



## Appeal Decision

Inquiry held on 10 - 12 March 2020

Site visit made on 11 March 2020

**by Joanna Gilbert MA (Hons) MTP MRTPI**

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

**Decision date: 16 April 2020**

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**Appeal Ref: APP/J2210/W/19/3226136**

**35 - 41 New Dover Road, Canterbury CT1 3AT**

- 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 YourLife Management Services Ltd against the decision of Canterbury City Council.
  - The application Ref 18/02088, dated 5 October 2018, was refused by notice dated 11 January 2019.
  - The development proposed is redevelopment of the site comprising 50 Extra Care apartments for older persons with associated communal facilities, parking and landscaping (C2 use class).
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### Decision

1. The appeal is allowed and planning permission is granted for redevelopment of the site comprising 50 Extra Care apartments for older persons with associated communal facilities, parking and landscaping (C2 use class) at 35 - 41 New Dover Road, Canterbury CT1 3AT in accordance with the terms of the application, Ref 18/02088, dated 5 October 2018, subject to the attached schedule of 13 conditions.

### Application for costs

2. An application for costs was made by YourLife Management Services Ltd against Canterbury City Council. This is the subject of a separate decision.

### Procedural Matters

3. During the appeal, the appellant submitted amended drawings. These included privacy screening and obscured glazing to windows and vehicular access alterations to provide swept path analysis for fire engines, refuse vehicles and cars. These amendments were discussed at the Inquiry as Scheme A+.
4. Additionally, the appellant submitted an amended scheme, referred to as Scheme B, which would reduce the proposed building's size while maintaining the number of units and associated facilities. The amendments to Scheme B would reduce the width of the proposed building's rear wing with a corresponding reduction in ridge heights; remove the proposed building's rear eastern part; reduce fenestration to the proposed flank elevations; retain a Yew (Tree No 5) and revise tree planting along New Dover Road; and would provide vehicular access alterations to allow large vehicles leaving the site to turn towards the south without crossing the road's centre line.

5. The appellant confirmed at the Inquiry that they would prefer the appeal to proceed using Scheme B. The Council confirmed prior to and at the Inquiry that it did not object to the consideration of Schemes A+ and B. Interested parties present at the Inquiry confirmed that Scheme B was preferable to the application Scheme A or amended Scheme A+, though they confirmed that they opposed all three schemes. Furthermore, concern was raised by interested parties that consultation had been unclear and that it was not appropriate to evolve a scheme in this way during the appeal process.
6. However, those consulted on the application and appeal and those who responded to earlier consultations were consulted on the amended plans for in excess of 21 days prior to the Inquiry's opening and plans were made publicly available. I have had regard to the consultation responses received in respect of the amended plans.
7. Given the proposed reduction in built development and the nature and extent of consultation, and having had regard to the relevant case law<sup>1</sup>, I am satisfied that no one would be prejudiced if the appeal were to be determined on the basis of the revised proposal. My decision therefore relates to Scheme B.
8. Prior to the opening of the Inquiry, the Council confirmed its intention to withdraw its fourth reason for refusal regarding affordable housing. Accordingly, the Council did not give evidence on this matter. I shall not therefore consider that reason as a main issue.
9. At the Inquiry, the planning obligation in the form of a unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 was not yet completed. A signed and executed planning obligation dated 31 March 2020 was submitted on 2 April 2020. I have had regard to it in reaching my decision.

### **Main Issues**

10. The main issues in this appeal are:
  - (i) the effect of the proposed development on the character and appearance of the Canterbury (New Dover Road and St Augustine's Road) Conservation Area;
  - (ii) the effect of the proposed development on the living conditions of neighbouring occupiers at Nos 33, 43, 43a and 43b New Dover Road and No 2a St Augustine's Road;
  - (iii) the effect of the proposed development on highway safety;
  - (iv) the need for extra care provision in Canterbury and the surrounding area; and
  - (v) whether the proposed development would make appropriate provision for infrastructure needs arising from the development.

### **Reasons**

- (i) the effect of the proposed development on the character and appearance of the Canterbury (New Dover Road and St Augustine's Road) Conservation Area*
11. The site is located within the Canterbury (New Dover Road and St Augustine's Road) Conservation Area, which was designated as a conservation area in its

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<sup>1</sup> Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL 1982]; Holborn Studios Ltd v London Borough of Hackney [EWHC 2823 (Admin)]

own right in 1998, but is addressed by the Canterbury Conservation Area Appraisal 2010 (CCAA).

12. New Dover Road was created at the end of the 18<sup>th</sup> century to allow easier access from Canterbury to Dover. The long and generally straight road allows for views towards Canterbury Cathedral's Bell Harry Tower. The conservation area contains buildings originating from the 19<sup>th</sup> century onwards. Buildings are typically detached and vary in size from large, somewhat taller Victorian villas on expansive plots to more modest 20<sup>th</sup> century suburban housing on smaller, but nevertheless spacious plots. There are frequent gaps between properties which vary in width. Despite there being an eclectic range of detailed building designs in Gothic, Italianate and sub-Georgian styles, there is much uniformity of architectural detailing and strong use of red brick and tiled roofs. There is considerable mature tree and shrub coverage within gardens, much of which is visible along New Dover Road. Although the conservation area has been subject to alterations including changes of use, extensions to properties, new-build development, and the somewhat negative insertion of Chaucer Court, a 1970s four-storey flat-roofed residential development, the character of the conservation area remains predominantly that of a Victorian suburb.
13. The site comprises four red brick detached two-storey houses of a similar size and scale to one another in generous plots on New Dover Road. Historic maps indicate that the existing buildings on site were built after the Second World War, potentially following clearance after bomb damage in the Baedeker raids. The existing houses are similarly spaced apart. They have established front and rear gardens, including trees of different ages, sizes and types.
14. While three of the four houses are pleasant, but generally unremarkable in appearance, No 37 is identified in the New Dover Road Design Guidance 2006 as a building of particular significance. However, the main parties agree that the site does not contain non-designated heritage assets in their own right and the CCAA does not highlight any of the buildings on site as being of either local significance or of interest in the streetscene.
15. Based on their consistent house and plot sizes, gaps between the properties, and mature and well-treed gardens, the existing buildings at Nos 35 - 41 fit into the overall townscape and general pattern of development within the conservation area. They therefore make a modest positive contribution to the character and appearance of the conservation area and its significance.
16. The proposed development would provide an almost T-shaped three-storey building of significant scale and mass. In seeking to break up the building's scale and emulate the rhythm of the existing and prevalent built form of separate detached houses, the front elevation of the proposed development along New Dover Road is designed to appear as four houses of different designs along the general building line on this side of the road, with the four houses linked by secondary elements stepped back from the main frontages and obscured to an extent by tree planting along the site frontage. As for the existing houses, the proposed development would be red brick and would have different roofscapes and detailing to be of sufficient interest.
17. The proposed development would not be entirely successful in replicating the appearance of separate dwellings with the set-back secondary elements, different roofscapes and architectural features. Moreover, it would result in the amalgamation of four existing plots, removing the existing separation created

- by four detached dwellings and their boundary treatments. However, given the nature of the proposed development, it would be difficult to avoid the loss of plot boundaries and there is evidence of other plot amalgamation within the conservation area such as at Nos 19 – 21 New Dover Road. Notwithstanding the plot amalgamation, the proposed design approach would break up the massing of the proposed development's front elevation along New Dover Road.
18. Although the proposed development would be large and of greater bulk than the buildings it would replace, it would not contrast significantly with the pattern of development within the conservation area. Though taller than the existing buildings on site, the overall height of the proposed development would be similar to or lower than a number of other buildings along New Dover Road within the conservation area.
  19. While the depth of the long flank elevations would be visible close to the site in the gaps between buildings and along the access to the proposed main car park, the flank walls would be broken up by means of windows, false windows and chimney stacks. Furthermore, given the positioning of the proposed development on the site, these flank elevations would not be clearly visible in long views along New Dover Road.
  20. The substantial two and half and three-storey rear wing element set behind the frontage of the proposed development would be apparent in views from surrounding gardens, houses, and nearby St Augustine's Road. However, this would be obscured from view to an extent by existing tree planting.
  21. It is evident on walking down New Dover Road that although there has been some loss of garden space for car parking and hardstanding, buildings are generally set back behind front gardens with many trees visible in the streetscene. The rear gardens at Nos 35 - 41, which presently contain a range of trees, would be removed. While it is acknowledged that some trees would be retained and a greater number of trees would be planted than those lost, the proposed development would fundamentally alter the nature of the rear portion of the site by replacing garden space with built form and car parking.
  22. While reference has been made by interested parties to conflict with the aims of the Council's Guide for Residential Intensification 2008 as well as the New Dover Road Design Guidance, both documents are now of some age and have not been adopted by the Council as Supplementary Planning Documents. I therefore afford them only limited weight as material considerations.
  23. For the reasons given above, the proposed development would have a harmful effect on the character and appearance of the Canterbury (New Dover Road and St Augustine's Road) Conservation Area. As a consequence, there would also be harm to the significance of the conservation area. The harm would be less than substantial and would be no more than moderate, stemming primarily from the plot amalgamation and loss of garden areas. Therefore, in this respect, the proposed development would not accord with policies HE1, HE6 and DBE3 of the Canterbury District Local Plan 2017 (CDLP), which require development within a conservation area to preserve or enhance all features that contribute positively to the area's character, appearance or setting, and require protection and enhancement of character, including consideration of setting and context, townscape character, form and building heights. CDLP Policy HE8 is referred to in the Council's first reason for refusal, but there was

agreement between the main parties at the Inquiry that the policy was not directly relevant in this instance.

24. However, CDLP Policy HE1, amongst other things, confirms 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 securing its optimum viable use. This is in line with paragraph 196 of the National Planning Policy Framework (the Framework). I address public benefits in the planning balance section below.

*(ii) the effect of the proposed development on the living conditions of neighbouring occupiers at Nos 33, 43, 43a and 43b New Dover Road and No 2a St Augustine's Road*

25. The Council considers that the amended drawings for Scheme B would appropriately address the reason for refusal relating to the effect of the proposed development on the living conditions of neighbouring occupiers at Nos 33, 43, 43a and 43b New Dover Road with particular reference to overlooking and privacy. I have no reason to disagree with this view. However, concerns have been raised in relation to the effect of the proposed development on the living conditions of neighbouring occupiers at No 2a St Augustine's Road, with particular regard to privacy, light, and outlook.
26. The site is bounded by New Dover Road to the south-west, and residential properties at Nos 33 and 43, 43a and 43b to the north-west and south-east respectively. To the north-east, the site bounds Canterbury College and the University for the Creative Arts Canterbury campuses and the garden of No 2a St Augustine's Road, with the house at No 2a situated slightly further north-east. No 2a has planning permission for extensions to the existing house.
27. Amongst other things, CDLP Policy DBE3 requires regard to be had to the privacy and amenity of neighbouring buildings and future occupiers, including overshadowing, outlook and light. Paragraph 8.44 of the policy's supporting text confirms that new dwellings should be sited to prevent any direct overlooking of habitable rooms of the existing neighbouring houses, and that new dwellings should be positioned away from common boundaries to ensure that windows do not overlook principal elevations and that daylight and sunlight are not adversely affected.
28. In an urban location such as this, there will often be a degree of overlooking between properties and some buildings will be closer to common boundaries than others. Despite their height and number, the proposed seven first and second floor windows, French door and Automatic Opening Vent would not have meaningful views into the interior of No 2a given their positioning relative to the house at No 2a. While there would be some overlooking of the end of the garden and the garden studio at No 2a, the garden studio faces away from the proposed development and there would be scope for screening through tree planting at the shared boundary to mitigate any limited effect on the end of the garden at No 2a. As such, this would not give rise to undue effects on privacy for occupiers of No 2a and I consider that it would not be necessary to condition alterations to the fenestration of proposed units 22 and 40.
29. The proposed development would be three-storeys high nearest to the shared boundary with No 2a. This would lead to a change in outlook for No 2a as the site is presently occupied by houses fronting New Dover Road with gardens and

trees to the rear. Although the proposed development would be taller and bulkier, it would provide a landscaped garden adjacent to No 2a's rear garden. It would be sited sufficiently far from the house at No 2a to ensure that it would not dominate or have an unacceptably oppressive effect on outlook from that property. For similar reasons, its siting, orientation, and distance from the house at No 2a would not adversely affect levels of daylight and sunlight, and as such no further technical assessment of this is necessary.

30. Concluding on this main issue, the proposed development would not have a significant harmful effect on the living conditions of neighbouring occupiers at Nos 33, 43, 43a and 43b New Dover Road and No 2a St Augustine's Road. In this respect, it would be compliant with CDLP Policy DBE3 and with paragraph 127 of the Framework. Paragraph 127 of the Framework requires the creation of places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

*(iii) the effect of the proposed development on highway safety*

31. The Council is satisfied, following consultation with the Highway Authority, that the amended drawings for Scheme B would ensure that refuse vehicles leaving the site would not travel into the opposing traffic lane. I share this view. However, I am considering this issue as concerns have been raised in relation to parking and highway and pedestrian safety by interested parties.
32. I saw on my site visit that New Dover Road is a busy main road and bus route. Double yellow lines are marked on New Dover Road in the vicinity of the site. There are bus stops for a number of services travelling in both directions close to the site and a pedestrian crossing just beyond the St Augustine's Road junction. With regard to pedestrian safety along New Dover Road, the footway is generally wide and there are examples of vehicular accesses crossing the footway. As such, both drivers and pedestrians would be aware of the potential for conflict. However, I see no reason why future occupiers of the proposed development, local residents, and students would not be safe in using the footway.
33. The provision of 25 parking spaces for residents, staff, and visitors would be in keeping with the proposed development's operational requirements and no objection has been raised by the Highway Authority. As the site has good access to bus services and there are local services and facilities within short walking distance, it is likely that residents, staff and visitors could use non-car modes of transport to access the site and local services and facilities.
34. Notwithstanding that there would be an increase in traffic generated by the proposed development in comparison to the existing houses at Nos 35 – 41, I consider that the increase would be relatively slight and would not have a significant effect on congestion on New Dover Road.
35. I conclude that the proposed development would have an acceptable impact on highway safety. This would be compliant in this respect with CDLP Policy DBE3, which, amongst other things, requires development to address the safe movement of pedestrians, cyclists and cars and to avoid a detrimental effect on the highway network in terms of congestion and road safety. Furthermore, it would accord with paragraph 108 of the Framework, which requires that safe and suitable access can be achieved for all users; and that any significant



impacts from the development on the transport network, or on highway safety, can be cost effectively mitigated to an acceptable degree.

*(iv) the need for extra care provision in Canterbury and the surrounding area*

36. Paragraph 61 of the Framework states that, amongst other things, the size, type and tenure of housing needed for different groups should be assessed and reflected in planning policies including housing for older people and people with disabilities. The Planning Practice Guidance (PPG)<sup>2</sup> confirms that the need to provide housing for older people is critical and that offering older people a better choice of accommodation to suit their changing needs can help them live independently for longer, feel more connected to their communities and help reduce costs to the social care and health systems. Additionally, the PPG<sup>3</sup> outlines that plan-making authorities should set clear policies to address the housing needs of groups with particular needs such as older and disabled people. They could also provide indicative figures or a range for the number of units of specialist housing for older people needed across the plan area throughout the plan period.
37. The Council accepts that Canterbury has an ageing population and that a need exists for extra care accommodation locally. Kent County Council's Accommodation Strategy 2014 identifies a need for 223 extra care units up to 2021 in Canterbury and confirms that there is one social-rented extra care scheme of 40 units at King Edward Court, Herne Bay. There is therefore a shortfall to 2021 of 183 extra care units within the district.
38. The Canterbury District Strategic Housing Market Assessment 2018 (SHMA) also seeks to estimate the need for specialist housing for older persons over the age of 55 in the period leading up to 2031. This specialist housing within the SHMA comprises both extra care and sheltered accommodation and does not split the two housing types in terms of need. Having accounted for existing provision of 40 extra care units and 1,810 sheltered housing units, the SHMA at paragraph 10.39 identifies a need for an increase in supply of 542 extra care or sheltered accommodation units for the over 55s within the district by 2031.
39. In addition to the need for an increase in supply of 542 specialist housing units, the SHMA acknowledges that Kent County Council seeks a 30% reduction in the use of care home spaces by those who could be housed in suitable supported or accessible housing (i.e. extra care). Paragraph 10.51 of the SHMA equates the reduction in need for care home spaces to a requirement for 424 additional extra care units over and above the increase in supply of 542 extra care units. This would result in an overall figure of 966 units to 2031.
40. At the Inquiry, the Council provided a certificate of lawful use or development (Ref: 17/02250) dated 15 December 2017 and an email exchange dated 4 March 2020 between the Council and the landowner in relation to the erection of a retirement village at Herne Bay Court within the district. This retirement village would include 117 extra care units if it were to come forward. The landowner considers that the 117 units could be in operation by early 2022. During the Inquiry, the appellant cast doubt on the likelihood of Herne Bay Court coming forward. Notwithstanding the time which has elapsed since the planning permission was granted, there is no clear evidence before me that the

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<sup>2</sup> PPG Paragraph: 63-001-20190626

<sup>3</sup> PPG Paragraph: 63-006-20190626

Herne Bay Court scheme would not be delivered, even if it were not in operation by 2021. The Herne Bay Court scheme would reduce the shortfall by 2021 to 66 units if it came forward in time, or the need to 2031 to 425 units or 849 units dependent on the starting point.

41. The proposed development would only provide accommodation for people of at least 70 years of age. For the Inquiry, Mr Appleton's evidence draws on "toolkits" for forecasting the housing and care needs of older people referred to by the PPG<sup>4</sup>, which the SHMA pre-dates. This evidence suggests a greater need to provide extra care units in the district between 2019 and 2035 with an increase from 5,000 people of over 85 years of age in Canterbury in 2019 to 9,100 by 2035, and an increasing need for assistance with carrying out at least one domestic task. While noting the Council's concerns about the likely number of Canterbury residents of over 70 years of age requiring care and having the ability to purchase that care, in my view the appellant's expert evidence simply indicates there is a real need for extra care housing and that there would be likely to be ongoing demand for extra care units for sale.
42. The Council does not dispute that Canterbury has significant numbers of home-owning older people. While the proposed development would require future occupiers to buy units on long leases, this would have the potential to attract current homeowners to extra care accommodation suited to their changing needs. At present, this area of the market is not provided for locally as the only extra care provision in the district is socially rented. Furthermore, it would form but one part of the overall solution to housing older people in need of care.
43. While there would be a loss of four homes suitable for families, the proposed development would provide the scope for housing to be released back into the housing market as a result of people selling under-occupied larger properties to move into the proposed development. While the extent to which homes would be freed up was discussed at the Inquiry, research<sup>5</sup> indicates that two-thirds of those moving to specialist housing such as the proposed development move from homes with three or more bedrooms. Furthermore, the same study indicates that many residents move locally and I see no specific reason why the residents of Canterbury would behave particularly differently in this regard.
44. Although provision of new accessible and adaptable homes could assist in meeting the overall needs of older people in the district, it is not evident that this approach to improving housing stock would on its own, or with provision of extra care housing at Herne Bay Court, meet the identified need.
45. Additionally, no sites are specifically allocated within the CDLP for the provision of extra care housing and the Council was not aware at the Inquiry of any proposals coming forward for extra care housing other than Herne Bay Court and the proposed development.
46. Interested parties have highlighted that other sites in Canterbury would be suitable for extra care provision. No detail of other available sites has been provided, though mention has been made of sites providing for purpose-built student accommodation (PBSA). However, it is clear that the appellant has undertaken a sequential test of sites and considers that this would be the best available site in Canterbury, where there is competition for sites with general

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<sup>4</sup> PPG Paragraph: 63-004-20190626

<sup>5</sup> Ball, M., 2011, Housing markets and independence in old age: expanding the opportunities



market housing and PBSA. While this sequential test was not the subject of considerable discussion at the Inquiry, it was not disputed by the Council.

47. I conclude that there is an identified need for the proposed development and a shortfall in the relevant accommodation. Consequently, I afford significant weight to the proposed development in terms of meeting an identified need for extra care accommodation and helping to address that shortfall.
- (v) *whether the proposed development would make appropriate provision for infrastructure needs arising from the development*
48. The Council has advised that financial contributions are required towards the provision of library bookstock. In addressing this, the signed and executed planning obligation submitted by the appellant undertakes to make a financial contribution of £2,400.79 towards local library bookstock.
49. The Council adopted its Community Infrastructure Levy (CIL) Charging Schedule on 1 April 2020. The CIL Charging Schedule is accompanied by a CIL Infrastructure List which was provided to me at the Inquiry. The CIL Infrastructure List includes social and community infrastructure and makes specific reference to libraries. The Council confirmed at the Inquiry that, if I were to make my decision after the CIL Charging Schedule came into force, the need for a libraries contribution to address the effect of the proposal on library bookstock would be effectively addressed by CIL. As such, I consider that the planning obligation, insofar as it relates to a financial contribution towards library bookstock would not be necessary to make the development acceptable in planning terms.
50. Additionally, the planning obligation secures occupancy to persons over 70 years of age and in need of care, who have been through an assessment prior to occupation which confirms they are in need of care; secures the lawful use as C2 use class; and ties the development's operation to an Operational Management Plan (OMP) which forms part of the planning obligation and which includes the Pre-Occupation Assessment. I shall refer to these together as the occupancy restrictions.
51. While I recognise that such occupancy restrictions for extra care schemes are frequently dealt with by means of condition, the Council has expressed its preference for an obligation to secure the occupancy restrictions. Notwithstanding the appellant's views on such use of a planning obligation, I have a completed and signed planning obligation before me which would provide the occupancy restrictions. Conditions should not be used to override or supersede a completed planning obligation. As such, conditions which would directly duplicate the effect of the planning obligation in terms of occupancy restrictions would not be necessary. I consider that the occupancy restrictions set out in the planning obligation would meet the tests outlined in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 56 of the Framework.
52. In summary, I have taken into account the occupancy restrictions in the planning obligation. I have not taken into account the financial contribution towards library bookstock and have not afforded this provision any weight. The financial contribution towards library bookstock would not therefore constitute a reason for granting planning permission.

53. Concluding on this main issue, the proposed development would make appropriate provision for infrastructure needs. It would therefore be compliant with CDLP Policy QL5, which requires funding for community services and facilities to be identified and agreed prior to grant of planning permission for residential and mixed use developments.

#### *Other Matters*

54. While I acknowledge concerns about the potential for additional demand on local healthcare services and community facilities, there is no substantive evidence that the additional demands on local infrastructure and services could not be adequately accommodated or mitigated. Concern has also been expressed about the effect of the development on drainage. This matter would be dealt with by means of condition.
55. With regard to the effect of the proposed development on property values, the PPG<sup>6</sup> confirms that the courts have generally taken the view that planning is concerned with land use in the public interest, so that protection of purely private interests such as the impact of a development on the value of a neighbouring property could not be a material consideration.
56. Notwithstanding that the Council has withdrawn its reason for refusal on the provision of affordable housing, local residents have raised concerns with regard to the lack of provision for affordable housing. While I recognise these concerns, given the level of care to be provided in this instance, I concur with the appellant's and the Council's view that the proposed development would fall within C2 use class and that there would not be a policy basis for requiring provision of affordable housing in this particular instance.
57. Though there may be some disruption during construction, this would be for a relatively short time and working practices would be restricted by condition. In terms of air quality, the site lies outside the Canterbury Air Quality Management Area (AQMA). The appellant's Air Quality Assessment (February 2020) indicates there would be negligible change in pollutant concentrations within and outside the AQMA as a result of the proposed development.
58. There are a number of inaccuracies in documents and on the red line boundary on one revision of the site location plan. However, the site location plan<sup>7</sup> has been corrected by the appellant and I consider that any remaining inaccuracies in documentation would not mislead interested parties or prevent them from understanding the proposed development. While I note comments about the volume of material submitted and the engagement of interested parties in the planning process, neither of these matters alter my findings.
59. Based on survey work in 2018 and 2019, No 39's loftspace appears to support a roost of brown long-eared bats. The Lloyd Bore Report dated 23 December 2019 also notes that there has been reported, but unverified, reference to bat droppings in No 35's roofspace.
60. The proposed loss of habitat for protected species through demolition of the existing buildings on site would require a derogation licence to avoid an offence under the Conservation of Species and Habitats Regulations 2010. There is no requirement for a derogation licence to be provided prior to grant of planning

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<sup>6</sup> PPG Paragraph 21b-008-20140306.

<sup>7</sup> SE-2564-03-AC-100 Rev B Site Location Plan

permission, but the decision-maker must be assured that there would be a reasonable prospect of the licence being granted by Natural England.

61. The provision of extra care housing is in the public interest and there is no alternative but to remove the existing roofspaces given the proposal. Works to the relevant properties would take place outside the period from May to mid-September inclusive to avoid bat maternity season. This would be addressed by condition (6). Furthermore, prior to the commencement of works, two different types of bat box would be mounted on boundary trees within the site to ensure that the bats would not be without roosting opportunities. A permanent bat roost would be incorporated into the proposed development's roof void as well as two further bat boxes being provided for cavity dwelling bats. These measures should maintain the species at a favourable conservation status. Based on these considerations, there is a reasonable prospect of Natural England granting a licence. As a consequence, the development would not have an unacceptable effect on protected species.

### *Planning balance*

62. In line with paragraph 196 of the Framework, a balancing exercise should be undertaken between less than substantial harm to the significance of the conservation area on the one hand, and the public benefits of the proposal, on the other.
63. I have addressed the need for extra care accommodation in the paragraphs above and consider that this matter should be afforded significant weight. Both main parties refer to an appeal decision for 52 assisted living units in Chislehurst<sup>8</sup> in terms of justifying the weight to be given to benefits. However, I have assessed this case on its own merits based on the evidence before me.
64. In addition to need for extra care accommodation, the appellant has referred to social and health benefits for older people moving into extra care accommodation; reduced pressure on social care and health systems with some additional economic benefits accruing from this; provision of an opportunity to live independently for longer and to address loneliness and well-being issues. I give these benefits moderate weight.
65. While it is possible that the construction phase of the proposed development would involve local people, there is no obligation in place to secure this and it would not be guaranteed. Notwithstanding this, the proposed development would provide some economic benefits in the form of employment for around 120 people during the construction process and for further people once the proposed development is occupied, and in increased use of local shops and services. I afford these benefits moderate weight. The appellant also refers to environmental benefits of reusing previously developed land and assisting the Council in meeting its five year land supply. As the main parties agree that the Council has a five year housing land supply, albeit narrowly, these benefits would also attract moderate weight in the balance.
66. There is a need to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area as set out in section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990. Furthermore, paragraph 193 of the Framework confirms that when

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<sup>8</sup> APP/G5180/W/16/3155059, decision issued 23 February 2017.

considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the conservation of the asset. Paragraph 194 of the Framework also requires that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification.

67. Taking all the above into consideration, I am of the view that taken together, significant weight can be afforded to the public benefits of the proposed development, which would outweigh the harm to the significance of the conservation area.
68. Moving onto the overall planning balance, while the proposed development would comply with relevant policies in relation to living conditions and highway safety and would provide appropriately for library bookstock through CIL payments, it would conflict with CDLP policies HE1, HE6 and DBE3 as discussed above. However, in this particular instance, there are significant and important material considerations which indicate that development should be allowed; and thereby justify making a decision not in accordance with the development plan.

### *Conditions*

69. Schedules of conditions for Schemes A and B were discussed at the Inquiry and two final schedules were submitted after the Inquiry closed. These schedules included the appellant's agreement to pre-commencement conditions. I have altered wording for consistency and for compliance with paragraph 55 of the Framework, and have amalgamated conditions where appropriate. Numbers in brackets refer to condition numbers.
70. It is necessary to specify conditions confirming the time limit for development (1) and approved plans (2) to ensure clarity and certainty. It is also necessary to require approval of materials (8) and hard and soft landscaping (9) in the interests of visual amenity. Condition 12 would be necessary to ensure a net gain in biodiversity. A condition on lighting is necessary to maintain visual amenity and in the interests of biodiversity (13).
71. Conditions 3 – 7 are pre-commencement conditions as they should be addressed before construction works begin. The condition requiring provision of a Construction Environmental Management Plan (3) is necessary to safeguard the living conditions of nearby residential occupiers and to ensure highway safety. To ensure no detrimental effects on local drainage, condition 4 has been imposed. In order to ensure that retained trees are protected during construction, it is necessary to require submission of and adherence to tree protection measures (5). A condition is necessary to mitigate the effect of the proposed development on bats (6). In ensuring that features of archaeological interest are dealt with appropriately, it is also necessary to have a condition addressing archaeological evaluation (7).
72. To maintain highway safety, Condition 10 is necessary to ensure that the site accesses and parking and manoeuvring areas are operational prior to occupation of the development. I have also attached a condition on refuse storage (11) in the interests of future occupiers' living conditions.
73. Conditions on provision of electric vehicle charging points, a space for a shared car rental scheme, broadband, and a scheme for rainwater harvesting have

been put forward by the Council, Kent County Council and interested parties respectively. While I recognise the importance of broadband provision, and that the other conditions could be beneficial in terms of addressing air quality, the sustainability of development and climate change, it has not been demonstrated that the four proposed conditions would be necessary to make the proposed development acceptable. Furthermore, a proposed condition to restrict fenestration to units 22 and 40 would not be necessary to preserve the living conditions of neighbouring occupiers at No 2a St Augustine's Road for the reasons set out above. Accordingly, I have not included these conditions in the attached schedule of conditions.

## **Conclusion**

74. For the reasons set out above, the appeal is allowed.

*Joanna Gilbert*

INSPECTOR

## **APPEARANCES**

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

Dr Alex Williams, Counsel

Instructed by Canterbury City Council

He called:

Chris Pragnell

Team Leader - Development Management,  
Canterbury City Council

Elizabeth Johnson BA (Hons) IHBC

Senior Heritage Officer, Canterbury City  
Council

### **FOR THE APPELLANT:**

Paul Tucker, Queen's Counsel

Instructed by Carla Fulgoni MRTPI of The  
Planning Bureau Ltd

He called:

Alex Child BA (Hons) MRTPI

Planning Director, The Planning Bureau Ltd

Henry Ryde BA (Hons) MSc

Associate Director, Jones Lang LaSalle

Nigel Appleton

Executive Chairman, Contact Consulting  
(Oxford) Ltd

Dr Allan Burns BSc (Hons)  
MSc PhD CEng MICE MIHT

Traffic and Transportation Consultant

Robert Towse ACIAT

Practice Partner, ON Architecture Limited



Jago Trevelyan Keen MSc  
Dip Arb MICFor MArborA

Partner, Keen Consultants

### **INTERESTED PARTIES:**

|                  |   |
|------------------|---|
| Catherine Manney | Local resident                              |
| Darin Manney     | Local resident                              |
| Pat Edwards      | Councillor, Canterbury City Council         |
| Tim Carlyle      | Oaten Hill and South Canterbury Association |
| Jonathan Cann    | Oaten Hill and South Canterbury Association |

### **DOCUMENTS SUBMITTED AT THE INQUIRY**

|              |  |
|--------------|--|
| Document 1:  | Council's consultation letter dated 28 January 2020  |
| Document 2:  | Council's further consultation letter dated 4 February 2020  |
| Document 3:  | Community Infrastructure Levy (CIL) Infrastructure List February 2020  |
| Document 4:  | Drawing: Option to create angled opening to reduce overlooking   |
| Document 5:  | Certificate of Lawful Use or Development reference 17/02250 dated 15 December 2017                                 |
| Document 6:  | Email dated 4 March 2020 from Jon Joyce, Xiros, to Chris Pragnell, Canterbury City Council                         |
| Document 7:  | Transcript of Housing Minister's speech to the Planning Inspectorate delivered on 4 March 2020                     |
| Document 8:  | Signed and dated Statement of Common Ground (Main)   |
| Document 9:  | Signed and dated Statement of Common Ground 1  |
| Document 10: | Signed and dated Statement of Common Ground 2  |
| Document 11: | Signed and dated Statement of Common Ground 3  |
| Document 12: | Email dated 11 March 2020 from Samuel Durham of Lloyd Bore Ltd with regard to European Protected Species licensing |
| Document 13: | Submissions on behalf of the appellant in respect of European Protected Species                                    |

### **DOCUMENTS SUBMITTED AFTER THE INQUIRY**

|              |  |
|--------------|--|
| Document 14: | Schedule of Conditions/Reasons: Scheme A Refused Scheme        |
| Document 15: | Schedule of Conditions/Reasons: Scheme B Amended Scheme        |
| Document 16: | Letter dated 3 March 2020 from the office of Rosie Duffield MP |
| Document 17: | Appellant's email dated 23 March 2020 regarding conditions     |

Document 18: Council's email dated 24 March 2020 regarding conditions

Document 19: Signed and executed planning obligation dated 31 March 2020

### **SCHEDULE OF 13 CONDITIONS**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby approved shall be carried out in accordance with the submitted drawings SE-2564-03-AC-100 Rev B Site Location Plan; SE-2564-03-AC-101 Rev D Proposed Site Plan; SE-2564-03-AC-102 Rev E Proposed Ground Floor Plan; SE-2564-03-AC-103 Rev E Proposed First Floor Plan; SE-2564-03-AC-104 Rev D Proposed Second Floor Plan; SE-2564-03-AC-105 Rev D Roof Plan; SE-2564-03-AC-107 Rev I Footprint Plan; SE-2564-03-AC-200 Rev D Elevations A/A and B/B; SE-2564-03-AC-201 Rev D Elevations C/C and D/D; SE-2564-03-AC-202 Rev D Proposed Elevations E/E – H/H; SE-2564-03-AC-203 Rev B Proposed Elevations I/I – L/L; 4939-LLB-XX-XX-DR-L-0001 PO8 Landscape Masterplan.
- 3) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following details:
  - i. Parking and turning areas for construction and delivery vehicles and site personnel;
  - ii. Timing of deliveries;
  - iii. Details of site access point(s) for construction;
  - iv. Dust control measures;
  - v. Site operation and delivery times between 0730 – 1800 Monday to Friday, 0800 – 1300 Saturday and at no time on a Sunday, Bank Holiday or Public Holiday unless in association with an emergency;
  - vi. Demolition and construction waste - storage and removal;
  - vii. Temporary traffic management/signage;
  - viii. Details of wheel washing facilities prior to commencement of spoil removal on site and for the duration of spoil removal.

The development shall thereafter be carried out in accordance with the approved CEMP.

- 4) No development shall take place until details of the means of foul and surface water disposal, including a detailed sustainable surface water drainage scheme for the site, have been submitted to and approved in writing by the Local Planning Authority. These details shall be compliant with the non-statutory technical standards for sustainable drainage and shall demonstrate the surface water run off generated up to and including the 100 year critical storm (including allowance for climate change) will not exceed the run off from the undeveloped site following the corresponding rainfall event, so as not to increase the risk of flooding both on- or off-site. These details shall also include

provision for the long-term maintenance of all surface water drainage infrastructure on site, and the provision of measures to prevent the discharge of surface water onto the highway. The development shall be carried out in accordance with approved details and thereafter retained.

- 5) No development shall take place, including any demolition or groundworks preparation, until a detailed, scaled, finalised Tree Protection Plan (TPP) and the related Arboricultural Method Statement (AMS) has been submitted to and approved in writing by the Local Planning Authority. These shall include details of the specification and location of exclusion fencing, ground protection and any construction activity that may take place within the Root Protection Areas of retained trees shown to scale on the TPP, including the installation of any service routings and drainage runs. The AMS shall also include a pre-commencement meeting, supervisory regime for their implementation and monitoring with an agreed reporting process to the Local Planning Authority. All works shall be carried out in accordance with the approved details.
- 6) No development shall take place, including any demolition, until a detailed bat mitigation strategy for Nos 35, 37, 39 and 41 New Dover Road has been submitted to and approved in writing by the Local Planning Authority. The strategy must be based on the information detailed within the Bat Report (Lloyd Bore; September 2018 and December 2019) and any other survey and mitigation required as detailed within paragraph 4.40 of the September 2018 Bat Report. The strategy must include the following:
  - i. Internal bat inspection of Nos 35, 37, 39 and 41 New Dover Road;
  - ii. Results of any additional emergence surveys (if required);
  - iii. Overview of the works proposed which shall include a void in the roofspace which is accessible to bats;
  - iv. Methodology to implement the works;
  - v. Timing of the proposed works;
  - vi. Details of who will be carrying out the works.

The works must be implemented as detailed within the approved strategy and retained thereafter.

- 7) No development, other than demolition, shall take place until a programme for archaeological investigation has been submitted to and approved in writing by the Local Planning Authority. The programme shall include:
  - i. Archaeological field evaluation works in accordance with a specification and written timetable; and
  - ii. following on from the evaluation, details of any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation, post-excavation assessment, analysis, publication or conservation in accordance with a specification and timetable.

The approved programme for archaeological investigation shall be implemented prior to the commencement of any development hereby permitted.

- 8) Prior to their first installation in the development hereby approved, samples of the materials to be used in the construction of the external surfaces of the development shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved samples.
- 9) Prior to the landscaping of the site, full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority and shall generally accord with approved drawing 4939-LLB-XX-XX-DR-L-0001 PO8 Landscape Masterplan and incorporate additional tree planting in the eastern corner of the site and to the boundary with 2a St Augustine's Road. The details shall include:
- i. species, size and location of new trees, shrubs, hedges and grassed areas to be planted;
  - ii. the treatment proposed for all hard surfaced areas beyond the limits of the highway;
  - iii. walls, fences, other means of enclosure proposed; and
  - iv. a management plan for both hard and soft landscape works including management responsibilities and maintenance schedule.

All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development, or in accordance with a programme of works to be agreed in writing with the Local Planning Authority. 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 a similar size and species, unless the Local Planning Authority gives any written consent to any variation. The landscape works and management plan shall be carried out in accordance with the approved details and retained thereafter.

- 10) Prior to the first occupation or use of the development, the site accesses and the area for the parking and manoeuvring of vehicles shown on SE-2564-03-AC-107 Rev I Footprint Plan shall be operational and thereafter be retained for that purpose.
- 11) Prior to the first occupation or use of the development, the refuse storage (and recycling) facilities as shown on SE-2564-03-AC-102 Rev E Proposed Ground Floor Plan shall be provided and thereafter be retained for that purpose.
- 12) Prior to the first occupation or use of the development, an ecological enhancement plan shall be submitted to and approved in writing by the Local Planning Authority. The plan will detail what ecological enhancements to the development as completed will be incorporated into it. The agreed works shall be carried out, retained and managed, where appropriate, in accordance with the approved plan.
- 13) Prior to the installation of any external lighting, full details including fittings, illumination levels and spread of light shall be submitted to and approved in writing by the Local Planning Authority. Lighting will be designed in accordance with the Bat Conservation Trust guidelines (BCT 2018). No external lighting shall be installed other than in accordance with the agreed scheme.