



Appeal Decision

Inquiry held 4 – 7 July 2023

Site visit made unaccompanied on 5 July 2023

by Jonathan Price BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 18th August 2023

Appeal Ref: APP/J1915/W/23/3318094

41 Railway Street, Hertford, Hertfordshire SG14 1BA

- 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 (CRL) against East Hertfordshire District Council (EHDC).
 - The application Ref 3/22/2346/FUL, is dated 4 November 2022.
 - The development proposed is redevelopment to form 34 retirement living apartments for older persons including associated communal facilities, access, parking and landscaping and 3 retail units (Use Class E).
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Decision

1. The appeal is allowed and planning permission is granted for redevelopment to form 34 retirement living apartments for older persons including associated communal facilities, access, parking and landscaping and 3 retail units (Use Class E) at 41 Railway Street, Hertford, Hertfordshire SG14 1BA in accordance with the terms of the application, Ref 3/22/2346/FUL, dated 4 November 2022, subject to the conditions set out in the schedule attached to this decision.

Preliminary Matters

2. The appellant submitted to the Inquiry a draft unilateral undertaking (UU), made to EHDC and Hertfordshire County Council (HCC) under section 106 of the Town and Country Planning Act 1990. A copy of a completed version dated 4 August 2023 was subsequently provided. The UU secures a developer contribution of £490,612 towards off-site affordable housing. Various non-affordable housing contributions are also provided for. The amounts sought by EHDC¹ are secured. The contributions fall somewhat short of those towards the funding of libraries and waste recycling/transfer required by HCC. The UU contains a 'blue pencil' clause allowing a reallocation towards off-site affordable housing of any other contributions found to fail the tests in Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010. I set out my findings over the UU later on in this decision.

Background and Main Issues

3. The appeal relates to a cleared site, originally intended for an 86-bed hotel. This formed part of a wider mixed-use redevelopment in this part of Hertford

¹ These include financial contributions towards bowls, sports hall, swimming pool, fitness gym, studio space, village and community centres, and parks, gardens and amenity green space.

town centre that is otherwise nearing completion. The planning application was made originally for 36 retirement living apartments with three retail units. Following meetings with the Council the design was amended, reducing the number of residential units to the 34 under consideration in this appeal.

4. A main statement of common ground (SoCG) sets out the issues agreed between the parties. The proposed land use is found acceptable in principle and to comply with policies HERT1 and RTC4 of the East Herts District Plan of October 2018 (DP).
5. It is common ground that the Council can currently demonstrate only a 4.41-year supply of deliverable housing land, less than the five-year amount specified in paragraph 74 of the National Planning Policy Framework (the Framework). It is agreed that there is an identified unmet need for specialist older persons' housing in East Herts. The SoCG confirmed there to be no highway safety objections to the proposal and that drainage and flood risk could be satisfactorily addressed by conditions.
6. CRL have a business model to provide schemes of all market accommodation for older people. On this basis, the Council has agreed to affordable housing requirements being met by a financial contribution towards off-site provision, as allowed for under DP policy HOU3. The amount the scheme can viably contribute towards off-site affordable housing remains a central matter of dispute between the parties.
7. The appeal is over non-determination and so the Council provided four putative reasons why permission would have been refused had it been in a position to make a decision. The main issues in the appeal reflect these in summary form. They are whether the proposal would:
 - make appropriate contributions towards affordable housing provision and other infrastructure;
 - be of a contextually satisfactory design, including in respect of designated heritage assets; and
 - provide acceptable living conditions for future occupiers, with particular regard to outlook, ventilation and communal outside space.

Reasons

Whether adequate contributions are made towards affordable housing provision and other infrastructure.

8. The UU secures the non-affordable housing contributions sought by EHDC. There is a relatively small shortfall in meeting the contributions sought by HCC and this weighs in the overall balance. Much the largest financial contribution from the scheme, both sought and offered, is towards affordable housing. Therefore, in respect of this main issue, the focus of the Inquiry concerned what the scheme could viably contribute towards this.
9. Policy HOU3 of the DP requires 40% affordable housing for residential developments of more than 15 gross additional dwellings, such as in this case. As set out in its affordable housing supplementary planning document², the Council will seek to secure financial contributions broadly equivalent to the cost

² East Herts Affordable Housing SPD May 2020.

of providing the affordable housing on-site. In its viability evidence, the Council shows the residual value of the appeal scheme provides a net surplus of £1,133,000 over a scheme with 13 affordable units provided on-site. This figure was not challenged and I have taken it to be approximately the *in lieu* requirement for 40% affordable housing.

10. Policy HOU3 may permit a lower affordable housing contribution if it is demonstrated that the 40% cannot be achieved due to viability reasons. In accordance with this policy, the appellant had provided a financial viability assessment (FVA) to justify the level of contribution towards affordable housing and other requirements. The Council had provided an independent review of this. Paragraph 58 of the Framework states that the weight given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case. The Planning Practice Guidance (PPG) sets out the key principles in understanding viability in decision taking³.
11. The parties had reached agreement over the Gross Development Value (GDV) of the appeal proposal and found little difference over its Residual Land Value (RLV). Where the parties were significantly apart was over the Benchmark Land Value (BLV) attributed to the site. This is critical since any excess in RLV over the BLV is generally accepted to represent the amount a scheme can viably contribute to financial obligations, in this instance off-site affordable housing and other infrastructure.
12. The site has been cleared in advance of redevelopment. As such it provides no reasonable basis for deriving a BLV based upon an existing use; the approach generally advocated by the PPG⁴. Instead, the appellant has relied on an assessment of alternative use value (AUV), related to the extant 86-bed hotel consent. The PPG⁵ acknowledges that AUV may be informative in establishing a BLV. This is where the use is policy-compliant and capable of implementation, as the recent hotel planning permission would suggest.
13. The hotel had originally been intended as a Premier Inn, but owners Whitbread had stepped back in September 2020 on account of the Covid pandemic. This situation thus made way for the later CRL proposal. The unprecedented effects of Covid provide a reasonable explanation, required by PPG paragraph 017, why that alternative use had not been pursued.
14. There is no dispute that AUV is an appropriate methodology for establishing BLV in this case. However, PPG paragraph 017 requires AUV to reflect a demonstrable market demand. The viability of the appeal scheme should be assessed against the alternative use providing the greatest BLV. The parties differ widely over a BLV based on the permitted hotel use. The appellant's hotel BLV is one of around £2m. This is compared to the Council's calculation of about £0.25m.
15. As an alternative to the hotel, the Council has tested a conventional flatted residential scheme on the appeal site, with a policy-compliant 40% on-site affordable housing, and found this to generate a residual value of £1.16m. Using this residential figure in an AUV, and deducting it from the RLV for the CRL proposal, the Council shows the appeal scheme to generate a surplus

³ Viability - GOV.UK (www.gov.uk)

⁴ Paragraph: 013 Reference ID: 10-013-20190509

⁵ Paragraph: 017 Reference ID: 10-017-20190509

sufficient to fully meet the in lieu 40% off-site affordable housing payment, as well as the other infrastructure contributions.

16. Therefore, the determinative matter becomes whether a BLV based on the permitted hotel exceeds that of a policy compliant market housing scheme and comprises a reasonable AUV for assessing a viable appeal scheme contribution. The fact that the parties are so far apart over the hotel BLV reveals valuation to be a highly inexact discipline. It is evident that relatively small variations in assumptions and inputs can generate widely differing BLV outputs.
17. The AUV is a theoretical exercise to assess the viable level of contributions from the CRL scheme. If it is to be based on a hotel, this should reflect a continuing market demand. Covid stalled the Hertford Premier Inn scheme, which was then overtaken by events with CRL stepping in with its retirement housing proposal. Whitbread has confirmed an ongoing interest in the site for a Premier Inn⁶, although is clearly not in a position to pursue this with the current involvement of CRL. I note also that Hertford/Ware features on the expansion list targeted by Travelodge; the other main budget hotel operator.
18. The data illustrates that market performance among branded budget hotels in the area has returned strongly post-pandemic. However, this is not conclusive evidence that a hotel would offer the highest BLV for the site, in the context of a high demand for housing in this area. Premier Inn already has a successful local presence with its Ware operation. A generally strong market demand might indicate a hotel BLV higher than estimated by the Council. However, this would not necessarily suggest to me this exceeds that generated by a general residential scheme.
19. Although giving rise to similar figures, much was made of the appellant's original August 2022 hotel valuation⁷ being based on a profits method and being revised shortly before the Inquiry by one applying an investment approach⁸. The Council's substantially lower site hotel value was a profits-based assessment. The RICS Valuation Practice Guidance, advisory and not mandatory, states that certain trade related properties, including hotels, are valued using the profits method guidance. However, there might be some justification for the amended investment-based approach. This is because the majority of budget hotels are held as investments⁹, and transactions take place on this basis. The appellant's adopted hotel valuation reflects the advisory RICS iSurv Material on Hotels. This advises that the valuer must adopt the prevalent methodology of the active buyers in the local hotel market, which is mainly investment based.
20. The Council finds the appellant's investment approach valuation too high. Contributory factors include too great an anticipated market rent, based on comparison with higher value, metropolitan locations, such as central Manchester. I acknowledge, however, that the comparators used reflect the appellant's valuer's particular experience in the hotel market.
21. The appellant applies its profits approach to cross check the investment valuation. I find the Council's criticisms on this quite persuasive. I agree that

⁶ letter from Whitbread dated 20 June 2023.

⁷ Valuation Report Proposed Hotel Development, Railway Street, Hertford SG14 1BA by Christie and Co dated 5 August 2022.

⁸ Christie and Co letter of 14 June 2023.

⁹ 47% Premier Inn, 100% Travelodge

food and beverage income is unlikely to experience a 22% annual increase factored into the calculation, in a location with a high level of existing competition. Even with ongoing lean hotel management processes, a general shortage of labour puts into question the anticipated reduced wage bill. Current high energy costs also place a question mark over the reduced overheads factored in by the appellant. Overall, the Council's financial estimates over revenues, costs and net operating profit provide a sound challenge to those put forward by the appellant.

22. The Council also considers the appellant is over-estimating Average Daily Rate (ADR) for a hotel here. The relatively high ADR shown by the Ware Premier Inn would likely be less with competition from a second facility located close by in Hertford. The Council's lower ADR figure is substantiated by the widely used STR evidence and is reasonable in my view.
23. For developer profit the PPG indicates 15%-20% of GDV in relation to establishing the viability of plan policies. However, I accept that for a custom-built budget hotel there is a lower risk profile and 6% might be an acceptable contractor's profit in the AUV calculation.
24. Considering the evidence in the round, and accepting valuation is not an exact discipline, a hotel BLV could fall somewhere within a wide range. Such a margin provides reasonable scope for judging that, on the balance of probabilities, a policy compliant market housing scheme provides the appropriate basis for AUV. The agreed RLV of the appeal scheme would most likely provide a surplus over a residential BLV sufficient to meet 40% off-site affordable housing and other contributions.
25. The appellant's FVA does not adequately substantiate the lower than 40% equivalent payment offered towards off-site affordable housing, in conflict with DP Policy HOU3. The harm from this policy conflict is of a substantial magnitude, since the UU proposes only in the order of 43% of the affordable housing contribution that this scheme might viably make. However, there is a realistic fallback situation, with implementation of the extant hotel consent resulting in no affordable housing contributions whatsoever. Giving weight to this fallback, the overall harm arising from the inadequate affordable housing contribution then reduces significantly.
26. The shortfall in the scheme contributions towards libraries, waste recycling and waste transfer is not contested and leads to the proposal conflicting with DP policies CFLR7 and DEL2. The harm from these policy conflicts is quite small in degree, related to the scale of deficit.

Whether a contextually satisfactory design, including in respect of designated heritage assets.

27. The vacant appeal site forms a corner segment of an area previously occupied by the twentieth century Bircherley Green shopping centre. Adjacent parts have been replaced by the now well-advanced re-development, which fronts onto the River Lea to the north. This part of Hertford town centre has more recent development, of a comparatively larger scale. In addition to the Bircherley Green re-development, this includes the adjacent multi-storey car park and four storey Bircherley Court apartment complex opposite to this. To its west and south, Bircherley Green gives way to a finer grain of development in the more historic parts of the town centre.

28. The appeal scheme would be broadly comparable to the approved hotel in scale, height, position and footprint. Fronting closely onto Bircherley Street and Railway Street, it would reflect a historic built pattern. To one side the scheme would face the contemporary four-storey Bircherley Court development. The other side is adjacent to and across from the smaller scale of historic development running along Railway Street. To the other sides, the scheme abuts existing development, including the adjacent multi-storey car park. The visually more accessible views of the proposal are from Bircherley and Railway Streets. The corner aspect of the scheme, at the junction of these streets, would be a prominent feature in views into the town centre from a main eastern entrance.
29. The revision to the scheme, from 36 to 34 apartments, allowed for a reduction in overall height, scale and massing. The lowered ridge and eaves heights adjoining the existing two-storey building at 31-33 Railway Street better manage the transition in scale to the smaller historic buildings adjacent and opposite.
30. The original Bircherley Green development had overridden the historic plot pattern in this part of Hertford town centre, which otherwise remains largely undisturbed. These historic plots are generally quite long and narrow, leading to a varied and vertical rhythm of street frontages. In the appeal scheme, the southern elevation onto Railway Street includes a projecting central section, of a contrasting white brick to the buff sections either side, that rises to a triangular parapet. The rectangular bay, with the recessed sections to either side, articulates the prevailing plot widths and would help restore a historic built rhythm along Railway Street.
31. The corresponding eastern elevation repeats this articulation, providing the scheme a balanced appearance. The mixture of buff and white brickwork reflects the facing materials used in the contemporary Bircherley Court development opposite. It is the design of the prominent corner section, between these southern and western elevations, to which the Council's objections relate. As the tallest element of the scheme, this creates an appropriate landmark feature, announcing a main entry point to the historic core of Hertford. This full four-storey corner element rises to a triangular parapet, repeating those to both sides and concealing the pyramidal roof structure behind.
32. Like the triangular parapets, the repetitive nature of the fenestration provides balance and coherence to the scheme overall. The larger windows and tall brick piers, along with the tall central parapet, provide strong emphasis to the focal point of the scheme. The building heights and window sizes then moderate at each side, blending in appropriately with their surroundings. Whilst the arches above the windows might be decorative rather than structural, this is not a fatal flaw in a scheme that possesses a satisfactory appearance overall.
33. The scheme provides no access to public realm, such that part III of DP Policy DES4 regarding maximising legibility must apply. Whilst the entrance is to the rear, rather than more obviously at the corner, the scheme nonetheless possesses architectural legibility. It clearly reads as a landmark feature, responding to a visually significant location and emphasising, in distinct design terms, the junction between contemporary redevelopment and a more preserved historic core. The proposal satisfies the relevant part I of DES4, by

providing a high standard of design and layout to reflect and promote local distinctiveness. It satisfies part I (a) by respecting and improving the character of the site and surroundings in terms of scale, height, mass and design features.

34. DP Policy HERT7 expects proposals to take account of, and contribute positively to, the Hertford Town Centre Urban Design Strategy (HTCUDS). This strategy promoted the Bircherley Green re-development. The appeal scheme would be an appropriate alternative to the approved hotel. It would equally mark the eastern entrance to a main connecting spine that the HTCUDS identifies as linking key places within the town centre, thus satisfying Policy HERT7.
35. The appeal site is within the Hertford Conservation Area¹⁰ (CA) and there are several listed buildings within its vicinity. I have duties under Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. These are to have special regard to the desirability of preserving the settings of any listed buildings affected and to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
36. The CA is quite large and covers the historic part of Hertford. This proposal is located on the eastern side of the Central Historic Core, as defined in the CA Appraisal¹¹. It is significant for its high concentration of listed buildings and historic street pattern and development frontages. Of the nearby listed buildings, the Grade 1 listed Friends' Meeting House, and its neighbouring Grade 2 listed Priory Rooms, lie further to the east on Railway Street, set apart by intervening modern development. The retrusive settings of these historic buildings would not be adversely affected by the proposal, and their significance would be preserved.
37. The Grade 2 listed buildings¹² fronting Railway Street relate more closely to the CRL proposal. As listed buildings these are also all of national significance, related to their architectural and historic interest as well as their group value. The empty gap in the street currently detracts from their settings. The appeal scheme would restore development with a series of shop fronts that reflect the plot rhythm and street appearance. The views of these listed buildings would not be significantly reduced and appreciation of their settings would be improved by a sympathetically designed sequence of new shop fronts. Therefore, the proposal would preserve the settings of all affected listed buildings and comply with DP Policy HA7.
38. The proposal would respect the established built pattern, be of an appropriate scale, height and form for its location and suitable traditional materials might be conditional. I have addressed the Council's detailed design concerns above, which relate only to the corner elevation. I consider this taller element, with its triangular parapet, pyramidal roof and larger openings, to provide a suitable landmark feature. The design of this keystone section fits in suitably with an overall scheme which would preserve the character and appearance of the CA, in full accordance with Policy HA4.
39. As I find that it would not cause harm to the significance of the designated heritage assets discussed, this proposal satisfies DP Policy HA1. Concluding on

¹⁰ As designated in 1967, revised in 1981 and further amended in 1996.

¹¹ Hertford Conservation Area Appraisal and Management Plan - adopted March 2017

¹² Nos. 28-30, 32, 34 and 36 opposite the scheme and 23 - 25 and 27 - 29 beyond to the west.

this main issue, the proposal would be of a contextually satisfactory design, including in respect of designated heritage assets, in conformity with development plan policy.

Living conditions provided for future occupiers, with particular regard to aspect, ventilation and outside space.

40. As part of achieving well-designed places, paragraph 130 of the Framework seeks that developments promote health and well-being, with a high standard of amenity for existing and future users. The issue of whether this scheme would provide acceptable living conditions for its future occupiers is a proper matter in the overall consideration of design. This is regardless of relevant DP Policy DES4 referring only to the amenity of neighbouring occupiers. I agree with the Council that market forces should not be the sole arbiter of what amounts to acceptable living conditions.
41. In this context, it is necessary to consider the particular living requirements of a likely older occupier and the trade-offs made in choosing to live in a town centre. I have no reason to doubt the CRL evidence that a purchaser might typically be of an advanced age and seeking single person accommodation for independent living, but within a communal environment with a degree of on-site assistance available. Further motivations would be to downsize to a smaller, more manageable home which is close to shops and services and where there would not be a dependence on private car use, once that option needs to be relinquished.
42. The appeal site offers proximity to public transport and a good range of town centre facilities. Being on an urban site, and to fit in with its surroundings, the scheme provides the relatively high density of accommodation typical of a town centre apartment development. There are no private balconies or roof terraces, which might have offered better living conditions. Nevertheless, the single aspect nature of most of the apartments, and the lack of private amenity space, is not unusual for town centre flats and would provide satisfactory living conditions.
43. In this case the occupiers would instead have the benefit of the communal lounge, with the small external sitting out area leading from this to use in suitable weather. Clearly, larger external grounds, with sunnier spots, would have provided improved living conditions. However, the external area fails no set standards and is not of an inadequate size given its more passive function. The site circumstances, whereby a compatible scheme must front onto the adjacent streets, dictate the location of the communal open space. There will be the expected background noise resulting from the town centre location and a degree of vehicular activity to the outer sides of the external amenity space. Whilst not reducing this noise, the fencing and planting around the perimeter would provide the sitting out area a secluded and pleasant feel, as the scheme illustrations show. The area would enjoy some direct sunlight in summer months and, overall, provide occupiers with a pleasant outside space to enjoy at appropriate times.
44. The general high level of activity, including an evening economy, means that a town centre location cannot guarantee the same lower noise environment provided by a suburban site. In this case, the Council notes in particular the live music hosted on the opposite side of Railway Street, at the Hertford Bell public house. However, satisfactory internal noise levels within the apartments

would be provided by closed windows, with mechanical ventilation providing fresh air and cooling when required. This would be an arrangement common to numerous town centre apartment schemes, allowing effective use of urban sites to provide housing. DP Policy EQ4, quoted in the Council's putative refusal reason is not relevant, since this relates to the effect of development on air quality. Otherwise, the proposal would provide acceptable living conditions for future occupiers, including in respect of the outlook and ventilation to all apartments and the quality of the communal outside space.

Planning obligation

45. The UU secures the financial contributions in the areas sought by HCC; towards waste recycling, waste transfer, libraries, fire and rescue and monitoring fees. Although the amounts offered by the appellant fall somewhat short of those required by HCC, the principle of these obligations is supported by the statement provided. The UU does not reflect the wording that HCC would have recommended in a trilateral agreement. This includes not providing the project flexibility, occupier liability and payment triggers in the way HCC would have sought. Nonetheless, I consider the obligations made remain adequately deliverable and enforceable in the manner set out.
46. The other non-affordable housing obligations are the financial contributions sought by EHDC and the amounts have been agreed. Including that towards off-site affordable housing, the policy justification for requiring these obligations is set out in the Council's CIL compliance statement.
47. On the basis of the evidence and policy justification put to me, I am satisfied that all the obligations made in the UU meet the three tests in Regulation 122(2) of the CIL Regulations 2010, as repeated in Framework paragraph 57. I consider each obligation in the UU to be a) necessary to make the development acceptable in planning terms, b) directly related to the development and c) fairly and reasonably related in scale and kind to the development.

Planning Balance

48. The proposal brings forward a number of benefits and weight is ascribed to these, having regard to the conclusions of Inspectors in the two appeal decisions¹³ drawn to my attention, relating to CRL schemes allowed elsewhere.
49. The 34 residential units will meet DP housing supply policies DPS1 and 3 and help redress the five year undersupply identified in paragraph 6 (above). This benefit attracts substantial weight. That the units will be specialised accommodation for older people will meet an unmet need and principally satisfies DP policies HOU 1 and 6. The PPG¹⁴ refers to a critical need generally to provide housing for older people, and I give this benefit significant weight. This weighting factors in wider social benefits, both in terms of the improved health and well-being of older residents and the freeing up of larger family homes.

¹³ Appeal Ref: APP/N1730/W/20/3261194 Former Fleet Police Station, 13 Crookham Road, Fleet GU51 5QQ – 31 retirement apartments allowed 14 May 2021 and Appeal Ref: APP/H1705/W/20/3248204 Former Basingstoke Police Station, London Road, Basingstoke RG21 4AD – 56 retirement apartments allowed 24 June 2021.

¹⁴ Paragraph: 001 Reference ID: 63-001-20190626 Revision date: 26 June 2019

50. The UU makes non-affordable housing contributions that carry small positive weight. This is despite the small shortfall in the amounts sought for libraries and waste recycling/transfer. The benefit of the affordable housing contribution of £490,612 helps meet a critical need and, although not policy compliant, still attracts moderate weight.
51. Substantial weight is given to the benefit of using suitable brownfield land within Hertford town centre for homes, in accordance with Framework paragraph 120 c). This helps deliver sustainable development in accordance with the strategy of DP Policy DPS2. This substantial weight reflects the proposal being in a highly sustainable location, where future residents would enjoy good accessibility to a wide range of services, in compliance with DP Policy DPS2 and paragraph 8 of the Framework. This positive weighting also factors in the scheme making efficient use of land and satisfying DP Policy HOU2 and paragraphs 119, 124 and 125 of the Framework.
52. In accordance with paragraph 81 of the Framework, I attach significant weight to the proposal's economic benefits, including the construction works, new Class E units and increased consumer spend within the town centre. The overall environmental benefits of the scheme attract more modest weight overall, although the swift bricks are particularly beneficial to a declining bird species dependant on nesting opportunities in buildings.
53. Considerable importance and weight is attributed to the satisfaction of the S66(1) and 72(1) duties, and with the proposal addressing a harmful gap within the CA through the provision of an acceptable scheme.
54. On the basis of the planning benefits discussed above, it is clear that the proposal complies with a large number of development plan policies. Nevertheless, the provision of sufficient affordable housing, as specified in Policy HOU3, is an important aim of the DP. This consideration is sufficient for me to conclude that the proposal would conflict with the development plan when considered as a whole. Therefore it is necessary to decide whether material considerations would indicate approval despite this conflict. Of these, the Framework carries considerable weight in policy terms.
55. The Council cannot currently demonstrate a five year supply of deliverable housing sites. Therefore, the DP policies most important for determining this appeal are deemed to be out-of-date by Framework paragraph 11 d), the terms of which must be given considerable weight. Under paragraph 11 d) i), the application of Framework policies protecting designated heritage assets does not provide a clear reason for refusal in this case. The tilted balance under 11 d) ii) therefore applies. There is an adverse impact stemming from an affordable housing contribution substantially lower than required by DP Policy HOU3. However, this harm would not be of a magnitude to significantly and demonstrably outweigh the many benefits that would flow from this proposal, when assessed against Framework policies taken as a whole. Material considerations would therefore indicate this appeal should be allowed.

Conditions and conclusion

56. The conditions suggested by the Council, along with the appellant's comments, were discussed at the Inquiry. I have amended, reordered and in some case combined those that meet the tests in paragraph 55 of the Framework, seeking to avoid repetition and to provide clarity and conciseness. Condition 1 applies

the standard three-year period for commencement. For certainty, condition 2 sets out the plans approved.

57. For the proposal to be acceptable, certain matters have to be agreed before the development can proceed. Such pre-commencement conditions have the appellant's prior written agreement. Condition 3 ensures the finished floor and ridge heights are as shown on the approved plans, in the interests of character and appearance. Conditions 4 and 5 respectively ensure adequate surface water drainage and flood risk measures are put in place. In the interests of highway safety and neighbouring living conditions, condition 6 requires adherence to an agreed Construction Method Statement (CMS).
58. At stages following commencement, a number of conditions are necessary. Condition 7 addresses any previously unidentified site contamination. Condition 8 ensures adequate parking and servicing arrangements, in the interest of highway safety. To reduce carbon emissions, condition 9 requires agreed energy efficiency measures be put in place. Condition 10 requires swift bricks be provided to provide nesting sites for this declining species of bird. In the interest of the satisfactory appearance of the completed development, condition 11 requires detailed approval of all external materials and features. Condition 12 requires agreement to piling methods, including to safeguard nearby underground utilities.
59. A number of conditions need to be satisfied before the approved development can be occupied. Condition 13 is necessary to ensure that the surface water drainage infrastructure is operated, managed and maintained throughout the life of the development. Condition 14 ensures that the shared surface area, parking spaces and access are adequately drained and surfaced. To promote sustainable travel modes, condition 15 is necessary to secure application of an agreed Travel Plan. In the interests of residential living conditions, condition 16 is needed to apply the noise management measures proposed. Condition 17 requires the implementation of external landscaping measures, principally necessary to ensure the quality of the residents' outside sitting area. Condition 18 is necessary to ensure adequate water efficiency standards. Finally, condition 19 is necessary to ensure occupation by the older age groups the scheme has been designed for, and upon which basis the benefits of the proposal have been assessed.
60. Specific conditions governing construction waste management and dust emissions are unnecessary, given these matters are covered by the CMS. Also unnecessary is a condition requiring the access arrangements to be the subject of a Stage 1 Road Safety Audit, as these are as previously approved for a hotel on this site and are found equally acceptable for this proposal. The permission is for three Class E retail units and there are no reasonable grounds for a condition requiring further approval for uses a), b) and c) within that category. Nor is there any necessity for a condition removing permitted development rights for additional storeys, as these do not apply to buildings built after 5 March 2018.
61. Subject to these conditions, I conclude the appeal should succeed.

Jonathan Price

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Neil Cameron of King's Counsel, instructed by Matthew Shellum of Planning Issues Limited

He called:

Matthew Shellum BA(Hons) DipTP MRTPI Planning Director and Head of Appeals, Planning Issues Limited.

Gideon Lemberg BArch RIBA ARB - Eastern Design Director of Planning Issues Ltd

William Bedford BA MCIfA Director of Landgage Heritage Ltd

R James Mackay BSc(Hons) MRICS (RICS Registered Valuer)
Alder King LLP

Karl Hines BSc(Hons) MRICS, Director Christie and Co.

FOR THE LOCAL PLANNING AUTHORITY:

Annabel Graham Paul of Counsel, instructed by Victoria Wilders, Legal Services Manager, EHDC

She called:

Amit Patel BSc (Hons) MSc DipEc - Principal Planning Officer, EHDC

Richard Freeman - Interim Development Management Team Leader, EHDC

Leena Shah BArch MLA CMLI - Conservation and Urban Design Officer, EHDC

Emma Keller Bsc (Hons) - Conservation and Urban Design Officer, EHDC

Andrew Jones BSc MRICS - Director, BPS Chartered Surveyors

Melvin J Gold, FIH - Hotel Industry Consultant of Melvin Gold Consulting

INQUIRY DOCUMENTS (ID)

ID 1 Opening statement on behalf of the appellant by Neil Cameron KC.

ID 2 Opening statement on behalf of the Council by Annabel Graham Paul of Counsel.

ID 3 Copy of appellants' draft UU.

ID 4 HCC's supplementary statement concerning the UU of 6 July 2023

ID 5 Appellant's written agreement to the terms of the pre-commencement conditions suggested pursuant of sections 100ZA(4-6) of the TCPA

ID 6 Closing statement on behalf of the Council by Annabel Graham Paul of Counsel.

ID 7 Closing statement on behalf of the appellant by Neil Cameron KC.

SCHEDULE OF CONDITIONS

Time period for commencement

1. The development hereby permitted shall begin not later than three years from the date of this decision.

The details and drawings subject to which the planning permission is granted

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan 40043HT-PL01A, site plan 40043HT-PL02A, ground floor plan 40043HT-PL03A, first floor plan 40043HT-PL04A, second floor plan 40043HT-PL05A, third floor plan 40043HT-PL06A, roof plan 40043HT-PL07A, elevations 1 40043HT-PL08A, elevations 2 40043HT-PL09A and elevations 3 40043HT-PL10A.

Pre-commencement conditions

3. Prior to the commencement of development hereby approved, detailed plans showing the existing and proposed ground levels of the site relative to adjoining land, together with the slab levels and ridge heights of the proposed buildings, shall be submitted to and approved in writing by the local planning authority and the completed development shall accord with these approved plans.
4. Prior to the commencement of the development hereby permitted, construction drawings of the surface water drainage network, associated sustainable drainage components, flow control mechanisms and a sustainable drainage scheme (SuDS) construction method statement shall have been submitted to and approved in writing by the local planning authority. The scheme shall then be constructed in accordance with these approved details.
5. Prior to the commencement of the development hereby permitted, full details of all required flood resilient and resistant technical measures shall be submitted to and approved in writing by the local planning authority. The scheme shall then be constructed in accordance with these approved details.
6. Prior to the commencement of the development, a Construction Method Statement (CMS) shall be submitted to and approved in writing by the local planning authority. The CMS shall include:
 - the construction programme;
 - methods for accessing the site, including traffic management measures and wider construction vehicle routing;
 - numbers of daily construction vehicles including details of their sizes;
 - hours of operation and construction vehicle movements;
 - any works to the public highway to facilitate construction;
 - parking, turning and loading/unloading arrangements for operatives and visitors;
 - the erection and maintenance of security hoardings and signage;
 - safety measures for existing public highway users;
 - wheel washing facilities;
 - measures to control the emission of dust and dirt during construction;

- consultation arrangements with neighbouring occupiers;
- a scheme for the recycling/disposing of waste resulting from the construction works.

The approved CMS shall be adhered to throughout the construction period of the development.

Pre-commencement above slab level and other construction stage conditions

7. Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
8. No development shall commence above slab level until a management and operation plan for vehicle and cycle parking, servicing, deliveries, refuse collection and emergency vehicle access associated with the development shall have been submitted to and approved in writing by the local planning authority. The plan approved shall thereafter be adhered to.
9. No development shall commence above slab level until details of the design and construction of the development demonstrating how it would minimise overheating in summer and reduce the need for heating in the winter have been submitted to, and approved in writing by, the local planning authority. The development shall thereafter be implemented in accordance with the approved details.
10. No development shall commence above slab level until details of the design and position of swift bricks shall be submitted to and approved in writing by the local planning authority. The development shall then be implemented with swift bricks in accordance with these approved details.
11. No development shall commence above slab level or on the respective part of the development until details or samples of the following have been submitted to and agreed by the local planning authority:
 - facing bricks and roof tiles;
 - all external lighting;
 - rainwater goods, including profiles, positioning, materials, colour and fixings;
 - Juliet balconies, including depth, soffits, railings and attachments;
 - dormers, roof soffits (finishing and fixings) and windows (including materials and colour, a section of the glazing bars and frame moulding, position of the window frame in relation to the face of the wall, depth of reveal, jambs, soffits and sill detail);
 - commercial frontages, including canopies and details of fascia signage zones.

Development shall be carried out in accordance with the approved details.

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

Pre-occupancy conditions

- 13.The development hereby approved shall not be first occupied until details of the operation, maintenance and management of the surface water drainage that shall have been provided in accordance with condition 4 have been submitted to and approved in writing by the local planning authority. The details of the scheme to be submitted for approval shall include:
- a detailed verification report demonstrating the approved construction details and specifications have been implemented in accordance with the surface water drainage scheme,
 - a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

The approved details shall thereafter be adhered to.

- 14.The building shall not be occupied until the shared service area, accesses and car parking spaces shown in drawing number 40043HT-PL02 rev.A have been drained and surfaced in accordance with details that shall have had the prior written agreement of the local planning authority. These areas shall thereafter be kept available at all times for access, parking and servicing.
- 15.The building shall not be occupied until a Residential Travel Plan (RTP) to promote sustainable travel measures has been submitted to and approved in writing by the local planning authority. The RTP shall thereafter be implemented as approved.
- 16.The building shall not be occupied until noise management measures based on 24Acoustics report ref. R9594-1 Rev 1 have been submitted to and approved in writing by the local planning authority. These details shall ensure noise levels in external amenity areas meet the lower limit for noise specified in BS8233:2014 '*Guidance on sound insulation and noise reduction for buildings*'. Noise levels from building services, including MVHR systems operating at maximum capacity, shall not exceed NR 20 in bedrooms (2300 to 0700 hours) and NR 25 in all habitable rooms (0700 to 2300 hours). The noise management measures shall thereafter be maintained as approved.
- 17.The building shall not be occupied until hard and soft landscaping based on the submitted Landscape Strategy Masterplan (ref: JBA 22/232 - SK02) has been implemented in accordance with details that shall have had the prior written approval of the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or

diseased shall be replaced in the next planting season with others of similar size and species.

18. Prior to the first occupation of any dwelling or other unit, measures shall be incorporated to provide a water efficiency standard of 110 litres (or less) per person per day in accordance with details that shall have had the prior written approval of the local planning authority.

Conditions relating to post occupancy monitoring and management

19. 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.

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