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## Appeal Decision

Inquiry opened on 7 June 2022

Site visit made on 14 June 2022

**by David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI**

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

**Decision date: 11 July 2022**

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**Appeal Ref: APP/V1260/W/22/3291925**

**The Thistle Hotel, The Quay, Poole, BH15 1HD**

- 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 MHA Burleigh Poole (Propco) Limited ('the appellant') against the decision of Bournemouth Christchurch and Poole Council ('the Council').
  - The application Ref APP/20/01163/F, dated 2 October 2020, was refused by notice dated 9 December 2021.
  - The development proposed is demolition of the existing hotel building and redevelopment to provide a mixed use scheme of 5 buildings providing flexible commercial units (Class E/F1/F2) at ground floor with residential above (Class C3) and a hotel with ancillary bar/restaurant (Class C1), plus basement level car parking, cycle parking, hard and soft landscaping, revised access and associated works.
  - The inquiry sat for 6 days on 7-10 and 14-15 June 2022.
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### Decision

1. The appeal is dismissed.

### Preliminary and procedural matters

2. The appeal site lies within the Poole Town Centre Heritage Conservation Area ('the Conservation Area'). I have therefore had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
3. After the inquiry had closed, but in accordance with an agreed timescale, the appellant submitted a completed planning obligation in the form of an agreement made under section 106 (S106) of the Town and Country Planning Act 1990, as amended. I deal with this in more detail under the third and fourth main issues.

### Site description and details of the appeal proposal

4. The appeal site comprises some 1.3 hectares of land lying within Poole Town Centre, and also within the Conservation Area. The site currently contains the Quay Thistle Hotel which is a part 2- and part 3-storey brick building with the third floor housed within a slate-hung mansard roof. This hotel building sits in the south-western part of the site, with surface-level car parking to its north and east, and with an area of currently unused and vacant land at the eastern part of the site. There is also an area of soft landscaping to the south of the hotel, fronting The Quay, the road which runs along the site's southern boundary. A mooring area for boats, and Poole Harbour itself, is located just to the south of The Quay.

5. The Cherbourg Roundabout lies adjacent to the site's eastern end, with Ballard Road running alongside the site's north-eastern boundary. An existing 4-storey block of flats on East Quay Road borders the site to the north, whilst the Dolphin Quays residential and commercial development which comprises a double-height ground floor with 4-6 storeys above, along with its multi-storey car park, lies to the west of the site, separated from it, in part, by Fisherman's Road.
6. The appeal site does not contain any statutory listed buildings, although it does contain a WWII 'pillbox', identified as being a local heritage asset, and an old weighbridge which is not locally listed but which has been identified as a non-designated heritage asset. In addition, the locally listed single-storey Lifeboat Museum lies a short distance to the south-east, across the road on East Quay.
7. The Statement of Common Ground<sup>1</sup> (SoCG) between the Council and the appellant explains that the appeal site is located within Flood Zones 1, 2 and 3, and has a probability of between low and high of flooding from tidal sources.
8. Under the appeal proposal the existing hotel would be demolished and replaced by 4 residential blocks on the western part of the site, containing 228 residential apartments, with 3 of these (Blocks A, B and C) orientated north-south and the fourth (Block D) lying east-west to the north of Blocks B and C. Block A would rise to 6 storeys, Block B to 7 storeys, Block C to 9 storeys, and Block D to 4/5 storeys. The eastern part of the site would accommodate a hotel with 118 rooms, a restaurant and bar. The hotel would comprise 2 linked blocks, with the western block generally of 7 storeys and the eastern block of 6 storeys, with a long sloping roof falling to an eaves height of 3 storeys on the hotel's north-eastern elevation. The development would be set on a podium to address potential flood risk concerns, with levels agreed with the Environment Agency. There would also be a semi-basement parking area for cars and bicycles.

## **Main issues**

9. The proposal was recommended for approval by Council Officers but was refused planning permission by Members of the Council's Planning Committee, for 4 reasons. The third reason was that the applicant (now appellant) had failed to demonstrate that the scheme was not sufficiently viable to be able to provide an affordable housing contribution in accordance with Policy PP11 of the Poole Local Plan (PLP), adopted in November 2018.
10. Since that time the Council and the appellant have agreed that the appeal scheme cannot currently viably provide any affordable housing, but have worked together on a S106 agreement, and have sought to establish whether a review mechanism could and should be incorporated into this agreement, so as to provide for affordable housing if the viability of the scheme was to improve at a later date.
11. The fourth reason for refusal was that the appeal proposal failed to provide adequate mitigation for the impacts of the scheme with regards to a number of stated subject areas. The submitted S106 agreement seeks to address these concerns.
12. In light of the above points I consider the main issues in this case to be:
  - The effect of the proposed development on the character and appearance of the site and the surrounding area, including on the Conservation Area;

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<sup>1</sup> Document (Doc) 13

- the effect on established trees on the site's northern boundary;
- whether an appropriate review mechanism should be incorporated into the S106 agreement, to ensure the provision of affordable housing if the viability of the scheme was to improve at a later date; and
- whether any submitted planning obligations would satisfactorily address the impacts of the proposed development.

13. Following my assessment of the main issues I look at other matters raised and then consider the benefits and disbenefits of the proposal. I then carry out the necessary balancing exercises and, finally, reach my overall conclusion.

### **Reasons**

14. I consider it helpful to first outline the planning framework against which this proposal needs to be assessed, before turning to consider the main issues.

### ***The Planning Framework***

15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan for the area, unless material considerations indicate otherwise. The SoCG confirms that the development plan includes the PLP and the Poole Quays Forum Neighbourhood Plan (PQFNP), although the Council alleged no conflict with any PQFNP policies.

16. The National Planning Policy Framework ('the Framework'), last updated in July 2021, is an important material consideration in this case. Specific Framework policies relevant to the consideration of this proposal are discussed later, under the main issues. The Framework also sets out the decision-taking process that should be adopted when considering planning proposals. In particular, it explains in its paragraph 11(c), that development proposals that accord with an up-to-date development plan should be approved without delay.

17. Whether the development plan is considered up-to-date depends on consistency with the Framework. In situations where the development plan policies which are most important for determining the application are out-of-date – which includes circumstances where the Council cannot demonstrate a 5-year supply of deliverable housing sites, with the appropriate buffer - paragraph 11(d) of the Framework makes it plain that planning permission should be granted unless:

- i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

18. The SoCG indicates that based on the most recent published data, the Council only has a 4.1 year housing supply, amounting to a shortfall of some 423 homes. There is therefore no dispute that the most important policies for determining this proposal have to be considered to be out-of-date. In this regard the Council's reasons for refusal allege conflict with a total of 11 policies from the PLP which I discuss, as appropriate, under the relevant main issues.

**Main issue 1 – the effect on character and appearance, including on the Conservation Area**

19. The Town Centre Supplementary Planning Document<sup>2</sup> (SPD) noted in 2015 that the Quay Thistle Hotel and adjoining land has long been identified for redevelopment to make efficient use of land. It makes reference to the types of uses envisaged for the site - a hotel and associated leisure facilities, along with residential units and parking - and also provides guidance on such things as site layout, building heights, the skyline, and the need for development to step down towards the surrounding low-scale buildings on Ballard Road and East Quay Road.
20. The desire to redevelop this site was carried forward in the PLP with Policy PP6(T12) referring, amongst other things, to a mixed use development including a hotel and approximately 180 homes. However, a footnote makes it clear that this housing figure is just an indicative Planning Officer estimate, and does not preclude a developer achieving significantly more or less homes on the site, subject to other policy considerations. The need to provide a transition in scale to the existing residential properties to the rear and east of the site is a specific criterion for redevelopment of the appeal site, as is the need to improve pedestrian connections between these properties and the quayside, and to preserve or enhance the Conservation Area, giving particular attention to the quayside location.
21. Other, more general criteria within Policy PP6 require development proposals to preserve or enhance the historic character of the area, having particular regard to the scale, roof profiles, building widths, appearance and detailing; incorporate flood protection measures where appropriate; and be in accordance with any other policy and guidance prepared for the area and adopted by the Council, including the Town Centre SPD. The policy's supporting text identifies the Conservation Area as being on the Historic England (HE) 'Heritage at Risk' Register; explains that the heritage status limits opportunities for significant change; and states that development must take place sensitively in this area, with due regard to its heritage setting.
22. There is nothing in either the Town Centre SPD or Policy PP6 which specifies the acceptable height of new buildings on the appeal site. However, PLP Policy PP29, cited in the Council's reasons for refusal, includes the requirement that developments which include a tall building<sup>3</sup> must make a positive contribution to the townscape, ensuring any heritage assets and their settings are preserved or enhanced and that adjacent residential properties are not dominated.
23. PLP Policy PP27, also cited in the Council's reasons for refusal, requires a good standard of design in all new developments, which should reflect or enhance local patterns of development and neighbouring buildings in terms of layout and siting, including building line and built site coverage; height and scale; bulk and massing, including that of the roof; materials and detailing; landscaping; and visual impact. New development should also respond to natural features on the site and not result in the loss of trees that make a significant contribution, either individually or cumulatively, to the character and local climate of the area. Any scheme that does involve the removal of trees will be required, where appropriate, to include replacement trees to mitigate their loss.
24. This policy also states that where appropriate, the Council will encourage developments with potentially significant impacts to undertake independent design

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<sup>2</sup> Core Document (CD) 4.4

<sup>3</sup> Defined as over 6 storeys (approximately 16m) or those which are substantially taller than their neighbours

review. In this case the proposal was presented twice to the South West Design Review Panel (SWDRP) and the Panel also had the benefit of a site inspection and a copy of comments made on the proposal by HE.

25. The final policy stated in the first reason for refusal is PLP Policy PP30, which explains that development proposals will be supported where they preserve or enhance the historic, architectural and archaeological significance of heritage assets, and their settings, in a manner that is proportionate with their significance. It goes on to state that developments within conservation areas and/or affecting listed/locally listed buildings should, amongst other things, enhance or better reveal the significance and value of the site within the street scene and wider setting; and seek to retain buildings that make a positive contribution to the conservation area.
26. Section 16 of the Framework deals with conserving and enhancing the historic environment. Amongst other things it indicates that applicants should describe the significance of any heritage assets affected, including any contribution made by their setting. The appellant has undertaken this in its Heritage, Townscape and Visual Impact Assessment (HTVIA) and HTVIA Addendum<sup>4</sup>, and I draw on these documents and the Council's 2-part Town Centre Heritage Appraisal<sup>5</sup> (TCHA), in setting out further details of the Conservation Area and its significance, below.

*The Conservation Area, appeal site, and its significance*

27. The Conservation Area was designated in 2013, following the aforementioned Appraisal exercise, which was carried out in 2012. It contains a wide-ranging mix of architectural styles, ages, qualities and uses, with much of the western part being characterised by narrow streets which connect the historic core of the Old Town to the quayside, together with open areas on the immediate quayside, with glimpsed views into these narrow interconnected streets. It contains a significant number of listed buildings, ranging from Grade I to Grade II, located predominantly within the High Street and Old Town 'character' areas, and at the western end of the Town Quay character area. The majority of the historic buildings which front the west and central parts of Town Quay date from the Georgian and Victorian periods, with some infill developments of modern, yet traditionally styled, buildings.
28. Much of the East Quay area, where the appeal site lies, was reclaimed from the harbour at the end of the 19<sup>th</sup> century. This enabled a gasworks to expand its operations south of East Quay Road, with historic photographs indicating that the northern part of the appeal site housed a number of large, warehouse-style industrial buildings associated with the gasworks, whilst large mounds of coal occupied the southern part of the site. Some relatively large-scale buildings also appear to have occupied parts of the south-eastern corner of the site, including one with an asymmetrical sloping roof which the appellant likens to the roof proposed for the hotel. Victorian terraced housing at Stanley Road and Ballard Road lies further to the east, also within the Conservation Area.
29. The TCHA comments that this East Quay area has been radically transformed from its industrial past into a residential, commercial and leisure area. This change has come about as a result of the construction of the Quay Thistle Hotel in 1979, and the re-development of the former Poole Pottery manufacturing site in the early 2000s by the Dolphin Quays mixed use development and adjacent marina.

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<sup>4</sup> CD1.9 and CD1.10

<sup>5</sup> CD4.5

30. Dolphin Quays comprises a series of 6- to 8-storey high linked buildings in a contemporary style, with curved roofs and broken elevations. It lies immediately to the west of the appeal site and is described in the TCHA as dominating the area, as its height and massing exceeds the tallest of the quay buildings. The consensus of opinion is that it has not been a particularly successful development, with un-let and unattractive commercial units in its inner areas, some uninviting public areas, and with materials which have not worn or weathered particularly well.
31. The TCHA refers to the area around the Quay Thistle Hotel as being open, informal and welcoming, despite the lack of landscaping around the hotel car park and derelict open space to the east. It comments that this low-rise hotel has a neutral or benign impact on its surroundings and, together with its green landscaped frontage, is seen to blend in well with the surrounding residential areas. The appellant's heritage witness disagrees with these comments, aligning his views with those expressed by HE, that the 'existing hotel building and sprawling car parks have a negative impact on the Conservation Area's character and appearance'. HE also considers that the existing hotel building, with its squat appearance, is of no architectural or historic merit and offers little interaction with the quayside.
32. My own view however, which generally accords with that expressed by the Council's heritage witness, is that despite the hotel building's somewhat bland architecture and atypical orientation parallel to the quayside, its relatively unobtrusive form means that when considered in isolation it does, indeed, have a neutral impact within the Conservation Area. It is only when the large expanse of somewhat neglected and untidy surface-level car parking to the rear of the hotel is also taken into account, that the hotel complex, overall, could be said to have a negative impact on the character and appearance of the Conservation Area.
33. The appellant's HTVIA has established that there would be no intervisibility between the sensitive historic core of the Conservation Area and the proposed development. As a result, the appellant 'scoped out' the historic, western part of the Conservation Area and those listed buildings within it, and did not consider them further in its HTVIA. This course of action was not objected to by the Council, and I, too, consider it to be an appropriate and acceptable approach.
34. In light of the above points, I see a particular significance of the appeal site to be that it can effectively function as a transition site from the mass of the Dolphin Quays development to the smaller-scale residential buildings to the east and north, both within and just outside the Conservation Area. This view is largely endorsed by HE in the first of its consultation responses<sup>6</sup> which sees redevelopment of the site as an opportunity to extend the exceptional high quality urban environment of Poole Quay past Dolphin Quays, and unite the domestic-scale Victorian cottages of the eastern part of the Conservation Area with the dynamic quay area.

*The impact of the proposed development*

35. At the Inquiry the appellant provided a comprehensive run-through of the design process which resulted in the scheme now at appeal, with this process also being described and presented in the Design and Access Statement<sup>7</sup> (DAS) and in CD5.13. It was highlighted that the scheme design had undergone 8 main iterations, responding to comments and advice given variously by HE, the SWDRP and the Council. But notwithstanding these various design iterations, it seems to

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<sup>6</sup> CD7.2

<sup>7</sup> See CD1.6 and CD1.7



me that the final layout fails, at least to some degree, to accord with some of the 'design principles' set out in the Town Centre SPD, with the chosen positioning of Block D being a case in point.

36. The appellant pointed out that this block was introduced at the instigation of the SWDRP, to give the development a greater sense of containment and to reduce what it referred to as too many pedestrian routes through the site which were not leading to an obvious destination. However, whilst I understand the reason behind the introduction of Block D, it does not automatically follow that its chosen positioning and form would be acceptable – either in policy/SPD guidance terms, or in terms of the SWDRP's own comments.
37. This building would comprise a flat-roofed block of flats with an overall length of some 60m and a depth of about 15m, rising to 5 storeys on the south side and 4 storeys on the north side, all set on a podium to reduce flood-risk and therefore raised somewhat from existing ground level. It would be located to the south of a group of trees agreed to be of public amenity value, referred to as T1 to T6 in the Arboricultural Impact Assessment<sup>8</sup>. At the time of my site visit these trees were all in full leaf and could be seen across the eastern part of the appeal site from The Quay, and from a variety of locations round to Ballard Road at the north-eastern side of the site, as well as from the southern end of Perry Gardens and from East Quay Road adjacent to part of the appeal site's northern boundary.
38. It is common ground between the parties that these trees make a significant contribution to the character and appearance of the area. Four of the trees feature on the Urban Design Map 2 within the TCHA as 'Trees of townscape significance', and they also feature on Heritage Map 2 in the same document as 'Positive Features'. The SWDRP commented on these trees in its written response dated 16 July 2019<sup>9</sup>, stating that it would be welcomed if they could be retained and worked into a proposition. It referred to these existing mature trees as 'your friends', in terms of filtering views and reducing overlooking of neighbouring properties, and felt that they should be meaningfully incorporated into the scheme.
39. Then, in its 4 October 2019 response the SWDRP stated that retaining the trees to the north of the site is welcomed as this helps with the transition to the surrounding housing, noting that the trees have been given more space in the revised scheme, which is positive<sup>10</sup>. I am not aware of the detail of the layout which prompted this SWDRP comment, but in the scheme now at appeal Block D is just a few metres from this group of trees, with the main parties agreeing that this would necessitate significant and regular pruning of some of these trees.
40. I deal with the issue of pruning under the second main issue, and also accept that the Framework only requires existing trees to be retained where possible. But under this first issue it is relevant to consider whether or not the chosen positioning, as a matter of principle, would be appropriate, and would accord with policy and guidance. Relevant guidance on such matters is contained in BS5837:2012 '*Trees in relation to design, demolition and construction – Recommendations*'<sup>11</sup>. Whilst clearly only guidance, this states, at its paragraph 5.3.4 that '*a realistic assessment of the probable impact of any proposed development on the trees ... should take into account the characteristics and*

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<sup>8</sup> CD1.15

<sup>9</sup> CD6.5

<sup>10</sup> Also in CD6.5

<sup>11</sup> CD4.15

*condition of the trees, with due allowance and space for their future growth and maintenance requirements'.*

41. Furthermore, subsections of this paragraph state that *'proposed buildings should be designed to take account of existing trees, their ultimate size and density of foliage, and the effect that these will have on the availability of light'*; and *'buildings ... should be sited allowing adequate space for a tree's natural development, with due consideration given to its predicted height and canopy spread'*. Whilst not expressing any firm view on the acceptability of the proposed location of Block D, the appellant's arboricultural witness did accept that by not taking account of the future growth potential of these trees, the proposed development did not fully have regard to this guidance.
42. The proposed positioning of Block D would cramp the growth of these trees of acknowledged townscape significance and, as such, would fail to accord with that aspect of the Town Centre SPD guidance for this site which indicates that buildings should be positioned to *'positively address the surrounding streets and spaces'*. The proposed positioning of Block D would, in effect, also block all views of these trees from the south, thereby severely reducing their public amenity value and failing to adequately respond to natural features on the site. This would place the proposed layout and siting of Block D at odds with some aspects of PLP Policy PP27.
43. Block D would also be the closest new building to the existing dwellings to the north of the appeal site. I acknowledge that one of these existing buildings, 7-31 East Quay Road, is itself a relatively large 4-storey, pitched-roof building on a 'cross' footprint. However, this building, and other nearby buildings to the north of the appeal site, would still be much smaller in scale than Block D. Moreover, whilst the proposed set-back of the fifth storey would lessen the bulk of Block D when viewed from close to its northern elevation, this fifth storey would be easily seen from slightly more distant locations on East Quay Road and Perry Gardens, from where I consider Block D would appear as a large, bulky building, out of scale and keeping with its more modest existing neighbours. Because of this, I do not consider that this aspect of the appeal proposal would achieve the necessary transition in scale required by PLP Policy PP6(T12) or the Town Centre SPD.
44. On other aspects of the design process the appellant explained that the proposed Blocks A to C have taken, as their basis, the gable-ended, industrial warehouse-type buildings which formerly existed on the appeal site when it operated as the town's gasworks, as shown in some of the historic photographs submitted in evidence. However, whilst I can understand and appreciate the inspiration for the chosen building forms, the final building designs and site layout seem to me to only loosely reflect these former warehouses.
45. The proposed buildings all appear to be taller and more bulky than the previous buildings which inspired them, with significantly different spacing to one another than previously existed and with fenestration and materials which do not necessarily conjure up ideas of warehouses. Moreover, there was no suggestion that the previous buildings on the site are well remembered locally, and it is therefore unclear whether the new buildings would be received with any form of nostalgic enthusiasm.
46. Staying on this topic, whilst it is the case that the materials chosen for the appeal proposal are not referred to specifically in the Council's reasons for refusal, the first reason for refusal does allege that the scheme would fail to make a positive contribution to the townscape. Further, the Council's Statement of Case states that



the appeal scheme presents a series of buildings that would appear as large, discordant features in the townscape, whose impact would not be mitigated by the use of materials proposed.

47. In this regard I note that a 'Principle' in the Town Centre SPD requires new buildings to reflect Poole's palette of building materials which includes red and buff brick, stone, tiles, slate and render, wherever possible. However, many of the materials proposed by the appellant, such as the dark grey cladding, louvres, light grey bricks, glass reinforced concrete and extensive tile hanging are not typically used in Poole, and are therefore at odds with this SPD requirement. Whilst some small areas of the distinctive green glazed Poole tiles are proposed, their use seems to be minimal and, as such, not really noticeable or notable.
48. Moreover, Blocks A to C would use the same materials for the roof and walls of the buildings, with no eaves details. This design feature is not found elsewhere in the Conservation Area, at least not to the extent now proposed, nor does it appear that this design was used on the historic gasworks buildings. In view of the above points I share the Council's view that these buildings would not reflect or enhance local patterns of development in terms of such things as bulk and massing, including that of the roof, materials and detailing, all as required by PLP Policy PP29.
49. A further 'Principle' set out in the Town Centre SPD is the requirement to establish appropriate building heights, with these stated to likely be between 2 and 4 storeys, depending on the specific location. I accept that the appeal site, located adjacent to the Dolphin Quays development which rises up to 8 storeys, need not be bound to just a 2 to 4 storey limit. But the issue of height does need to be considered very carefully, when a key requirement of both the SPD guidance and the site-specific policy for redevelopment of this site is to provide a transition in scale to the existing residential properties to the rear and east of the site.
50. On this point the SWDRP commented, in its July 2019 response, that the starting point for an options analysis should not be to use the existing tower blocks nor Dolphin Quays as a baseline to build high. Moreover, whilst being generally supportive of the appellant's proposals it indicated that more work was needed to demonstrate how proposals for redevelopment of this site would integrate successfully with its unique context, and mediate successfully between the traditional domestic 2-storey townscape to the east and the bulky forms (including Dolphin Quay) to the west. For reasons already given, and others which I set out shortly, I do not consider the appeal proposal to be successful in this regard.
51. The appellant explained that it had interpreted comments and guidance in the TCHA and the Town Centre SPD as indicating that a proposal for the appeal site that would provide a variety of heights and roofscapes, and a varied skyline, both within the site and in relation to neighbouring sites, would be welcomed. The DAS also notes that Poole contains an eclectic mix of buildings of all shapes and sizes, constructed using a broad mix of materials, and contrasts the permeable street frontage at the western end of the Town Quay with the impermeable street frontage created by Dolphin Quays. With these points in mind the DAS further comments that the appeal site gives the opportunity for a development on the appeal site to provide a permeable street frontage and taller buildings.
52. In part, the justification for this reference to taller buildings arose from the DAS's consideration of the wider context of the appeal site, which noted that the overall skyline of Poole contains a number of taller buildings, reaching up to 12 storeys in some locations. The appellant acknowledges that these tower blocks are not within

the Conservation Area but argues that they have become an established feature of the post-WWII townscape of Poole, and can be seen as prominent features from several roads within the Conservation Area. But whilst these points are factually correct, regard still has to be had to achieving a transition in scale to the lower, more modest buildings to the east and north, as noted previously, in the context of any redevelopment of the appeal site.

53. The success or otherwise of this aspect of the proposed development can best be judged by means of the visualisations of the proposal from the agreed viewpoints set out in the HTVIA Addendum. I visited many of these viewpoints as part of my accompanied site visit, and formed my own impression as to the likely impact of the proposed development not only from these viewpoints, but also from other nearby locations visited during the site visit. It is the case that the proposed buildings would be most clearly seen and would have the greatest visual impact in views from the south, east and north, and would be more prominent and noticeable from locations closer to the appeal site, unimpeded by intervening buildings.
54. Dealing first with Viewpoint 5 on the Town Quay outside Dolphin Quays, from the viewpoint itself a sliver of the front elevation of Block B would be seen, with more of the west side and front elevation of Block C behind it. Continuing eastwards along the quayside, more of these buildings would come into view, with a clear sensation of increasing building heights. Continuing further eastwards, the tall western part of the hotel would come into view, and then the slightly lower eastern part of the hotel would be seen. But the significantly sloping roof of this eastern part would not be appreciated until relatively close to this part of the building, by which time much of the area of modest 2-storey housing at Ballard Road and Stanley Road would also be part of the view. To my mind the appearance would be one of a significant disparity in height and scale between the hotel and these much smaller residential properties. Because of this I consider that the reduction in height of the eastern part of the hotel, to 3 floors at eaves level, would be largely ineffective in achieving any meaningful visual transition in scale.
55. Insofar as Viewpoint 6 from Perry Gardens is concerned, the visualisation shows that the eaves line on the finally proposed version of the hotel design would clearly be lower than with the originally proposed scheme. However, the ridge heights of both parts of the hotel building would remain the same and the tall Block C would become more visible as one moves south-westwards down Perry Gardens, with the 4/5 storey Block D also becoming visible. Notwithstanding the fact that these views are from outside the Conservation Area, it is my assessment that the visual juxtaposition of these modest Perry Garden dwellings with the taller and more massive buildings proposed on the appeal side would not achieve an acceptable transition in scale.
56. I share the appellant's view that the 2-storey roof form of the short terraces on Perry Gardens is highly distinctive. But despite being considered for inclusion within the Conservation Area in 2012, as part of the Lagland study area, these post-WWII dwellings in Perry Gardens, along with other nearby dwellings of similar age, were not included in the Conservation Area when it was designated in 2013. Because of this, I do not consider that it is appropriate to draw on such features to guide development within the Conservation Area, as the appellant has done here.
57. On this point I acknowledge that one of the historic photos placed before the Inquiry did show a similar asymmetric sloped roof, but in my assessment it was on a much smaller, lower and less bulky building than the proposed hotel. Because of

this, and the points set out above, I do not see the proposed steeply sloping hotel roof either as a positive design feature, or as a successful way of complying with the aforementioned 'transition in scale' requirements of PLP Policy PP6(T12).

58. Turning to Viewpoints 7 and 8, looking south-westwards along Stanley Road, from within the Conservation Area, any development of the appeal site to accord with Policy PP6(T12) would inevitably change these views and result in some built form being visible on the appeal site. Although there would be a separation of some 30m across Ballard Road between the hotel and the nearest dwellings, this would not be overly apparent in views down Stanley Road, and the proposed positioning of the hotel building at the extreme eastern end of the site would place it uncomfortably close to these existing modest, 2-storey terraced houses.
59. The steeply sloping roof with its somewhat unusual inset planting strip on the hotel's north-eastern side is clearly an attempt to manage the transition in scale required by PLP Policy PP6(T12). But as the greater ridge height, gable-end and bulk of this part of the hotel would still be very noticeable from the western end of Stanley Road and from Ballard Road, I do not consider that this arrangement would satisfactorily lessen the visual massing or deliver the necessary transition in scale.
60. The appellant acknowledges that in the context of these viewpoints the appeal proposal would result in some harm to visual amenity and significance of the Conservation Area which it categorises as less than substantial in Framework terms. I agree, although as already detailed above, I consider that visual harm would also arise from other viewpoints. This less than substantial harm needs to be weighed against the wider public benefits of the proposal, which I do later in the planning balance section of this decision.
61. Finally, I consider the likely impact of the appeal proposal from Labrador Drive and Ballard Road from the east, as shown in Viewpoints 10 and 9 respectively. From the more distant location, the taller Dolphin Quays buildings form a noticeable backdrop to the 2-storey dwellings at the end of Labrador Drive/Green Gardens, and to the low form of the Lifeboat Museum. There is a clear sense of Dolphin Quays being some significant distance away from these properties, with the existing hotel not really visible from this location. However, the 'now proposed' viewpoint shows that there would be a significant change, with the buildings on the appeal site noticeably taller and more prominent than Dolphin Quays, resulting in an uncomfortable visual relationship with the aforementioned lower buildings.
62. A very similar experience would arise from Viewpoint 9, from where the modest Lifeboat Museum, which currently enjoys a relatively isolated setting, would be clearly seen against the far taller but much more distant Dolphin Quays complex, with further modest 2- and 3-storey residential dwellings at Ballard Road also in view. The proposal would result in a significant increase in height and massing on the appeal site when viewed from this location, and even though the final amendments to the scheme would see Block C set back into the site a little, and the eaves height of the hotel reduced, the visible development on the site, principally in the forms of the hotel, Block C and Block D would appear to rise relatively abruptly from the edge of the site.
63. I accept that the vertical form of the proposed hotel would contrast somewhat with the horizontal form of the Lifeboat Museum, but the fact that this tall hotel building would be sited in relatively close proximity to the Lifeboat Museum would, in my assessment, have an adverse impact on the Lifeboat Museum's setting. Furthermore, I acknowledge that from Viewpoint 9 the proposed tree planting and

landscaping to the north-east of the hotel would be a noticeable and attractive feature, but it would not be the most prominent part of the proposed development from this location, with any viewer's eye being much more likely to be drawn to the bulk and height of the hotel building itself.

64. Insofar as comments from professional consultees are concerned, I note that HE has expressed general support for the principle of the appeal proposal, but it has also commented that a reduction in units could allow for a reduction in scale and massing to assuage concerns about potential townscape impact. This is a somewhat ambiguous comment as it is unclear whether it is HE, itself, that has concerns about the scale and massing of the proposal, and consequent concerns about the potential impact on townscape. At the very least, however, this does not appear to be a ringing endorsement of the appeal proposal.
65. It also appears to be the case that although the scheme has taken on board some of the SWDRP's comments, some further matters set out in its written responses have not been fully met by the final design option. For example, the SWDRP highlighted that a key area of work would be to include the transition to the existing neighbours on all sides, and in my assessment this is an aspect of the proposal which, for reasons given above, the proposed design has not successfully achieved.

#### *Summary*

66. Drawing all the above points together, the appeal proposal would offer a number of positive features, including commercial spaces likely to provide a vibrant active frontage to the quayside; the orientation of the residential blocks to maximise waterfront views; and the avoidance of single-aspect, north-facing residential units. Furthermore, I understand and support the need to make efficient use of the appeal site. However, having regard to the layout and siting of the proposed buildings, with their significant height, scale and bulk, and the intended palette of materials, I conclude that the proposed development would not sufficiently reflect or enhance local patterns of development, or neighbouring buildings, and would not make a positive contribution to the townscape.
67. Moreover, in light of these points I consider that the quantum of development sought would result in a cramped layout and distribution of development, and would not afford the trees of townscape significance on the site, sufficient space. This means that a further criticism of the proposal is that it would appear out of keeping on this site in the context of the nearby existing development to the north and east, and would thereby fail to deliver the necessary transition in scale to the existing residential properties to the rear and east of the site.
68. As a result, the proposed development would have an adverse impact on the character and appearance of the surrounding area and would fail to preserve or enhance the character or appearance of the Conservation Area. Indeed it would undermine the integrity of the Conservation Area as a whole and would leave Stanley Road and Ballard Road disconnected from the remainder of the Conservation Area. This would amount to less than substantial harm to the significance of the Conservation Area and, in accordance with the Framework, this harm needs to be weighed against the public benefits of the proposal, an exercise which I undertake later in this decision. Overall, for the reasons detailed above, the proposed development would be in conflict with those aspects of PLP Policies PP6(T12), PP27, PP29 and PP30, and the requirements of the Town Centre SPD, to which I have already referred.

**Main issue 2 – the effect on established trees on the site’s northern boundary**

69. The Council’s second reason for refusal alleges that the proximity of proposed Block D to the established trees on and just outside the northern boundary of the site is likely to compromise their long-term retention, through subsequent pressure to fell, and that loss of the trees would be harmful to the character and appearance of the area. As such it contends that there would be a conflict with PLP Policy PP27.
70. The trees in question comprise 2 Sycamore, 2 Norway Maple and 2 Silver Birch. It is common ground that the appeal proposal would not directly result in the loss of any of these trees. There are, however, clear differences of opinion between the Council and the appellant regarding matters such as the acceptability and effects of pruning, the likely pressure to fell the trees, and the Council’s ability to resist any such pressure. The Council also expressed concerns about the success or otherwise of future tree planting on the site.
71. This juxtaposition of trees and Block D can be seen from the submitted drawings, perhaps best so from Appendix 2 to the appellant’s arboricultural witness’s proof of evidence<sup>12</sup>, where the extent of pruning for these trees is also shown. This indicates that the existing crown spread of both Norway Maples – T2 and T5 – would need to be more or less halved on their south sides, to achieve a 3m clearance from Block D, with a similar impact on the Silver Birch, T6.
72. Notwithstanding my concerns regarding the fundamental matter of site layout and building positioning, dealt with under the first main issue, I now consider the proposed pruning which would be necessary if this proposal was to proceed. The most detailed evidence on this matter was put forward by the appellant’s arboricultural witness who had undertaken his own, recent assessment of the extent of the crown spread of these trees, and their pruning requirements. He concluded that for the 3 Category B trees T2, T5 and T6, branches would need to be cut back to 3.75m from the trunk for T2; 3.5m from the trunk for T5; and 3.6m from the trunk for T6, to achieve a 3m clearance to the north elevation of Block D.
73. By considering historic images of these trees he determined that they have exhibited an average annual growth of some 250mm, a figure which was not seriously disputed by the Council. This means that having initially pruned the trees to be no closer than 3m from Block D, they would need to be pruned on a 4-year cycle to ensure they encroach no closer to Block D than 2m. Growth rates can be variable, but as a mathematical/analytical exercise I cannot fault the appellant’s position on this matter. As no firm evidence was submitted to demonstrate that the trees would be unacceptably harmed by such pruning, and as a 4-year pruning cycle does not seem to me to be excessive, I would not have considered this matter to weigh against the appeal proposal if all other things had been in its favour.
74. I turn now to deal with the Council’s concern that there could be pressure to fell one or more of these trees because of potential impacts on future occupiers of Block D, such as loss of light. On this point the appellant argued that the Council would be in a strong position to refuse any such requests, because the rooms on the north elevation of Block D most likely to be affected by the close proximity of the trees would be bedrooms, which do not have as strong a requirement for good lighting as would be the case for living rooms or kitchens.

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<sup>12</sup> Pages 61-64 in CD5.11A



75. But whilst this is correct, it is also quite possible that some future occupiers could seek to use one or more of their bedrooms for other purposes – such as a home office – which may well change the lighting requirements. As such, any requests for felling would clearly need to be assessed on their own particular merits. Again, however, no firm evidence was submitted on this point, and because of this I do not consider it to be something that I can come to a firm view on at the present time. In these circumstances I again take the view that this matter would not weigh materially against the proposal if all other points had been in its favour.
76. The final matter put forward by the Council on this issue is that in the absence of any firm planting scheme agreed at this stage, there can be no certainty that any newly planted trees would successfully establish on the site. In this regard the Council's arboricultural witness highlighted a number of reasons why he considered replacement or newly planted trees might not flourish or survive in this coastal environment. However, I share the appellant's view that the matters raised all relate to relatively common challenges which need to be faced when planting new trees on sites close to the sea. As such, I am not persuaded that they amount to anything which could not adequately be addressed by the detailed and comprehensive planning condition on this topic, agreed between the parties as appropriate to be imposed if planning permission is granted. I therefore do not consider this to be a matter which should weigh materially against this proposal.
77. Drawing all the above points together, for the reasons just set out I do not consider that the specific matters put forward in the Council's second reason for refusal have been sufficiently justified to warrant finding against the appeal proposal on those grounds. However, as explained above, and also referred to under the first main issue, the proposed positioning of Block D would effectively block all views of these trees from the south, thereby severely reducing their public amenity value.
78. Because of this, and notwithstanding my conclusions on the Council's specific areas of concern, I have to conclude that the appeal proposal would have an adverse impact on the established trees of townscape significance on the site's northern boundary and, as already noted, this would place it in conflict with PLP Policy PP27.

***Main issue 3 – whether a review mechanism should be incorporated into the S106 agreement, to provide for affordable housing if the viability of the scheme was to improve at a later date***

79. The factual position on this matter is straightforward and is set out in the agreed SoCG. This explains that because of the appeal site's location within the town centre, PLP Policy PP11 seeks to secure an affordable housing contribution equivalent to 10%. Part (g) of this policy indicates that in circumstances where developers contest that they cannot meet the affordable housing requirement, they must demonstrate the maximum amount of affordable housing provision and tenure mix that could be achieved on site viably, through the submission of a Residual Land Value assessment as set out in Policy PP40: Viability.
80. In this case an Economic Viability Assessment was submitted by the appellant and this was independently assessed by the District Valuer Service which gave qualified endorsement to the conclusion that the appeal scheme could not viably provide any affordable housing. Although the Council's Planning Committee subsequently resolved to refuse planning permission on the basis that the appeal proposal would not provide affordable housing, the appellant and the Council are now agreed that the appeal scheme cannot viably provide any affordable housing at the present time.

81. At the time the SoCG was finalised, the Council and appellant were working together to consider whether it was possible to agree the terms of a review mechanism which could provide for affordable housing should the viability of the scheme improve at a later date, if planning permission was granted for the appeal scheme. This work has been concluded and, as a result, Schedule 2 has been included within the submitted S106 agreement to deal with this matter. In summary, it provides for the following.
82. First, if substantial commencement<sup>13</sup> of the development has not occurred within 30 months of a grant of planning permission, the Owner is required to carry out an Early Stage Review, to determine whether a 'deficit' or 'surplus' has arisen; and in the event of a surplus, an Affordable Housing Contribution shall become payable. This will be the lower of (a) 25% of the surplus; or (b) a financial cap equivalent to the provision of 23 residential units (being 10% of the residential units to be provided as part of the development), on the basis of 70% being provided as affordable rent and 30% intermediate housing.
83. Second, a Late Stage Review carried out when 50% of the residential units have been disposed of or occupied, whichever is the earlier, again to determine whether a deficit or surplus has arisen, and whether an Additional Affordable Housing Contribution shall become payable, in accordance with the Formula set out as part of the Schedule. If an Additional Affordable Housing Contribution is payable, it will be the lower of (a) 25% of the surplus; or (b) a financial cap equivalent to the provision of the balance of 23 residential units not provided as a result of the Early Stage Review Assessment (being 10% of the residential units to be provided as part of the development), on the basis of 70% being provided as affordable rent and 30% intermediate housing.
84. There is, however, a distinct difference of opinion between the parties on this topic. Put simply, the Council considers that the obligations set out in Schedule 2 providing for an 'Early Stage Review' and a 'Late Stage Review' are both justified. In contrast, the thrust of the appellant's argument is that neither of these reviews are required to make the development acceptable in planning terms, because there is no such requirement for any viability review set out in the Council's development plan. The appellant therefore invites me to disregard these obligations and give them no weight in determining this appeal.
85. In this regard I have noted the appellant's contention that the main reason behind the Council's requests for these reviews is that negotiations on this matter, have been carried out on its behalf by an external London-based Solicitor, who is used to dealing with such reviews in the context of the London Plan, and London-related guidance, which makes explicit provision for such reviews. Be that as it may, it nevertheless remains the case that the key question which needs to be asked in this regard, is whether such viability reviews would be necessary to make the development acceptable in planning terms.
86. I have had regard to the extensive arguments put forward by the Council and the appellant on this topic, and have also considered the many legal authorities submitted by the appellant<sup>14</sup>, although it does not seem to me that any of these directly mirror the details or circumstances of the current case. I have therefore reached my own view on this matter, along the following lines.

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<sup>13</sup> Defined as demolition of the structure of the existing buildings on the appeal site to ground floor slab level, and practical completion of the works to divert the Wessex Water public sewer which crosses the site

<sup>14</sup> CD8.1 – CD8.9

87. The starting point is the application of PLP Policy PP11 which, as already noted, requires housing schemes like this, sited within the Poole Town Centre Boundary, to provide 10% of the residential units as affordable housing. However, the agreed position in this case is that at the present time the scheme could not viably provide any affordable housing, in accordance with part (g) of this policy. This proposal could therefore be granted planning permission with zero affordable housing, and it would still be policy-compliant insofar as Policy PP11 is concerned. It is relevant, however, that the supporting text to this policy states that the Council will support affordable housing delivery by maintaining an up-to-date Affordable Housing SPD.
88. The relevant SPD<sup>15</sup> in this case was adopted in 2011, following appropriate public consultation, with its main objective being to provide support for what was at that time the operative development plan policy for the provision of affordable housing in the planning authority's area. A new Local Plan is now in force, along with a different responsible local planning authority, but there is no firm evidence before me to suggest that this adopted SPD is not able to continue to provide support for the currently operative development plan policy dealing with affordable housing - PLP Policy PP11. Despite being adopted in 2011, the SPD seems to generally accord with Framework requirements for affordable housing provision, and I therefore regard it as up-to-date and capable of carrying weight in this appeal.
89. The SPD does make it clear that developers will have to enter into a legal agreement where development is intended on a site where an affordable housing obligation is required. It further makes it clear that such a legal agreement will contain provisions to rule out the banking of sites until market values rise; and to seek to capture any additional affordable housing contribution in circumstances where there is an uplift in the market. There is no explicit reference to a 'viability review', but it seems quite clear to me that the SPD's use of the phrase 'overage (clawback) of value' effectively seeks to achieve the same thing. The SPD defines 'overage value' as the residual value after the scheme has been reappraised.
90. The SPD does provide an example, in its Appendix E, as to how an overage clause could be incorporated into a legal agreement, pointing out that any such agreement would need to include the recognition of a 'trigger point' for subsequent assessment, and an agreement of the proportion of any revised contribution that would be attributable to affordable housing. It seems to me that these provisions are just what the Early Stage and Late Stage reviews currently included in Schedule 2 of the S106 agreement seek to achieve, and it is therefore apparent that this sort of mechanism was foreshadowed in the adopted SPD. It should therefore not be a surprise to any potential developer.
91. I have noted the content of the Council's guidance note, entitled '*Information required supporting the submission of a planning application. Economic Viability Appraisal: Affordable Housing*', which is dated April 2018 and is stated to come into effect from 1 May 2018. However, whilst this is clearly the most recent indication of what the Council would like to see in terms of an affordable housing review mechanism, it does not appear to have undergone any public consultation or independent assessment and, as such, it has no formal status. I have therefore not had regard to its content in considering this matter. But this does not change the views I have expressed above, regarding Policy PP11 and its supporting SPD.
92. In summary, if planning permission was to be granted for this proposal, I conclude that the Early Stage and Late Stage review options in the S106 agreement would

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<sup>15</sup> CD4.11

be needed to make the proposal acceptable in planning terms, in accordance with the requirements of CIL Regulation 122, repeated in paragraph 57 of the Framework. I take this view because the inclusion of these obligations seems to me to be the only way that a policy-compliant contribution to affordable housing could potentially be achieved, if viability of the proposal was to improve. In these circumstances I am not persuaded that the absence of any direct reference to the need for such a review in the Council's adopted policies need be a barrier, as claimed by the appellant.

#### ***Main issue 4 – Planning obligations***

93. The Council's fourth reason for refusal alleged that the appeal proposal failed to provide adequate mitigation for the impacts of the scheme with regards to open space provision; education provision; medical provision; highway impacts; heathland mitigation; and Poole Harbour mitigation. As a result, the reason for refusal alleged a conflict with a number of PLP policies. However, an Informative Note attached to the reason for refusal made it clear that the completion of a suitable S106 agreement to secure the necessary contributions would satisfactorily overcome this reason for refusal.

94. In this case, the submitted S106 agreement makes provision for:

- Works to improve the existing bus stop at The Quay to provide real-time information;
- the provision of 2 Car Club Spaces and a Car Club Contribution of £55,410;
- an Education Contribution of £373,641 towards the provision of additional school places at early years, primary, secondary and post-16 phases;
- a Habitat Contribution of £61,788 for planting acid grassland within Dorset Heathlands to compensate for loss of acid grassland on the appeal site;
- a Harbour Contribution of £22,116 towards offsetting the recreational impact of the proposed development on the Poole Harbour Special Protection Area;
- a Health Contribution of £19,188 towards an additional clinical room and ancillary space for one or more surgeries in the Council's administrative area;
- an Open Space Contribution of £90,000, split £20,000 towards the upgrade of the Green Road play park; £20,000 towards a current Council project at Baiter Park; £30,000 for football pitch improvements; and £10,000 for the creation of meadows, tree or hedge planting;
- a Transport Contribution of £180,000 towards frequency improvements for the Route 1 bus service;
- a Transport Contribution Supplement of £4,000 towards traffic regulation orders and necessary bay markings and signage in the event that the Car Club spaces have to be provided on the public highway; and
- a Travel Plan, incorporating practical measures tailored to the occupiers/users of the proposed development, aimed at reducing the impact of car travel on the environment and promoting a range of sustainable travel choices.

95. As appropriate, all of the above contributions would be index linked.

96. Having had regard to the above details, and the Community Infrastructure Levy (CIL) Compliance Statement<sup>16</sup> submitted by the Council, I am satisfied that all of these obligations are necessary to make the development acceptable and that all meet the requirements of Regulation 122 of the CIL Regulations 2010 and paragraph 57 of the Framework. The obligations 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.
97. I therefore conclude that these submitted planning obligations would satisfactorily address the impact of the proposed development, and that the appeal proposal would therefore not be at odds with PLP Policies PP24 (Green infrastructure); PP25 (Open space and allotments); PP32 (Poole's nationally, European and internationally important sites); PP34 (Transport strategy); PP35 (A safe, connected and accessible transport network); or PP39(Delivering Poole's infrastructure).

### **Other Matters**

98. I now deal briefly with a number of other matters of concern, raised by interested persons either in written representations, or at the Inquiry.

#### *Living conditions*

99. A number of existing residents in nearby properties expressed concern that the proposed development would result in a loss of sunlight, daylight, outlook and privacy, and also that noise would increase, associated with parking, and with deliveries and the general comings and goings associated with the hotel. On these points the Officer's report to Committee concluded that the appeal proposal would be largely acceptable in terms of privacy, daylight/sunlight levels and overshadowing. It did, however, identify that occupiers of some existing dwellings at Dolphin Quays, and East Quay Road would experience an adverse impact on their outlook, but concluded that this would be limited. I see no reason to dispute these findings, and will ensure that this identified harm – albeit modest – is considered in the final planning balance.
100. In terms of noise, none of those objecting to the proposal submitted any firm evidence to support their concerns, and I have noted that the Council's Environmental Health department raised no objections, commenting that the submitted report demonstrates that there should be no significant impact from noise arising from the proposed development. I see no reason to dispute this view, and therefore do not consider that these objections should carry any material weight against the proposal.

#### *Parking*

101. There were many concerns from interested persons that there would be inadequate parking provision for the development, and in this regard I note that during the determination of this proposal the Council adopted its revised Parking Standards SPD, which advocates zero parking in the town centre for residential development. Whilst the appeal proposal does not fully conform to these standards, the appellant has commented that it has sought to strike a balance between the policy in place at time of submission, the views of local residents to ensure an element of parking is provided and the wider sustainability agenda as reflected in the SPD.
102. In addition, to offset any harm which might arise as a result of the level of parking provided, the appellant has agreed to contribute towards measures which would

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<sup>16</sup> Doc 19



mitigate and discourage car use, through obligations secured through the S106 agreement. With such mitigation the Council confirmed that the quantum of car parking proposed would be acceptable, and I see no reason to take a contrary view.

### *Biodiversity*

103. At the Inquiry, a local resident, Dr Christine Brady, expressed concern about the impact of the proposal on biodiversity. I note, however, that the planning application was supported by a Biodiversity Net Gain (BNG) Assessment<sup>17</sup> and a Preliminary Ecological Assessment<sup>18</sup>, and that these had satisfied the Council that the proposal would have an acceptable impact on local ecology. In particular, the BNG Assessment confirmed that the proposal would deliver a BNG of some 51.8% on the site. Although expressing some scepticism regarding this figure, Dr Brady produced no countervailing information, and in the absence of any firm, contrary evidence I see no reason to dispute the appellant's findings and conclusions.

### *Summary*

104. Although a significant number of objections were raised against the proposal at application stage, with some further objections at appeal stage, there was very little put forward in the way of firm evidence to support these views and objections, and therefore little for me to meaningfully address in this regard. The Council comprehensively dealt with the matters raised in the Officer's report to Committee, and it is clear that the Council did not consider that these matters warranted being used as reasons for refusal.
105. With these points in mind, and having regard to the fact that the SoCG between the appellant and the Council also deals comprehensively with a range of other concerns, I am satisfied that there are no further matters which need to be considered as weighing against this proposal.

### ***Benefits and disbenefits***

106. Having regard to the evidence submitted and my own observations and assessments I set out, below, the weight which I consider should be given to benefits and disbenefits of this proposal, dealing first with the list of benefits agreed between the Council and the appellant as set out in paragraph 7.68 of the SoCG.

### *Benefits*

107. The first listed benefit is the fact that the appeal proposal would result in the redevelopment of a site that is currently underutilised brownfield land, situated within the town centre, and which has long been considered appropriate for redevelopment. I consider that this benefit should attract substantial weight. However, I am not persuaded that the second item listed as a benefit – the fact that the appeal scheme proposes the same mix of uses as sought by the site allocation in PLP Policy PP6(T12) – materially adds anything to this first benefit.
108. I am satisfied, however, that the provision of 228 residential units is a clear benefit of this proposal. I consider that this should attract significant weight, especially as the Council cannot currently identify a deliverable 5-year supply of housing land.
109. I agree that some economic benefits would arise from the construction and operational phases of the development through local spend and net employment generation, including in association with the opening of new commercial units. But

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<sup>17</sup> Doc 11

<sup>18</sup> Doc 12

as some of these benefits would only be temporary, and as similar benefits would arise with any redevelopment of the appeal site, I consider that these benefits should just be afforded moderate weight.

110. There would also be clear benefits from the delivery of a modern hotel, which would enhance the current tourism offer of Poole, providing visitor accommodation and a destination for visitors, with views of the harbour. But as a hotel already exists on the site, I again consider it appropriate to just give these benefits moderate weight.
111. Finally, in terms of the agreed SoCG list, there would be improvements to the public realm along the Quay, including improvements to accessibility and landscaping, and public realm improvements would also extend to the site itself, to include the proposed landscaped areas between the residential blocks. Overall I consider that these public realm improvements would be relatively extensive and warrant being given significant weight.
112. In terms of other benefits, elsewhere in the SoCG there is recognition that the locally listed WWII pillbox and the non-designated weighbridge would both be better revealed and incorporated into the final scheme design. I consider that modest weight should be attributed to these improvements.

#### *Disbenefits*

113. Contrary to the view expressed by the appellant, my assessment, detailed above under the first and second main reasons, is that the appeal proposal would be in conflict with each of the 4 PLP policies cited by the Council in its first reason for refusal, namely Policies PP6(T12), PP27, PP29 and PP30. Importantly, 3 of these make direct reference to the need for new development proposals to preserve or enhance heritage assets, and for the reasons I have detailed above I consider that the appeal proposal signally fails to achieve this. Like the Council and the appellant I consider that the harm to the Conservation Area would fall into the 'less than substantial' category referred to in the Framework.
114. The appellant only considers the harm to the Conservation Area to arise as a result of the impact on amenity and the townscape character and appearance, in the views along Stanley Road. It places this harm at the low end of the 'less than substantial' scale. However, like the Council, I consider the harm to comprise further elements, including the failure to provide an acceptable transition in scale to the north as well as to the east; the fact that the proposal would not sufficiently reflect or enhance local patterns of development or neighbouring buildings in relation to layout, siting, height, scale, bulk, massing and visual impact; and the fact that the proposed buildings would appear as large, discordant features in the townscape, whose impact would not be mitigated by the use of proposed materials. As a result I consider that the level of harm would be greater than argued by the appellant. I place it at the low- to mid- point of the 'less than substantial' range.
115. Further harm would arise from the fact that I have found that the appeal proposal would have an adverse impact on the character and appearance of the surrounding area, under the first main issue. Whilst I acknowledge that there is a degree of overlap between this harm and the specific harm to the Conservation Area which I have already identified, I consider that there would be additional harm to townscape and to the character and appearance of the surrounding area more generally. Put simply this would arise, at least in part, as a result of the scale and extent of development which the appellant seeks to place on this site. I consider that this more general harm should carry significant weight.

116. It is this desire to place the proposed amount of development on the site which has led to the scale and positioning of the proposed buildings, and it is this which in turn has led me to conclude that further harm would arise under the second main issue, as a result of the failure to respect and give adequate space to the trees of townscape significance on the northern part of the site. Again, I consider that this harm should carry significant weight.
117. In my assessment, the current, relatively isolated setting of the locally listed Lifeboat Museum would be adversely affected by the close proximity of the more massive development on the appeal site. I consider that this harm should carry modest weight.
118. Finally, it is clear from the Officer's report to Committee, that there would be some adverse impact, albeit slight, on the living conditions of some occupiers of Dolphin Quays, and some residents in properties to the north of the site, through a loss of outlook. I consider the harm, in these cases, to be minimal, attracting just a small amount of weight against the appeal proposal.

### ***Balancing exercises***

119. Paragraph 199 of the Framework makes it clear that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. I give the less than substantial harm which would be caused in this case, considerable importance and weight.
120. The public benefits to be set against this harm are detailed in paragraphs 107 to 112, above. These are real and tangible benefits, which would clearly flow from the specific scheme now at appeal. However, they would arise from a development which would be in conflict with a number of important development plan policies, and in my assessment this has to lessen the weight which can be given to them compared to those which would flow from a fully policy-compliant scheme.
121. At the Inquiry the appellant took the view that this balance should be considered more or less as a mathematical exercise with the subjectively assumed weights in the proposal's favour being simply set against the considerable weight that this heritage harm attracts. In my view, however, this exercise is much more nuanced than that, with qualitative and policy issues also needing to be taken into consideration.
122. This is how I have approached this assessment, and although finely balanced, I consider that the public benefits would not be sufficient to outweigh the considerable weight which the heritage harm has to attract. As such, I share the Council's view that in this case the decision falls to be made under paragraph 11(d)(i) of the Framework, with the application of the heritage policies in the Framework providing a clear reason for refusing the development proposed.
123. I therefore intend to dismiss this appeal. But for completeness, and as the most important policies for determining this proposal have to be considered out-of-date because the Council cannot demonstrate a 5-year supply of deliverable housing land, I also consider it appropriate to assess this proposal under the 'tilted balance' set out in the Framework's paragraph 11(d)(ii). In this case, although there is no dispute that the Framework requires PLP Policies PP6(T12), PP27, PP29 and PP30 to be regarded as out of date, all of these policies deal with matters of design - in one way or another - and the need for good design is a key element and component of

the Framework. This means, to my mind that these policies are consistent with the Framework, and can and should still attract significant weight in the assessment of this proposal.

124. Carrying out the tilted balance, there are no more material benefits to be considered, as compared to the previous heritage balance. But in terms of disbenefits, there are the further harms arising from the adverse impacts to the character and appearance of the surrounding area, and the adverse impact on the established trees of townscape significance on the site's northern boundary, all as detailed in the first 2 main issues. Whilst acknowledging a degree of overlap with the harm to the Conservation Area, as already noted, I consider that each of these harms should carry significant weight against the appeal proposal. The harm to the setting of the Lifeboat Museum adds some modest weight to this side of the balance, and the loss of outlook to a small number of residential units in Dolphin Quays and to the north of the appeal site attracts a further, small amount of weight against the appeal proposal.
125. Having regard to the above points, I conclude that the adverse impacts of allowing this proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole.

### ***Summary and overall conclusion***

126. I have found this proposal to be in conflict with a number of adopted development plan policies, and whilst these policies have to be regarded as out-of-date in Framework terms, I am satisfied that they should still carry significant weight in this appeal, as they deal with matters of design, which is a key element of the Framework's policies, and aspirations.
127. My overall conclusion is that this proposal should be dismissed, as the public benefits it would give rise to would not be sufficient to offset the considerable weight which has to be given to the harm which would be created as a result of the proposal failing to preserve or enhance the character or appearance of the Conservation Area. But even if I am wrong on this count, my assessment under the Framework's tilted balance still points to the fact that this proposal should fail.
128. The potential to obtain some affordable housing contribution through obligations in the S106 agreement if viability should improve is noted, as are the other contributions offered by the appellant to address matters raised in the Council's fourth reason for refusal. But these matters do not go to the heart of my concerns regarding this proposal, and do not alter my decision.
129. I have had regard to all other matters raised, including the Planning Officer support at the Committee stage, but find nothing sufficient to outweigh the considerations which have led me to conclude that this appeal should be dismissed.

*David Wildsmith*

**INSPECTOR**

## APPEARANCES

### FOR THE COUNCIL

Mr Matthew Fraser of Counsel

instructed by Robert Firth, Senior Solicitor  
(Law and Governance), Bournemouth  
Christchurch and Poole (BCP) Council

**He called:**

Mr Ignus Froneman  
BArchStud ACIfA IHBC  
Mr Lloyd Fursdon  
NCHArb TechArborA  
Mr Ransford Stewart  
BA(Hons) MRTPI

Director, Cogent Heritage

Arboricultural Officer, BCP Council

Director, Stewart Management and Planning  
Solutions

### FOR THE APPELLANT

Mr Gwion Lewis QC

instructed by Ms Claire Saffer, Legal Counsel,  
Gunnercooke LLP

**He called:**

Dr Chris Miele  
IHBC MRTPI  
Mr Simon Jones  
DipArb(RFS) FArborA  
RCArborA  
Mr Peter Bovill  
BSc(Hons) MA DipSurv  
AIEMA MRTPI MRICS FRSA  
FRGS

Partner, Montagu Evans LLP

Managing Director and Principal Consultant,  
Simon Jones Associates Ltd

Partner, Montagu Evans LLP

### INTERESTED PERSONS OPPOSING THE PROPOSAL

Mr Bill Constance

Chair, Poole Quays Forum

Dr Christine Brady PhD

Local resident



**CORE DOCUMENTS**

<b>Document Number</b>	<b>Document Title</b>
<b>SECTION 1: FINAL PLANNING APPLICATION DOCUMENTS</b>	
CD1.1	Application Covering Letter – 23 March 2021
CD1.2	Application Form for Full Planning Permission – 2 October 2021
CD1.3	Site Location Plan – September 2020
CD1.4	Existing and Proposed Application Drawings
CD1.5	Drawing Schedule
CD1.6	Design and Access Statement
CD1.7	Design and Access Statement Addendum
CD1.8	Planning Statement
CD1.9	Heritage, Townscape and Visual Impact Assessment
CD1.10	Heritage, Townscape and Visual Impact Assessment Addendum
CD1.11	Landscaping Statement
CD1.12	Landscape Plans
CD1.13	Daylight, Sunlight and Overshadowing Assessment
CD1.14	Daylight and Sunlight Assessment Addendum
CD1.15	Arboricultural Impact Assessment
<b>SECTION 2: OTHER DOCUMENTS</b>	
CD2.1	Draft S106 Legal Agreement
<b>SECTION 3: LOCAL PLANNING AUTHORITY DOCUMENTS</b>	
CD3.1	Decision Notice – Planning Permission Refused
CD3.2	Planning Committee Report
CD3.3	Planning Committee Printed Minutes from 6 October 2021
<b>SECTION 4: PLANNING POLICY AND GUIDANCE DOCUMENTS</b>	
CD4.1	Poole Local Plan (2018) – relevant extracts
	PP6 High Street, Quay and Old Town
	PP11 Affordable Housing
	PP24 Green Infrastructure
	PP25 Open space and allotments
	PP27 Design
	PP28 Flats and plot severance
	PP29 Tall buildings
	PP30 Heritage Assets
	PP39 Delivering Poole’s infrastructure
CD4.2	Poole Quays Forum Neighbourhood Plan – relevant extracts
	Policy PQF 3 High Quality Design
	Policy PQF 10 Creating a more vibrant quay
	Policy PQF 11 The layout and appearance of Poole Quay
CD4.3	BCP Parking Standards SPD (2021)
CD4.4	Poole Town Centre SPD (2015)
CD4.5	Poole Town Centre Heritage Appraisal (Part 1 & 2) (2012)
CD4.6	Town Centre Heritage Conservation Area Map
CD4.7	Dorset Heathlands Planning Framework 2020-2025
CD4.8	Poole Harbour Recreation 2019-2024 (April 2020)
CD4.9	Nitrogen Reduction in Poole Harbour (1 April 2017)
CD4.10	Heritage Assets (April 2013)

CD4.11	Affordable Housing SPD (November 2011)
CD4.12	Economic viability: affordable housing guidance (2018)
CD4.13	Five Year Housing Land Supply Position at 1 April 2021 (2022)
CD4.14	Audit & Analysis Evidence Base to the: Draft Poole Town Centre Planning and Urban Design Supplementary Planning Document
CD4.15	British Standard BS 5837:2012, Trees in relation to design, demolition and construction – Recommendations
<b>SECTION 5: APPEAL DOCUMENTS</b>	
CD5.1	Appeal Start Letter and Inquiry Date
CD5.2	Statement of Case on behalf of the Appellant
CD5.3	Statement of Case on behalf of Bournemouth, Christchurch and Poole Council
CD5.4	Statement of Common Ground
CD5.5	Draft List of Conditions
CD5.6A	Proof of Evidence – Ransford Stewart (Council)
CD5.6B	Summary Proof of Evidence – Ransford Stewart
CD5.7A	Proof of Evidence – Lloyd Fursdon (Council)
CD5.7B	Summary Proof of Evidence – Lloyd Fursdon
CD5.8A	Proof of Evidence – Ignus Froneman (Council)
CD5.8B	Summary Proof of Evidence – Ignus Froneman
CD5.8C	Rebuttal – Ignus Froneman
CD5.9A	Proof of Evidence – Peter Bovill (appellant)
CD5.9B	Summary Proof of Evidence – Peter Bovill
CD5.10A	Proof of Evidence – Dr Chris Miele (appellant)
CD5.10B	Summary Proof of Evidence – Dr Chris Miele
CD5.10C	Rebuttal – Dr Chris Miele (including Appendix)
CD5.11A	Proof of Evidence – Simon Jones (appellant)
CD5.12B	Summary Proof of Evidence – Simon Jones
CD5.12C	Rebuttal – Simon Jones
CD5.13	Design Document Presentation – Hollaway Studio (appellant)
CD5.14	Statement of Arboricultural Common Ground dated 7 June 2022
<b>SECTION 6: CORRESPONDENCE RELATING TO PLANNING APPLICATION</b>	
CD6.1	BCP Urban Design Comments (January 2021)
CD6.2	BCP Urban Design Comments (April 2021)
CD6.3	BCP Conservation Comments (undated)
CD6.4	Poole Quays Forum (17/05/2021)
CD6.5	South West Design Review Panel 2019
CD6.6	Arboricultural Officer Comments on Trees (24 June 2021)
CD6.7	Regulation 63 Appropriate Assessment (undated)
<b>SECTION 7: STATUTORY CONSULTEE AND PUBLIC RESPONSES</b>	
CD7.1	Representations from Interested Parties
CD7.2	Historic England – 17 December 2020
CD7.3	Historic England – 20 April 2021
CD7.4	Natural England – 3 February 2021
<b>SECTION 8: RELEVANT APPEAL DECISIONS AND CASES</b>	
CD8.1	Bramshill v SSHCLG [2021] EWCA Civ320
CD8.2	R (on the application of Skipton Properties Limited) v Craven District Council (case summary)

CD8.3	R (on the application of Skipton Properties Limited) v Craven District Council (Judgment)
CD8.4	R (on the application of Cherkley Campaign Ltd) v Mole Valley DC (case summary)
CD8.5	R (on the application of Cherkley Campaign Ltd) v Mole Valley DC [2014] PTSR D14
CD8.6	Smyth v Secretary of State for Communities and Local Government (case summary)
CD8.7	Smyth v Secretary of State for Communities and Local Government (Judgment)
CD8.8	William Davis Ltd v Charnwood BC (case summary)
CD8.9	William Davis Ltd v Charnwood BC [2017] EWHC 3006 (Admin) (Judgment)

### **DOCUMENTS SUBMITTED AT THE INQUIRY, AND SHORTLY BEFORE**

Document	1	Opening Submissions for the appellant
Document	2	Opening Submissions for the Council
Document	3	Opening Submission from Mr Constance on behalf of Poole Quays Forum
Document	4	Statement by Dr Brady
Document	5	Site visit itinerary and plan
Document	6	Email query submitted by Dr Brady
Document	7	Appellant's response to Dr Brady
Document	8	Emails from Dr Brady and Mr Constance regarding site visit
Document	9	BS:3998 Tree Works – Recommendations
Document	10	Historic England Comments – 3 July 2019
Document	11	Biodiversity Net Gain Assessment (March 2021)
Document	12	Preliminary Ecological Appraisal (March 2021)
Document	13	Final Statement of Common Ground, dated 14 June 2022
Document	14	Closing Submission from Mr Constance on behalf of Poole Quays Forum
Document	15	Closing Submissions for the Council
Document	16	Closing Submission for the appellant
Document	17	Summary of S106 agreement
Document	18	Signed and completed S106 agreement
Document	19	Community Infrastructure Levy (CIL) Compliance Statement dated 7 June 2022, submitted by the Council