The Planning Inspectorate

Appeal Decision

Hearing Commenced and Adjourned on 17 March 2020

Site visit made on 16 March 2020

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 April 2020

Appeal Ref: APP/X5990/W/19/3229842
Land at 36 St John's Wood Road and 38-44 Lodge Road, London NW8 8QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Westbourne Capital Partners Limited against City of Westminster Council.
- The application Ref 18/08105/FULL, is dated 13 September 2018.
- The development proposed is described by the appellant as redevelopment of land at 36 St John's Wood Road for an extra care facility, ancillary medical and rehabilitation facilities, landscaping, car and cycle parking, and the redevelopment of 38-44 Lodge Road for a care home and residential units along with landscaping, car parking and cycle parking.

Decision

1. The appeal is allowed and planning permission is granted for the redevelopment of land at 36 St John's Wood Road to provide residential units with extra care services and facilities, landscaping, car and cycle parking, and the redevelopment of 38-44 Lodge Road for a care home and residential units along with landscaping, car and cycle parking in accordance with the terms of the application, Ref 18/08105/FULL, dated 13 September 2018, subject to the conditions in the Schedule below.

Procedural Matters

2. I opened the Hearing at 10am on 17 March, as programmed. The evening before saw the introduction of the first Government restrictions on social gatherings resulting from the Covid-19 pandemic as well as the Inspectorate's (PINS) first resulting restrictions on appeal events in London.

3. In light of this and because the Council told me that it had already written to the PINS office suggesting an adjournment, I paused the event to allow the Council to consider its position. When we resumed the Council made clear that, due to the personal circumstances of one its team, it formally requested an adjournment of the Hearing or that preferably the appeal be dealt with via written representations (WR). The appellant agreed to the adjournment, made clear that it was willing to progress the Hearing by electronic means and WR, or as a last resort deal with the appeal solely by WR.

4. The main parties (the parties) were notified on 20 March that the appeal would proceed by way of WR including the submission of agreed S106 obligations (the

S106 agreement dated 24 April 2020 – the S106), in view of the fact that PINS had not agreed any procedures for progressing events electronically at the time. Both parties accepted this WR procedure and subsequently stuck to the timetable for additional submissions, which concluded on 9 April. I have taken account of all these submissions as well as the parties' original representations.[1]

5. I conducted an unaccompanied site visit on the afternoon of 16 March. The site itself was locked up but I was clearly able to view it in connection with neighbouring land from the surrounding streets. The parties agreed that it was unnecessary for an accompanied site visit of this or any other sites to take place.

The Proposed Development

6. The appeal site comprises two parcels of land opposite each other and separated by Oak Tree Road, a short and narrow public highway linking St John's Wood Road to Lodge Road. The eastern smaller parcel, known as 38-44 Lodge Road or Oak Tree House, fronts Lodge Road next to a new block of apartments (The Compton). It is a vacant cleared site excepting a small substation in its north-western corner. The proposal is to erect a single 10-storey building, the bottom 7 stories comprising a 121-bedroom Class C2 care home surmounted by 3 stories of 12 open market residential flats, together with two basement levels shared by both uses.

7. The larger western parcel, known as 36 St John's Wood Road or The Boundary, comprises a T-shaped piece of land whose T-base features a relatively narrow frontage facing Lord's Cricket Ground on the other side of St John's Wood Road and a wide and deep T-head facing Lodge Road. This is also a cleared vacant site except that part abutting Oak Tree Road, which is occupied by a large bulky electricity Switch House belonging to UKPN. This building would be retained and incorporated within a 10-storey block facing Lodge Road. The proposed building would be linked at 2-storeys to a 12-storey tower block set back from St John's Wood Road to align with the existing adjacent blocks of apartments of approximately the same height. There would be a single basement level beneath that part of this land not occupied by the Switch House, the northern part of which would accommodate a double layer car stacker for 28 cars accessed by a vehicle lift from the St John's Wood Road access.

8. This parcel of land would be occupied by the extra care facility, which would comprise 89 self-contained flats (21 one- and 68 two-bedroom units) and a range of communal and fully accessible facilities for residents located at ground floor level including a swimming pool and spa etc, gym, lecture theatre/cinema, hair/therapy salon, mobility scooter store, bar and restaurant, consultation rooms, occupational health/rehabilitation area and an orangery/café including terrace on the first floor. Residents would also have access to a range of landscaped terraces at various floors of the building.

Main Issues

9. The main issue is the extent to which the proposed development is required to provide affordable housing. It is agreed that, at the current time, it would be

[1] Including specifically the appellant's legal opinion by Russel Harris QC & Andrew Parkinson dated 13 April 2018

economically unviable for the development to deliver any affordable housing. It is agreed that the 12 residential flats generate a policy requirement for affordable housing and the S106 provides for a suitable viability review of the development at the appropriate time, which may result in a financial contribution by the appellant to the Council towards the provision of affordable housing elsewhere within the City of Westminster (the Borough), in lieu of specific on-site or off-site provision. It is also agreed that the proposed care home, a Class C2 use, would not generate a policy requirement for affordable housing.

10. However, what is disputed is the requirement for the 89 extra care units in the other building to provide affordable housing. The Council argue that they do because they comprise self-contained Class C3 dwellings with private balconies. The appellant argues that they do not and are either a Class C2 use or an unspecified use providing a mix of care and dwellings for people 65 years and older. The S106 is drafted to allow for either scenario.

11. Consequently, the main issue is whether the proposed development, via the viability review mechanism (overage clauses) in the S106, would be required to deliver a lesser or possibly much greater amount of affordable housing in the form of a financial contribution that would be used to deliver such housing elsewhere in the Borough.

12. There are also a series of other disputed issues between the parties in the S106 and in respect of two conditions as follows:

    (a) the extent of the S106 obligation in relation to the car club for residents; and

    (b) the timing for the payment of the carbon offset contribution S106 obligation; and

    (c) whether the description of development should be changed; and

    (d) whether there should be a phasing condition; and

    (e) the extent of cycle storage provision via the relevant condition.

Reasons

<u>The Nature of the Extra Care Use and Whether it Generates a Need in Principle to Deliver Affordable Housing</u>

Relevant local policy and guidance regarding affordable housing

13. As set out in the Statement of Common Ground (SoCG), the development plan consists of the London Plan (adopted March 2016), the 'saved' policies of the City of Westminster Council Unitary Development Plan (adopted January 2007) and the Westminster City Plan (adopted November 2016). This section outlines relevant policies and text from these plans and from local guidance relevant to the principal main issue.

14. The Mayor of London's *Housing Supplementary Planning Guidance* (*Housing SPG*, updated August 2017) sets out a variety of specialist housing options for older Londoners to ensure that their needs and aspirations are addressed including those in need of care and support. Its relevant wording is considered further below.

15. Both the existing and new draft London Plans set out the pressing need for new affordable housing. The Mayor's *Homes For Londoners: Affordable Housing and Viability Supplementary Planning Guidance* (also August 2017) sets out changes to the way in which relevant policies within the existing London Plan (LP) are implemented – Policies 3.9, 3.11 and 3.12 – in order to try and improve the failure to deliver the then annual affordable housing targets for the capital. These changes consisted of ensuring standard approaches to the viability assessment of schemes and increasing the Mayor's powers of direction to determine applications where he is concerned about such information or the level of affordable housing contribution. The viability review mechanisms in the S106 comply with this *SPG*.

16. LP Policy 3.11 states that Boroughs should set an overall target for affordable housing in their local plans to ensure an average annual delivery of 17,000 homes per year in London. Policy 3.12 states that the maximum reasonable amount of affordable housing should be sought when negotiating on private residential and mixed use schemes, having regard to several factors including specific targets, the need to encourage rather than restrain residential development and to viability including in terms of the re-appraisal of schemes prior to implementation.

17. Westminster Unitary Development Plan (UDP) 'saved' Policy H4 states that the Council expects affordable housing to be provided as part of housing developments on sites of 0.3 hectares or over or of 10 or more new dwellings, normally on-site. On sites outside the Central Activities Zone (i.e. including this site) the number of additional affordable units required to be provided varies dependent on the overall number of residential units being proposed (as set out in paragraph 3.42 of the UDP). Where the number of additional units falls at the upper end of the range (as is the case here), the proportion sought is stepped (in an unspecified way) from 30% to 50%.

18. 'Saved' UDP Policy H6 states that the Council will grant permission for hostels or special needs housing which meets the needs of institutions and employers within the Borough and requires such a location. Special needs housing in this context includes residents who depend on care and support services. UDP Paragraph 3.86 makes clear that where such accommodation provides a significant element of care, it is likely to fall within the C2 Use Class although paragraph 3.89 acknowledges that some special needs housing could be Class C3, in which case it will be considered in the same way as normal housing.

19. Westminster City Plan (WCP) Policy S15 requires residential developments to provide an appropriate mix of units in terms of size, type and affordable housing provision as set out in regional and sub-regional assessments, which includes the need for specialist housing such as extra care units for the elderly, and seeks to protect specialist housing floorspace. Paragraphs 4.13-4.15 of the explanatory text to this policy list the then acute need for affordable homes in the Borough, amounting to an annual requirement for 5,600 social rented homes alone. There is no dispute between the parties that there remains a pressing need for more affordable housing in the Borough.

20. WCP Policy S16 states the Council will aim to exceed 30% of new homes to be affordable and that housing developments of either 10 or more additional units or over 1,000m² will be expected to provide a proportion of the floorspace as affordable housing. This is a strategic target for the proportion of all housing to

be provided as affordable; it is not a specific target to be applied to individual development sites.

21. The Council's *Interim Statement of our new approach to Housing Delivery: Application of Adopted City Plan Policies* (of 13 June 2017) clearly states *"there will be a presumption that developments will meet the full viable affordable housing requirements."* It also states that large and phased schemes will be subject to post-permission viability review mechanisms to see whether market changes after permission is granted have improved schemes' viability and they can support the delivery of more affordable homes. This scheme, via the overage clauses in the S106, complies with these requirements.

The nature of the proposed extra care use

22. Paragraphs 3.7.4 and 3.7.17-3.7.19 of the Mayor's *Housing SPG* explain the differences between extra care accommodation and a Class C2 care home. It indicates that extra care accommodation is generally considered to fall within Class C3 providing *"self-contained residential accommodation and associated facilities designed and managed to meet the needs and aspirations of people who by reason of age or vulnerability have an existing or foreseeable physical, sensory or mental health impairment."* The proposed extra care facility appears to fall within this definition since it does not fall within paragraph 3.7.4's definition of a Class C2 care home, where accommodation is not self-contained and meals and personal services are routinely provided to all residents.

23. Paragraph 3.7.18 acknowledges that whether a unit of older persons' accommodation has its own front door may not be determinative of a Class C3 use. It is necessary to *"take appropriate account of the components of care and support and level of communal facilities, such as those associated with some extra care schemes where units may have their own from door but functionally are effectively C2."* This paragraph also highlights that the need for such elderly persons' accommodation should be provided, whether such schemes are Class C2 or C3. However, paragraph 3.7.19 cautions that development proposals should not be *"categorised incorrectly (perhaps to avoid S106 contributions which are normally expected of C3 development)."*

24. The appellant argues, first, that UDP Policy H4 and WCP Policy S16 do not apply to this proposal because the extra care units do not comprise normal market dwellings; rather, it should be assessed against UDP Policy H6 because it comprises specialist needs housing. The question here, as referenced above, is therefore whether the residents in the proposed extra care facility here will depend on care and support services and whether it will provide a significant element of care.

25. The operation of the extra care facility is set out in detail in the appellant's submitted *Extra Care Accommodation Operation Policy (May 2018)*; paragraph 1.1 and Schedule 7 of the S106 requires the extra care units to be run in accordance with this document, which it defines as the Extra Care Management Plan (ECMP).

26. The ECMP makes clear that the extra care accommodation units would be owner-occupied self-contained flats with security of tenure. Single residents and/or one member of a couple occupying one of the 89 flats would be required to be a minimum of 65 years of age and require a minimum 2½ hours of care a week, although the Policy says that 10% of residents could be between 55 and

65 years of age. This could be nursing (rather than personal) care, which *"includes the promotion of health and prevention and/or treatment of illness"*. The Council suggests that such care could include housekeeping or ironing but the Policy precludes such services in the definition of care, albeit they would be separately available at a cost.

27. Emergency care and support would be available 24 hours a day every day and care for all types of health conditions including Alzheimer's, Dementia, Parkinson's, cardiac and orthopaedic conditions, cancer and mobility issues and end of life care. The flats have been designed to allow care to take place within them and care packages would be adaptable to residents' changing needs. The facility has clearly been designed to allow residents to age and remain in occupation until the end of their life such that it could be said that levels of care within it will generally increase. The minimum care charge includes the provision of at least one meal per day as well as nutritional advice and a daily group exercise class. Nurses stations would be included throughout the development.

28. There is no doubt that there is a need for this facility in this location, as set out in the ECMP and acknowledged in the above planning policies and explanatory text. The appellant compares the proposed facility here with extra care facilities in other appeal decisions. It argues those decisions found those extra care facilities amounted to a Class C2 use or that they provided a significant element of care, which their residents were dependent on, and that the same applies here. In the one appeal decision cited by the Council, which concluded that the extra care facility proposed at Gondar Gardens in Camden Borough would result in 82 Class C3 extra care flats, the appellant correctly points out that there was no necessary commitment to a minimum level of care and that access to nursing care could be sourced externally.

29. In this case there is a minimum care requirement of 2½ hours a week and residents would be obliged to accept such care from the appellant's on-site care provider, Draycott Nursing and Care. But 68 of the 89 units (76% of them) would be two-bedroom units. If each of these units were occupied by two people only one of whom needed any care, this would mean that 68 of the 157 residents (or 43%) would not need any care.

30. Furthermore, the 2½ hours of care a week needed by those residents (the other 57%) required to sign up to this minimum care package, need be no more than health promotion or illness prevention advice, according to the ECMP. This cannot reasonably be said to comprise a significant element of care or make residents dependent on such care because they may not actually be ill or in need of care as understood by the normal meaning of the word. Clearly, some residents realistically will be dependent on care, but this could be a relatively small proportion. There would be no reason for the appellant not to sell any of the 89 units to anyone who only required such a minimum care package. In reality, the level of care staff on site at any one time would be dependent on the overall level of care required by the residents.

31. In this context I consider it useful to refer to the updated wording of the emerging Draft London Plan (DLP). The appellant correctly points out that the 'front door test' and the classification of special needs housing for the elderly by way of its use class have been removed from the DLP. But new draft Policy H13 still requires specialist older persons housing provision to deliver

affordable housing. DLP paragraph 4.13.6 makes clear that in the case where elderly persons housing provides care where there are separate contracts/agreements in place for the care and accommodation elements (as would be the case here according to the ECMP, Sections 7 and 8), such housing will be expected to deliver affordable housing in accordance with Policy H13.

32. I cannot attach full weight to this draft Policy, but the London Plan has reached an advanced state. There remain elements of dispute, specifically between the Secretary of State and the Mayor. But Policy H13 and its explanatory text is not one of these. It is not one of the Directions annexed to the Secretary of State's letter to the Mayor of 13 March 2020. I consider a reasonable degree of weight can be attached to it since it is likely to be adopted as policy within the new London Plan in the foreseeable future. The main reason for raising it is because the appellant specifically referred to draft Policy H13 in its final comments and because it appears to highlight the fact that the proposed extra care facility here would not be likely to create a situation where the majority of residents were realistically dependent on care.

33. The fact that residents of the extra care flats are defined as being required to have a *"foreseeable physical, sensory, cognitive or mental health impairment"* (as defined by the S106) clearly does not mean that they have one now (my emphases), which implies to me that they are not dependent on care now (i.e. at the time they are assessed as being suitable for residency). For this and the above reasons, I conclude that most residents of the proposed extra care facility will not depend on care and support services and that it will not necessarily provide a significant element of care.

34. In making this conclusion I have considered the current and future need for such extra care accommodation generally, a need clearly set out by the appellant in the ECMP and elsewhere. Such developments with all their attendant communal facilities, as detailed above regarding this proposal, are going to be needed increasingly, hence the reason for planning and building them. The population of the country, of London and of Westminster continues to age and people continue to live longer. The development industry is bound to adapt to the accommodation demands of older people, not least the wealthier amongst them, and such extra care accommodation with attractive facilities and care packages will increasingly become a mainstream part of the housing market.

35. The principal point here is that, due to the increasing proportion of the population that are 65 years old or older, the housing market must adapt by providing the type of accommodation that such residents want to live in. This inevitably includes communal facilities and care packages because older people still desire security of tenure and independence as well as freedom from isolation and loneliness. As such, and above all, such self-contained extra care units are and will continue to remain part of the housing market because they allow residents to live in and control their own independent living space (flats) whilst accessing care within them as and when it is needed, as well as sharing health and social facilities within the wider facility.

36. There is no good reason why such forms of elderly persons accommodation should be exempt from making a contribution towards the continuing urgent need for affordable housing. Whilst it is true that there is also a need for such accommodation, there is no suggestion that this need is greater than or trumps

the need for affordable housing, including for elderly people. Indeed, applying the requirement for affordable housing only to age-blind market housing developments would effectively disincentivise the development of 10+ units of conventional housing compared to extra care schemes, which would exacerbate the under-supply of affordable housing in the capital.

37. For this reason, this extra care facility would constitute new market housing development, and so it should be assessed against LP Policy 3.12, UDP Policy H4 and WCP Policy S16, as well as to The Mayor's *Housing SPG* and with reference to the Council's *Interim Statement to Housing Delivery* dated 2017.

Use Class C2 or C3?

38. The appellant argues, secondly, given my above conclusion, that an assessment should be made as to whether the extra care facility would fall within Class C2 or C3 or neither since if it is categorised as falling within C2 then it is agreed between the parties that there is no requirement for affordable housing.

39. The Use Classes Order[2] (the UCO) defines the C2 use class 'residential institutions', as follows:

"Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).

Use as a hospital or nursing home.

Use as a residential school, college or training centre."

40. Article 2 of the UCO defines care as:

"personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder and in class C2 also includes the personal care of children and medical care and treatment…"

41. The UCO defines the C3 use class 'dwellinghouses', as follows:

"Use as a dwellinghouse (whether or not a sole or main residence) by –

(a) a single person or by people to be regarded as forming a single household;

(b) not more than six residents living together as a single household where care is provided for residents; or

(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within class C4)."

42. It is noted that care in the context of the UCO is defined as personal care, which the ECMP defines as *"physical assistance given to a person including eating and drinking, toileting, washing and bathing, dressing, oral care and the care of skin"*, albeit 'personal care' is not specifically defined itself in the UCO. As set out above, there is no requirement in the proposed extra care facility for any personal care to be provided to any of the residents.

[2] The Town and Country Planning (Use Classes) Order 1987, as amended

43. The majority of the floorspace of the building on The Boundary would be occupied by the self-contained flats in the extra care facility. Only the ground floor, a small part of the first floor and the few sporadic nurse stations on the upper floors of the building would be devoted to caring and social activities, and most of that floorspace would not be devoted to caring but merely social or sports activities such as the pool, gym, cinema and restaurant/bar. There is, of course, no compunction on any residents to use any of these facilities, although since they would be available as part of the building's service charge it is likely that most residents would use at least some of them. Nonetheless, these communal facilities are separate from and incidental to the principal use of the proposed building, which would be a block of self-contained flats.

44. The fact that residents will be asked to sign a waiver which permits extra care accommodation staff to enter their flats in particular circumstances, such as the triggering of a motion/fall sensor monitored by on-site nurses, does not mean that they cease to qualify as dwelling houses. Leasehold flats in other apartment blocks also allow entry by the freeholder in particular circumstances.

45. For these reasons, as well as those indicated in the preceding section that conclude the majority of residents of the proposed extra care facility will not depend on care and support services and that it will not necessarily provide a significant element of care, I conclude that the flats within the facility would be Class C3 uses in the same way that a block of flats/apartments with similar incidental communal facilities without any specific age restriction would be. The 89 flats proposed here are self-contained C3 uses in a building which also encompasses communal sports, social and care facilities which are themselves incidental or ancillary to the C3 dwellings, albeit residents may receive medical and care treatments within their flats.

46. In any case, even if it was deemed that a significant element of care was likely to be provided, Class C3 (b) signals that a single household of up to six residents where care is provided would still fall within the definition of a dwelling house. That would be the case for all 89 extra care units here. Conversely, the definition of a Class C2 use specifically excludes C3 dwelling houses.

47. In concluding that the extra care facility comprises a block of Class C3 dwelling houses with ancillary or incidental communal facilities I have taken note of the other appeal decisions cited by the appellant. But each case, including this one, is specific and in arriving at my conclusion I have carefully assessed the circumstances of this proposal as set out above.

Conclusion

48. For the above reasons the proposed extra care flats fall to be assessed against LP Policy 3.12, UDP Policy H4 and WCP Policy S16, as well as in relation to the Mayor's *Housing SPG* and with reference to the Council's *Interim Statement to Housing Delivery* dated 2017 and DLP Policy H13. The development plan policies, DLP Policy H13 and this guidance confirm that the proposed extra care facility would be required to provide a 30-50% level of affordable housing, providing of course that such a level does not make the development economically unviable.

49. This is what the relevant parts of the S106 (Schedules 1 and 2) do. In particular, the Option 2 inputs require, subject to the terms of the viability

review formulas in Annex 1 to Schedule 2 of the S106, the payment to the Council of up to £30,298,462 as an affordable housing contribution since this is the amount required to reach the equivalent of a 35% (by habitable room) policy compliant level of affordable housing in connection with the extra care accommodation and the 12 market residential flats.

The Other Disputed Issues

The extent of the S106 obligation in relation to the car club for residents

50. A car club is a club which residents may join which makes cars available for hire as and when needed so they do not need to own and maintain their own car on site. As such I consider that it would have a legitimate and useful purpose. The policy requirement for it appears to be justified by reference to the Council's *Draft Supplementary Planning Document on the Use of Planning Obligations and Other Planning Mechanisms*. The Council's position is that free membership of such a car club should be provided for all the extra care units as well as the 12 market flats for a period of 25 years. The appellant argues that only the residents of the 12 market flats should be entitled to free car club membership and then only for a period of 5 years.

51. I can see no justifiable reason why residents' membership of such a car club should be provided free for 25 years. The purpose of a car club is to discourage residents from owning and driving their own cars. But such ownership and use would result in an expense to residents so I see no reason why a car club, which is an alternative to such, should be free for 25 years. 5 years would be sufficient time for residents to utilise and embed their membership such that they would renew it at their own expense thereafter.

52. I appreciate that there would be 28 car parking spaces for residents in the basement of The Boundary building plus 3 spaces for visitors, accessed by the car lift. But there would be 89 self-contained flats (21 one- and 68 two-bedroom units) giving rise to a figure of at least 157 residents in the extra care flats. I very much doubt that 28 spaces would be sufficient for such a number, many of whom would not be reliant on care in the sense of its common meaning. Consequently, I conclude that membership of the car club should be available free for 5 years to the residents of the extra care units as well as the residents of the 12 market flats. Schedule 3 (paragraph 1.8) of the S106 allows for this to happen.

The timing for the payment of the carbon offset contribution S106 obligation

53. The appellant pledges in Schedule 8 of the S106 to pay £171,455 based on the estimated carbon reduction shortfall included within the appellant's energy strategy submitted with the application. The appellant pledges to pay the first instalment of this contribution (50% of it) on commencement of development and the other half before occupation. The Council argues it must all be paid on commencement since this was what the appellant assumed in its original viability assessment and because this is what is required in its *Westminster Carbon Offset Fund Guidance* dated January 2020. Paragraph 4 of Schedule 8 allows for either scenario. I understand that the contribution reflects the formula in the Guidance and so complies with the *Community Infrastructure Levy (CIL) Regulations 2010*.

54. However, this Guidance recognises, on the Council's own admission, that this does not have to be the case and can be agreed otherwise in writing. The contribution is to be used to 'offset' the carbon footprint of the development by funding carbon saving projects elsewhere in the Borough such as low carbon energy schemes or the promotion of greener modes of transport.

55. The appellant argues that there is no need to pay the whole of the contribution upfront because the Council makes no commitment to early expenditure of the monies and there is no certainty as to when and for which project it will be used. It also argues that such a demand fails to recognise that the site is comprised of two buildings, which may be separately developed at different times.

56. I agree for the above reasons that there is no reason why this contribution should not be paid in two equal instalments as proposed by the appellant. Failure to allow this would, in my view, be unreasonable under the circumstances of this development.

Whether the description of development should be changed

57. The appellant argues that neither local planning authorities nor Inspectors have the legal power to change an applicant's description of development. As a matter of fact, the Council did not change the applicant's description of development in this case, but it explains why it considers this to be necessary as part of the appeal. Provision has been made for this to occur, if necessary, through Schedule 1 and Appendix 3 of the S106.

58. However, the appellant also draws my attention to the relevant part of Planning Practice Guidance (PPG) on this subject, which makes clear that planning authorities should not amend development descriptions without first discussing any revised wording with applicants. In this case Appendix 3 of the S106 includes possible agreed alternative wording. I appreciate that the appellant considers this unnecessary, but it has agreed to such alternative wording if I consider that the description should be changed.

59. The PPG wording also states that local planning authorities should be satisfied that development descriptions are accurate, and thus encourages them to discuss alternative wording with applicants if necessary. It is not uncommon for Inspectors to alter descriptions of development, where they consider that this would better reflect proposed development and provided they explain the reasons for such a change.

60. The appellant refers to *Finney*[3], where it is pointed out that that applicants should not use a s.73 application to effect a change in the description of development. I appreciate that the Council would prefer the development description to list the number of extra care flats, but that is not what it has agreed to in the new definition of development in Part 2 of Appendix 3 of the S106, which simply refers to "residential units with extra care services and facilities…." (instead of "an extra care facility"). So, this new description would not prevent the appellant from applying under s.73 to change the scheme, e.g. by increasing the number of units on the site.

61. However, whilst I consider that the new definition of development in Part 2 of Appendix 3 of the S106 would better reflect the nature of the proposed use for

[3] *Finney v Welsh Ministers [2019] EWCA Civ 1868*

the reasons I have given earlier in this decision, the description of development could be improved further to make it more accurate. The phrase "residential units with extra care services and facilities" adequately covers the communal and health facilities that the extra care unit would provide so that there is no need to add on "ancillary medical and rehabilitation facilities" – otherwise those facilities would be needlessly listed twice.

62. I conclude, for the above reasons, that I am entitled to change the original development description, not least because the appellant allows me to do so, which reflects the above PPG advice. The original description also listed the "extra care facility" and "ancillary medical and rehabilitation facilities" separately, so the new description gives better clarity of what is proposed in The Boundary building. Consequently, this is the description that I have used in the Decision in my first paragraph.

63. In other words, I use my own description of the proposed development as set out in my paragraph 1 above and neither the appellant's original description nor the Council's suggested descriptions or terms set out in Appendix 3 of the S106. It is unnecessary to change the existing defined terms set out in paragraph 1.1 (the Interpretation section) of the S106 to those suggested by the Council in Part 1 of Appendix 3 because they are already clear and self-explanatory.

Whether there should be a phasing condition

64. The appellant points out that the two separate buildings with their separate uses are likely to be separately developed at separate times and that a phasing condition would simply acknowledge that. The Council maintains that this is simply a device to minimise the payment of the overall CIL of £19,983,263 in accordance with its adopted charging schedule, which includes the requirement for 50% of the total to be paid within 90 days of the start of development.

65. The appellant acknowledges that such a phasing condition would allow the care home building and extra care buildings to be treated as separate chargeable development under the CIL Regulations, so that CIL need only be paid when each phase comes forward. But there is no suggestion by the Council that this changes the overall amount of CIL payable. In my view it is practically likely that the two constituent parts of the development will come forward at different times and to require the payment of nearly £10 million in CIL within 90 days of starting work on the wider site would be unreasonable under the likely phased nature of the proposal. Consequently, I have no objection to the additional phasing condition proposed by the appellant.

The extent of cycle storage provision via the relevant condition

66. The Council seeks the provision of 168 cycle storage spaces for the extra care facility on the basis, essentially, that it comprises normal residential development. However, although many of the residents of these flats will be fit and well, they will still mainly be aged 65 or older. There are likely to be 157 residents in The Boundary building. I consider that 54 cycle storage spaces, as proposed by the appellant, would be likely to be sufficient for the numbers of residents wishing to own and keep a bike on the premises and cycle on a regular basis. Consequently, I am content to adopt the appellant's wording for this condition.

The S106 and Conditions

67. Aside from the above issues regarding the S106, there are also obligations requiring an employment and skills training contribution and plan, a monitoring fee, and for a programme of highway works either to be conducted by the appellant or the Council. A summary of the obligations is set out by the appellant in Annexure A of its written submissions dated 27 March. All the obligations in the S106 are necessary to make the development acceptable in planning terms; directly related to it; and fairly and reasonably related in scale and kind to it. Consequently, the S106 complies with Regulation 122 of the CIL Regulations as well as relevant policy in the National Planning Policy Framework (NPPF) and in the development plan.

68. The SoCG sets out a list of 42 conditions (43 with the additional phasing condition) agreed between the parties as being necessary and otherwise meeting the relevant national policy tests for conditions in the NPPF and PPG. I agree that all these conditions bar one meet these tests. They are set out in the Schedule below, including the specific reasons for each condition. Where necessary I have amended their wording to ensure that they comply with the national tests and are grammatically correct. I have deleted a noise condition (the Council's suggested condition 40) since it would have simply duplicated an earlier condition.

Overall Conclusion

69. The parties agree that permission should be granted subject to the S106 and the conditions set out in the Schedule below. I address the areas of disagreement above under the main issues. For these reasons I allow this appeal, subject to the relevant clauses in the S106 as described above and the conditions below.

Nick Fagan

INSPECTOR

Schedule of Conditions

1 The development hereby permitted shall be carried out in accordance with the drawings and other documents listed in this condition, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.

Site Boundary Plan A_PL_010; Existing Site Plan B_A_PL_011; Site Demolition Plan B_A_PL_012; The Boundary – General Arrangement Plan – Level B1 B_A_PL_099 Rev. 02; The Boundary – General Arrangement Plan – Ground Floor B_A_PL_100 Rev.01; The Boundary – General Arrangement Plan – Level 01 B_A_PL_101; The Boundary – General Arrangement Plan – Level 02 B_A_PL_102; The Boundary – General Arrangement Plan – Level 03 B_A_PL_103; The Boundary – General Arrangement Plan – Level 04 B_A_PL_104; The Boundary – General Arrangement Plan – Level 05 B_A_PL_105; The Boundary – General Arrangement Plan – Level 06 B_A_PL_106; The Boundary – General Arrangement Plan – Level 07 B_A_PL_107; The Boundary – General Arrangement Plan – Level 08 B_A_PL_108; The Boundary – General Arrangement Plan – Level 09 B_A_PL_109; The Boundary – General Arrangement Plan – Level 10 B_A_PL_110; The Boundary – General Arrangement Plan – Level 11 B_A_PL_111; The Boundary – General Arrangement Plan – Roof Plan B_A_PL_112; The Boundary – General Arrangement Section - 01 B_A_PL_201; The Boundary – General Arrangement Section – 02 B_A_PL_202; The Boundary – General Arrangement Section – 03 B_A_PL_203; The Boundary – General Arrangement Section – 04 B_A_PL_204; The Boundary – South Elevation – Lodge Road B_A_PL_301; The Boundary – North Elevation – Back of Building B B_A_PL_302; The Boundary – North Elevation – St John's Wood Road B_A_PL_303; The Boundary – East Elevation – Oak Tree Road B_A_PL_304; The Boundary – West Elevation B_A_PL_305; The Boundary – South Elevation – Back of Building A B_A_PL_306; Existing Site Plan OTH_A_PL_011; Site Demolition Plan OTH_A_PL_012; Oak Tree House – General Arrangement Plan – Level B2 OTH_A_PL_098 Rev.01; Oak Tree House – General Arrangement Plan – Level B1 OTH_A_PL_099 Rev.01; Oak Tree House – General Arrangement Plan – Ground Floor OTH_A_PL_100 Rev 03; Oak Tree House – General Arrangement Plan – Level 01 OTH_A_PL_101 Rev.01; Oak Tree House – General Arrangement Plan – Level 02 OTH_A_PL_102 Rev.01; Oak Tree House – General Arrangement Plan – Level 03 OTH_A_PL_103 Rev.01; Oak Tree House – General Arrangement Plan – Level 04 OTH_A_PL_104 Rev.01; Oak Tree House – General Arrangement Plan – Level 05 OTH_A_PL_105 Rev.01; Oak Tree House – General Arrangement Plan – Level 06 OTH_A_PL_106 Rev.01; Oak Tree House – General Arrangement Plan – Level 07 OTH_A_PL_107 Rev.01; Oak Tree House – General Arrangement Plan – Level 08 OTH_A_PL_108 Rev.01; Oak Tree House – General Arrangement Plan – Level 09 OTH_A_PL_109 Rev.01; Oak Tree House – General Arrangement Plan – Roof Plan OTH_A_PL_110 Rev.01; Oak Tree House – General Arrangement Section - 01 OTH_A_PL_201 Rev.01; Oak Tree House – General Arrangement Section – 02 OTH _A_PL_202 Rev.01; Oak Tree House – General Arrangement Section – 03 OTH _A_PL_203 Rev.01; Oak Tree House – South Elevation – Lodge Road OTH _A_PL_301 Rev. 02; Oak Tree House – North Elevation OTH _A_PL_302 Rev.01; Oak Tree House – West Elevation – Oak Tree Road OTH _A_PL_303 Rev.01; Oak Tree House – East Elevation OTH _A_PL_304 Rev.01;

Reason: For the avoidance of doubt and in the interests of proper planning.

2 Except for piling, excavation and demolition work, building work which can be heard at the boundary of the site shall only be carried out:

- between 08.00 and 18.00 Monday to Friday;
- between 08.00 and 13.00 on Saturday; and
- not at all on Sundays, bank holidays and public holidays.

Piling, excavation and demolition work must only be carried out:

- between 08.00 and 18.00 Monday to Friday; and
- not at all on Saturdays, Sundays, bank holidays and public holidays.

Noisy work must not take place outside these hours unless otherwise agreed through a Control of Pollution Act 1974 section 61 prior consent in special circumstances (for example, to meet police traffic restrictions, in an emergency or in the interests of public safety).

Reason: To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan (November 2016) and STRA 25, TRANS 23, ENV 5 and ENV 6 of the Unitary Development Plan.

3 Prior to the commencement of any demolition or construction on site the applicant shall provide evidence that any implementation of the scheme hereby approved, by the applicant or any other party, will be bound by the council's Code of Construction Practice. Such evidence must take the form of a completed Appendix A of the Code of Construction Practice, signed by the applicant and approved by the Council's Environmental Inspectorate, which constitutes an agreement to comply with the code and requirements contained therein.

Reason: To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan (November 2016) and STRA 25, TRANS 23, ENV 5 and ENV 6 of the Unitary Development Plan.

4 Specific provisions to secure the following shall take place: A full Strategic Environmental Management Plan to cover the following:

a. Site Information: i. Environmental management structure; ii. Location of any potentially sensitive receptors;

b. Environmental Management: i. Summary of main works ii. Public access and highways (parking, deliveries, loading/unloading, site access and egress, site hoardings) iii. Noise and vibration (predictions, managing risks and reducing impacts) iv. Dust and Air Quality (risk rating, managing risks and reducing impacts) v. Waste management (storage, handling, asbestos, contaminated land) vi. Water Resources (site drainage, surface water and groundwater pollution control, flood risk) vii. Lighting viii. Archaeology and build heritage (if applicable) ix. Protection of existing installations (if applicable) x. Urban ecology (if applicable); xi. Emergency procedures; xii. Liaison with the local neighbourhood.

c. Monitoring: i. Details of receptors ii. Threshold values and analysis methods; iii. Procedures for recording and reporting monitoring results; iv. Remedial action in the event of any non-compliance.

Reason: To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan (November 2016) and STRA 25, TRANS 23, ENV 5 and ENV 6 of the Unitary Development Plan adopted in January 2007.

5 No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.26 m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.

Reason: As set out in ENV6 (2) and (6) of the Unitary Development Plan, to ensure that the development is designed to prevent structural transmission of noise or vibration.

6 Noise Condition 1

(1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(2) Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(3) Following installation of the plant and equipment, you may apply in writing to the City Council for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report confirming previous details and subsequent measurement data of the installed plant, including a proposed fixed noise level for approval by the City Council. Your submission of a noise report must include:
(a) A schedule of all plant and equipment that formed part of this application;
(b) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment; (c) Manufacturer specifications of sound emissions in octave or third octave detail; (d) The location of most affected noise sensitive receptor location and the most affected window of it; (e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location; (f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey is to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures; (g) The lowest existing L A90, 15 mins measurement recorded under (f) above; (h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the

planning condition; (i) The proposed maximum noise level to be emitted by the plant and equipment.

Reason: Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of the Unitary Development Plan, so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan (November 2016), by contributing to reducing excessive ambient noise levels. Part (3) is included so that applicants may ask subsequently for a fixed maximum noise level to be approved in case ambient noise levels reduce at any time after implementation of the permission.

7 Noise Condition 2

(1) Where noise emitted from the proposed internal activity in the development will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the internal activity within the building use hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the permitted hours of use. The activity-specific noise level should be expressed as LAeqTm, and shall be representative of the activity operating at its noisiest.

(2) Where noise emitted from the proposed internal activity in the development will contain tones or will be intermittent, the 'A' weighted sound pressure level from the internal activity within the building use hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the permitted hours of use. The activity-specific noise level should be expressed as LAeqTm and shall be representative of the activity operating at its noisiest.

(3) Following completion of the development, you may apply in writing to the City Council for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report including a proposed fixed noise level for approval by the City Council. Your submission of a noise report must include:
(a) The location of most affected noise sensitive receptor location and the most Page 23 affected window of it; (b) Distances between the application premises and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location; (c) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (a) above (or a suitable representative position), at times when background noise is at its lowest during the permitted hours of use. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures; (d) The lowest existing LA90, 15 mins measurement recorded under (c) above; (e) Measurement evidence and any calculations demonstrating that the activity complies with the planning condition; (f) The proposed maximum noise level to be emitted by the activity.

Reason: Because existing external ambient noise levels exceed WHO Guideline Levels and as set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of the Unitary

Development Plan, so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan (November 2016), by contributing to reducing excessive ambient noise levels. Part (3) is included so that applicants may ask subsequently for a fixed maximum noise level to be approved in case ambient noise levels reduce at any time after implementation of the planning permission.

8 The waste store shown on drawing B_A_PL_099 Revision 02 shall be provided before anyone moves into the property. It must be clearly marked and made available at all times to everyone using the buildings. Waste is to be stored inside the property. No waste or bins should be left or stored on the public highway pending collection. The waste store shall not be used for any other purpose.

Reason: To protect the environment and provide suitable storage for waste as set out in S44 of Westminster's City Plan (November 2016) and ENV 12 of the Unitary Development Plan.

9 No properties shall be occupied until confirmation has been provided that either:- all combined water network upgrades required to accommodate the additional flows from the development have been completed; or - a housing and infrastructure phasing plan has been agreed with Thames Water to allow additional properties to be occupied. Where a housing and infrastructure phasing plan is agreed no occupation shall take place other than in accordance with the agreed housing and infrastructure phasing plan.

Reason: As requested by Thames Water, as the development may lead to sewage flooding and network reinforcement works are anticipated to be necessary to ensure that sufficient capacity is made available to accommodate additional flows anticipated from the new development. Any necessary reinforcement works will be necessary in order to avoid sewer flooding and/or potential pollution incidents.

10 No piling shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface water infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority in consultation with Thames Water. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

Reason: As requested by Thames Water, as the proposed works will be in close proximity to underground water utility infrastructure and piling has the potential to impact on local underground water utility infrastructure.

11 No properties shall be occupied until confirmation has been provided that either:- all water network upgrades required to accommodate the additional flows from the development have been completed; or - a housing and infrastructure phasing plan has been agreed with Thames Water to allow additional properties to be occupied. Where a housing and infrastructure phasing plan is agreed no occupation shall take place other than in accordance with the agreed housing and infrastructure phasing plan.

Reason: As requested by Thames Water as the development may lead to no / low water pressure and network reinforcement works are anticipated to be necessary to ensure that sufficient capacity is made available to accommodate additional demand anticipated from the new development.

12 Prior to the first occupation of each building or part of a building or use, a 'Secured by Design' accreditation shall be obtained for such building or part of such building or use and thereafter all features are to be permanently retained.

Reason: To reduce the chances of crime without harming the appearance of the building as set out in S29 of Westminster's City Plan (November 2016) and DES 1 (B) of the Unitary Development Plan.

13 Pre-Commencement Condition. A detailed site investigation shall be carried out to find out if the building or land are contaminated with dangerous material, to assess the contamination that is present, and to find out if it could affect human health or the environment. This site investigation must meet the water, ecology and general requirements outlined in 'Contaminated Land Guidance for Developers submitting planning applications' - produced by Westminster City Council in January 2018. Written approval of the Council is required for phases 1, 2 and 3 before any demolition or excavation work starts, and for phase 4 when the development has been completed but before it is occupied.

Phase 1: Desktop study - full site history and environmental information from the public records. Phase 2: Site investigation - to assess the contamination and the possible effect it could have on human health, pollution and damage to property. Phase 3: Remediation strategy - details of this, including maintenance and monitoring to protect human health and prevent pollution. Phase 4: Validation report - summarises the action you have taken during the development and what action you will take in the future, if appropriate.

Reason: To make sure that any contamination under the site is identified and treated so that it does not harm anyone who uses the site in the future. This is as set out in STRA 34 and ENV 8 of the Unitary Development Plan.

14 Pre-Commencement Condition. A supplementary acoustic report demonstrating that the plant will comply with the Council's noise criteria as set out in Condition(s) of this permission shall be submitted. No work on site shall commence until the Council has approved this.

Reason: Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of the Unitary Development Plan, so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan (November 2016), by contributing to reducing excessive ambient noise levels.

15 Pre-Commencement Condition. A supplementary acoustic report demonstrating that vibration attenuation measures will comply with the Council's vibration criteria as set out in Condition 5 of this permission. No work on this part of the development shall commence until the Council has approved this.

Reason: As set out in ENV6 (2) and (6) of the Unitary Development Plan, to ensure that the development is designed to prevent structural transmission of noise or vibration.

16 Noise from emergency plant and generators

(1) Noise emitted from the emergency plant and generators hereby permitted shall not increase the minimum assessed background noise level (expressed as the lowest 24 hour LA90, 15 mins) by more than 10 dB one metre outside any premises.

(2) The emergency plant and generators hereby permitted may be operated only for essential testing, except when required by an emergency loss of power.

(3) Testing of emergency plant and generators hereby permitted may be carried out only for up to one hour in a calendar month, and only during the hours 09.00 to 17.00 hrs Monday to Friday and not at all on public holidays.

Reason: As set out in S32 of Westminster's City Plan (November 2016) and ENV 7 (B) of the Unitary Development Plan. Emergency and auxiliary energy generation plant is generally noisy, so a maximum noise level is required to ensure that any disturbance caused by it is kept to a minimum and to ensure testing and other non-emergency use is carried out for limited periods during defined daytime weekday hours only, to prevent disturbance to residents and those working nearby.

17 External Noise

The design and structure of the development shall be of such a standard that it will protect residents within it from existing external noise so that they are not exposed to levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.

Reason: As set out in ENV6 (4) of the Unitary Development Plan, and the related Policy Application at sections 9.84 to 9.87, in order to ensure that design, structure and acoustic insulation of the development will provide sufficient protection for residents of the development from the intrusion of external noise.

18 <u>Pre-Commencement Condition</u>. A Noise Assessment Report to demonstrate that the residential units will comply with the Council's noise criteria set out in Conditions 6,7,17 and 40 of this permission. Work shall not commence on this part of the development until the Council has approved this. The work shall then be implemented according to the details approved before the residential units are occupied and thereafter retain and maintain.

Reason: As set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of the Unitary Development Plan, so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan (November 2016), by contributing to reducing excessive ambient noise levels.

19 A scheme of mechanical ventilation to prevent overheating and incorporating appropriate air quality filtration shall be provided to the residential properties. Details of the mechanical ventilation system must be submitted to and approved by the Council prior to the occupation of the residential units. The approved scheme shall be installed and permanently maintained. The mechanical ventilation system installed shall ensure that the internal noise levels of the residential units do not exceed the noise levels specified in condition 17.

Reason: As set out in ENV6 (4) of the Unitary Development Plan, and the related Policy Application at sections 9.84 to 9.87, in order to ensure that design, structure and acoustic insulation of the development will provide sufficient protection for residents of the development from the intrusion of external noise.

20 Air Quality Neutral

Features shall be installed to ensure the development can achieve air quality neutral, as set out under section 6.2.2 in the air quality assessment by WSP dated September 2018.

Reason: To ensure features are provided to minimise air pollution as required by policy S31 of Westminster's City Plan (November 2016).

21 Evidence on how the proposed Combined heat and Power plant (CHP) will meet the emission benchmarks included in the GLA SPG on Sustainable Design and Construction shall be submitted prior to its installation.

Reason: For the avoidance of doubt and in the interests of proper planning.

22 Approval of details of the ventilation system to get rid of fumes, including details of how it will be built and how it will look shall be submitted to and approved by the Council and the approved ventilation system installed prior to occupation of the development.

Reason: To protect the environment of people in neighbouring properties as set out in S29 and S32 of Westminster's City Plan (November 2016) and ENV 6, ENV 7 and DES 5 of the Unitary Development Plan.

23 The properties must not be occupied until you have carried out and sent the Council a post-commissioning Electro Magnetic frequency (EMF) exposure survey and the details of the survey have been approved in writing.

Reason: The post-commissioning EMF exposure survey must demonstrate that EMF levels measured within the new dwellings are in line with current guidance.

24 Prior to occupation, details of cycle parking consistent with the draft London Plan standards (minimum of 54 for the western site for residents, 10 for the eastern site care units and 22 for the eastern site residential units) are required to be submitted and approved by the Local Planning Authority for all uses and thereafter maintained for the life of the development.

Reason: To provide cycle parking spaces for people using the development as set out in Policy 6.9 (Table 6.3) of the London Plan 2016.

25 Prior to occupation of the development the following shall be submitted: Servicing Management Plan (SMP) is required to be approved followed/maintained for life of development, unless a revised strategy is approved (in writing) by the Council. The plan must identify process, internal storage locations, scheduling of deliveries and staffing. The SMP must thereafter be maintained and followed by the occupants for the life of the development. A car lift management and maintenance plan shall be submitted and approved in writing prior to first occupation of the development and thereafter followed for the life of the development.

Reason: In the interests of public safety as set out in S41 of Westminster's City Plan (November 2016) and TRANS 2 and TRANS 3 of the Unitary Development Plan.

26 All servicing, except waste and recycling collections, must only be undertaken from within the site and not from the highway.

Reason: In the interests of public safety as set out in S41 of Westminster's City Plan (November 2016) and TRANS 2 and TRANS 3 of our Unitary Development Plan that we adopted in January 2007.

27 Prior to occupation of the development a minimum of 20% of the car parking spaces shall be provided with electric vehicle charging points available for use within the basement car park and thereafter maintained in working order.

Reason: To make sure that the development provides the environmental sustainability features included in your application as set out in S28 or S40, or both, of Westminster's City Plan (November 2016).

28 Four (4) accessible car parking spaces shall be provided in the eastern site building for residential occupant or operational use (2 spaces for the care home and 2 spaces for the residential units).

Reason: To provide parking spaces for people living in the residential part of the development as set out in STRA 25 and TRANS 23 of the Unitary Development Plan.

29 No car parking spaces shall be allocated to a specific residential unit (through sale, lease or other means) and all car parking to be provided on a first come, first served basis. A Car Park Management Plan will be submitted prior to commencement of development to detail how this will be managed to ensure a maximum of 1 space to be allocated/used per unit and able to be reallocated to a unit with a car if unused.

Reason: In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TRANS 2 and TRANS 3 of the Unitary Development Plan.

30 Prior to commencement of development, detailed design of the vehicle ramp (eastern site) shall be submitted for approval to ensure minimum gradients (1:7) are provided including transition zones (1:10 and 1:20 as appropriate) to ensure long term usability and function of the vehicle ramp.

Reason: To avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in S42 of Westminster's City Plan (November 2016) and STRA 25, TRANS 20 and TRANS 21 of the Unitary Development Plan.

31 All vehicles must enter and exit the site in forward gear.

Reason: In the interests of public safety as set out in S41 of Westminster's City Plan (November 2016) and TRANS 2 and TRANS 3 of the Unitary Development Plan.

32 All vehicle gates or barriers shall be set back a minimum distance of 6 metres from the highway (footway) boundary.

Reason: In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TRANS 2 and TRANS 3 of the Unitary Development Plan.

33 No doors or gates shall open over or across the road or pavement.

Reason: In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TRANS 2 and TRANS 3 of the Unitary Development Plan.

34 Detailed drawings of a hard and soft landscaping scheme which includes the number, size, species and position of trees and shrubs including proposed trees to replace those to be removed shall be submitted prior to its installation, and this shall be installed within the first planting season of completing the development. Any trees dying, severely damaged or diseased within 5 years of planting them, must be replaced with trees of a similar size and species.

Reason: To improve the appearance of the development, to make sure that it contributes to the character and appearance of the area, and to improve its contribution to biodiversity and the local environment. This is as set out in S38 of Westminster's City Plan (November 2016) and ENV 16, ENV 17 and DES 1 (A) of the Unitary Development Plan.

35 Pre-Commencement Condition. The following details shall be submitted prior to commencement of works on site:-

A. Details/Evidence to show that the development including basements and foundations and will not detrimentally impact the London Plane Trees on Lodge Road, the Group of Maple trees and the Fastigated Oak Trees, either by impact on their root protection areas or their canopies.

B. The work must be carried out according to the approved details.

Reason: To protect trees and the character and appearance of the site as set out in S38 of Westminster's City Plan (November 2016) and DES 1 (A), ENV 16 and ENV 17 of the Unitary Development Plan.

36 Pre-Commencement Condition. A method statement explaining the measures you will take to protect the trees on and close to the site shall be submitted prior to commencement. No demolition, site clearance or building work, and no equipment, machinery or materials for the development shall be deposited onto the site, until the Council has approved the method statement. The work shall be carried out according to the approved details.

Reason: To make sure that the trees on the site are adequately protected during building works. This is as set out in S38 of Westminster's City Plan (November 2016) and DES 1 (A), ENV 16 and ENV 17 of the Unitary Development Plan.

37 Samples of the facing materials to be used, including glazing, and elevations and roof plans annotated to show where the materials are to be located shall be submitted and approved by the Council prior to work starting on the relevant part of the development. The work shall be implemented using the approved materials. Reason: To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of the area. This is as set out in S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 of the Unitary Development Plan.

38 Details of a scheme of public art as described in submission shall be submitted to and approved by the Council prior to its installation and this shall be installed before anyone moves into the development. This public art shall be maintained and kept on this site.

Reason: To make sure the art is provided for the public and to make sure that the appearance of the building is suitable. This is as set out in DES 7 (A) of the Unitary Development Plan.

39 Pre-Commencement Condition. No development shall take place, including any works of demolition, until the following plans have been submitted to and approved in writing by the Council as local planning authority in liaison with Transport for London:-

a) Delivery and Service Plan 19/01284/FULL

b) Construction Logistics Plan

These documents should detail the traffic impact resulting from construction vehicles and delivery and servicing vehicles on St Johns Wood Road (part of the Strategic Road Network). The development must then proceed in accordance with the approved details.

Reason: In order to appropriately manage any potential adverse effects on the local road network, as requested by Transport for London.

40 Details of a scheme of privacy measures to the flank windows of the tower facing Lords View Two shall be submitted and approved by the Council prior to start of work on the relevant part of the development and such privacy measures shall be installed and retained in accordance with the approved details.

Reason: To protect the privacy and environment of people in neighbouring properties. This is as set out in S29 and S32 of Westminster's City Plan (November 2016) and ENV 6 and ENV 13 of the Unitary Development Plan.

41 Pre-Commencement Condition. Prior to commencement, a community management plan which details how you will engage with the local community during construction in order to keep them informed and minimise impact of construction on them shall be submitted to the Council, approved by it and implemented.

Reason: To make sure people in neighbouring properties are fully aware of the timing of construction works.

42 Pre-Commencement Condition. Details of the phasing of the development shall be submitted to and approved in writing by the Local Planning Authority before commencement of the development. The development shall be carried out in accordance with the approved details.

Reason: The development is to be a phased planning permission for purposes of the Community Infrastructure Levy (CIL) Regulations 2010 and for the Local Planning Authority to be satisfied that the development of the site is undertaken in a coherent and comprehensive matter.

--*End of Conditions*

APPEARANCES at the commencement of the Hearing

FOR THE LOCAL PLANNING AUTHORITY:

Saira Kabir Sheick QC	Barrister
Isaac Carter	Council's solicitor
Sarah Whitnal	Planning case officer

FOR THE APPELLANT:

Robert Walton QC	Barrister
Nick de Lotbiniere	Savills
Stephen Ashworth	Dentons Solicitors

DOCUMENT SUBMITTED AT THE HEARING

1 Overview of the proposed scheme's architecture by Apt architects dated 13 March 2020