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## Appeal Decision

Site visit made on 11 May 2021

**by Rachael Pipkin BA (Hons) MPhil MRTPI**

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

**Decision date: 25 June 2021**

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**Appeal Ref: APP/H1705/W/21/3268065**

**42-46 New Road, Tadley RG26 3AL**

- 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 S Paull of McCarthy and Stone Retirement Lifestyles Ltd against the decision of Basingstoke & Deane Borough Council.
  - The application Ref 18/03146/FUL, dated 19 October 2018, was refused by notice dated 15 January 2021.
  - The development proposed is erection of 42 retirement living apartments (Category II Type) with communal facilities, landscaping and car parking. Erection of a Class A1 retail store with 5 flats at first floor level, car parking and service layby.
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### Decision

1. The appeal is allowed and planning permission is granted for erection of 42 retirement living apartments (Category II Type) with communal facilities, landscaping and car parking. Erection of a Class A1 retail store with 5 flats at first floor level, car parking and service layby at 42-46 New Road, Tadley RG26 3AL in accordance with the terms of the application, Ref 18/03146/FUL, dated 19 October 2018 and subject to the attached schedule of conditions.

### Procedural Matter

2. The appellant has submitted a completed signed planning obligation by way of a Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 (as amended) dated 6 May 2021. This deals with affordable housing and the provision of a traffic layby. I will discuss this in more detail later in this decision.

### Main Issue

3. The main issue is whether or not the proposal makes adequate provision for affordable housing.

### Reasons

4. Policy CN1 of the Basingstoke and Deane Local Plan 2016 (Local Plan) requires 40 per cent affordable housing on all market housing sites. On-site provision will be expected for five or more net residential units. In exceptional circumstances, off-site provision or financial contributions of equivalent value will be accepted.

5. The appeal proposal is for the provision of 42 retirement homes and five flats. The proposal includes a contribution to affordable housing. The appellant submitted a viability assessment to justify the amount of affordable housing it could provide, either as on-site provision or as a financial contribution to affordable housing. In the event of off-site provision of affordable housing, the viability assessment determined a figure of £202,326. This figure is not disputed by the Council.
6. The submitted UU sets out that affordable housing would be secured through a 'cascade' approach whereby if on-site affordable housing could not be secured, then a financial contribution would be provided. In the first instance, under cascade position 1, five intermediate units (shared equity dwellings) would be transferred to a registered provider for 60 per cent of open market value. If there were to be no interest from a registered provider, then cascade position 2, offering five discounted market units (DMUs) to qualifying persons with an additional £100,000 commuted sum for off-site provision, would be made available. The Council accepts these two options.
7. If, after due process, there were to be no demand for DMUs from qualifying persons then the UU secures two alternative options which would be a choice for the Council. Cascade position 3 sets out that the DMUs would be made available to the market with a commuted sum of £100,000 payable. Alternatively, cascade position 4 sets out that the appellant would pay an affordable housing contribution of up to £202,326 prior to occupation of the market units.
8. The UU secures any future sales of the units as DMUs and requires subsequent sales of the units to be to a qualifying person in accordance with the same requirements as set out in cascade position 2. This would therefore secure the ongoing contribution of these units to affordable housing in the future.
9. The appeal site lies within the Detailed Emergency Planning Zone (DEPZ) surrounding the Atomic Weapons Establishment (AWE) at Aldermaston. It is located approximately 1,490 metres from the site boundary and is within Sector H and within the most densely populated sector within the DEPZ.
10. Policy SS7 of the Local Plan requires that development in the DEPZ be managed in the interests of public safety. It only permits development where the Off Site Nuclear Emergency Plan can accommodate the needs of the population in the event of an emergency.
11. Due to its location within the DEPZ and the restrictions on development as set out in Policy SS7, the Council has indicated that it would not be possible to identify affordable housing schemes in the Tadley area where the total contribution as set out under cascade position 4 could be spent. In support of its position, the Council has referred me to a dismissed appeal<sup>1</sup> at 27 Millers Road, Tadley. In this case, the Inspector accepted that the additional dwelling proposed would result in an incremental increase in the number of dwellings affected by an incident and that cumulatively such incremental increases in housing could undermine the general thrust and purposes of Policy SS7. This lends some weight to the Council's position that the availability of housing schemes locally are limited.

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<sup>1</sup> APP/H1705/W/19/3221311

12. Nevertheless, I have not been provided with firm evidence that there are no affordable housing schemes to which this proposal could contribute. Furthermore, if such a scheme were to come forward, bearing in mind each scheme must be determined on its own individual merits, the dismissal at 27 Millers Road does not provide conclusive evidence that an affordable housing scheme would similarly be rejected.
13. I appreciate that it would be preferable for financial contributions to contribute to affordable housing within Tadley. However, they would nevertheless contribute to affordable housing needs within the Borough. This approach is supported in the Council's Housing Supplementary Planning Document 2018 (SPD) which sets out that financial contributions towards affordable housing will be available for allocation throughout the Borough.
14. The principle of a commuted sum has been accepted by the Council in regards to cascade position 2. The proposed contribution under cascade position 4 is approximately double this figure. If the full contribution were to be made this would provide a reduced level of affordable housing provision compared to what could be provided on site. The Council has indicated that it would be sufficient to fund the conversion of four 1-bedroom flats from shared ownership to social rented units. However, cascade position 4 is a backstop once all other options have been exhausted. I am satisfied that this is reasonable.
15. The Council has confirmed that there are over 100 people registered on the local Help to Buy register who are interested in low cost home ownership initiatives within the Tadley area as well as 272 households on the housing register who have a verified local connection to Tadley.
16. If the cascade approach were to be restricted to the first two cascade positions and the appellant was unable to secure the occupation of the units in accordance with these options, it would be open to the appellant to seek a variation to the legal agreement. However, in such circumstances 25 per cent of the market units would be unoccupied whilst a variation is being sought. In view of my findings on the additional options, it seems unreasonable, given the available options under cascade positions 3 and 4, to require the appellant to seek a variation in these circumstances.
17. I conclude that the proposal would make adequate provision for affordable housing. It would therefore accord with Policy CN1 of the Local Plan as referred to above. It would also accord with the National Planning Policy Framework (the Framework) which requires affordable housing to be met on site unless off-site provision or an appropriate financial contribution in lieu can be robustly justified. It would also accord with the approach to affordable housing provision set out within the SPD.

#### *Planning obligation*

18. Paragraph 56 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations require that planning obligations should only be sought where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
19. The UU makes provision to secure funding of £7,500 for a Traffic Regulation Order to restrict the use of the layby at the front of the site to be used solely

for loading and unloading for the proposed shop. This layby would be within highway land. The restriction of this area for servicing the retail unit is necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development.

20. I find that the provision of affordable housing also secured through the UU, also meets these tests.

### **Other Matters**

21. A large number of objections to the scheme were raised in relation to the provision of another convenience retailer in the location and its effect on a local independently run convenience store. However, it is not the role of the planning system to restrict competition between different commercial interests.
22. New Road is a relatively busy road with laybys, a GP surgery and children crossing. With additional vehicles and people associated with the proposal, concerns have been raised about its impact on highway safety. New Road benefits from wide footpaths and a refuge island a little further north of the site. This has dropped kerbs and tactile paving and provides a crossing place. The proposal would provide visibility splays which are considered to be acceptable. There is no firm evidence to suggest that the proposal would give rise to unacceptable highways impacts.
23. The scheme provides 50 car parking spaces, shared between the retirement home, flats and retail unit. The Council has confirmed that the number of spaces would meet the parking requirements set out within Policy CN9 of the Local Plan and the Parking Supplementary Planning Document.
24. The proposal would demolish a vacant property adjacent to a bungalow at 50 New Road (No 50). The replacement buildings would be some distance from No 50, separated from it by an area of car parking and a 2.5 metre wide strip of landscaping. The proposal would be sufficiently separate from the proposed development to not adversely affect the living conditions of this neighbour.
25. There is no evidence that the proposal would give rise to unacceptable pressures on the local surgery and other health care.
26. The three-storey design of the building would be higher than surrounding development. However, its design incorporates two-storey elements closer to surrounding development, which in combination with its position to the rear of the site, helps to reduce the visual impact of its scale and height. I have found no reason to disagree with the Council's assessment of the proposal in that it would be compatible with the surrounding area.

### **Conditions**

27. The Council has suggested a number of conditions which I have considered against advice in the Framework and Planning Practice Guidance. As a result I have amended some of them for consistency and clarity.
28. A condition specifying the approved plans is necessary as this provides certainty. In the interests of ecology, I have imposed a condition requiring the development to be carried out in accordance with the submitted ecological report.

29. Pre-commencement conditions requiring the submission and approval of a construction method statement in the interests of highway safety and avoiding nuisance; and requiring a tree protection plan in the interests of the amenity of trees on site; are reasonable and necessary. A condition requiring Emergency Plans to be in place is necessary in order to protect public safety in proximity to AWE Aldermaston. I have however separated this so that the pre-commencement part of that condition only relates to the demolition and construction phase of the development. These have been agreed by the appellant. A condition controlling the hours of work, deliveries and removal of plant and materials on site are also necessary to avoid harm arising through nuisance.
30. Conditions requiring an assessment of the risk of contamination, remediation and verification that works have been completed are necessary and relevant in the interests of environmental protection and safety of users of the site. For the same reason, a condition requiring the removal of asbestos is necessary.
31. In the interests of character and appearance, I have imposed conditions specifying materials to be approved and retained; details of hard landscaping; and for the implementation and management of soft landscaping in accordance with submitted details, which I have also included to ensure the proper establishment and maintenance of the scheme of planting.
32. I have imposed a condition requiring a proportion of the dwellings to be built to accessible and adaptable standards. This is necessary to meet future housing needs and required by Policies CN1 and CN3 of the Local Plan.
33. A condition requiring details of external lighting is both necessary and reasonable to ensure such lighting does not harm ecology or cause a nuisance. I have imposed conditions requiring noise mitigation and confirmation that appropriate noise levels can be met in the interests of achieving satisfactory living conditions for occupants. In order to protect the privacy of occupants, a condition requiring details of screening is reasonable and the use of obscured glass.
34. A condition requiring car parking on site to be provided and retained, is both necessary and reasonable in the interests of highway safety and avoiding parking nuisance.

### **Conclusion**

35. For the reasons set out above, I conclude the appeal should be allowed.

*Rachael Pipkin*

INSPECTOR

## **Schedule of Conditions**

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - SO-2560-03-AC-00-B
  - SO-2560-03-AC-01-A
  - SO-2560-03-AC-02- D
  - SO-2560-03-AC-100-C
  - SO-2560-03-AC-103-E
  - SO-2560-03-AC-10-A
  - SO-2560-03-AC-11-A
  - SO-2560-03-AC-12-A
  - SO-2560-03-AC-13-A
  - SO-2560-03-AC-15-A
  - SO-2560-03-AC-222-E
  - SO-2560-03-AC-80-A
  - SO-2560-03-AC-81-A
  - SO-2560-03-AC-84-B
  - 034.0112.003 Rev A
  - 034.0112.005
  - 64010-02-Rev C
  - 9990-KC-XX-YTREE-TCP01 Rev 0
  - MCS623/DRG 02 REV E
  - MCS623/DRG 03 REV C
  - MCS623/DRG 04 REV C
  - MCS623/DRG 05 REV B
- 3) The development hereby approved shall be carried out in strict accordance with Chapter 6 Mitigation and Chapter 7 Enhancements of the Phase 2 Bat Emergence Survey by Abbas Ecology dated July 2018.
- 4) No development shall start on site until a construction method statement has been submitted to and approved in writing by the local planning authority. It shall include:
  - a) A programme of and phasing of demolition and construction work;
  - b) The provision of long-term facilities for contractor parking;
  - c) The arrangements for deliveries associated with all construction works;
  - d) Methods and phasing of construction works;
  - e) Access and egress for plant and machinery;
  - f) Protection of pedestrian routes during construction;
  - g) Location of temporary site buildings, compounds, construction materials and plant storage areas.

Demolition and construction work shall only take place in accordance with the approved method statement.

- 5) No development or other operations shall commence on site until a Tree Protection Plan has been submitted to and approved in writing by the local planning authority. The approved tree protection shall be erected prior to any site activity commencing and maintained until completion of the development. No development or other operations shall take place other than in accordance with the Tree Protection Plan.
- 6) A comprehensive Emergency Plans for the retirement apartments, the affordable housing units and the retail unit shall be submitted to and approved in writing by the local planning authority in relation to how the occupiers of the site will respond and manage the situation should there be a radiation emergency at AWE Aldermaston. The Emergency Plan shall include:
  - a) all emergency and business continuity considerations for employees, visitors and the business at the site during construction and operation of the development.
  - b) all actions to follow should there be a radiation emergency at AWE Aldermaston and should set out the notification of an emergency, the response actions, how guests (and others) will be alerted of an incident, where they will go (shelter or evacuate to) and how they will be supported.
  - c) the information to be provided to residents in their homes as well as actions for the site operators and staff to respond to.

A timetable shall be submitted setting out yearly dates for review and amendments where necessary for consideration and agreement by the local planning authority.

The Emergency Plan shall be provided in two phases.

- i) Phase One to cover employees, visitors and businesses at the site during the demolition and construction phase, shall be submitted to and approved in writing prior to any development or other operations commencing on site; and
  - ii) Phase Two to cover residents, employees, visitors and businesses at the site during the operational phase of the development, shall be submitted to and approved in writing prior to the development hereby permitted being occupied/brought into use.
- 7) Demolition or construction works shall take place only between the hours of 0730 and 1800 on Mondays to Fridays, 0800 and 1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 8) Deliveries of construction materials or plant and machinery and removal of any spoil from the site shall only take place between the hours of 0730 and 1800 on Mondays to Fridays, 0800 and 1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 9) With the exception of the demolition of existing buildings and removal of existing hardstanding no works pursuant to this permission shall commence until there has been submitted to and approved in writing by the local planning

authority:- (a) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as being appropriate by the Council's Environmental Health team, in accordance with BS10175:2011- Investigation of Potentially Contaminated Sites - Code of Practice; and, unless otherwise agreed in writing by the local planning authority, (b) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants/or gases when the site is developed. The scheme must include a timetable of works and site management procedures and the nomination of a competent person to oversee the implementation of the works. The scheme must ensure that the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 and, if necessary, proposals for future maintenance and monitoring.

If during any works contamination is encountered which has not been previously identified, it should be reported immediately to the local planning authority. The additional contamination shall be fully assessed and an appropriate remediation scheme, agreed in writing with the local planning authority. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR11'.

- 10) The development hereby permitted shall not be occupied/brought into use until there has been submitted to the local planning authority verification by the competent person approved under the provisions of condition 9(b) that any remediation scheme required and approved under the provisions of condition 9(b) has been implemented fully in accordance with the approved details (unless varied with the written agreement of the local planning authority in advance of implementation). Unless otherwise agreed in writing by the local planning authority such verification shall comprise:
- a) as built drawings of the implemented scheme;
  - b) photographs of the remediation works in progress;
  - c) Certificates demonstrating that imported and/or material left in situ is free of contamination.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under condition 9(b), unless otherwise agreed in writing by the local planning authority.

- 11) The development hereby permitted shall not be occupied/brought into use until there has been submitted to the local planning authority verification that any identified asbestos has been removed from the application site and disposed of by a licensed asbestos contractor in accordance with the Control of Asbestos Regulations 2012.
- 12) No development above ground floor slab level shall commence on site until details of the materials to be used for hard and paved surfacing have been submitted to and approved in writing by the local planning authority. The approved surfacing shall be completed before the approved buildings are first occupied and thereafter maintained.

13) No development shall take place above ground floor slab level until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of screen walls/fences/hedges to be erected. The approved screen walls/fences shall be erected before the buildings hereby approved are first occupied and shall subsequently be maintained. Any trees or plants which, within a period of 5 years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, details of which shall be agreed in writing by the local planning authority before replacement occurs.

14) Notwithstanding the details provided on drawings MCS623/DRG 05 REV B, MCS623/DRG 04 REV C, MCS623/DRG 03 REV C, and MCS623/DRG 02 REV E, no development shall take place above ground floor slab level until full details of both hard and soft landscape proposals have been submitted to and approved in writing by the local planning authority. Hard landscaping details shall include, as appropriate:

- a) proposed finished levels or contours,
- b) means of enclosure,
- c) car parking layouts,
- d) other vehicle and pedestrian access and circulation areas,
- e) minor artefacts and structure (e.g. furniture, refuse or other storage units, signs, lighting, external services, etc.).

Soft landscape details shall include:

- f) planting plan, specification (including cultivation and other operations associated with plant and grass establishment),
- g) schedules of plants, (including replacement trees where appropriate), noting species, planting sizes and proposed numbers/densities where appropriate,
- h) any works to enhance wildlife habitats where appropriate.

In addition, implementation timetables and maintenance programmes detailing all operations to be carried out to allow successful establishment of soft landscaping, shall be submitted to and approved in writing by the local planning authority before development above slab level commences. The landscaping works shall be carried out in accordance with the approved details before any part of the development is occupied or in accordance with a timetable agreed with the local planning authority.

Any trees or plants which, within a period of five years after planting, are removed, die or become seriously damaged or defective, shall be replaced in the next planting season with others of species, size and number as originally approved, to be agreed in writing by the local planning authority.

15) No development above ground floor slab level shall take place on site until a scheme for protecting the approved dwellings from plant noise associated with the development has been submitted to and approved in writing by the local planning authority. Any proposed mitigation scheme shall have regard to the

Basingstoke & Deane 'Noise assessments and reports for planning applications - Guidance note for developers and consultants'. Mitigation proposals will consider and utilise where possible, reduction in noise exposure achieved by effective site layout, building orientation, the use of physical barriers, utilising open space as a buffer, internal room configurations and any other available mitigation strategies. The following noise levels shall be achieved with mitigation in place:

- a) Internal day time (0700 - 2300) noise levels shall not exceed 35dB LAeq, 16hr for habitable rooms (bedrooms and living rooms with windows open)
- b) Internal night time (2300 - 0700) noise levels shall not exceed 30dB LAeq with individual noise events not exceeding 45dB LAfMax (windows open).
- c) Garden areas shall not exceed 55 dB LAeq, 16hr.

Where it is predicted that the internal noise levels specified above will not be met with windows open despite mitigation strategies, an alternative method of mechanical ventilation must be specified to supply outside air to habitable rooms with windows closed, and relieve the need to open windows. Background and passive ventilators, and system 3 extraction systems are not considered adequate for this purpose. Methods may include a system 4 MVHR system with cool air by-pass, or standalone mechanical units supplying outside air to each affected habitable room.

All works which form part of the scheme shall be completed before the dwellings hereby approved are occupied and retained thereafter.

- 16) No dwelling shall be occupied until a post completion noise survey has been undertaken by a suitably qualified acoustic consultant, and a report submitted to and approved in writing by the local planning authority. The post completion testing shall assess performance of the noise mitigation measures against the noise levels as set in condition 15. A method statement should be submitted to and approved by the local planning authority prior to the survey being undertaken. If the noise levels set out in condition 15 are exceeded, additional noise mitigation measures, (where necessary to ensure the appropriate noise levels can be met), shall be submitted to and approved in writing by the local planning authority and implemented in full prior to the first occupation of the relevant phase.
- 17) A minimum of 15% of the properties shall be built to accessible and adaptable standards to enable people to stay in their homes as their needs change. No development above ground floor slab level shall commence on site until details of which properties are to be built to such standards are submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 18) No development above ground floor slab level shall commence on site until details of the height, design and materials to be used in the construction of the privacy screens to the balconies of Units 27 and 28 has been submitted to and

approved in writing by the local planning authority. The development shall be carried out and thereafter maintained in accordance with the details so approved.

- 19) Details of any external lighting shall be submitted to and approved in writing within one month of the date of development commencing. Any external lighting should follow the guidelines set out by the Bat Conservation Trust and shall be submitted to and approved in writing by the local planning authority. The development shall then proceed in full accordance with the approved details.
- 20) Prior to the first occupation of the development hereby approved the provision for the parking of vehicles shown in the approved plans shall be constructed, laid and marked out and shall thereafter be retained for the parking of vehicles.
- 21) The windows at first floor level on the western elevation to Units 27 and 28 shall be non-opening and glazed with obscured glass, and shall be installed prior to the occupation of these units. The windows shall remain non opening and obscured glazed.

### **End of Schedule of Conditions**