



Appeal Decision

Inquiry Held on 1 November 2022

Site visit made on 2 November 2022

by J P Longmuir BA (Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2023

Appeal Ref: APP/V4630/W/22/3303616 Land off The Green, Aldridge WS9 8NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Churchill Retirement Living Ltd. against Walsall Metropolitan Borough Council.
 - The application Ref 22/0254 is dated 18 February 2022.
 - The development proposed is the erection of 49 retirement living apartments for older people (comprising 34. no 1-bed and 15 no. 2-beds) including communal facilities, access, car parking and landscaping; and the reconfiguration of the Compass Suites car park to provide 50 spaces.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 49 retirement living apartments for older people (comprising 34. no 1-bed and 15 no. 2-beds) including communal facilities, access, car parking and landscaping; and the reconfiguration of the Compass Suites car park to provide 50 spaces at Land off The Green, Aldridge WS9 8NJ in accordance with the terms of the application, Ref 22/0254, dated 18 February 2022, subject to the conditions in the conditions annexe.

Preliminary matters

2. The appeal was submitted due to the non-determination of the application within the required period. The Council resolved at its committee meeting on 8 September 2022, that had it been in a position to determine the application, permission would have been refused due to the effect of the proposal on the Cannock Chase Special Area of Conservation (Cannock SAC) and the lack of a planning obligation to provide for affordable housing, open space and healthcare.
3. Subsequently the Council appointed specialists to review the viability of the scheme: they concluded that it could only provide a total of £370,000 for contributions in planning obligations to which the Appellant agrees. The submitted legal agreement dated 24 November 2022 provides funding for management of visitor pressures at Cannock SAC. The agreement has two different schedules for alternative public open space payments and affordable housing where I have to decide upon the appropriate amounts. The other contribution is funding for healthcare. I consider these latterly.

4. The Council as a part landowner of the appeal site, considers that it would be inappropriate to enter into a Section 106 agreement, rather the agreement is made under Section 111 of the 1972 Local Government Act which requires the future submission of the Section 106 legal agreement once the site is sold. The intended Section 106 agreement (unsigned) is appended to the Section 111 agreement. As Section 111 provides wide ranging local authority powers I find that it is appropriate in this case.
5. The appeal site is proximate to a number of listed buildings: the Grade II listed Manor House; the Grade II* listed Church of St Mary the Virgin; the Grade II listed Old Rectory; and the Grade II listed Aldridge War Memorial.
6. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
7. The site and its surroundings are within the Aldridge Conservation Area (CA). Section 72(1) of the Act requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
8. Heritage did not form part of the Council's putative reasons for refusal. The main parties collaborated on a Heritage Statement of Common Ground; albeit there remains dispute over the level of harm to the significance or special interest of the relevant listed buildings and the CA. Regardless of this, in considering whether to grant planning permission for the proposed development, I have borne in mind the statutory requirements placed on me as decision-maker by s66(1) and s72(1) of the Act. I am also mindful of the historic environment policies within the National Planning Policy Framework (the Framework) that relate to the significance of designated heritage assets and their settings.
9. The Aldridge Conservation Area Character Appraisal and Management Plan dated November 2009 (CAMP) provides an analysis of the special interest of the CA. Whilst there are references in the submitted evidence to a draft document, it was agreed at the Inquiry that consideration should be given to the above version.
10. In terms of the Cannock Chase Special Area of Conservation (SAC), both parties agree that the proposed funding would mitigate the potential recreational impacts arising from the proposal. However, I still have a duty to consider the SAC under The Conservation of Habitats and Species Regulations 2017.
11. The Council advised that The Manor House, is the subject of current non-determination listed building and planning appeals for alterations to form eight residential flats and the demolition of outbuildings. Owing to the nature of the proposed works and development in those appeals, I am satisfied there is no material bearing on the proposals before me.
12. The application details and submitted appeal evidence make a comparison with a previous refused application (not appealed) on this appeal site, by another applicant for 'retirement homes'. However, that involved a larger and different

site area and more dwellings and accordingly, I have considered this proposal on its own merits rather than as a comparison.

Main Issues

13. The main issues are therefore:

- The effect of the proposal on the special interest and significance of the relevant designated heritage assets; and
- the effect of the proposal in terms of recreational impact on the protected habitats and species at Cannock Chase SAC.

Reasons

The effect of the proposal on heritage assets

14. Both parties agree on the relevance of Historic England's 'Good Practice Advice on the Setting of Heritage Assets'. This describes the importance of setting lies in what it contributes to the significance of the heritage asset or to the ability to appreciate that significance. The definition of setting in the Framework also refers to the setting as the surroundings in which the asset is experienced. The PPG on 'Historic environment' highlights that the extent and importance of setting includes visual factors as well as experiences including the historic relationship. Both parties highlighted the relevance of the Court of Appeal case involving Kedleston Hall¹ which the Council agree shows that historical, social and cultural matters are relevant to the definition of setting, and that a direct physical or visual connection is not always necessary to form part of a setting.

The Manor House

15. The Manor House is a Grade II listed building (List Entry Number 1115690), which is identified in the Statutory List Description as being early to mid-19th century and no longer in residential use.
16. Architecturally, the building has a distinctive and imposing three-storey rendered front façade, emphasised by sash windows, and featuring a particularly large sandstone porch, supported by two pairs of Ionic columns. The detailing and symmetrical form emphasise the listed building's grand frontage which overlooks an open space called The Croft.
17. The building's other elevations are of brick and are much plainer, feature restrained detailing and informal window arrangement and projecting offshoots. These characteristics suggest the rear and sides were designed largely to be functional.
18. This was built as a replacement for an earlier manor, which the historic maps indicate had extensive grounds stretching to the north, east and south. The extant Manor House has much smaller grounds, partially due to three blocks of flats to the rear². Also, within its grounds to the rear, are an unkempt tennis court, a twentieth century ancillary building³ and shipping containers, all

¹ *Catesby Estates Ltd v Steer* [2018] EWCA Civ 1697

² Annotated on the submitted layout as Court Larch, Ash Court and Maple Court

³ Annotated as Activity Room on the submitted layout

enclosed by a low modern brick wall. The front grounds have also been reduced due to the re-alignment of the through road (the A454 Little Ashton Road).

19. The Manor House has a slightly neglected appearance and has been clearly much altered over time. Even so the significance and special interest of The Manor House derives principally from its classically inspired architectural aesthetic and detailing that denotes its origins as a mid-to-high status dwelling in Aldridge. The clear differentiation between the building's front and other elevations are also aspects that contribute to its significance and special interest.
20. However, the grounds as confirmed above have been reduced and no longer reflect their historic boundaries or wider context of the countryside. They have also been undermined in terms of quality by twentieth century structures; a substantial element being lost by the proposal would be the tennis court which is not attractive. Consequently, the additions and changes within the building's grounds have reduced the ability to appreciate the building's integrity and are of little merit.
21. The block-like massing, form and lack of fenestration, adjacent three storey flats and Compass Suites stand out as being starkly at odds with the age and detailing of The Manor House. In addition, its enclosing low wall of modern brick and lack of greenery have diminished the imposing quality that would be expected for a building of historic status.
22. Nevertheless, the land in which The Manor House sits, which includes the appeal site, comprise part of its setting. Moreover, and notwithstanding the changes over time, this remnant of The Manor House's once much larger grounds, reflects the building's historic importance in the nineteenth century. Consequently, the setting contributes to the ability to appreciate the listed building's significance and special interest.
23. The proposal would involve the construction of a relatively large single building leading to the further loss of some of the historic grounds to the rear of The Manor House and reduction of its setting.
24. The proposal also includes the removal of a boundary wall, which is partially overgrown with ivy, now free standing and has been partially rebuilt. There would also be re-arrangement of some of The Compass Suites grounds to provide additional parking spaces, which would involve the loss of an area of grass, albeit very small.
25. The proposed new building would be 20 metres away from the boundary and sited tangentially so that the walls would extend away from The Manor House. The proposed building would broadly be a 'S' shape, which would help alleviate the length of the facing elevation. The ends would also be hipped which would reduce the bulk of the facing roofline. The fenestration would be simple and uniform, and red brick and cream render walling are also proposed.
26. Whilst the above would help towards limiting the presence of the new building, it would nonetheless be 3 storey and at a higher slab level. Consequently, as the contextual elevations show, the ridgeline of the new building would be above that of The Manor House, giving the former more prominence. In addition, the massing of each element of the elevation would not be significantly broken, which would contribute to a sense of competition.

27. This effect would be most obvious from the eastern side (along the side road called The Green). To some extent the dominating effect of the proposed new building would be tempered by The Compass Suites and the lower ancillary outbuilding. However, the latter is lower and so the presence of the new building would only be partially obscured.
28. The western side of the appeal site has only an oblique and narrow view and the existing flats are more dominant in the foreground. When seen from the front, including The Croft, the new building would be set back behind The Manor House and therefore less apparent and recessive. The rear and side elevations of The Manor House would be most affected, experienced from short range viewpoints, however, these are less notable and more utilitarian than the front.
29. Some aspects of the proposal would be of neutral effect or offer marginal improvements within the grounds of The Manor House, such as the removal of two shipping containers⁴, but only slightly as they are not large in comparison with the new building. The proposal includes re-arrangement of some of The Compass Suites grounds to provide additional parking spaces and would involve the loss of an area of grass, albeit very small. This area and the adjoining road are already dominated by car parking and hard standings, so the increase would not be harmful.
30. The strategic landscaping plan also shows potentially a variety of large trees on the common boundary, with ample room for them to flourish. Whilst these trees would not be a continuous screen, they would provide eventual softening. A close boarded fence is also proposed between the car parks. Being within the existing utilitarian car parking area, and the ancillary building would also be nearer and shielding, it would not detract from The Manor House. The loss of the brick wall would be neutral; the new shared boundary brick wall would be of in-keeping materials and therefore appropriate.
31. Yet, harm to significance and special interest does not depend on visibility, screening, or material detailing. The presence of a large new building within the grounds and setting of The Manor House would contribute to a weakening of the ability to appreciate the space historically associated with it. The scale of the new building would also contribute to an erosion of the importance that The Manor House once had, and that the listed building currently commands within its setting.
32. The historical pattern of building, extent and quality of the grounds of The Manor House have been partly eroded but the proposal would impair what remains of these characteristics. The new building would also have some presence and lessen its prominence and legibility of the listed building's historic status. The creation of the new parking would have a marginal adverse impact on the setting of The Manor House. Overall, the appeal proposal would contrast with the immediate vicinity, fail to preserve its setting and cause some harm to the building's significance and special interest. I note that Historic England⁵ raised similar concerns.

⁴ The committee report refers to the benefit of the removal of buildings as part of the proposal. At the Inquiry both parties commented that this only related to two shipping containers.

⁵ 5 April 2022

Church of St Mary

33. The Grade II* listed Church of St Mary the Virgin (List Entry Number: 1076396) (the Church) is located to the south east of the appeal site, just off 'The Green', an open space. The Statutory list description identifies the Church as dating back to the fourteenth century, with some later re-building and remodelling during the nineteenth/twentieth century. The Church stands on raised ground within a churchyard well defined by boundary walls. The Church's small sandstone tower, supported by diagonal buttresses, is a notable feature and this stands out amongst the churchyard trees.
34. In addition to its architectural interest, surviving historic fabric and historic associations, the significance and special interest of the listed church is also underpinned by it being a social and spiritual focal point. The Church's immediate setting is its associated yard, while the stone tower and boundary trees are appreciable from The Green and The Croft. Owing to their relative proximity and that the two buildings are experienced together in views along The Green and from The Croft, I consider the Manor House site falls within the wider setting of the Church.
35. However, the wider setting of the Church has been subject to change. Not least, The Compass Suites now stands between the Church and the Manor House and draws the eye. There are views of The Manor House and the Church together, particularly during winter when the intervening deciduous trees do not obscure⁶. Even if the appeal site does arguably fall within the wider setting of the Church, I do not consider that it contributes to its significance and special interest.
36. The Appellant's heritage statement⁷ suggests the appeal site at its closest is 40m away. While the appeal site forms part of the grounds associated with The Manor House, those grounds have been significantly reduced and any visual and associative connection with the Church is not apparent. I do not consider that the appeal proposal would appear as an overtly dominant intervention within the church's setting. I have not been made aware of any historic connection between the appeal site and the Church.
37. I therefore find that the appeal proposal would preserve the setting of the Church and cause no harm to its special interest or significance as a highly graded designated heritage asset.

Old Rectory

38. The Grade II listed Old Rectory (List Entry Number: 1115750) is located to the east of the appeal site in well-defined grounds marked by high brick boundary walls. The listed building's early nineteenth century origins are reflected in its orderly proportions and Classical detailing. The front elevation has no entrance but has large sash windows looking towards the church while a small red brick stable and coach house stands to the east.
39. The historic maps confirm the proximity of the church with the Old Rectory but also show them as a group on their own away from any other buildings. They

⁶ Plate 4 Appellant's heritage statement

⁷ Paragraph 4.3.6 Ecus Heritage Statement

were historically connected by a footpath, recorded on historic mapping from the late nineteenth century onwards.

40. The significance and special interest of the Old Rectory are derived in part from its architectural interest, including its front elevation with large Classically proportioned windows, orientation and layout and detailing. Despite its subdivision into flats, the listed building today is experienced as one of some grandeur that was evidently conceived as having a clear functional and physical connection with the church.
41. The setting of the Old Rectory includes the grounds in which it is sited but also, owing to the historic connection, the church and its associated yard on the opposite side of The Green. The historic maps indicate the open land historically surrounded the Old Rectory, including The Croft, which contributed to its grandeur and close association with the church. However, this once spacious setting has been much reduced with flats immediately to the north, the adjacent road, Compass Suites building and car parking. While the appeal site and Compass Building are proximate and visible from the Old Rectory and arguably part of its setting, today, the contribution they make to its significance and special interest is negligible.
42. The re-arrangement of the Compass Suites car park would be evident from the grounds of Old Rectory, and this would lead to more car parking and removal of some grass within the building's setting. However, this would be away from the building's most significant elevation and beyond the tall boundary wall and therefore barely perceptible.
43. The proposed building would be at some distance from the Old Rectory, experienced only oblique in the views and in the context of the modern architecture and land change. I therefore conclude that the appeal proposal would preserve the setting of the Old Rectory and cause no harm to its significance and special interest.

War Memorial

44. The Grade II listed Aldridge War Memorial (List Entry Number: 1422545) stands adjacent to the Church amongst 'The Green'. The significance and special interest of the War Memorial comes in large part from its historic associations and the commemoration of losses within the Aldridge community, and its architectural form featuring a Celtic stone cross.
45. I consider the setting of the War Memorial to comprise its associated area of hardstanding and the wider Green and The Croft, and the Church, from which it is experienced as an important local landmark. Whilst the appeal site is relatively close to the War Memorial, I do not consider it falls within its setting.
46. The appeal site is set well back from The War Memorial and there are no obvious visual or associative connections between the two. The proposed building would only be glimpsed in part and would not appear harmful or out of place.
47. There is very limited visibility with the appeal site as again The Compass Suites obstruct and due to their particular design dominates the area.
48. The proposed building would be only glimpsed in part and in any event would appear deferential given its quality design as I have found above. The re-

arrangement of the Compass Suites car park would not be significant due to this separation distance and limited visibility.

49. I therefore find that the setting of the War Memorial would be preserved and there would be no harm to its special interest or significance.

Conservation Area

50. The CAMP provides analysis of the Conservation Area as well as commentary on the listed buildings pertinent to this appeal. Amongst other things, it identifies the CA as encompassing the main surviving areas of the historic village of Aldridge, comprising a mixture of residential areas and public open space. It highlights the medieval origins and suggests a rural character still prevails. The document includes as special interest the historic village centre, a focus of historic buildings, which includes the Old Rectory and The Manor House, attractive open area, parkland tree planting, views in/out of the countryside, boundary and walling materials notably brick and painted render.
51. The Croft was originally an agricultural field⁸, but today is public parkland typified by its tree planting, close mown grass and use. The Croft offers open views towards the front elevation of The Manor House and the Church and the War Memorial, providing a sense of status and stature in the local context. I agree, as the Appellant suggests⁹, that the best views of these heritage assets are from The Croft as well as the adjoining Little Green Ashton Road. These heritage assets are seen collectively and experienced from the foreground of the public parkland. Views to these buildings from The Croft are of value to the character and appearance of the CA.
52. The historic, architectural, artistic, and archaeological interests which are derived from the history and development of the settlement are elements which contribute to the character and appearance of the CA as a whole and which are of value to its significance as a designated heritage asset. Within this context are various historic buildings that offer focal points, architectural and historic interest to the CA as a whole. This includes the Manor House.
53. As already identified, historically The Manor House had extensive grounds to the north including the appeal site. The Manor House is part of the built backcloth of Aldridge and the grounds reflect its development and landownership over time. However, today, such a historic relationship has been undermined by the development of the flats and a tennis court to the rear of The Manor House and to the side The Compass Suites, so such a historic context is only partially discernible on the ground.
54. As forming part of the remnant historic grounds associated with The Manor House, the appeal site contributes to the historic character of the CA. However, this contribution is very small in consideration of the CA as a whole.
55. The Historic England response foresees that the proposal would change the character of the Conservation Area. However, there is little elaboration on the specific effects. As I found earlier the proposal would lead to loss of some of the grounds of the Manor and undermine what remains of the historic pattern of building. It would reduce the legibility of the sense of status of The Manor

⁸ Character Appraisal and Management Plan page 6

⁹ Paragraph 4.4.6 Proof of Evidence Ms Taylor

House, albeit its visual dominance has already been tempered by the flats and Compass Suites. The proposed building would not intrude into views from The Croft being recessive to the rear. Yet, The Manor House would, to some small degree, be less of an historic and visual landmark when experienced from the east.

56. The CAMP identifies the garden and front car park of The Manor House as detracting from its character as well as the environs of The Compass Suites. The proposal would increase the car parking to the side with a loss, albeit small of grassed open space. The presence of additional cars would also be detracting to the spaces around these buildings. This aspect of the proposal would offer neither a preservation nor enhancement to the character and appearance of the CA, but rather cause some small harm to its special interest as a whole.

Overall conclusion on heritage assets

57. I have found that the proposal would fail to preserve the setting of the Grade II listed The Manor House, causing harm to its special interest and significance as a designated heritage asset. I have also found that the proposal would neither preserve nor enhance the character or appearance of the CA, causing harm to its significance.
58. In failing to preserve the setting of the listed building, and the character or appearance of the CA, the proposal leads to conflict with s66(1) and s72(1) of the Act. Accordingly, the proposal would be contrary to Policies ENV29 of the Walsall Unitary Development Plan 2005 (UDP), ENV2 of the 2011 Black Country Core Strategy (CS) and EN5 of 2019 Walsall Site Allocation Document (AP), insofar as they seek to conserve and/or enhance the historic environment.
59. Bearing in mind the nature of the proposals in relation to the overall significance of the listed building and the CA, I consider the harm to the designated heritage assets would be 'less than substantial', which would be at a low point on this scale. Paragraph 202 of the Framework states where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate securing its optimum viable use. This is considered latterly.

The effect of the proposal in terms of recreational impact on the protected habitats and species at Cannock Chase SAC

60. This is renowned for its heathland vegetation, in particular rare bilberry as well as species: bats, birds including Dartford Warbler and insects. It is noted for various scarce species and distinctive habitat, which are protected under The Conservation of Habitats and Species Regulations 2017. The site lies within the zone of influence of the SAC.
61. Natural England commissioned a survey that found degradation from recreation. This manifests itself in several ways. Firstly by increased air pollution from vehicles as well as visitors disturbing vegetation by trampling. Dogs are also harmful in terms of disturbance to birds as well as excrement affecting the sensitive soil PH. Having regard to the evidence provided I consider that the development could, in combination with other development in

- the area, have a significant adverse effect on the above designations through added recreational pressure.
62. Natural England have found that visitors will travel up to 15 kilometres to go to Cannock Chase. The proposal will increase the number of people living within a typical driving distance of the SAC, which is an attractive semi-natural area, likely to be used for recreation.
63. It is therefore necessary to assess whether the potential adverse impact could be adequately mitigated so as to avoid any significant adverse effect on the conservation objectives of the above designation.
64. Several adjoining Councils have well established planning policies in conjunction with Natural England which require contributions from new residential development to mitigate and monitor the visitor impacts. Walsall Borough has recently adopted such a policy in partnership with these adjoining councils. Monies from new development are pooled to enable a coordinated action. Measures include visitor information/education, staffing to oversee visitors, promotion of specific recreational routes, signage and car parking works.
65. The submitted legal agreement has an obligation for a contribution of £14,238.62 towards the above measures. Both parties agree that such mitigation would help support the management of the SAC and ensure that the proposal would not adversely affect its integrity. I similarly concur.
66. The contributions would be directly related to the impacts of the proposal on the SAC and necessary to make the development acceptable. Moreover, the contributions would be fairly and reasonably related in scale and kind to the development, as they follow the methodology for calculating them in the Council's strategy. Accordingly, the contribution towards the SAC is a material consideration.
67. In conclusion, with the contribution secured through the planning obligation, the scheme would not harm the SAC. Accordingly, the proposal would not conflict with Policy CSP3 of the Black Country Core Strategy 2011(CS) which requires protection of biodiversity, Policy ENV1 of the CS seeks to avoid harm to protected habitats and EN1 of the Site Allocations Development Plan 2019 seeks to protect habitats beyond the Borough.

Planning obligations

68. The 2010 CIL Regulations and Paragraph 57 of the Framework provide the tests for obligations. The Council has provided a CIL Compliance Statement. Policy GP3 of Walsall Unitary Development Plan 2005 (UDP) and Policy CSP4 of the CS support the provision of infrastructure.
69. The £14,238.62 contribution towards Cannock Chase SAC is necessary to alleviate the impact on legally protected habitat and species and therefore both parties agree this needs to be funded as a priority. As I have found above this meets the tests.
70. The £29,434.66 NHS contribution would fund the reorganisation of the Aldridge doctor's surgery to allow an increase capacity to meet the increased needs arising from the development. This is also agreed by both parties and I concur that it is necessary.

71. The extent of the contribution for public open space [recreation] was disputed by the parties. Consequently, the legal agreement has two schedules, with a mechanism which allows me to decide which one is the most appropriate. The Council's favoured schedule allows £73,792 for public open space and £252,534.92 for affordable housing; the Appellant's favoured schedule allows £23,406.27 for public open space and £302,920.65 for affordable housing; the lesser open space funding would allow more for affordable housing.
72. The Council acknowledged that the formula is a standard generic approach across all types of Use Class C3 dwellings. However, it was affirmed that such recreation provision is one of the Council's primary aims and is regarded as important for the quality of life of residents and well-being of the community. At the Inquiry the Council advised recreation provision is a priority over affordable housing.
73. The unrestricted occupancy of dwellings would be reasonably expected to demand a range of recreational facilities for all ages: youth, children and adults. The Appellant advises that the average age of its residents is 79 and so they would have less need for such a range of recreational facilities. I concur that the occupants (if restricted by age) would still have need for some recreational facilities but not such a wide range.
74. The Council had no objection to the contribution for affordable housing provision being off site and confirmed that they have schemes available. Such provision would not be constrained by the management costs and age restrictions of the type of housing in this proposal.
75. The affordable housing contribution would help people living in inappropriate accommodation everyday of their lives, which threatens quality of life and challenges health and wellbeing. I therefore find there is more pressing priority for affordable housing and a lesser contribution to recreation is warranted here.
76. Both the affordable and recreation provision would meet the requirements of the tests. The proposal would comply with Policy H4 of the UDP and Policy HC3 of the Site Allocations Development Plan 2019 which promote the provision of affordable housing. Similarly, UDP saved policy LC1 and the Urban Open Space SPD require recreational contributions.
77. Whilst the viability of the proposal has constrained the extent of contributions, I do not find that this makes it unacceptable. With this in mind a reasonable contribution would enable some affordable housing provision and the recreational needs of the intended occupants would be capable of being met.
78. The CIL Compliance Statement sets out how each obligation would meet the tests in the CIL Regulations and the Framework. I am satisfied that each obligation contained in the agreement would meet the tests in that they are all necessary to make the development acceptable, directly related and fairly and reasonably related in kind and scale, with priority for affordable housing and a lesser contribution to recreation: £23,406.27 towards public open space and £302,920.65 for affordable housing as in Schedule 1.

Other matters

79. Neither party made reference to the Moot House at the Inquiry, but I have nonetheless given it consideration. The Moot House is a Grade II listed building, List Entry Number: 1076421, which dates back to the seventeen

century with mid-late eighteenth century additions. I find that it is notable for its fenestration: ornate Venetian style mullioned windows on its wings and semi-circular windows below pediments. It lies within a fenced and hedged garden, partially shrouded by trees. This self-contained domestic setting highlights the unusual nature of the fenestration allowing it to be perceived in its own focussed space. It is located away from the appeal site and there is no clear historic, cultural or visual connection: they are not experienced together. I therefore find that the setting of The Moot House would be preserved and there would be no harm to its special interest and significance.

80. One of the local residents comments that there are too many other retirement homes in the area. However, this view was not shared by the Council, and I have not been presented with any substantive evidence that it is causing any particular harm.
81. Another respondent suggests that there are problems with the nearby road junction particularly at peak times. However, the proposal would be expected to be low traffic generating due to the intended occupants and the non-vehicular accessibility. I have not been presented with any substantive evidence and the relevant Council highway officer had no objection and I similarly concur.

Heritage and planning balances

82. Addressing the heritage balance first, I found earlier the proposal would lead to less than substantial harm to the significance of designated heritage assets. I give this great weight. Balanced against this are the positive benefits of the scheme associated with the provision of 49 new dwellings, providing specialist accommodation, utilisation of a highly accessible location without reliance on the use of private vehicles and additional funding for affordable housing provision in the area. I conclude that these public benefits would be substantial and of sufficient weight to outweigh the heritage harms identified. The Council also arrived at a similar conclusion. On this basis there is no clear reason for refusing the development in the context of paragraph 11(d)i and footnote 7 and therefore does not disengage the presumption in favour of development or the tilted balance as set out in 11(d)ii of the Framework, however I will still include the heritage harm as part of the effect of the proposal when undertaking the overall balance.
83. The PPG and Framework promote accommodation for this later life age group. Similarly, Policy 5 of the UDP supports the provision for housing for specialist groups. This would be purpose-built accommodation, suitable for the needs of this age group and thus contributes to the benefits of the proposal.
84. The occupants of the dwellings would be approximately 50m¹⁰ away from the edge of the town centre close to facilities without reliance upon car use, thereby helping towards low carbon living. The town centre shops and services would benefit from the support of the occupants. Policy GP1 of the UDP requires proposals embrace sustainable development principles.
85. Policy H3 of the UDP encourages the provision of additional housing through the re-use of previously developed land. Similarly, Policy HC2 of the Site AP.

¹⁰ Appellant proof of evidence paragraph 4.2

The proposal would be an efficient use of land in terms of its density. Policy 9 of the UDP is supportive as such particularly where the proposal is for accommodation for the elderly.

86. The proposal would provide funding for affordable housing as far as viability allows. Thus, it would comply with Policies H4 of the UDP and HC3 of the AP. However, as I found earlier the proposal would due to its effect on heritage assets be contrary to Policies ENV29 of the UDP, ENV2 of the CS and EN5 of the AP.
87. Both parties agree that the proposal would comply with Development Plan policies when taken as a whole and I similarly concur.
88. At the Inquiry, both parties acknowledged that the Council does not have a 5-year housing land supply, rather a 3.1 years housing land supply. I find the 49 dwellings would be deliverable within 5 years as the site lacks significant constraints, thus the proposal would be a significant benefit to housing land supply. Indeed, The Black Country Strategic Plan review has been abandoned and the LP review is only just starting, which suggests improvement is unlikely to be imminent.
89. Paragraph 11(d) of The Framework would be triggered due to housing land supply shortfall but in any event, I find that there is no conflict with the Development Plan.
90. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states determination must be made in accordance with the plan unless material considerations indicate otherwise. This is re-iterated in Paragraph 2 of the Framework. Paragraph 11 (c) of the Framework states that decision taking means approving development proposals that accord with an up-to-date development plan without delay. As the proposal accords with the development plan and material considerations do not indicate otherwise, I therefore find the proposal should be approved.

Conditions

91. Paragraph 56 of the Framework and the Planning Practice Guidance (PPG) provide the tests for the imposition of conditions. Both parties have collaborated on the suggested conditions and reached general agreement with a couple of exceptions. However, the Framework is clear that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning, and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have assessed the suggested conditions accordingly.
92. The Council suggested that the usual three-year commencement deadline should be reduced to two years to encourage earlier implementation to contribute towards housing land supply. The Appellant suggested this would be unnecessary and would be seeking to build out as quickly as possible. The site is not overly large or complex with little demolition and clearance involved. It was clearly stated at the Inquiry that unlike the construction of houses, the flats would be likely to be finished at similar times. I therefore conclude that this would be unnecessary in this case.
93. A condition on age occupancy was put forward by the Appellant but the Council questioned its necessity. This would confirm that the accommodation would be

age-related which is put forward as a material consideration. Provision of this type of accommodation is supported in the Framework and is a planning benefit. It also ensures that the car parking provision is appropriate as it would be typically expected to be less than unrestricted Use Class C3 as confirmed by the Appellant's evidence. The Appellant has provided two appeal decisions¹¹ for similar proposals where such age restrictive conditions were imposed. Accordingly, I find that such a condition would be warranted.

94. Both parties agree that cycle parking shelter(s) for a capacity of 10 would be appropriate for staff and occupants. I similarly concur and this would encourage low carbon transport.
95. The condition listing the approved plans would provide clarity and certainty. The plan in the suggested condition 19 on the retaining wall is incorporated in the list of approved plans.
96. The submission and approval of the intended external materials would ensure that the development is in keeping with the surroundings including the nearby listed buildings. A condition is similarly needed on levels to control the height of the finished buildings. A simply worded condition is imposed but not the suggested requirement for ridge and eaves heights to be approved which are intrinsic to the submitted and approved elevations. A condition to agree the details of the boundary treatments is necessary to ensure that they are in keeping with the nearby listed buildings. A condition on archaeological work is needed to ensure that such heritage is properly recorded.
97. A condition on details of landscaping is needed to help the development blend with the surroundings. The new trees should reflect the concept planting plan submitted. Similarly due to the quality of the trees adjacent to the development, a condition, albeit re-worded for simplicity is warranted to require tree protection measures are in place at the outset of development and retained up to completion.
98. The condition on drainage plans would ensure that provision is made for this essential need and the prevention of problems in the vicinity. The condition is worded as pre-commencement as other matters such as landscaping could constrain opportunities.
99. The condition for a badger survey is to provide a check before development to avoid any harm. Mitigation if needed could be arranged around the open space. The condition on external lighting is necessary to minimise disturbance to wildlife in the area. A compliance condition on the ecological assessment is necessary and the suggested timing of works to avoid the bird nesting season is also incorporated.
100. A condition is necessary to ensure that the replacement parking is implemented so that the overall development has sufficient parking. Similarly, a condition on the setting out and availability of the new parking areas is necessary. A condition is needed on tactile paving by belmouth accesses to ensure that provision is made for those pedestrians with challenged eyesight.

¹¹ APP/N1730/W/20/3261194 and APP/H1705/W/20/3248204

101. The Construction Environment Management Plan would ensure that measures are put in place to minimise the disturbance to the living conditions of nearby residents. This is worded as pre-commencement out of necessity.
102. It was agreed at the Inquiry that the condition of fenestration details should be re-worded to the submission and approval of detailed cross sections and elevations. This would ensure that the fenestration is not overly wide and properly detailed to ensure a satisfactory appearance. The Council's Conservation Officer expressed a preference for not using UVPC windows. However, timber windows could constrain configuring the windows and undermining the perception of security. I find that timber windows are not warranted in this particular case bearing in mind the nature of the site and the proposal.
103. A condition on the approval of electric charging points would be unnecessary as this would be covered by Building Regulations.

Conclusion

104. For the reasons set out above I conclude that the appeal should be allowed subject to the conditions in the conditions annex below as well as all the obligations, including the affordable housing and public open space contributions as confirmed in paragraph 79 above, within the Section 106 agreement annexed to the signed Section 111 agreement.

John Longmuir

INSPECTOR

Appearances

For the Council

Mr Mark O'Brien O'Reilly

Counsel Francis Taylor Building

Ms Sally Wagstaff BA (Hons) MA

Principal Planning Officer

For the Appellant

Mr Ben Fullbrook,

Counsel Landmark Chambers

Ms Emily Taylor BA (Hons) MA ACIfA

Senior Heritage Consultant Ecus

Mr Matthew Shellum BA (Hons) DipTP MRTPI Planning Director Planning Issues Ltd

Documents submitted during the Inquiry

INQ1 Occupation statistics

INQ2 Opening Statement: Appellant

INQ3 Opening statement: Council

INQ4 Approval for demolition

INQ5 Closing: Appellant

INQ6 Closing: Council

Conditions Annexe

1. The development hereby permitted shall be begun not later than 3 years from the date of this permission.
2. The development hereby permitted shall not be carried out otherwise than in accordance with the following approved plans details and documents:
 - Site Location Plan drawing no. 30049-PL002 submitted 22/02/22
 - Site Plan and Roof Plan, drawing no. 30049-PL002- Rev A submitted 15/06/2022
 - Site and Ground Floor Plan, drawing no. 30049-PL003- Rev A submitted 15/06/2022
 - Ground Floor Plan, drawing no. 30049-PL004- Rev A submitted 15/06/2022
 - First Floor Plan, drawing no. 30049-PL005- Rev A submitted 15/06/2022
 - Second Floor Plan, drawing no. 30049-PL006- Rev A submitted 15/06/2022
 - Roof Plan, drawing no. 30049-PL007- Rev A submitted 15/06/2022
 - East Elevations, drawing no. 30049-PL008- Rev A submitted 15/06/2022
 - South Elevation drawing no. 30049-PL009- Rev A submitted 15/06/2022
 - West and North Elevation, drawing no. 30049-PL010- Rev A submitted 15/06/2022

- Sub- Station and Buggy Store Elevations, drawing no. 30049AR- PL011 submitted 15/06/22
- Masonic Lodge Car Park Extension, drawing no. 113424-070907 by Farrell and Clark Architects submitted 22/02/22
- Preliminary Drainage Layout, drawing no. 1310-01-PDL1001-A by AWP submitted 22/02/22
- Tree Protection Plan, drawing no. 21202-3 by Barrells submitted 22/02/22
- Strategic Tree Planting Plan, drawing no.21202-4 by Barrells submitted 22/02/22
- Landscape Strategy, drawing no. JBA 22-0020-SK02 by JBA submitted 22/02/22
- Retaining Wall Detail, drawing no. CDN 03.04.01 submitted 15/06/22

3. Prior to the commencement of building operations above damp proof course of the development details of landscaping including both hard and soft landscaping and earthworks, including the concepts of tree planting plan ref. 21202-4 Barrell Tree Consultancy, shall be submitted in writing to and approved in writing by the Local Planning Authority.

4. No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the Local Planning Authority. The scheme for the protection of the retained trees shall be carried out as approved.

5. Prior to first occupation of the development hereby permitted the approved landscaping details shall be carried out.

If within a period of 5 years from the date of the planting of any trees shrubs or plants, that tree shrub or plant, or any tree shrub or plant planted in replacement for it, is removed, uprooted, destroyed or dies and or becomes seriously damaged or diseased in that period another tree shrub or plant of the same species and size as that originally planted shall be planted at the same place

6. Prior to the commencement of development hereby permitted, drainage plans for the discharge of surface water and disposal of foul sewerage shall be submitted to and approved in writing by the Local Planning Authority. These shall include:

- i. plans illustrating flooded areas and flow paths in the event of exceedance of the drainage system.
- ii provision of an acceptable management and maintenance plan for surface water drainage to ensure that surface water drainage systems shall be maintained and managed for the lifetime of the development.
- iii the name of the organisation responsible for management.

The development shall not be carried out otherwise than in accordance with the approved details and shall thereafter be retained.

7. Prior to the commencement of development hereby permitted a Construction Environmental Management Statement shall be submitted in writing to and

approved in writing by the Local Planning Authority. The Construction Environmental Management Statement shall include:

- i. Construction working hours
- ii. Parking and turning facilities for vehicles of site operatives and visitors
- iii. Loading and unloading of materials
- iv. Storage of plant and materials used in constructing the development
- v. A scheme for recycling/disposing of waste resulting from construction works
- vi. Temporary portacabins and welfare facilities for site operatives
- vii. Site security arrangements including hoardings
- viii. Wheel washing facilities and/or other measures to prevent mud or other material emanating from the application site reaching the highway
- ix. Measures to prevent flying debris
- x. Dust mitigation measures (particularly as the contaminated land investigation has indicated that land is contaminated)
- xi. Measures to prevent dirt (including need for wheel cleaning and use of a road-sweeper)
- xii. Noise and vibration (if piling and/or ground stabilisation is to be conducted) mitigation measures

The development hereby permitted shall not be carried out otherwise than in accordance with the approved Construction Environmental Management Statement and the approved Construction Environmental Management Statement shall be maintained throughout the construction period.

8. Prior to commencement of the development hereby permitted and notwithstanding the information provided, a badger survey shall be undertaken by a person qualified in ecology and/or nature conservancy in accordance with methodology submitted and agreed by the Local Planning Authority. Prior to commencement, the survey details together with any mitigation measures, together with a timetable, in the event of finding presence, shall be submitted in writing to and agreed in writing by the Local Planning Authority also prior to commencement. Such mitigation shall be carried out in accordance with the details, including the timetable, as approved by the Local Planning Authority.

9. No development above ground shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.

10. Notwithstanding the submitted details and prior to the commencement of building operations above damp proof course of the development hereby permitted a schedule of materials to be used in the construction of the external surfaces including details of the colour, size, texture, material and specification of bricks, render, roof tiles, windows, doors, rainwater products and soffits shall be submitted in writing to and approved in writing by the Local Planning Authority.

The development shall not be carried out otherwise than in accordance with the approved details and the approved materials shall thereafter be retained for the lifetime of the development.

11. Notwithstanding the submitted details and prior to the commencement of building operations above damp proof course of the development hereby permitted details of the proposed boundary treatment of the site, including heights, positions and extents, materials and finishes of all walls, fences, gates or other means of enclosure, shall be submitted in writing to and approved in writing by the Local Planning Authority. The submitted details shall include all internal site divisions in addition to the perimeter boundary treatments.

The development shall not be carried out otherwise than in accordance with the approved schedule and the boundary treatments shall thereafter be retained for the lifetime of the development. The development hereby permitted shall not be occupied until all boundary treatments have been erected in accordance with the approved.

12. Prior to commencement of the development hereby permitted details of a programme of a written scheme of investigation and archaeological work, to include a watching brief and recording, shall be submitted in writing to and approved in writing by the Local Planning Authority. No development shall be carried out on site otherwise than in accordance with the approved details.

13. Prior to the closure and removal of the existing northern parking areas for the Compass Suites necessary to enable the construction of the Retirement Apartments, the replacement parking areas for the Compass Suites shall be fully implemented and brought into use. The areas being fully consolidated, hard surfaced in tarmacadam or similar material and drained so that surface water run-off from the area does not discharge onto the highway or into any highway drain, together with the clear demarcation of all parking bays on the ground. The parking areas shall thereafter be retained and used for no other purpose.

14. Prior to the first occupation of any dwelling of the development, the development shall be constructed with the access road, parking and vehicle manoeuvring areas being consolidated, hard surfaced and drained so that surface water run-off from these areas does not discharge onto the highway or into any highway drain, together with the clear demarcation of all parking bays. These areas shall thereafter be retained and used for no other purpose.

15. Prior to the first occupation of any dwelling the following works within the public highway have been carried out:

- i) The installation of a bellmouth at the new access point including a tactile pedestrian crossing,
- ii) The modification of the retained bellmouth serving the Compass Suites car park to include a tactile pedestrian crossing point.

16. Prior to the development first coming into use, details of parking shelter(s) for 10 cycles, which shall be covered and illuminated with facilities for locking, shall be submitted to and approved in writing by the Local Planning Authority and the facility shall be fully implemented in accordance with the approved details. The cycle shelter facility shall thereafter be retained and used for no other purpose for the lifetime of the development.

17. The recommendations for the protection of habitats and protected species within the Ecological Assessment by Tyler Grange LLP dated 18th February 2022 shall be incorporated within the design of the proposals and retained for the lifetime of the development. Site clearance and dismantling works shall only be undertaken outside the bird nesting season.

18. No external lighting shall be installed on the site other than in accordance with details first submitted in writing to and approved in writing by the Local Planning Authority.

19. Prior to the commencement of building operations above dampcourse details of all the proposed windows shall be submitted to the Local Planning Authority for approval. The development shall only be carried out in accordance with the approved window details and shall be maintained as such thereafter.

20. Each dwelling hereby permitted shall be occupied only by;

(i) A person aged 60 years or over;

(ii) A person aged 55 years or older living as part of a single household with the above person in (i); or

(iii) A person aged 55 years or older who were living as part of a single household with the person identified in (i) who has since died.

End of conditions