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## Appeal Decisions

Hearing Held on 26 November 2019

Site visit made on 25 and 26 November 2019

**by Neil Pope BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 December 2019

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### **Appeal A Ref: APP/Y1110/W/19/3227714**

**Beech Hill House, Walnut Gardens, St. David's Hill, Exeter, Devon, EX4 4DH.**

- 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 Crosslane Student Developments (UK) Ltd against the decision of Exeter City Council (the LPA).
  - The application Ref. 18/1445/FUL, dated 3/10/18, was refused by notice dated 22/3/19.
  - The development proposed is the erection of building to provide residential accommodation for students comprised in cluster flats (up to 29 No.) and Studios (up to 17 No.) with associated accommodation, infrastructure works and landscaping following demolition of existing buildings.
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### **Appeal B Ref: APP/Y1110/W/19/3238758**

**Beech Hill House, Walnut Gardens, St. David's Hill, Exeter, Devon, EX4 4DH.**

- 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 Crosslane Student Developments (UK) Ltd and Tamewade Limited Group Pension and Life Assurance Scheme against the decision of Exeter City Council.
  - The application Ref. 19/0560/FUL, dated 24/4/19, was refused by notice dated 10/9/19.
  - The development proposed is the erection of building to provide residential accommodation for students comprised in cluster flats (up to 26 No.) and Studios (up to 28 No.) with associated accommodation, infrastructure works and landscaping following demolition of existing buildings.
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## Decisions

1. Appeal A is dismissed and appeal B is allowed. Planning permission is granted for development to build residential accommodation for students (166 bed spaces) with associated accommodation, infrastructure works and landscaping following demolition of existing buildings at Beech Hill House, Walnut Gardens, St. David's Hill, Exeter, Devon, EX4 4DH. The permission is granted in accordance with the terms of the application, reference 19/0560/FUL, dated 24/4/19 and subject to the conditions set out in the attached Schedule.

## Preliminary Matters

2. Prior to the LPA's determination of the application that is now the subject of appeal A the following revised description of the proposed development was agreed by the main parties: *Development to build residential accommodation*

*for students (192 Bed Spaces) with associated facilities, infrastructure works and landscaping following demolition of existing buildings.*

3. I note that the LPA's decision notice in respect of the application that is now the subject of appeal B describes the proposals as: *Development to build residential accommodation for students (166 bedspaces) with associated accommodation, infrastructure works and landscaping following demolition of existing buildings.* For simplicity, I shall adopt this description of the proposals.
4. The appeal site lies within the St. David's Conservation Area (CA). The main parties agree that the site forms part of the settings of the grade II listed Walnut House<sup>1</sup> and the grade I listed Church of St. David. The provisions of sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are therefore engaged.
5. Following my unaccompanied site visit on 25 November 2019, I informed the parties at the Hearing that I also considered the appeal site forms part of the settings of the grade I listed Church of St. Michael and All Saints, as well as the Cathedral Church of St. Peter. The site also forms part of the setting of the locally listed terrace of houses at 55-61 St. David's Hill.
6. Listed building consent has been granted for the demolition of an existing link building to Walnut House together with works of reinstatement (Ref. 18/1811/LBC). Prior Approval has also been granted for the conversion of the existing offices on the appeal site to residential (class C3) use<sup>2</sup> (refs. 19/1259/PDJ and 19/1261/PDJ).
7. In determining these appeals I have taken into account the contents of the Statements of Common Ground (SoCG) that have been agreed between the LPA and the appellants, as well as the SoCG that has been agreed between the appellants and Devon County Council as the highway authority. Within its Statement, the LPA has informed me that it is no longer pursuing reason for refusal no. v) in appeal A (transport/highways) and instead has substituted this for reason for refusal no. v) in appeal B (imbalance in the local community). Amongst other things, it is agreed that the proposals would not undermine development plan policies which seek to protect employment land in the city.
8. A planning agreement, under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended), has been submitted for each of the appeal schemes. These include financial contributions towards the costs of improving pedestrian safety in the vicinity of the Clock Tower, a Traffic Regulation Order on St. David's Hill and undertakings in respect of various other highway works.
9. The LPA is only able to demonstrate about 2 years and 1 month supply of deliverable housing land<sup>3</sup>. The appellants and the LPA agree that a local housing need assessment conducted using the Government's standard methodology should take into account the needs of students. It is also agreed that there is a substantial need for additional purpose-built student accommodation in Exeter of an appropriate scale and location.

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<sup>1</sup> Listed as 63 St. David's Hill.

<sup>2</sup> The LPA informed me that these comprise schemes of 14 and 7 residential units and was a fallback position.

<sup>3</sup> Amongst other things, the Government's Planning Practice Guidance advises that student accommodation can in principle count towards contributing to an authority's housing land supply where there is evidence of accommodation being released into the wider housing market and /or the extent to which it allows general market housing to remain in such use, rather than being converted for use as student accommodation.

10. There is a minor error in the application forms. One of the appellants is Tamwade Limited Group Pension and Life Assurance Scheme.
11. I adjourned the Hearing on 26 November 2019, to allow for the submission of a various documents, before closing in writing on 16 December 2019.

### **Main Issue (both appeals)**

12. The main issue is whether the public benefits of the proposals would outweigh any harm to the heritage interest (significance) of various designated<sup>4</sup> and non-designated<sup>5</sup> heritage assets and, if so, whether any adverse impacts of the proposals, having particular regard to: the likely effect upon the living conditions of the occupiers of Nos. 55-61 St. David's Hill and; any imbalance in the local community, would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework (the Framework) taken as a whole.

### **Reasons**

13. This 0.35 ha site sits on a plateau above a wooded escarpment and overlooks the Exe valley to the west. Notwithstanding the office use of the site<sup>6</sup> and the adjacent Walnut House, this area of the city is mainly residential in character. There is variety in the scale and design quality of neighbouring buildings. These include Montpelier Court (3-4 storeys) and Morwenna Court (4-5 storeys) and 18<sup>th</sup> and 19<sup>th</sup> century two and three storey terraced houses, such as Nos. 55-61 St. David's Hill. The Church of St. David lies to the rear of Montpelier Court and Morwenna Court, whilst the Church of St. Michael and All Saints lies further to the south. The tower block of Exeter College lies to the north east. There is a significant change in levels across the site.

### *Planning Policy*

14. The development plan includes the 'saved' policies from the Exeter Local Plan Review 1995-2011 (LP), which was adopted in 2005 and the Exeter Core Strategy 2006-2026 (CS), which was adopted in 2012. My attention has been drawn to numerous policies. Given the above noted housing land supply position in Exeter, policies for the supply of housing are out-of-date.
15. The most relevant development plan policies to the determination of these appeals are: CS policies CP4 (density), CP17 (design<sup>7</sup>) and; LP policies LP policies H5 (student housing), C1 (conservation areas), C2 (listed buildings), C3 (buildings of local importance) and DG1 (design). With the exceptions of LP policies C1 and C2, which lack the 'public benefits' balance set out within section 16 of the Framework, these policies are broadly consistent with the provisions of national planning policies.
16. My attention has been drawn to various supplementary planning guidance (SPG) and supplementary planning documents (SPD) produced by the LPA. I have not been provided with copies of these documents, other than a map extract from the LPA's 'Student Accommodation Development in Residential

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<sup>4</sup> The CA, Walnut House, the Church of St. David, the Church of St. Michael and All Saints and the Cathedral Church of St. Peter.

<sup>5</sup> Nos. 55-61 St. David's Hill.

<sup>6</sup> This comprises the four storey Beech Hill House and the two storey former BBC Broadcasting House.

<sup>7</sup> Objective 9 of the CS includes a requirement for development to raise the quality of urban living through excellence in design.

Areas' SPG (2008) showing areas where there is an over-concentration of student accommodation. The main parties agreed that I did not require any other extracts from this SPG or any copies/extracts of the other SPGs and SPDs that had been mentioned within the SoCGs. Much student accommodation has been approved in Exeter since 2008 and the Framework has been published. I therefore attach only limited weight to the map extract provided to me.

17. Whilst not planning policy, I have been provided with a copy of the LPA's 2005 St. David's Conservation Area Appraisal and Management Plan (CAA). Amongst other things, this identifies the special qualities of the CA. It was subject to a process of public consultation and can be given moderate weight.
18. I have also taken into account the provisions of the National Design Guide.

### *Benefits*

19. The proposed developments would increase the supply of purpose-built student accommodation (PBSA) within Exeter and on a site that is conveniently located with respect to the University and main services and facilities, including public transport. The proposals would entail the more efficient use of previously-developed urban land for housing and would accord with the thrust of the Government's objective of boosting significantly the supply of housing. They would help address the shortfall in the supply of PBSA within Exeter, have the potential to reduce the pressure on the existing housing stock and to release some houses in multiple occupation (HMO) by students for use by families.
20. The proposals would provide economic benefits in terms of support for the construction industry, assisting in the expansion of the University and the increased spend on services and facilities by students. As 'car free' developments, there would be a potential reduction in vehicle traffic to and from the site (compared to the lawful use and the fallback) and possible improvements to air quality. The use of solar panels on the roofs of the new buildings would assist in helping to tackle climate change and the appellants' drainage strategy indicates that, subject to a reduction in run-off rates from the site, the risk of flooding elsewhere could be reduced.
21. As more student bed spaces would be provided in the scheme advanced under appeal A the package of benefits would be slightly greater. In both schemes these benefits would be substantial and can be given considerable weight.
22. The main parties disagree as to whether or not the proposals would help to address the very considerable shortfall in housing land supply within Exeter. The LPA has drawn attention to some previous appeal decisions<sup>8</sup> in Exeter, as well as case law<sup>9</sup>. For the appellants, it is argued that these previous decisions related to an objectively assessed need for housing that did not take into account student needs. Moreover, since that time there have been material changes to national planning policies and guidance relating to the standard method for calculating local housing needs and the supply of land for housing.
23. At the Hearing, I heard evidence that following the construction of some PBSA in Exeter some HMOs had been released for family housing. I also note that the proposals before me include studio flats. To a very small extent, the appeal schemes would be likely to assist in addressing the shortfall in housing

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<sup>8</sup> APP/Y1110/A/14/2215771 and APP/Y1110/A/W/15/3005030.

<sup>9</sup> Exeter City Council v SSCLG [2015] EWHC 1663 (Admin).

land supply within Exeter. This carries some limited weight in the planning balance but my decisions do not turn on this particular matter.

### *Designated and Non-Designated Heritage Assets*

24. The significance (heritage interest) of the CA is derived from its special architectural qualities, which include the contribution made by the numerous listed buildings, some of which are landmark buildings<sup>10</sup>, as well as its historic attributes, which include the pattern of development along the arterial routes that lead into the heart of the city, and its archaeology.
25. The late 18<sup>th</sup> century/early 19<sup>th</sup> century villa at Walnut House, by virtue of its siting immediately adjacent to the roadside, three storey height, painted stucco walls and design, is a prominent and pleasing feature within the St. David's Hill part of the CA. To a lesser extent, the set-back terrace of 19<sup>th</sup> century brick and tiled roof houses at 55-61 St. David's Hill also makes a positive contribution to the architectural and historic interest of the CA.
26. I concur with the assessment within the CAA that the 20<sup>th</sup> century red brick office buildings on the appeal site make a neutral contribution to the character of the CA. However, the trees<sup>11</sup> growing within the site assist in softening the built environment and a number of them, including a mature walnut tree<sup>12</sup> that was planted in memory of the journalist and television presenter Jill Dando, make a pleasing contribution to the character and appearance of the area.
27. The appeal site does not form part of any important or glimpsed views from within the CA and does not form part of any identified views towards CA as provided for within the CAA. However, the CAA fails to identify any important views towards the CA. As I noted during my unaccompanied visit, in long-distance views from the west, including Flowerpot Playing Fields and the rising land at Exwick (such as Peterborough Road), part of the site is a small component of the wooded escarpment that runs along part of the western boundary of the CA. This woodland forms an attractive green edge to the CA.
28. From the playing fields and parts of Exwick, the pattern of development within this part of the CA can be discerned together with some buildings that make a positive contribution to the character of the CA. These include Walnut House and the above noted landmark buildings and the Cathedral. These views towards the CA, reveal the relationship between some important buildings and the landscape and assist in affording an appreciation of the special architectural and historic qualities of the CA. The appeal site forms a very small part of these important panoramic views.
29. The significance of Walnut House is mainly derived from its inherent architectural attributes<sup>13</sup> and its historic interest. These include the above noted features as well as its 'L'-shaped plan, windows, Tuscan verandah, principal south east elevation, much of its fabric and its enclosed garden. This is one of the earliest surviving villas on St. David's Hill.
30. I understand that originally the appeal site formed part of the residential curtilage to Walnut House. However, this has long since been severed and the

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<sup>10</sup> These include the Church of St. David and the Church of St. Michael and All Saints.

<sup>11</sup> Some of these have been identified by the appellants' tree consultant as Category A (high quality) and Category B (moderate quality) trees.

<sup>12</sup> A Category A tree.

<sup>13</sup> The modern link to Beech House does not contribute to its significance.



car park and office buildings which have subsequently been constructed have diminished its contribution to the heritage interest of this listed building. Nevertheless, from part of the appeal site the rear of Walnut House can be discerned, including its window arrangement. To a limited extent, this assists in understanding the significance (architectural interest) of this listed building.

31. The significance of the Church of St. David is mainly derived from its architectural interest and historic qualities. These include its late Gothic revival style of architecture (to the design of W D Caröe) with its dramatic exterior and tower on top of St. David's Hill, as well as its numerous interior fixtures. This landmark building embodies the piety and high church beneficence of late Victorian Exeter. Its setting includes the long distance views from the west, which afford an appreciation and understanding of the presence of the church within the city and its surroundings. Some trees growing along the western boundary of the appeal site contribute to the heritage interest of this listed building. However, there are wide ranging and expansive views of the church and the appeal site makes a very limited contribution to its significance.
32. The significance of the imposing Church of St. Michael and All Saints is derived primarily from the architectural qualities of this Geometric Gothic style building with its high steeple (inspired by the spire at Salisbury Cathedral) that is visible over long distances, as well as its historic qualities, including the presence of the church in Exeter and its associations<sup>14</sup> with the Church of St. David. The setting of this building also includes the views from the west, which afford an appreciation and understanding of the presence of the church within the city and its surroundings. Some trees growing along the western boundary of the appeal site also contribute to the heritage interest of this listed building. However, once again, there are wide ranging and expansive views of this church and the appeal site makes a very limited contribution to its significance.
33. The significance of the 13<sup>th</sup> century Cathedral Church of St. Peter is mainly derived from its architectural qualities, which include its Norman towers, as well as its historic interest, which include its fabric and role as the centre for religious worship within Devon. The very extensive setting to this prominent building include the numerous distant views towards the cathedral from around the city. These help reveal the landscape setting of the cathedral and afford an appreciation of the former power, wealth and influence of the church in Devon. These views include the escarpment and green edge to the west. Although within the wider setting of the cathedral, the appeal site, by virtue of its size, makes no perceptible contribution to its significance.
34. The significance of Nos. 55-61 St. David's Hill as locally listed buildings is derived mainly from its architectural interest as a terrace of locally distinctive 19<sup>th</sup> century housing and its historic interest as part of the growth and development in the St. David's area of the city. The appeal site forms part of the setting of this non-designated heritage asset and is separated from it by a 4.5m high stone boundary wall. There is nothing of substance to demonstrate that the appeal site contributes to the significance of this locally listed terrace.
35. The LPA has informed me that it has no 'in principle' objection to the redevelopment of the appeal site for PBSA. As with the existing office buildings on the site, the proposed building (both schemes) would be sited to the rear (west) of Walnut House and to the north and west of Nos. 55-61 St. David's

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<sup>14</sup> I note from the list description that this church was built as a chapel of ease to St. David's in 1865-68.

- Hill. Whilst the proposals would have a much larger 'footprint' than the existing offices they would not entail the harmful loss of any important open space or disrupt the pattern of building within the street.
36. The new building would be set back from both the street and Walnut House and would not affect the rhythm of building frontages or result in any plot subdivision. It would respect the urban grain and adequate space would be retained around the new building to avoid any cramped effect. The space that would be created between Walnut House would provide a modest enhancement to the setting of this listed building. The siting and footprint of the building would preserve the character of the CA and the setting of Walnut House.
  37. The scale of the proposed building would be greater than Walnut House and the existing office buildings<sup>15</sup>. However, the appellants' architect has given thoughtful consideration to this matter as part of the overall design. In this regard, the new building would comprise a series of interconnected volumes that would relate to the scale of historic development when seen from within the CA and would assist in breaking-up/concealing the overall mass of new building on the site. In both schemes, the upper floor would be stepped back in an attempt to reduce the overall mass of new building on the site.
  38. In comparison to the scheme advanced under appeal A, there would be a significant reduction in the size, height and mass of the building proposed under appeal B. The top floor of accommodation would be removed from the north and south wings and extensively reduced elsewhere. The visual impact of this building would be decreased and a varied roofline created.
  39. In utilising the change in levels across the site the proposals would step-down towards the wooded western boundary. The new buildings would be lower<sup>16</sup> in height than the roof ridge on Walnut House and no taller than the existing office building (Beech Hill House). Neither development would intrude into the street scene of St. David's Hill.
  40. The proposed use of red brick, stucco and slate<sup>17</sup> would emphasise the breaks in the building volumes whilst also respecting the existing palette of materials. The vertical emphasis of the proposed windows and louvred openings would be sympathetic to the character of the CA and with the other elements of the design, would provide a high quality contemporary interpretation of traditional building forms. I note that the proposals took into account comments made by The Design Review Panel. In both schemes the proposed building would sit comfortably alongside Walnut House. There is no evidence to indicate it would harm the significance of this listed building or Nos. 55-61 St. David's Hill.
  41. The proposals would entail the removal of a number of trees growing within the site. These include two Category A trees (walnut and holly), two Category B trees (yew and acer) and a number of Category C and Category U trees. Some works/pruning of other trees, including some growing along the south western and western boundaries, are also proposed.

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<sup>15</sup> The building proposed in appeal A would be one storey higher than the roof ridge on the former BBC building.

<sup>16</sup> The larger building (appeal A) would vary in height between 3 and 5 storeys, inclusive of basement and roof. The majority of the proposed roofline for the building advanced under appeal B would be the same height as the existing ridge level on the former BBC studio building on the site.

<sup>17</sup> Whilst noting the appellants' argument that artificial slates would give a 'crisp' finish, such material would be at odds with distinctive qualities in the CA, which include natural slate. The main parties agreed that this matter could be addressed by way of a planning condition.

42. The loss of healthy trees within the site would have a negative impact on the character and appearance of the CA. However, some felling and pruning works would be required as part of any sound management regime. As the management of some boundary trees has been lacking in recent years, irrespective of the appeal schemes, some thinning of the boundary vegetation would be required. Until the canopies of the remaining trees filled the ensuing spaces there is likely to be a noticeable short-term reduction in the tree cover/vegetation growing along the top of this part of the escarpment. Whilst this is a negative impact of the proposals that is to be weighed in the balance, some new tree and landscape planting is also proposed. In this regard, the appellants' agent has informed me that there would be an opportunity for a net gain in tree planting as part of the proposed development.
43. The proposed loss of the Category A and B trees would be especially unfortunate as these, by definition, are of particular amenity value and trees form part of the pleasing attributes of the CA. If unaffected by development, these trees could be reasonably expected to continue to grow and make a stronger contribution to the character and appearance of the CA. The loss of the Walnut tree could also be perceived by some as somewhat disrespectful to the memory of a popular person. I note, following the refusal of the appeal A scheme, that the appellants are now proposing (in both schemes) to transplant this Walnut tree to a different part of the site.
44. Transplanting trees, especially mature trees, is not without risk to their health and, to be successful, this requires considerable knowledge/skill. It is also unlikely to be inexpensive. Such works would require careful and most likely, extensive, excavation around the tree plate to carefully release its roots. Such works would also need to be undertaken when the tree was dormant to give it the best chance of survival. Heavy lifting gear would be required to carefully move the tree and relocate<sup>18</sup> it to a different and suitable part of the site<sup>19</sup>.
45. Appropriate aftercare would also be required to reduce the effects of shock to the tree. In this regard, I note that the appellants' tree consultant is confident that this Walnut tree could be successfully relocated<sup>20</sup> to another part of the site. Whilst not without some risk of danger to the tree, provided the transplanting was undertaken in accordance with a detailed method statement, this tree could continue to flourish. Both main parties agree that this matter could be addressed by way of planning conditions attached to a permission.
46. The proposed development, including the removal and works to those identified trees growing along the boundary, would, be visible in some long-distance views from the west. This would be especially so in the scheme advanced under appeal A, where its greater height and mass would be readily apparent above the tree-lined escarpment and would erode the contribution the site makes to the green edge of the CA. Notwithstanding the proposed high quality design of the new building, including the palette of materials to be used, this development would stand out as a discordant addition in some views into the CA. Great weight must be given to the conservation of designated heritage assets. This harm weighs heavily against granting permission.

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<sup>18</sup> A sizeable new root pit would need to be dug in readiness for the tree.

<sup>19</sup> Such a location has been identified by the appellants on land to the rear of Nos. 55-61 St. David's Hill.

<sup>20</sup> The appellants' agent has informed me that the prospects for survival of this translocated tree would be 95%.



47. Whichever scheme was built, the new buildings would be more noticeable in these views than the existing development on the appeal site. However, in appeal B, the lower height and reduced mass of the proposed building (in comparison to the appeal A scheme) would not significantly interrupt the tree line. This new building would result in negligible or, at worst, very limited disruption to the tree-lined edge of the CA and minor harm to its significance.
48. In both schemes, there could be future pressure to undertake further works to some boundary trees in order to provide increased levels of natural light within some of the proposed flats. However, there is likely to be pressure to remove / thin some of these trees if the fallback was implemented. If approved, it is the appellants' intention to carefully manage all of the trees that it is intended to retain so as to provide a pleasant living environment for students.
49. Within long-distance views from the west, the proposed buildings would sit at a much lower level than the tower of the Church of St. David and would not detract from an appreciation or understanding of the significance of this designated heritage asset. The proposals would also result in a very minor change to the setting of the Church of St. Michael and All Saints. The scale of the proposed buildings and the intervening wooded escarpment would ensure that neither scheme diminished the prominence of this landmark building or harmed its significance and the contribution it makes to the townscape and CA.
50. Neither scheme would harm the significance of any listed (including locally listed) buildings and their settings would be preserved. The proposals would accord with the provisions of LP policies C2 and C3. In appeal A, when the impact of this proposal upon some important trees growing within the site and in some views into the CA is considered with the design quality of the new building, as well as the removal of the connecting link to Walnut House, there would be less than substantial harm to the significance and character and appearance of the CA. This development conflicts with the provisions of CS policies CP17 and CP4, LP policies C1 and DG1 and, on balance, the aims and objectives of the National Design Guide. The harm to the CA that I have identified would not be outweighed by the public benefits of the proposal.
51. In appeal B, the negligible/minor harm to the significance and character and appearance of the CA arising from the views of the building from the west and the loss of some trees growing within the site (and ensuing conflict with LP policy C1) would be outweighed by the public benefits of the proposal. This development would accord with provisions of CS policy CP17, aspects of CP4, LP policy DG1 and the aims and objectives of the National Design Guide.

#### *Living Conditions of Neighbouring Residents*

52. The proposed developments would change the outlook for some neighbouring residents, especially the occupiers of Nos. 55-61 St David's Hill. The mass and height of the new buildings would be apparent from the upper floor rear (west) facing windows in this terrace of houses. However, as I noted during my accompanied site visit, the height and mass of Beech Hill House is also apparent and parts of the former BBC offices can be seen over the top of the rear boundary wall. The proposed buildings would be sited away from the western boundary of the neighbouring terrace and, by virtue of its flat roof profile, massing, contrasting materials and the fall in land across the site, would not appear overbearing or oppressive when seen from Nos. 55-61.

53. At the Hearing, the LPA informed me that it operated a minimum '21 metre rule' for the separation between facing windows to habitable rooms. It also informed me that this had been relaxed in some situations to ensure the more efficient use of previously-developed urban land for housing. On behalf of the appellants, it has been calculated that most of the proposed windows to habitable rooms would be 23 metres from the facing windows to habitable rooms in Nos. 55-61 St. David's Hill. The exception would be the window in the projecting gable of No.55, which would be about 20 metres from the nearest facing window to a habitable room in the new development.
54. As I also saw during my accompanied visit, from some windows in Beech Hill House it is possible to see into the rear gardens/yards and some windows of this neighbouring terrace. The fallback would be likely to result in overlooking from some habitable rooms. The windows in the proposed buildings would be further away than some of the existing windows in Beech House and those closest to Nos. 55-61 St. David's Hill would be angled away at 45 degrees to further reduce overlooking. Notwithstanding the slight breach to the LPA's '21 metre rule', this would be unlikely to give rise to any serious overlooking of this neighbouring terrace or any significant loss of privacy.
55. In support of the proposals, the appellants have submitted an indicative sun path analysis. Whilst only illustrative, these suggest that during part of the day in the winter months there could be some overshadowing in parts of the rear garden and some facing windows in this neighbouring terrace. There could also be some limited overshadowing to parts of the gardens during part of the day in the remainder of the year. This would be a negative impact of the proposals and there would be an element of conflict with CS policy CP4.
56. The existing tall boundary wall along the rear of these neighbouring properties is likely to cast shadows across parts of these rear gardens/yards for part of the day. However, for the scheme advanced under appeal A, the height and mass of this proposed building would be likely to result in a significant loss of sunlight and could create a gloomy living environment for the occupiers of Nos. 55-61 St. David's Hill. This also weighs against granting planning permission.
57. In appeal B, the impact of this smaller building upon sunlight within these neighbouring rear yards/gardens would not be so great and would be unlikely to seriously erode or harm the living conditions of those living alongside. This proposal would avoid creating a gloomy living environment for neighbours.
58. The proposals would result in an increase in noise and activity within the site and at the rear of Nos. 55-61 St. David's Hill. However, the existing car park immediately alongside these neighbouring rear gardens/yards would be removed and landscaped, including some tree planting. The development would also largely be 'car free'. If the existing office use intensified or the fallback was implemented there could be disturbance to neighbours, not least through cars parking and moving within the site. The proposals would eliminate potential disturbance from motor vehicles immediately alongside these neighbouring dwellings. This would be a benefit of the appeal schemes.
59. Whilst some students can behave in an anti-social way such behaviour is not limited to the student population. There is evidence to suggest that PBSA is less likely to result in this type of behaviour than student HMOs. Furthermore, it is the appellants intention to operate the development in accordance with an approved student management scheme. This would assist in managing student

behaviour. When considered overall, the proposals would be unlikely to result in harmful noise or disturbance to neighbouring residents.

60. The appeal A scheme would be likely to unacceptably harm the living conditions (loss of light) of the residents of Nos. 55-61 St. David's Hill, whereas the impact of the scheme advanced under appeal B would not be so great as to justify withholding permission. Whilst there would be much noise and disturbance during the demolition and construction phases, this is the case with most schemes of urban redevelopment. Disturbance would be for a limited period and a planning condition, requiring the development to be undertaken in accordance with an approved construction method statement, would avoid any harmful disturbance to neighbouring residents.

#### *Imbalance in the Local Community*

61. I note the concerns of the LPA and some interested parties that the proposed developments would increase the student population within this part of the city. I also note that there are other PBSAs and some student HMOs within the CA and the smaller St. David's Neighbourhood Area that was referred to by the ward member at the Hearing. I appreciate that where an imbalance arises in the local population this can lead to social problems and a change in character. However, as I have already noted above, the LPA's SPG does not identify this part of the city as having an over-concentration of student accommodation.
62. Whilst respectful of the Community Plan that was referred to by the ward member, this is not planning policy or planning guidance and was not relied upon by the LPA as part of its case. It is also unclear from the extract provided to me what percentage of the local population and/or housing stock comprises / is currently used by students. Whilst I note that there are 57 HMOs in St. David's Hill, it is unclear how many are occupied by students and how this compares to the overall stock of housing within the street<sup>21</sup>. I was also informed that following the completion of some PBSA in the area some HMOs have been released from student occupation for use as family or other housing.
63. The LPA's argument that this matter should be based on an assessment of the site and its immediate surroundings is a rather nonsensical way of considering the likely impact upon the area. Such a restricted approach would almost certainly result in 'false' or distorted figures for making an assessment and there is nothing to support this approach within the development plan or any other published planning guidance that was made available to me.
64. Even if the LPA's approach was adopted it has not provided any figures/details to demonstrate what percentage of housing would comprise student accommodation in the event of the development proceeding. The figures provided on behalf of the appellants for the ward area indicate that the proposals would result in less than a 2% increase in the student population from 15.6% to 17.2%. Whilst the ward area is sizeable and this is only a very crude way of measuring impact, there is no cogent evidence to substantiate the concerns of the LPA and the fears of some interested parties on this matter.
65. From everything that I have seen and heard, it has not been demonstrated that the numbers of students that would occupy the site would result in an

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<sup>21</sup> I note from the extract that there are no PBSA within the street.

overconcentration of student accommodation within this part of the city, or harm to the character of the area or any imbalance in the local population.

### *Other Matters*

66. I note the concerns of some interested parties regarding the potential implications of surface and foul water discharge from the site. Whilst the appellants' drainage strategy concludes that further investigation is needed to ascertain if soakaways are feasible, and to determine the capacity of existing drainage arrangements to accept the proposed flows, there are no objections from those who are responsible for ensuring that the proposals are capable of being served by adequate drainage arrangements. I am not aware of any flooding attributable to surface water discharge from the site and both main parties agreed that this matter could be addressed by a planning condition.
67. I also note the concerns of some interested parties regarding potential land instability. Other than anecdotal evidence, there is nothing to indicate that the appeal site contains unstable ground conditions. However, given its location on the top of an escarpment, both main parties agreed that it would be prudent to also address this matter by way of a planning condition.

### *S106 Obligations*

68. I have considered the submitted planning obligations, and the request for contributions from an interested party, having regard to the tests set out in paragraph 56 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL).
69. Those occupying/using the proposed development would make use of the surrounding highway network. This would include the footways around the junction of St. David's Hill and Hele Road, the Clock Tower junction and the Elm Grove Road/Howell Road junction. The likely increase in pedestrian traffic using these junctions has the potential to increase the risk of an accident. The S106 obligations include necessary provision for improving pedestrian safety and avoiding this. The obligations for these works are reasonably related in scale and kind to the developments and would be enforceable. I have therefore taken them into account in determining these appeals.
70. The proposed alterations to existing access into the site, necessitating a raised crossing and uncontrolled pedestrian crossings alongside are also required for highway safety reasons and the contribution towards a Traffic Regulation Order to include these works, would be necessary and proportionate. I have therefore also taken this obligation into account.
71. However, whilst the proposed uncontrolled pedestrian crossings in Velwell Road would benefit public safety and would avoid expenditure from the public purse, these works appear 'remote' from the proposed developments. I am unconvinced that the proposals would generate a sufficient increase in pedestrian use of this junction so as to justify this particular obligation. I have not therefore taken it into account in determining the appeals.
72. I note the request, made on behalf of the Royal Devon and Exeter (RD&E) NHS Foundation Trust for a financial contribution<sup>22</sup> towards the costs of maintaining

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<sup>22</sup> Whilst the request for £72,563 is made in respect of appeal B, the representative from the RD&E NHS Foundation Trust informed me that it was seeking a higher contribution in respect of appeal A.

local health services in the event of permission being granted. I have also had regard to the various appeals decisions<sup>23</sup> and legal opinions<sup>24</sup> that were submitted with that request<sup>25</sup>. I have much sympathy for those responsible for funding and working within the NHS and appreciate the very difficult financial circumstances under which they and other public sector organisations operate.

73. I note that when the LPA determined the applications it responded to the request made on behalf of the RD&E NHS Foundation Trust explaining why the requested contribution would be unjustified. Whilst the letter that was sent by the LPA related to different applications, the same principles appear applicable to the schemes before me. Moreover, at the Hearing, the LPA informed me that any such contributions would be covered by its CIL Charging Schedule.
74. Those acting on behalf of the appellants have argued that: the development accords with national and local planning policies and is not unanticipated additional growth; planning policy does not require financial contributions, via S106 obligations from the appeal schemes, towards the cost of maintaining the delivery of local health care services; one of the appeal decisions relied on by the NHS Foundation Trust does not support its case and; the proposals are chargeable development under the LPA's CIL Charging Schedule.
75. Having considered the above, it has not been demonstrated that the proposals would harm the provision of local healthcare services. Furthermore, in making its request, the RD&E NHS Foundation Trust does not appear to have considered the fallback position. The arguments of both main parties on this matter are more convincing. It would be inappropriate to withhold permission on the basis of the argument put forward by the RD&E NHS Foundation Trust.

### *Planning Conditions*

76. In addition to a 'standard' condition requiring development to commence within three years, in the interests of certainty, a condition would be necessary specifying the approved plans. (It would be unnecessary to include illustrative plans/material.)
77. There are exceptional reasons why a number of pre-commencement conditions would be necessary. These comprise conditions requiring: a Construction Method Statement, in order to safeguard the amenities/living conditions of neighbouring residents; drainage details, to ensure satisfactory drainage arrangements, including minimising flood risk and; investigations into ground stability, to limit the risk of any harm to public safety. Those acting on behalf of the appellants confirmed that they accepted the need for these conditions.
78. I agree with the appellants that given the known history of the appeal site, pre-commencement conditions regarding land contamination would be unnecessary. Instead and to safeguard public health, a condition would be necessary to remedy any contamination in the unlikely event of this being discovered during the construction phase. Conditions would also be necessary

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<sup>23</sup> These relate to sites in Warwickshire and many of the them pre-date changes to the CIL and planning guidance.

<sup>24</sup> These appear to be several years old, relate to different Foundation Trusts and one opinion pre-dates CIL.

<sup>25</sup> Whilst in its letter of 3/12/19 the NHS Foundation Trust expressed concern at the notice it had been given by the LPA of the Hearing, no such argument was made by its representative at the Hearing. There was opportunity before and during that oral event for interested parties to present all the evidence they were seeking to rely upon. The adjournment was made solely to receive outstanding information on matters sought by the Inspector. It was not an opportunity to drip-feed additional comments.



to ensure satisfactory drainage arrangements and to avoid any significant risk to public safety arising from any unsuitable ground conditions.

79. To safeguard the living conditions of neighbouring residents, conditions would be necessary: requiring a noise assessment in respect of plant and equipment to be installed in the development and; the submission/approval of a student management scheme. To ensure that the development promotes alternative means of travel to the private car, a condition would be necessary requiring it to be operated in accordance with an approved travel plan.
80. To safeguard the character and appearance of the area, conditions would be necessary requiring: the use of natural rather than artificial slates; details of the finished floor and overall heights of the buildings; a scheme of landscaping, including transplanting the memorial tree; the retention of those trees and shrubs which are not shown as being removed on the approved plans; replacement of trees and shrubs in the event of new and transplanted trees and shrubs failing; tree protection measures; details of the building contract or reinstatement works following demolition so as to minimise the risk of the site becoming unsightly.
81. Other conditions would be necessary to safeguard archaeological interests and to ensure that the new building met energy efficient requirements. I note the appellants' argument that the BREEAM standards to which CS policy CP15 originally applied have been 'upgraded' such that what was 'excellent' is now classified as 'very good'. As 'very good' is the minimum standard to which the building would aspire it would be reasonable to specify this rather than 'excellent' as part of a condition.
82. To safeguard nature conservation interests, conditions would be necessary requiring: the provision of swift boxes and bat tubes and; a survey of any nesting birds or hedgehogs that may be using the site. Whilst noting the comments of the RSPB, the recommendation made by the appellants' ecologist for a minimum of 10 swift boxes would be reasonable.
83. Conditions to the above effect would accord with the provisions of paragraph 55 of the Framework.

#### *Overall Planning Balance and Conclusion*

84. I have found in appeal A that the public benefits of the proposals would not outweigh the less than substantial harm to the significance and character and appearance of the CA. Permission should therefore be withheld for this scheme. Moreover, when the harm that I have also found to the living conditions of some neighbouring residents is added to the overall planning balance there is a clear case for dismissing this appeal.
85. In appeal B, the limited harm to the significance of the CA and the impact upon the living conditions of the occupiers of Nos. 55-61 St. David's Hill that I have identified would not significantly and demonstrably outweigh the substantial benefits of this development when assessed against the policies in the Framework taken as a whole. This appeal should therefore succeed.
86. I recognise that some interested parties will be disappointed in my findings. However, local opposition to a proposal is not by itself sufficient grounds for withholding planning permission. The development advanced under appeal B strikes the appropriate balance between accommodating growth within the city

and safeguarding the quality of the local environment, including the living conditions of neighbouring residents. This proposal accords with the overall provisions of the development plan and comprises sustainable development. Having carefully assessed this scheme against locally adopted policies, I note that the LPA's officers, when advising members, recommended it for approval.

87. Given all of the above, I conclude that appeal A should be dismissed and appeal B should be allowed.

*Neil Pope*

Inspector

## SCHEDULE OF PLANNING CONDITIONS

### Appeal B

1. The development hereby permitted shall commence no later than the expiration of three years from the date of this decision.
2. The development hereby permitted shall be undertaken in accordance with the following approved plans/Nos: 3666 (12) 01 5; 3666 (22) 0b 12; 3666 (22) 00 14; 3666 (22) 01 13; 3666 (22) 02 4; 3666 (22) 03 12; 3666 (22) 04 5; 3666 (22) 06; 3666 (32) 01 5; 3666 (32) 02 4; 3666 (32) 03 4; 3666 (32) 04 7; 3666 (42) 01 4; 3666 (42) 02 4; 3666 (42) 03 6; 3666 (42) 04 2.
3. Notwithstanding the details specified on the approved plans, natural slates, rather than artificial slates, shall be used on the buildings hereby permitted. Samples of these shall have first been submitted to the Local Planning Authority (LPA) for approval in writing, together with samples of all other materials to be used on the exterior of the building. The development shall be undertaken in accordance with the approved samples/details.
4. No development (including ground works) or vegetation clearance works shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority (LPA). The Statement shall provide for:
  - a) the site access point(s) of all vehicles to the site during the construction phase;
  - b) the parking of vehicles of site operatives and visitors;
  - c) the areas for loading and unloading plant and materials;
  - d) storage areas of plant and materials used in constructing the development;
  - e) the erection and maintenance of securing hoarding, if appropriate;
  - f) wheel washing facilities;
  - g) measures to control the emission of dust and dirt during construction;
  - h) no burning on site during construction or site preparation works;
  - i) measures to minimise noise nuisance to neighbours from plant and machinery;
  - j) a restriction limiting construction working hours and deliveries from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank/Public Holidays;
  - k) no driven piling without prior consent from the LPA.

The approved Statement shall be strictly adhered to throughout the construction period of the development.

5. Prior to the commencement of construction of the superstructure, a noise assessment shall be undertaken and submitted for approval in writing by the Local Planning Authority (LPA). This assessment shall consider the impact of noise from any plant and equipment to be installed in the development on local receptors. If, following the above assessment, the LPA concludes that noise mitigation measures are required, the appellant shall then submit a scheme of works to the LPA to ensure that the development does not have a significant negative impact on local amenity. These measures shall be agreed in writing by the LPA and shall be implemented prior to and throughout the occupation of the development.
6. No development above slab level shall take place until details of the proposed finished floor levels and overall heights of the proposed building, as indicated on the approved drawings and set in relation to an agreed fixed point or Ordnance Survey datum, has been submitted to and approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved details.
7. No development above slab level shall take place until a detailed scheme for landscaping, including the planting of replacement trees and shrubs (including the transplanting of the Jill Dando memorial tree – identified as T98 in the Dart Tree Consultancy Report dated 16 May 2017), the use of surface materials and boundary screen walls and fences has been submitted to the Local Planning Authority (LPA) and no unit shall be occupied until the LPA has approved a scheme. The approved scheme shall specify materials, species, tree and plant sizes, numbers and planting densities, and any earthworks required together with the timing of the implementation of the scheme. The landscaping shall thereafter be implemented in accordance with the approved scheme.
8. With the exception of those trees and/or shrubs shown to be removed or pruned on the approved plans, no other trees, shrubs and/or hedges in or around the site shall be removed, felled, pruned or lopped without the prior written consent of the Local Planning Authority.
9. In the event of failure of any trees or shrubs, planted or transplanted in accordance with the scheme approved by the Local Planning Authority (LPA), pursuant to Condition 7 above, become established and to prosper for a period of five years from the date of the completion of that scheme, such trees or shrubs shall be replaced with a similar specimen, unless otherwise agreed in writing by the LPA.
10. No materials shall be brought onto the site or any development commenced, until the developer has erected protective fencing around all trees and shrubs to be retained, in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority (LPA). These details shall be produced in accordance with BS 5837:2012 - 'Trees in Relation to Design, Demolition and Construction - Recommendations'. The developer shall maintain such fences until all development the subject of this permission is completed. The level of the land within the fenced areas shall not be altered without the prior written consent of the LPA. No materials shall

be stored within the fenced area, nor shall trenches for service runs or any other excavations take place within the fenced area except by written permission of the LPA, such approval shall include the method of excavation.

11. No development related works, other than the demolition or stripping-out of the existing buildings, shall take place within the site until a written scheme of archaeological work has been submitted to and approved in writing by the Local Planning Authority (LPA). This scheme shall include on-site work, and subsequent assessment, such as the analysis, publication, and archiving of the results, together with a timetable for completion of each element. All works shall be carried out and completed in accordance with the approved scheme, unless otherwise agreed in writing by the LPA.
12. Prior to the occupation of the building hereby permitted, not less than 10 swift boxes and 5 bat tubes shall be installed on the building in accordance with the recommendations contained within the EAD Ecology report dated August 2018. The swift boxes and bat tubes shall be retained thereafter unless previously agreed in writing by the Local Planning Authority.
13. Prior to any works of demolition or the commencement of development, including ground clearance works, the site shall be surveyed for evidence of any nesting birds and hedgehogs in accordance with the recommendations contained within the EAD Ecology report dated August 2018. The findings of the survey shall be submitted to the Local Planning Authority (LPA), together with details of the proposed means of mitigating any adverse impact upon wildlife, for approval in writing by the LPA. Works of demolition and construction shall be undertaken in accordance with the approved mitigation. In the event of the works of demolition and construction not commencing within a period of twelve months from the date of the survey a new / updated survey and details of any proposed mitigation shall be submitted to and approved in writing by the LPA. The development shall proceed in accordance with the approved mitigation.
14. Unless otherwise agreed in writing by the Local Planning Authority (LPA), the building hereby approved shall include the use of photovoltaic panels, as shown on the approved drawings, and shall achieve a BREEAM 'very good' standard as a minimum. Prior to commencement of development, excluding demolition, any works required to facilitate demolition and ground reprofiling work, the developer shall submit to the LPA a BREEAM design stage assessment report to be prepared by a licensed BREEAM assessor which shall set out the evidence to confirm that the minimum standard can be achieved. The building shall be completed fully in accordance with any approval given. A BREEAM post-completion report of the building shall be carried out by a licensed BREEAM assessor within twelve months of substantial completion of the building and shall set out the BREEAM score achieved by the building and the equivalent BREEAM standard to which such score relates.
15. The works of demolition shall not be undertaken until details of either a building contract, which has been entered into for the erection of the replacement building hereby approved, or measures for the reinstatement of the site following demolition have been submitted to and approved in writing by the Local Planning Authority.

16. Prior to the first occupation of the building hereby permitted, a student management scheme shall be submitted to and approved in writing by the Local Planning Authority (LPA). The scheme shall include: securing student only occupation; employment of a warden/student liaison representative and 'night porter' arrangements to manage student behaviour; on site CCTV management (including location so as to safeguard the privacy of neighbouring residents) and; restriction of student parking within the surrounding area. The scheme shall be implemented in accordance with the approved details and shall be operated thereafter unless otherwise agreed in writing by the LPA.
17. No part of the development shall be occupied until a travel plan/management plan (including recommendations/arrangements for monitoring and review) has been submitted to and approved in writing by the Local Planning Authority (LPA). Thereafter the recommendations/arrangements of the travel plan shall be implemented, monitored and reviewed in accordance with the approved document or any amended document subsequently approved in writing by the LPA.
18. No development shall commence until details of the following have been submitted to and approved in writing by the Local Planning Authority:
  - a) details of the proposed means of surface water disposal and the foul drainage arrangements;
  - b) an investigation of ground conditions and a risk assessment of land stability, together with any recommendations for ensuring the development does not pose a significant risk to public safety.The development shall be carried out in accordance with the approved details.
19. In the event of any contaminated land being discovered during the demolition or development phases, works shall cease and a contaminated land investigation/report shall be prepared and submitted to the Local Planning Authority for approval in writing. The approved report shall detail the nature and extent of the contamination, as well as remediation measures, including a timetable for addressing the contaminated land. The demolition or development shall then proceed in accordance with the approved details.



## **APPEARANCES**

### **FOR THE APPELLANTS:**

Mr R Taylor QC	Instructed by Dr T S Roche
Dr T S Roche BA (Hons), PhD, BTP (Dist), MRTPI	Director, Roche Associates Limited
Mr J Clemons	Savills
Mr B Ricketts	Architect, Kay Elliott

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

Mr P Jeffrey	Principal Project Manager (Development)
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### **INTERESTED PERSONS:**

Cllr D Moore	Member, St. David's Ward
Mr D Tarbet	Business Development Director, RD&E NHS Foundation Trust

### **DOCUMENTS SUBMITTED AT THE HEARING**

Document 1	Details on community imbalance, provided by Cllr Moore
Document 2	LPA letter to agent acting for the RD&E NHS Foundation Trust
Document 3	Suggested planning conditions
Document 4	S106 agreements (not signed or dated)

### **DOCUMENTS SUBMITTED WHILST HEARING ADJOURNED**

Document 5	Details on S106 financial contributions
Document 6	Letter from Dr Roche setting out responses to Inspector's request
Document 7	Updated report from Dart Tree Consultancy
Document 8	Note from the appellants' ecologist
Document 9	Signed/dated S106 Agreements
Document 10	Correspondence from RD&E NHS Foundation Trust
Document 11	Response from Dr Roche to RD&E NHS Foundation Trust correspondence