking and turning of motor vehicles including mobility scooters have been provided. The spaces shall thereafter be retained and kept available for their intended purpose at all times.
- 11) Before the installation of windows and doors, eaves, verges, bargeboards and chimneys, the following details shall be submitted to, and approved in writing by the Local Planning Authority.
- a) detailed drawings to show typical joinery details of the proposed windows and doors to include precise details of their external finish and cross-sectional drawings through the windows to illustrate the depth of reveals;
  - b) detailed drawings to show typical eaves, verge and bargeboard details;
  - c) details of the brick chimneys and the materials and finishes to be applied;
  - d) details of the materials to be used for the window cills and headers;

Development shall only take place in accordance with those details which have been approved.

- 12) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in

the next planting season with others of similar size or species, unless the Local Planning Authority gives written consent to any variation.

- 13) Before the installation of windows in units 15, 16, 31 and 32, details of the acoustic insulation measures that are to be incorporated into units 15, 16, 31 and 32 shall be submitted to and approved in writing by the Local Planning Authority. Development shall only take place in accordance with the approved details.
- 14) Prior to the demolition of the existing building, one Schwegler 1FF bat box shall be installed on the site by a qualified ecologist, at 3m above the ground against the north-east boundary wall, facing in a southern or eastern direction, in accordance with the recommendation in the Phase 2 Bat Assessment by Ecosa dated November 2017. The bat box shall be retained on site until the completion of development. Any bats found during an external inspection of the building prior to works commencing on the site shall, where deemed appropriate by the qualified ecologist, be placed in the bat box provided.
- 15) The development hereby permitted shall not be occupied until details of parking for mobility scooters within the site have been submitted to and approved by the Local Planning Authority. The spaces shown on the approved plans shall be provided prior to first occupation of the development and shall thereafter be retained and kept available for their intended purpose at all times.
- 16) Before the completion of development details of the biodiversity mitigation, compensation and enhancement measures that are to be incorporated into the development shall be submitted to and approved in writing by the Local Planning Authority in accordance with the recommendations of the Preliminary Ecological Appraisal by Ecosa dated November 2017 and the Phase 2 Bat Assessment by Ecosa dated November 2017. The measures shall include two artificial nest boxes and one 2FE Schwegler wall-mounted bat shelter. Development shall only proceed to completion in accordance with the approved details.
- 17) No persons under sixty years of age and/or partner under fifty five years of age shall occupy any of the units hereby permitted with the exception of guests and/or wardens.

### **Post occupancy monitoring and management**

- 18) The proposed slab levels of the development shall be strictly in accordance with the level details indicated on the approved drawings. The development shall only take place in accordance with those details which have been approved.

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Charles Banner of Counsel

He called:

Kevin Morris BA (Hons), Dip TP, MA, Urb Dsgn, Dip Bldng  
Cons(RICS), IHBC

Heritage Consultant

Nicholas Straw BA (Hons) MA MRTPI

Appeals Officer

### **FOR THE APPELLANT**

Neil Cameron QC

He called:

Dermot McCarthy BA (Hons), Dip Arch, RIBA

South West Design Director,  
Planning Issues Limited

Paul White BA (Hons), MPhil, MCIfA, PIEMA

Head of Heritage, Ecus Ltd

Andrew Burgess BA (Hons), MRTPI, FRSA

Managing Director, Planning  
Issues Ltd and Group Land and  
Planning Director, Churchill  
Retirement Living

### **INTERESTED PERSONS:**

Councillor Alex Wade

Ward Councillor

Councillor Dan Poole

Ward Councillor

### **DOCUMENTS SUBMITTED TO THE INQUIRY:**

INQ1 Notification Letter

INQ2 Letters of Representation

### **CORE DOCUMENTS SUBMITTED BY THE LPA AND THE APPELLANT:**

CD1 Plans

CD2 Hythe Conservation Area Appraisal

CD3 Core Strategy (NFDC Local Plan Part 1)

CD4 Sites and Development Management (NFDC Local Plan Part 2)

CD5 Housing design, density and character (NFDC SPD)

## **DOCUMENTS SUBMITTED BY THE LPA**

- LPA1 Statement of Case
- LPA2 Statement of Common Ground
- LPA3 Summary of Proof of evidence of Nicholas Straw
- LPA4 Proof of evidence of Nicholas Straw
- LPA5 Appendices of Nicholas Straw
- LPA6 Proof of evidence and Appendices of Kevin Morris
- LPA7 Position Statement
- LPA8 Suggested Conditions
- LPA9 Applicant's Design and Access Statement for 16/11639
- LPA10 Applicant's Heritage Statement for 16/11639
- LPA11 Pre-application advice letter from NFDC to Applicants dated 5 February 2015
- LPA12 Pre-application advice letter from NFDC to Applicants dated 26 May 2016
- LPA13 Opening Statement by Charles Banner
- LPA14 Agreed Conditions
- LPA15 Bundle of documents relating to Appropriate Assessment
- LPA16 Closing Submissions of Charles Banner

## **DOCUMENTS SUBMITTED BY THE APPELLANT**

- APP1 Updated Document List
- APP2 Managing Significance in Decision: Good Practice Advice Note 2 Historic England
- APP3 The Setting of Heritage Assets: Good Practice Advice Note 3 Historic England
- APP4 Conservation Principles, Policies and Guidance (2008) Historic England
- APP5 Conservation Principles (2017 draft) Historic England
- APP6 Public Consultation Report: Amended Appeal Drawings
- APP7 Opening Submission on behalf of the Appellant
- APP8 D6/01 and D6/02 @A1 from the Drawing Pack
- APP9 Pre Commencement Conditions Letter to PINS
- APP10 Closing Submissions of Neil Cameron

## **INTERESTED PERSONS' DOCUMENTS:**

- IP1 Statement by Councillor Alex Wade
- IP2 Letter from Peter and Glenda Read dated 21 December 2018
- IP3 Letter from John Elliott dated 21 January 2019
- IP4 Letter from Hythe and Dibden Parish Council dated 21 January 2019