
Appeal Decisions

Hearing Held on 9 February 2021

Site visit made on 10 February 2021

by John Wilde CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 11th March 2021

Appeal Ref: APP/Y3940/W/19/3224155

Land to rear of 8 - 13 High Street, Calne, Wiltshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Churchill Retirement Living against the decision of Wiltshire Council.
 - The application Ref 18/09556/FUL, dated 28 September 2018, was refused by notice dated 25 January 2019.
 - The development proposed is 39 No apartments for older people (sixty years of age and/or partner over fifty five years of age), guest apartment, communal facilities, access, car parking, landscaping and 4 No retail units.
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Appeal Ref: APP/Y3940/W/20/3246442

Land to rear of 8 - 13 High Street, Calne, Wiltshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Churchill Retirement Living against the decision of Wiltshire Council.
 - The application Ref 19/03435/FUL, dated 3 April 2019, was refused by notice dated 31 January 2020.
 - The development proposed is 39 No apartments for older people (sixty years of age and/or partner over fifty five years of age), guest apartment, communal facilities, access, car parking, landscaping and 4 No retail units.
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Decisions

Appeal ref: APP/Y3940/W/19/3224155 (Appeal A)

1. The appeal is dismissed.

Appeal ref: APP/Y3940/W/20/3246442 (Appeal B)

2. The appeal is allowed and planning permission is granted for 39 No apartments for older people (sixty years of age and/or partner over fifty five years of age), guest apartment, communal facilities, access, car parking, landscaping and 4 No retail units at Land to rear of 8 - 13 High Street, Calne, Wiltshire in accordance with the terms of the application, Ref 19/03435/FUL, dated 3 April 2019, subject to the conditions contained within the attached schedule.

Application for costs

3. At the Hearing an application for costs was made by Churchill Retirement Living against Wiltshire Council, in relation to Appeal B. This application is the subject of a separate Decision.

Appeal A and B - background and common main issue

4. In respect of Appeal A there were originally four reasons for refusal. However, since the Council's decision the appellant has submitted further ecological information that the Council considers overcomes reason for refusal four, and I have been given no significant evidence to arrive at a contrary view. Furthermore, the Council have made it clear that with the submission of a Section 106 Agreement addressing off-site affordable housing, public realm improvements and waste and recycling, reasons for refusal two and three of Appeal A would also fall away. A signed and dated Section 106 Agreement has subsequently been supplied and I will address this later in these decisions.
5. With regard to Appeal B, there are three reasons for refusal, but the second reason is precisely the same as the remaining reason for refusal for Appeal A. I will therefore consider this reason jointly, and then move on to consider the two remaining issues with respect to Appeal B.
6. The main issue common to both appeals is:
 - a) Whether or not the proposed development would preserve or enhance the setting of the Zion Chapel and the character and appearance of the Calne Conservation Area.

Reasons

7. The appeal site is situated between the rear of properties that front onto Calne High Street and a road known as The Pippin, and is currently used for car parking, although there is a retail unit on the northern side. The majority of the site lies within Area 4 (The Strand and River Marden East) of the Calne Conservation Area (CA), with a small section in Area 12 (Phelps Parade and The Pippin). Several sections of the site are overgrown and unkempt.
8. To the north of the site, beyond a service lane and a pedestrianised area, lies the Grade II listed Zion Baptist Chapel. The service lane leads to the servicing area for an Iceland supermarket. Opposite the chapel, on the other side of The Pippin, set behind a paved pedestrianised area, lies a Sainsburys supermarket. To the north of the chapel, separated by Phelps Parade is a contemporary three storey building with retail at ground floor and residential above. The third storey of this building is flat roofed and set back, so as to help diminish the bulk and mass of the building. It is however at a higher level than the chapel.
9. The Zion Chapel was at one time on the outskirts of Calne, but as can be seen from the above description it has, over time, been subsumed into the fabric of the expanding town such that it is now seen within the context of a range of modern buildings. The Calne Conservation Area Statement (CAS) notes that the character of the area has changed beyond all recognition in the last 30 years with buildings of two and three storey with continuous modern shopfronts at street level and residential units above on the north side of the chapel.

10. The CAS also notes that the Sainsburys supermarket on The Pippin is a building of good quality that has already had a beneficial effect on the area. With respect to the Zion chapel, the CAA informs that it remains historically detached from its surroundings. To my mind it is the space around the chapel, allied to the fact that it can be seen in conjunction with the Grade 1 listed Church of St Mary when looking south along The Pippin, that plays an essential role in its setting.
11. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving a Listed Building or its setting. Similarly Section 72 of the same Act requires that consideration must also be given to the preservation or enhancement of a Conservation Area.
12. The proposed development in Appeal A would result in a three storey building with descending ridge heights when seen from The Pippin to the north-east. All of these ridges would be higher than the top of the chimney of the chapel. There would also be three nearly full-height gables on this elevation. When seen from the pedestrianised area to the south of the chapel the north-west elevation of the proposed development would present a relatively large area of roof and a particularly large gable on the north-west corner, considerably higher than the chapel, which would be the closest part of the proposed development to the chapel.
13. I acknowledge that the setting of the chapel has changed over time, and that several new buildings are now in relatively close proximity to it. However, I consider that the bulk and mass of the proposed development would overpower the chapel, reducing the feeling of spaciousness around it and resulting in harm to its setting, and therefore a diminution of its significance. This would in turn mean that the character and appearance of the CA would not be preserved or enhanced.
14. Conflict would therefore occur with policies CP58 and CP57 of the Wiltshire Core Strategy (CS). The former of these seeks to ensure, amongst other things, that development protects, conserves and where possible enhances the historic environment. The latter requires that development is sympathetic to and conserves historic buildings and historic landscapes. There would also be conflict with policy BE2 of the Calne Community Neighbourhood Plan 2016-2026 (NP), which requires that development is designed to a high quality that reinforces local distinctiveness.
15. The harm would in my view be less than substantial, and therefore with respect to paragraph 196 of the National Planning Policy Framework (the Framework) would need to be weighed against the public benefits of the scheme. I will return to this in my planning balance later in this decision.
16. In the development proposed under Appeal B the height, roof form and design of the building have been changed considerably. The roof would be of a far shallower pitch and the third storey would be recessed on the north-east and south-east elevations. Furthermore, the large gable on north-west corner would be removed and the overall height of the building would be at about the same height as the top of the chimney pots on the Zion chapel, and considerably lower than the building to the north of the chapel. The net result would be a discernible reduction in the bulk and mass of the proposed building such that it would no longer overpower the Zion Chapel or harm its setting.

Consequently the character and appearance of the CA would be preserved and there would be no conflict with policies CP58 and CP57 of the CS or with policy BE2 of the NP.

Appeal B further main issues

17. The remaining main issues are:

- a) Whether or not the proposed development would help to strengthen or regenerate the town centre in line with the requirements of the local plan and,
- b) The effect of the proposed development on the living conditions of the occupiers of neighbouring property with particular respect to privacy.

Whether or not the proposed development would help to strengthen or regenerate the town centre in line with the requirements of the local plan

18. Core Policy 8 (CP8) of the CS relates to the spatial strategy for the Calne Community Area (CMA). The policy indicates that development proposals in the CMA will need to demonstrate how the relevant issues and considerations listed in paragraph 5.41 of the LP will be addressed. Paragraph 5.41 contains a list of 13 bullet points that in some cases are purely informative (e.g. the community has commenced work on preparing a Town Plan for Calne), in some cases relate to specific desires (e.g. the need to expand the existing GP surgeries and provide additional cemetery capacity) and in other cases relate to character and appearance (e.g. the need to conserve the landscape of the North Wessex Downs AONB and the safeguarding of the Wilts and Berks canal).
19. The bullet points are not, however, detailed directives as to what should be developed on any one particular site, but are more generalised desires. The seventh bullet point states that there is potential for additional convenience retail and that this should be directed to the central area of the town. The proposed development would be in line with this.
20. My attention has been drawn to several paragraphs in the justification for policy CP8. Section 5.39 says that the strategy for Calne is to ensure housing growth is carefully balanced with job creation. Similarly section 5.40 makes clear that the strategy for Calne will help maintain the economic base in the town with mixed growth of employment alongside housing. This does not mean however that every proposal should necessarily provide both employment and housing, although in the proposed development this would be the case, albeit with a greater accent on the housing.
21. As I have stated above, paragraph 5.41 refers to a Town Plan for Calne. This is now in existence and Policy WS2.2 of the NP refers directly to it, and makes clear that proposals should consider and address their relationship to the vision set out in the Masterplan and the evolving plans derived from it.
22. The site is identified within the Masterplan on the 'measured plan' and shown as having a mixture of retail units with residential above and also a block of residential three storey apartments. The measured plan also notes that development of three storeys would be acceptable, and indicates the potential provision of 28 residential units, with 580sqm of retail and 210sqm of commercial use on the site. The proposed provision under Appeal B would be 39 residential apartments and 210sqm of retail. I acknowledge that the

proposed development would be somewhat denser than that shown in the various options looked at in the Masterplan, but nonetheless in terms of use it would broadly conform to it. I am also aware that the measured plan is akin to a sketch of what could be achieved and is not a definitive requirement. Furthermore, the measured plan, and indeed Masterplan, whilst being important material considerations, are not in themselves documents adopted as part of the local plan.

23. The vision set out within the NP is contained within paragraphs 46-48. The vision is in general a broad brush approach and encompasses a range of overarching desirable and aspirational outcomes, including that an appropriate balance is struck between housing development and new or improved infrastructure in the town. The vision also makes clear that the *town will deliver a range of housing types* (my emphasis), and it seems to me that the proposed development would be completely in line with this desire.
24. Furthermore, I note that the objectives outlined within the NP at paragraph 49 include the provision of a balance of new homes and jobs to support economic growth and reduce the need to travel, and the encouragement of amongst other things, provision for the elderly. The proposed development would provide new homes for the elderly in a location that would reduce the need to travel. I also note that policy H3 of the NP, entitled housing mix, makes clear that specific consideration should be given to the inclusion of bungalows and other types of accommodation suitable for people who are elderly and/or disabled.
25. My attention has been drawn to several other policies and paragraphs within the NP. Policy WS1 of the NP deals with proposals for employment development. The proposed development is not for such a use and therefore this policy is not strictly relevant. The list given in paragraph 120 of the NP is of key aspirational objectives and not an inventory of criteria that every development should rigorously adhere to.
26. Overall therefore, whilst I acknowledge that the proposed development is not perhaps what the local community envisaged when developing the Calne Town Centre Masterplan, it is nonetheless in general compliance with it, and I have been given no definitive evidence to demonstrate that it would not help to strengthen or regenerate the town centre. It follows that there would be no conflict with core policy 8 of the LP or with policy WS2.2 of the NP.

Living conditions

27. The Council's third reason for refusal relates to the impact on the living conditions of the occupiers of neighbouring property, although no specific properties are mentioned.
28. The proposed building would be located towards The Pippin, with a garden area to the rear. There would therefore be a distance of over 20m between the south-west elevation of the proposed building and the rear elevations of the properties fronting High Street. There is also a change in levels from the front of the site to the rear such that the proposed building would appear more of a two storey height rather than three storeys when viewed from properties in the High Street.

29. At the Hearing my attention was particularly drawn to 8a High Street, which has a small conservatory and garden facing towards the appeal site. The nearest part of the proposed development to these would however be the car parking area, with the actual building a considerable distance away at an oblique angle. I also note that a sub-station was proposed at the boundary of No 8 and the proposed development but that this has now been removed and replaced with further landscaping.
30. The rear elevation of the proposed building would not extend beyond the properties on the north-west side of the site and in any event there would only be a small kitchen window on the first floor of the north-west elevation which, due to the site levels, would be at a relatively low level in relation to the properties to the north-west.
31. Overall, I have been presented with no significant evidence to show that the proposed development would be harmful to the occupiers of any existing neighbouring properties. It follows that there would be no conflict with policy CP57 of the CS. This policy seeks to ensure, amongst other things, that development has regard to the compatibility of adjoining buildings and uses.

Section 106 contributions

32. I have been supplied with a signed and dated Unilateral Undertaking (UU) under section 106 of the Town and Country Planning Act 1990 for each application. These Undertakings both provide contributions towards off-site Affordable Housing, public realm improvements and waste and recycling.
33. Community Infrastructure levy (CIL) regulation 122 makes clear that it is unlawful for a planning obligation to be taken into account in a planning decision on a development that is capable of being charged CIL if the obligation does not meet all of the following tests. These are that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.
34. In respect of the UUs I have also been supplied with a compliance statement (CS) by the Council. In respect of Affordable Housing the CS shows clearly the policy derivation and the calculation of the sum involved. The sum given in the UU is actually less than that calculated as the Council have undertaken a viability assessment and have accepted that a lesser figure is reasonable. I have been given no cause to question this lesser figure and conclude that the Affordable Housing contribution complies with the required tests.
35. The waste contribution derives from core policy 3 and the Council's Planning Obligations Supplementary Planning Document (SPD). The contribution would be for the required bins and containers and is related to each new dwelling. Once again, from the information before me I conclude that the contribution meets the tests.
36. The requirement for the public realm contribution stems from core policy 3. This makes clear that all new development will be required to provide for the necessary on-site, and where appropriate, off-site infrastructure requirements arising from the proposal. However, I have not been given any information to identify the particular public realm improvements that the contribution would fund, how necessary they are, how they relate to the proposed development

or how the required figure is arrived at. This contribution does not therefore meet the required tests and I am unable to take it into account in my decision.

Other matters

37. The proposed development would include 20 car parking spaces. The site is in a very sustainable location and consequently the residents would be more likely to not own a car than if they lived in a development away from a town centre. Furthermore, the occupants of the development would be older people and less likely to have jobs that would require regular commuting. The Council's highway officer raised no objection to the proposed development on parking or highway safety grounds and I have been given little significant evidence that would lead me to a contrary view.
38. Several residents have commented that other proposals for the site could be on the horizon. It is however incumbent upon me to assess the proposal before me against the development plan. My attention has also been drawn to a number of matters that could change the planning landscape in the future, including the report Living with Beauty and the National Design Code, as well as climate change awareness and the Covid 19 pandemic. However, none of these issues remove my present duty to consider the proposed development against the current adopted local plan.

Planning balance

39. Before coming to a final conclusion on the two appeals it is necessary to apply a planning balance. There are several factors common to both appeals that I will discuss in this section of the decision.
40. Firstly, it is agreed between the parties, and I have been given no significant evidence that would make me disagree, that the Council cannot demonstrate a five year supply of deliverable housing sites. It follows that, unless there are policies within the National Planning Policy Framework that provide a clear reason for refusing the development, the 'tilted' balance contained in paragraph 11 d comes into force, and development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
41. Both developments would have a number of benefits. There would be the delivery of 39 specialist apartments for older people and a brown field site would be developed, resulting in improvement to the public realm. There would be four new retail units within the town centre and economic benefits both in the short term in respect of the building process and in the longer term with respect to the spending of residents in the local economy. I acknowledge that some of the residents of the proposed schemes may already live in the area, but it is most unlikely that all will. Those that do already live in the area may well free up family homes within the area. The Council would also receive the new homes bonus. These benefits would all be on the positive side of the environmental, social and economic limbs of sustainability.
42. With respect to appeal A, I have found that it would harm the significance of the Zion Chapel and conflict with policies CP57 and 58 of the CS and policy BE2 of the NP. The harm to the chapel would be less than substantial and therefore this has to be balanced against the public benefits of the scheme as outlined

above. Whilst the latter are considerable, I nonetheless consider that the harm to the heritage asset would significantly and demonstrably outweigh them.

43. With respect to Appeal B, I acknowledge that many residents, including those who signed the on-line petition, oppose the scheme and consider it to be in the wrong place. However, this cannot outweigh the fact that I have found that it would broadly accord with both the CS and the NP.

Conditions (appeal B)

44. The conditions set out in the accompanying schedule are based on those given in the Statement of Common Ground. Where necessary I have amended the wording of these in the interests of precision and clarity in order to comply with advice in the Planning Practice Guidance.
45. In the interests of the final appearance of the development I have imposed conditions requiring the appellant to submit further details of boundary treatments, servicing and refuse collections, samples of external materials and finishes, the layout of the retail units and the public realm landscaping and widening of the footway. For similar reasons I have imposed conditions relating to landscaping and tree protection and retention and a condition requiring debris to be removed expediently from the site. To ensure that the retail units are retained as such I have imposed a condition removing certain permitted development rights.
46. To ensure the safety of future occupiers of the site I have imposed a condition requiring a contamination survey and any remediation that may be required. As there is a chance of archaeological remains within the site, I have imposed a condition requiring an archaeological investigation. To ensure satisfactory foul and surface water drainage I have imposed a condition requiring further details of the drainage provision for the site.
47. To protect public health I have imposed conditions requiring an air quality assessment and a noise impact assessment. To protect the amenity of highway users and nearby residents I have imposed a condition requiring a construction method statement and another restricting the hours of work. In the interest of highway safety I have imposed a condition requiring that the access and turning areas are constructed prior to use of the development.
48. The development is designed specifically for older people who are likely to have lower levels of car ownership commensurate with the provision on the site. Consequently a condition to ensure such occupation is necessary. To protect wildlife various ecological conditions are necessary. These include the submission of a Landscape and Ecology Management Plan and an Ecological Mitigation and Enhancement Strategy, one to ensure that the development is carried out in accordance with the previously submitted Ecological Assessment, as well as one relating to external lighting and one preventing the felling of trees during the nesting period.
49. In the interests of sustainability I have imposed conditions requiring two electric car charging points, the submission of a travel statement and further details of covered bicycle parking. As the access to the southernmost retail unit is not at present satisfactory, I have imposed a condition requiring revised details to be agreed by the Council. Finally, for certainty, I have listed the drawings relevant to the proposed development.

Conclusions

Appeal A

50. In light of my above findings, and having had regard to all other matters raised, I dismiss the appeal.

Appeal B

51. In light of my above findings, and having had regard to all other matters raised, I allow the appeal.

John Wilde

Inspector

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 10100CN-PA101C site plan, 10100CN-PA102 lower ground floor plan, 10100CN-PA103 ground floor plan, 10100CN-PA104A first floor plan, 10100CN-PA105A second floor plan, 10100CN-PA106A roof plan, 10100CN-PA107A elevations 1, 10100CN-PA108A elevations 2, 10100CN-PA109 elevations 3, JBA 18/262 Rev D Landscape Strategy Masterplan, SU-01 Topographical Survey, 17335-BT4 Tree Protection Plan
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), the four units (1-4) allocated as 'non residential units' on the submitted drawings (10100CN-PA103) shall be used solely for purposes within Class(es) A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).
- 4) No construction works shall take place on site until all the existing buildings on site have been permanently demolished and all of the demolition materials and debris resulting therefrom has been removed from the site.
- 5) No railings, fences, gates, walls, bollards and other means of enclosure development shall be erected in connection with the development hereby permitted until details of their design, external appearance and decorative finish have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details prior to the development being occupied. Natural stone will be used for masonry elements, not brick.
- 6) All soft landscaping comprised in the approved details of landscaping (JBA 18/262 Rev A) shall be carried out in the first planting and seeding season following the first occupation of the building or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, 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 otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority. All hard landscaping comprised in the approved details of landscaping shall be carried out in full prior to the first occupation of the building and maintained as such thereafter, in perpetuity.
- 7) No part of the development hereby permitted shall be occupied until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans (10100CN-

PA101C). The areas shall be maintained for those purposes at all times thereafter.

- 8) No development shall commence on site (other than that required to be carried out as part of a scheme of remediation approved by the Local Planning Authority under this condition), until steps (i) to (iii) below have been fully complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local planning Authority in writing until step (iv) has been complied with in full in relation to that contamination.

Step (i) Site Characterisation:

An investigation and risk assessment must be completed to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings submitted to and approved in writing by the Local Planning Authority. The report of the findings must include:

- A survey of the extent, nature and scale of contamination on site;
- The collection and interpretation of relevant information to form a conceptual model of the site, and a preliminary risk assessment of all the likely pollutant linkages;
- If the preliminary risk assessment identifies any potentially significant pollutant linkages a ground investigation shall be carried out, to provide further information on the location, type and concentration of contaminants in the soil and groundwater and other characteristics that can influence the behaviour of the contaminants;
- An assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwater and surface waters, ecological systems, archaeological sites and ancient monuments;

This must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11" and other authoritative guidance.

Step (ii) Submission of Remediation Scheme:

If any unacceptable risks are identified as a result of the investigation and assessment referred to in step (i) above, a detailed remediation scheme to bring the site to a condition suitable for the intended use must be prepared. This should detail the works required to remove any unacceptable risks to human health, buildings and other property and the natural and historical environment, and should be submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures.

Step (iii) Implementation of Approved Remediation Scheme:

The approved remediation scheme under step (ii) must be carried out in accordance with its requirements. The Local Planning Authority must be given at least two weeks written notification of commencement of the remediation scheme works.

Step (iv) Reporting of Unexpected Contamination:

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it should be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment should be undertaken in accordance with the requirements of step (i) above and where remediation is necessary, a remediation scheme should be prepared in accordance with the requirements of step (ii) and submitted to and approved in writing by the Local Planning Authority.

Step (v) Verification of remedial works:

Following completion of measures identified in the approved remediation scheme a verification report (referred to in PPS23 as a validation report) must be produced. The report should demonstrate the effectiveness of the remedial works. A statement should also be provided by the developer which is signed by a person who is competent to confirm that the works detailed in the approved scheme have been carried out (The Local Planning Authority can provide a draft Remediation Certificate when the details of the remediation scheme have been approved at stage (ii) above). The verification report and signed statement should be submitted to and approved in writing of the Local Planning Authority.

Step (vi) Long Term Monitoring and Maintenance:

If a monitoring and maintenance scheme is required as part of the approved remediation scheme, reports must be prepared and submitted to the Local Planning Authority for approval at the relevant stages in the development process as approved by the Local Planning Authority in the scheme approved pursuant to step (ii) above, until all the remediation objectives in that scheme have been achieved. All works must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11" and other authoritative guidance.

- 9) Each apartment hereby permitted shall be occupied only by:
 - (1) a person aged 60 years or older
 - (2) persons aged 55 or older living as part of a single household with the above person in (1)
 - (3) persons aged 55 years or older who were living as part of a single household with the person identified in (1) who has since died.
- 10) Prior to the commencement of any development works on site including vegetation clearance, site clearance, boundary treatment works, building conversion and/or demolition works, an Ecological Mitigation and Enhancement Strategy (EMES) shall be submitted to the local planning authority for written approval. The strategy shall augment and consolidate the recommendations proposed within the Ecological Assessment (Tyler Grange, 19th July 2019) and the Preliminary Ecological Appraisal (Ecosa, Revision 2, March 2019) submitted to the

Council prior to the determination of the planning application. The strategy shall provide comprehensive details of all ecological avoidance, mitigation, compensation and enhancement measures to be implemented on site, and these shall also be illustrated on an accompanying site plan clearly illustrating the type, number and location of proposed features. Details of maintenance arrangements for these features should be included with the strategy, where this is applicable. Thereafter, the development shall be carried out in strict accordance with the approved strategy.

- 11) Prior to the commencement of any development works on site including vegetation clearance, site clearance, boundary treatment works, building conversion and/or demolition works, a Landscape and Ecology Management Plan (LEMP) shall be submitted to the local planning authority for written approval. The LEMP shall include a finalised soft landscape plan, a planting schedule and specification. Details of the proposed maintenance and landscape management of the site and the mechanism for securing the implementation of these activities where necessary, shall also be submitted to the local planning authority for approval. The development site shall be managed and maintained in accordance with the approved LEMP in perpetuity unless another time period is agreed with the local planning authority via the LEMP approval.
- 12) Prior to the commencement of any works on site including vegetation clearance, site clearance, boundary treatment works, building conversion and/or demolition works, a finalised proposed Site Plan which incorporates and consolidates the proposed ecological mitigation, compensation and enhancement measures stipulated within the Ecological Assessment (Tyler Grange, 19th July 2019) and the Preliminary Ecological Appraisal (Ecosa, Revision 2, March 2019) shall be submitted to the local planning authority for written approval. The finalised Site Plan shall provide comprehensive details with respect of the proposed boundary treatment and fencing installation and this shall accord with Section 6.2.4 of the aforementioned Preliminary Ecological Appraisal. Thereafter, the development shall be carried out in strict accordance with the approved plan.
- 13) Prior to the commencement of any works on site including vegetation clearance, site clearance, boundary treatment works, building conversion and/or demolition works, finalised details of any proposed external lighting should be provided to the Council for approval in writing. The lighting strategy should be sensitive to wildlife, particularly bats, and shall accord with the recommendations put forward in the Ecological Assessment (Tyler Grange, 19th July 2019) and the Preliminary Ecological Appraisal (Ecosa, Revision 2, March 2019). The strategy shall include a site lighting plan and lux contour plots that are based on the final design and scheme layout, and shall illustrate the location, height and specification of proposed luminaires. Details of mitigating fixtures to be used, where applicable, such as cowls, louvres or baffles shall also be included. All external lighting shall be installed in accordance with the approved lighting strategy and no other external lighting shall be installed without prior written consent from the local planning authority.
- 14) The felling of trees, and clearance of scrub and other vegetation that affords opportunities for nesting birds shall not be undertaken between

1st March and 31st August inclusive as this is generally accepted to comprise the breeding season for birds. Where it is absolutely essential for tree felling and/or vegetation clearance to take place within the aforementioned breeding season, an inspection for active nests in the trees and vegetation to be removed must be undertaken by a suitably qualified and experienced ecological consultant within 24 hours of the felling/clearance. In the event that an active nest is identified, the nest and supporting tree/vegetation must remain in situ and a suitable buffer of at least 5 metres implemented and demarcated around the nest. The nest must remain undisturbed until all the fledglings have permanently left the nest, and this will need to be confirmed by the ecological consultant. This restriction also applies to the demolition and/or refurbishment of any buildings that are being used by nesting birds and support active nests, and demolition/refurbishment works cannot take place if active nests are present within the buildings to be affected.

- 15) No development shall commence until a Noise Impact Assessment in accordance with BS4142:2014 has been submitted and approved in writing by the Local Planning authority to assess fixed plant associated with the retail units. With regard to the proposed retail units, fixed plant must be capable of meeting a Rating Level of -5dB (BS4142:2014) below the measured background noise level during their proposed operating hours, at both existing and proposed residential receptors. No fixed plant shall be installed unless it has been demonstrated that it is compliant with the above criteria.
- 16) The development shall be undertaken and maintained in perpetuity in strict accordance with the following approved documents (relevant sections stipulated) and plans:
- Tree protection plan (Barrell Tree Consultancy, Plan Reference: 17335-BT5);
 - Preliminary Ecological Appraisal (Ecosa, Revision 2, March 2019); and
 - Ecological Assessment (Tyler Grange, 19th July 2019).

The development shall also be undertaken in strict accordance with the following forthcoming documents and plans to be supplied to discharge associated conditions:

- Ecological Mitigation and Enhancement Strategy;
- Landscape and Ecology Management Plan;
- Finalised Site Plan; and
- Wildlife sensitive lighting strategy and lighting plan.

The development shall also be undertaken with liaison with, and supervision by a suitably qualified, experienced and licensed professional ecological consultant where this is necessary.

- 17) No part of the development shall be occupied until a scheme of 2 electric car charging points/ bays (e.g EV charging points), including cabling provision for up to 6, the details of which shall have been submitted to and approved by the Local Planning Authority, has/have been provided in accordance with the approved details prior to occupation. The 2 charging

points/bay(s) shall be kept clear of obstructions and available for the passing/parking of vehicles at all times thereafter.

- 18) No development shall be commenced until an Air Quality Assessment or Screening Assessment has been undertaken which quantifies both the effect of existing emission levels upon the development/end users and the impact of the development itself upon the future emission levels in the locality. The Air Quality Assessment or screening Assessment must be submitted and approved in writing by the Local Planning authority.
- 19) No development shall commence until full details of the widening of the footway on The Pippin to 2m wide have been submitted to and approved in writing by the Local Planning Authority. There shall be no occupation of the development until the footway has been constructed in accordance with the approved details.
- 20) No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:
 - a) the parking of vehicles of site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials used in constructing the development;
 - d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - e) wheel washing facilities;
 - f) measures to control the emission of dust and dirt during construction;
 - g) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
 - h) measures for the protection of the natural environment.

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.
- 21) No development shall commence on site until a Travel Statement has been submitted to and approved in writing by the Local Planning Authority. The Travel Statement shall include details of available means of travel, and the means of communicating such information to staff, residents and visitors, including the provision of appropriate plans. The development shall thereafter be operated in accordance with the Travel Statement.
- 22) Prior to the occupation of the development, an operational statement shall be submitted to and approved in writing by the Local Planning Authority and shall include details of the regime for servicing and refuse collections, including the locations for servicing the site, and the types and frequency of servicing vehicles.
- 23) No construction, demolition work or deliveries shall take place on Sundays or Public Holidays or outside the hours of 07:30 to 18:00

Monday to Friday and 08:00 to 13:00 on Saturdays. There shall be no construction or demolition on Sundays and Bank or Public Holidays.

- 24) No development shall commence within the site until:
- a) A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and
 - b) The approved programme of archaeological work has been carried out in accordance with the approved details.
- 25) No development shall commence on site until details of the works for the disposal of sewerage and storm water including the point of connection to the existing public sewer have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be first occupied until the approved sewerage details have been fully implemented in accordance with the approved plans.
- 26) The development shall be carried out as specified in the approved Arboricultural Assessment and Method Statement prepared by Barrell Tree Consultancy dated 28th September 2018 and shall be supervised by an arboricultural consultant.
- 27) No retained tree/s shall be cut down, uprooted or destroyed, nor shall any retained tree/s be topped or lopped other than in accordance with the approved plans and particulars. Any topping or lopping approval shall be carried out in accordance British Standard 3998: 2010 "Tree Work – Recommendations" or arboricultural techniques where it can be demonstrated to be in the interest of good arboricultural practise. If any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted at the same place, at a size and species and planted at such time, that must be agreed in writing with the Local Planning Authority. No fires shall be lit within 15 metres of the furthest extent of the canopy of any retained trees or hedgerows or adjoining land and no concrete, oil, cement, bitumen or other chemicals shall be mixed or stored within 10 metres of the trunk of any tree or group of trees to be retained on the site or adjoining land.
- [In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs above shall have effect until the expiration of five years from the first occupation or the completion of the development, whichever is the later].
- 28) No brick walls shall be constructed on site, until a sample wall panel, not less than 1 metre square, demonstrating the colour, texture, face bond and pointing has been constructed on site, inspected and approved in writing by the Local Planning Authority. The panel shall then be left in position for comparison whilst the development is carried out. Development shall be carried out in accordance with the approved sample.
- 29) No external stonework shall be constructed on site, until a sample panel of stonework, not less than 1 metre square, demonstrating the colour, texture, face bond and pointing has been constructed on site, inspected and approved in writing by the Local Planning Authority. The panel shall

then be left in position for comparison whilst the development is carried out. Development shall be carried out in accordance with the approved sample.

- 30) No render shall be applied to any building or walls on site until a sample panel of the render to be used on the external walls not less than 1 metre square, demonstrating the colour, texture, face bond and pointing has been made available on site, inspected and approved in writing by the Local Planning Authority. The panel shall then be left in position for comparison whilst the development is carried out. Development shall be carried out in accordance with the approved sample.
- 31) No roofing works shall be constructed on site, until a sample of all roofing products demonstrating the colour, texture, and appearance has been inspected and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved sample.
- 32) Notwithstanding the details shown on the submitted plans and elevations, no development shall commence on site until details at 1:10 or 1:20 scale of all;
1. Eaves,
 2. Verges,
 3. Windows (including head, sill and window reveal details),
 4. Shopfronts (and material finishes),
 5. External doors (and material finishes),
 6. Balconies (and material finishes),
 7. Rainwater goods (details of routing and material finishes),
 8. Entrance canopies,
 9. Meter boxes,
 10. Fire hydrant/rise positions,
 11. Door entry systems and letter boxes,
 12. Boundary treatments (including materials and railings) have been submitted to and approved in writing by the Local Planning Authority.
- A plan to identify where each of these details are covered on the overall elevations should be submitted with these drawings.
- Development shall be carried out in accordance with the approved details.
- 33) Details of the storage and collection of refuse and recycling for the retail units shall be submitted to and approved in writing by the Local Planning Authority before the development commences. The design shall ensure that no refuse bins will be or visible from the public realm. Revised details of the design of any related alterations to the floor plans or site plan shall be submitted to and agreed in writing by the Local Planning Authority before the development commences.
- 34) No part of the development shall be brought into use until details of secure covered cycle parking for staff or visitors of the retail units and the residential home, together with a timetable for their provision, have

been submitted to and approved in writing by the Local Planning Authority. These facilities shall be provided in accordance with the approved details. Revised details of the design of any related alterations to the floor plans or site plan shall be submitted to and agreed in writing by the Local Planning Authority before the development commences.

- 35) The details of the stepped-only access to the southernmost retail unit are not approved. Revised details of the design of the access and any related alterations to the floor plans or site plan shall be submitted to and agreed in writing by the Local Planning Authority before the development commences. The development shall then be constructed in accordance with these agreed revised details. The revised details shall address the issue of lack of a level or ramped access from the public realm into the retail store.
- 36) Before any works commence on the road and walkways, open spaces or the individual buildings shown on the plans hereby approved, a scheme for public realm landscaping within the site directly outside the retail units shall be submitted to and agreed in writing by the local planning authority, which shall include details of all proposed hard surfacing, means of enclosure, including that relating to any refuse storage and collection, and any other street furniture including bike stands and balustrades. Unless otherwise agreed, public realm materials shall be similar in quality and appearance to those used in the public realm improvements to the front of the neighbouring Sainsburys.

APPEARANCES

FOR THE APPELLANT:

Mr Neil Cameron QC
Mr Rob Jackson
Mr Paul White
Mr Mathew Shellum

FOR THE LOCAL PLANNING AUTHORITY:

Mr Simon Chambers

INTERESTED PERSONS:

Councillor Glenis Ansell
Councillor Ian Thorne
Councillor John Boaler
Mr Wells
Mrs Henshaw
Mr A Jones
Mr D Dillamore

DOCUMENTS

- 1 Statement from Kevin Wells
- 2 Statement from Councillor Glenis Ansell
- 3 Statement from David Dillamore
- 4 Statement from Andrew Jones
- 5 Letter of notification of the Hearing
- 6 Email from Jon Jones