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# Appeal Decision

Inquiry held from 22 October 2024 to 29 October 2024

Site visit made on 25 October 2024

**by Jonathan Bore MRTPI**

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

**Decision date: 22<sup>nd</sup> November 2024**

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## **Appeal Ref: APP/N4720/W/24/3343107**

### **Mercure Hotel, Wetherby Road, WETHERBY, LS22 5HE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Lidl GB Ltd and Springfield Healthcare Group Ltd against the decision of Leeds City Council.
  - The application Ref is 23/01507/FU.
  - The development proposed is a phased development to comprise demolition of existing buildings and erection of a foodstore (Use Class E), care home (Use Class C2) and eight senior living homes (Use Class C3) with associated access, parking, servicing area and landscaping.
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### **Decision**

1. The appeal is allowed and planning permission is granted for a phased development to comprise demolition of existing buildings and erection of a foodstore (Use Class E), care home (Use Class C2) and eight senior living homes (Use Class C3) with associated access, parking, servicing area and landscaping at Mercure Hotel, Wetherby, LS22 5HE in accordance with the terms of the application, Ref 23/01507/FU, and the plans listed in Condition 2 to this decision, subject to the conditions in the schedule at Annex 2 to this decision.

### **Main Issues**

2. The main issues in this case are the effect of the proposed development on:
  - a. the supply of homes;
  - b. the vitality and viability of Wetherby town centre;
  - c. the settings of heritage assets;
  - d. the effect on trees and biodiversity;
  - e. the living conditions of existing and future residents.

### **Reasons**

*Issue a: the effect of the proposed development on the provision of homes*

3. The site consists of 1.8 hectares of previously developed land within the settlement boundary of Wetherby. It is part of a larger site allocated for housing development under policies HG2 and HG2-20 of the Leeds Site Allocations Plan (as amended 2024). Policy HG2-20 gives an indicative

capacity for the whole allocated site of 86 units. Seven dwellings have already been built as a separate scheme on the western part of the allocated site, in an area comprising 23% of the overall allocation. In the appeal scheme, 60% of the appeal site would be devoted to the care home and independent senior living homes whilst the remainder would be occupied by the Lidl food store. The retail part of the scheme would conflict with Leeds UDP Policy GP1, which seeks to resist, on allocated sites, uses that are not specified on the site allocation plan.

4. The scheme would include 84 dementia care home units and 8 independent senior living homes and would play an important role in helping to meet the growing need for older persons' housing in the area. The 2017 SHMA predicted a 75% increase in the requirement for older persons' specialist accommodation and a particular need to increase the provision of enhanced sheltered housing and extra care support. The latest SHMA of 2024 expects a need for around an additional 8,800 units of accommodation by 2040 to cater for the elderly population. The City Council recognises that there is an undersupply of nursing dementia and nursing beds in Leeds and, to a lesser extent, residential dementia care. There is currently a heavy reliance on homes converted from alternative uses, and on ageing purpose-built accommodation, and 26 homes have closed over the last 10 years. Leeds City Council's most recent monitoring report states that only 58 and 66 older persons' housing units were completed in 2019/20 and 2020/21 respectively. In this context the scheme would appear much needed. It would be aligned with the National Planning Policy Framework and Policy H4 of the Core Strategy, which recognise the need to provide homes for older persons, and Policies HG2-20 and HG4 of the Leeds Site Allocations Plan, which indicate that the appeal site is suitable for older persons' housing and independent living.
5. The care home would fall into Use Class C2. Annex 1 of this decision examines how its accommodation should count towards the allocated site's indicative dwellings target. If all the care home units were counted as individual homes, 99 dwellings would be delivered on the allocated site; if the care home units were discounted to reflect the number of homes released on to the market, the total for the allocated site would be 68 dwellings. Neither of these figures represents a significant departure from the allocated site's indicative delivery figure of 86 homes set in Policy HG2-20, which in any case is not a precise requirement.
6. Annex 1 also sets out the housing land supply position in Leeds. The supply was formerly poor but is now comfortably in excess of 5 years. A substantial amount of the supply would be from Leeds city centre, but there is a strategic site to the east of Wetherby itself which would provide a large number of homes for the local market. There is no evidence to indicate that the supply deficiencies which were a feature of the recent past are likely to return in the foreseeable future. Even if the lower figure for the care home's contribution to housing supply were relied upon, the scheme would not cause material harm to the housing land supply position in Leeds.
7. Without the food store, the whole site might be devoted to housing, and it is theoretically possible that a greater number of homes would result. But it is unlikely that the difference, if any, would be significant in the context of the current housing supply position in Leeds, for a number of reasons. Firstly, the appeal site comprises only 77% of the total site allocation, the remainder

having already been built out at a low density. Secondly, the Council's approach to development on the site, evinced through its evidence, is to give considerable emphasis to perceived constraints that would reduce the number of homes that the site could accommodate. Thirdly, the appeal scheme is a very efficient package promoted by active and experienced operators in the fields of retailing, care homes and homes for older people, providing a high level of certainty that very effective use would be made of the site and that much-needed older persons housing would be delivered within a reasonable timeframe.

8. In conclusion, the scheme would not materially harm the housing land supply position in Leeds and would have a very positive effect on the delivery of homes to meet the growing need for housing for older people, in accordance with the objectives of Core Strategy Policies H4, Site Allocations Plan Policies HG2 and HG2-20 and the National Planning Policy Framework. It would not impair the ability to deliver the housing requirement set out in Core Strategy Policy SP6 or the distribution of housing in Policy SP7. It would make the best use of brownfield land within the urban area in accordance with Core Strategy Policy SP1.

*Issue b: the effect of the proposed scheme on the vitality and viability of Wetherby town centre*

9. The proposed food store would be of 2,092 square metres gross floorspace, or 1,392 square metres net floorspace and would be of the discount type operated by Lidl. It would be in an out-of-centre location, but easily accessible, lying some 500 metres south of Wetherby town centre. Core Strategy Policy P5 directs new food stores to town centres and Policy P8 seeks sequential and impact tests for convenience retail proposals of over 1,500 square metres. There are no sequentially preferable sites or vacant units within or on the edge of Wetherby town centre. The scheme therefore passes the sequential test.
10. Wetherby has an attractive and well maintained town centre with good accessibility and a low level of vacancy compared with the national average. It is in a good position in respect of vitality and viability, and recent survey-based turnover within the primary catchment area demonstrates that all the stores in Wetherby are substantially overtrading against their company benchmark turnovers. That includes Morrisons, M&S Simply Food, Aldi and other stores in the town centre.
11. Nationally, there has been a reduction in the market share of some of the major stores such as Morrisons as a result of the growth of the discount food stores such as Lidl and Aldi. In the case of Wetherby, with limited expenditure growth in the catchment, the proposed foodstore would inevitably divert some trade from the town centre stores. That in itself does not mean that the vitality and viability of Wetherby town centre would be harmed. Even with the proposed food store in place, the town centre stores would all still be overtrading compared with their company benchmark levels. The level of expenditure capacity, using benchmark trading levels, is about four times the forecast turnover of the proposed foodstore. Company benchmark figures are the conventional and widely-used means of assessing retail impact and trade draw.

12. The retail impact assessment forecasts Morrisons' residual turnover, following the opening of the proposed food store, to be 170% of its benchmark turnover. The equivalent figure for M&S Simply Food is 137% and that of other stores in Wetherby town centre is 164%. The retail impact analysis forecasts that the largest trade draw, of 21.2%, would fall on Aldi in Wetherby. Aldi is substantially overtrading compared with its benchmark trading level and would continue to be in a strong position with the development of the proposed food store. It is evident from all these figures that the retail trading position in Wetherby, and within the town centre, would continue to be healthy after the opening of the food store. The food store would not impact upon any existing, planned or committed investment in Wetherby or any other centre in the proposal's catchment area.
13. It is inappropriate to establish, as the Council have suggested, a "locally appropriate" trading level for the proposed food store for the retail impact assessment, based on the current level of trading at the local Aldi. That is because Lidl and Aldi occupy similar positions in the market and would compete for overlapping customer expenditure; they would not both be able to sustain such high trading levels. Furthermore Lidl and Aldi carry a small proportion of the lines of Morrisons and other stores. Morrisons has ancillary services within the store which Lidl does not have; and Wetherby town centre also offers a range of other retail outlets and services. So even with the addition of the proposed food store to the retail offer, there would still be strong reasons to visit Morrisons and the other town centre retail outlets. Even if the trade diversion were to be higher than that anticipated by the retail impact analysis, the current level of overtrading in the town centre is such that the existing stores would continue to trade at a healthy level.
14. For all these reasons, the proposed food store would not harm the vitality and viability of Wetherby town centre. The development would bring benefits in terms of greater competition and choice of outlet and indeed there is evidence of strong local support for the proposed food store with a considerable number of representations in favour. The scheme would pass the sequential and impact assessments sought by Core Strategy Policy P8 and the National Planning Policy Framework, and would not undermine the centres-first approach in Core Strategy Policy SP2. There being no sequentially preferable site, it would not conflict with Policies SP1 and SP8 which prioritise the location of new retail development in the town centres, or Policy P5, which is silent on the circumstances under which new out-of-centre retailing would be appropriate.

*Issue c: the effect of the scheme on the settings of heritage assets*

15. The site lies to the south and west of, but outside, the Wetherby Conservation Area. The site's current character and development history have almost no relationship with the conservation area, despite its proximity. The conservation area was designated in 1971 and modified in 1981 and 2010 but it is notable that the site has been consistently omitted. The site was developed as the roadside Wetherby Grill, and then the building complex was expanded in various stages to form a hotel. Its function was closely related to passing traffic. Historically it faced the road system, not the town; the kinetic experience of passing the site on the way towards the town reinforces that perception; and the present proposal largely maintains that south-facing, road-oriented relationship.

16. The care home would be located close to the southern boundary of the site, and its southern elevation would be of three floors plus a roof terrace and ancillary area at roof level. It would be more prominent than the present hotel, which is recessed and consists of a number of lower elements. However, the site's landscape setting is not special, being dominated by roads and their ancillary structures; nor, as discussed below, is its current internal planting and landscaping structure of any merit. The care home would be faced with locally appropriate materials and would be a significant improvement on the current hotel. The bulk of part of the southern elevation would be reduced by means of a lower shoulder height with a mansard roof above.
17. There would be limited scope for landscaping at the front of the building; some tree planting is proposed, along with a fence and hedge. However, a wide grassed area separates the site from the highway edge, and this would provide an adequate green setting. It is appropriate for future development on this site to have greater prominence; it is a brownfield site, allocated for development, within the settlement boundary of Wetherby, and it is important to make the best use of brownfield urban land.
18. The food store with its relatively low profile would be set back from the road behind a landscaped buffer at the western end of the site. Neither the food store nor its car park would have a significant effect on the settings of heritage assets.
19. The independent living homes would be located behind the care home. Their design, consisting of terraces with front-facing gables, would not reflect many of the traditional forms found in the conservation area. However, that would not matter in this instance. They would be located in the middle of the site and would have no effect on the character of the nearby conservation area; their facings would respect local materials, and the immediate surroundings of the site in any case display a variety of different building forms.
20. In the current Wetherby Conservation Area Character Appraisal, the site is not recognised as a landmark or a gateway, a key view over green space or a progressive view. Whilst the scheme would have a greater presence than the hotel at the entrance to the town, it would be screened from the conservation area by the houses in Micklethwaite Grove and Grange View. The characteristics of the conservation area only become apparent when travelling north along Boston Road, away from the site. The scheme would not in any perceptible way interfere with an understanding of the conservation area as part of the market town.
21. Thus despite the greater prominence of the proposed care home and the non-traditional design of the independent living units, the scheme would have no effect on the character or setting of the conservation area, or the way it is perceived, the qualities of which would be preserved.
22. The scheme would equally have no effect on the setting of the Grade II listed West Lodge, a former lodge belonging to the long-demolished Wetherby Grange. West Lodge can be glimpsed from the front of the appeal site but there is no significant visual connection between the two, nor was there any notable historic connection. The care home would be a larger and more noticeable building, but would not compete for attention with the listed building: seen from the majority of positions in the vicinity they would be visually disparate. The setting of the listed building is dominated by, and

severely compromised by, the road system at the front and the Police Station and ancillary buildings close behind. The appeal site is not within its setting, nor would the care home impinge on it. The scheme would not affect any perception of the historic or architectural significance of the building.

23. Grange View, a non-designated heritage asset, sits to the rear of the site. It is a two storey residential terrace of no great age, but it is very pleasantly detailed with stone facing, contrasting corners, mullioned gables and a traditional slate roof. Grange View once looked toward open countryside but the quality of its setting has long been compromised by the unattractive back of part of the hotel, an untidy hedged area, a car park, and the main road system itself. The scheme would block the limited remaining views between Grange View and the open countryside, and in that regard there would be minor harm to the significance of the heritage asset. However, the care home building, though larger than the hotel, would be better designed, and adequate space would be provided between the care home and Grange View, including new garden areas. The minor harm would be significantly outweighed by the public benefits of the scheme which are discussed elsewhere in this decision.
24. The scheme would accord with Policies G1, P10 and P11, Core Strategy Policies GP5, N14 and N19 of the UDP and Wetherby Neighbourhood Plan Policies ENV1 and H2, which together aim to ensure that development is appropriate to its context, respects the character of its surroundings and protects heritage assets.

*Issue d: the effect of the development on trees and biodiversity*

25. The site contains a number of trees which are part of the Strategic Green Infrastructure covered by Core Strategy Policies G1 and SP13. The policy seeks to retain the green infrastructure character of these areas. However, in the case of the appeal site that character is not strong. There are very few important trees on the site. Many are poor, immature and/or in poor condition. Much planting appears to be random. An English Oak has advanced fungal infection. Some small trees at the front of the site are leaning heavily. Groups of previously planted trees have been invaded by sycamore. There is little evidence of recent tree management. The tree canopies can be seen from the south as part of the urban edge but are not of any special significance.
26. Having regard to the evidence and personal site observations, the significant arboricultural features of the site are represented by trees T13, T35, T48, and G20. Of these, T13 and T35 would be retained. T48 would have some encroachment into its root protection area, but this being a robust lime its future would be unlikely to be compromised. G20 would be thinned out to remove the sycamore encroachment but would be supplemented with new planting. The scheme would not remove any significant arboricultural features.
27. 54 trees would be removed (amended from 51 following my post-site visit comments), several of which are subject to tree preservation orders, but none of the trees is large and only four are mature. Two self-seeded sycamores in group G20 are visible from Wetherby Road but are not notable individual features because they are part of a group. None of the trees to be removed are significant features in the local landscape. The removal of these trees is necessary to allow the development to go ahead and to make the best use of the land. It is more appropriate in this instance to re-structure the tree

planting and landscaping to complement the new development, than to prioritise the retention of unremarkable and immature trees and compromise the developability of the site.

28. Policy LAND 2 of the Natural Resources and Waste Plan seeks three trees to be planted for every tree removed, which would mean some 162 new trees. This standard needs to be approached with a degree of pragmatism because of its potential to compromise the ability to make the best use of land where sites are allocated for development. The scheme proposes 91 new extra heavy standard trees within the body of the site, of which 12 would be of large ultimate size with commensurate visual impact. In addition, the native scrub mix on the western boundary would contain 456 specimens of tree species. Some of these would not survive because of competition for space, but even if a quarter were to grow to maturity, these together with the 91 heavy standard trees would greatly exceed the objectives of Policy LAND 2. The trees proposed for the food store car park and the internal spaces should not be accorded less importance than those on the periphery of the site; they would be important in the views of visitors to the food store and residents of the older persons' accommodation. The new tree planting would ultimately soften the appearance of the development and provide ample green infrastructure.
29. Of the retained trees, six would be pruned. However, pruning would be necessary in connection with any suitable form of development on this allocated site to allow the best use to be made of the land. There would also be some excavation into the root protection areas of five trees. The recommendations of BS5837:2012 are acknowledged but the Appellant's evidence in respect of the specific incursions satisfactorily demonstrates that the degree of intrusion would be minor and would not harm the long-term viability of the trees. The retained and newly planted trees would be satisfactorily protected during construction and this is the subject of a condition.
30. In respect of biodiversity, the provisions for net gain contained in the Environment Act are not applicable in this case because the application was submitted in 2023. Core Strategy Policy G9 seeks an overall net gain for biodiversity but is silent on how it is calculated or whether it should be on-site or off-site. The Council's "Guidance for Developers to Achieve Net Gain for Biodiversity in Leeds" seeks 10% net gain on-site, but indicates that where off-site delivery of biodiversity net gain is provided it needs to be delivered in the same locality as a development proposal. This is however guidance only and does not carry the same weight as the development plan.
31. The scheme originally achieved 14% biodiversity net gain, but a change in the tree and landscape plan agreed by the arboricultural experts of both parties turned the gain into a net loss of 8.85% from the baseline value, according to calculations based on the Defra-approved metric. Since the change arose from the agreement of tree experts, and the fundamentals of the scheme were unaltered, this outcome needs to be treated with considerable caution. The result of the calculation appears to have been very sensitive to inputs at the margin: for example the proportion of native tree stock, which can be directly influenced by the planting and landscaping plan; whether the existing trees are of significant stature, which is a matter of judgement; and whether the proposed trees included in the mixed scrub should be counted towards the biodiversity calculation. In my assessment the great majority of trees on the

site are neither of importance nor of significant stature and apart from certain groups the tree cover is far from continuous across the site. There is no obvious reason why the trees proposed for the mixed scrub area should not be counted towards the biodiversity calculation. Moreover, the details of landscaping which are required by Condition 33 could influence the biodiversity value of the scheme.

32. This is an allocated redevelopment site in an urban area. Making the best use of the site will inevitably result in the loss of some existing habitats. These include the large area of unused and unkempt grass near the hotel; bramble scrub, symptomatic of an under-used site; and the unmanaged and woodland and urban trees, mostly of limited significance, which require proper management, felling and re-planting both to allow for an efficient development layout and to secure their long-term healthy future. Thus the very factors that need to be addressed to bring about the best use of the site and secure its long term landscaping quality and contribution towards biodiversity are those that have resulted in the putative loss of biodiversity, according to the calculation.
33. Nevertheless, the Appellant has offered to contribute towards biodiversity enhancement off-site. The Council's guidance requires any compensatory off-site biodiversity measures to be provided close to the site. The Appellant does not control available land nearby but has offered to purchase biodiversity units from a habitat bank in the district. However, the Council does not have a such a scheme. There is one in Harrogate, but the Council does not consider it appropriate for the scheme to contribute to biodiversity provision in another district, despite it being relatively close.
34. Given my comments on the caution that should be exercised over the biodiversity calculation, the relatively small percentage biodiversity loss if that evidence were taken at face value, and the difficulty in agreeing off-site compensatory measures, it would be unreasonable and disproportionate to impose a pre-commencement Grampian condition requiring Council approval for a biodiversity net gain management plan which would include the arrangements for off-site provision. It would hold up this beneficial development if no agreement were reached on the terms of the plan, which seems likely from the Council's stance on off-site provision. No such condition is therefore attached to this permission. Nor is it necessary to have a separate unilateral undertaking to the same end.
35. Rather, it is sufficient to rely on the proposed landscaping and tree planting on site, and the biodiversity measures described in the list of conditions. These would have real and tangible long-term benefits notwithstanding the outcome of the metric calculation.
36. As a result of this decision, the requirements of the s106 agreement dated 7 November 2024 in respect of the Biodiversity Commencement Date, Biodiversity Gain Monitoring Contribution and BNG Management Plan have no effect. They are not reasonable and are unnecessary for the development to go ahead.
37. The scheme would accord with Core Strategy Policies LD1, SP13, P10 and P12 and G1, and UDP Policy N19, and Policy LAND 2 of the Natural Resources and Waste Plan, which together aim to ensure that development respects green

infrastructure. The theoretical calculated biodiversity shortfall against the objectives of Policy G9 would be far outweighed by the benefits of the scheme.

*Issue e: the effect of the scheme on the living conditions of existing and future residents*

38. Homes adjoin the site in Boston Road, Grange View, Micklethwaite View, Micklethwaite Grove and Ings Walk. In all these cases, there would be an adequate distance between the proposed buildings and the existing homes and the development would not appear overbearing.
39. As regards potential noise and disturbance, the loading bay and air management plant would be at the back of the foodstore, relatively near the gardens of homes in Micklethwaite Grove. However, there would be a planted buffer area between the development and the gardens, and the loading bay would be at a lower level and shielded by an acoustic fence. The air management plant would be similarly shielded. Conditions are attached to this decision which require the implementation of the submitted noise mitigation scheme; deliveries to be carried out in accordance with the submitted noise mitigation plan; plant noise to be restricted to background levels when measured at noise sensitive premises; and deliveries to the foodstore to be restricted to between 08:00 and 20:00 hours Monday to Saturday, and 10:00 and 18:00 hours on Sunday. Evidence submitted to the inquiry indicates that deliveries would take place only once or twice a day. With these conditions in place, the living conditions of nearby residents would be protected.
40. The scheme breaches a number of aspects of the Council's Neighbourhoods for Living Supplementary Planning Document (SPD) in respect of the independent living units' garden sizes, the proximity of care home windows to the boundary, and the location and depth of private defensible space. Some of the outdoor areas would be shaded and next to the parking area. However, the SPD does not address the requirements of a community for older persons. For such developments, it is reasonable to expect outdoor space to reflect the needs and priorities of their residents, who would not necessarily place as much importance on private garden size, layout and dimensions as would the residents of houses designed for the general market. In the appeal scheme, the gardens of the independent living units would be fit for their purpose; the area around the care home would be managed space; internally the scheme has been designed in the context of the guidance of Department for Health "Care Homes for Older People - National Minimum Standards" and the occupancy of different rooms within the care home would be arranged according to the needs of different residents. The intended operators of the care home are very experienced in their field. For these reasons the divergence from the SPD is not considered significant.
41. The scheme would be well-designed and appropriate to its purpose as a development for older persons' accommodation, and would thus accord with Policy P10 of the Core Strategy and Policy GP5 and BD5 of the UDP.

*Other Matters*

*Highways*

42. Various highway improvements would be undertaken as part of agreements under s278 of the Highways Act and s106 of the Town and Country Planning

Act, the latter completed on 7 November 2024. These include the provision of widened footways, a portion of shared footway/cycleway, a signalised crossing on Boston Road and real time information boards at the bus stops nearest to the site. Whilst necessary for the development to go ahead, these measures would bring wider benefits for pedestrians, cyclists and bus users. There would also be a relocated site access with a ghost right turning lane, and a contribution towards alleviating the cumulative impact of development-related traffic in the area.

#### *Employment and economic benefits*

43. The scheme would bring economic benefits to the area in the form of nearly 140 full time equivalent jobs and another 40 to 50 indirect jobs.

#### **Conditions**

44. A schedule of 40 conditions is attached to this decision. The conditions and the reasons for them were discussed at length in the inquiry and do not need to be elaborated on here. The schedule was amended in the light of my comments at the inquiry and agreed between the parties. I have simplified and combined some conditions in the interests of effectiveness and clarity, and have removed unnecessary prescription. The conditions cover phasing, contamination remediation, construction environmental management, ecological measures, parking, servicing and electric vehicle charging, highway works, energy generation and performance, water consumption, accessibility, materials, ancillary details such as ventilation, rainwater goods and lighting, hours of operation, trees, landscaping and levels, archaeology, drainage and noise. They are all necessary to enable the development to go ahead.
45. Nearby residents will be particularly interested in several conditions which are designed to protect their living conditions. These are Condition 13, which requires a car parking and servicing management plan to be produced with the purpose of controlling deliveries, servicing and parking; Condition 14, which reserves parking spaces for 2, 4 and 6 Micklethwaite View and 2, 4, 6 and 8 Grange View, and associated visitor parking; Condition 15, which controls important aspects of construction to limit its impact; Condition 28, which controls lighting and vents; Conditions 29 and 30, which restrict opening hours and delivery times; and Conditions 38, 39 and 40, which seek to mitigate and control noise from the development when in operation.

#### **Conclusions**

46. The scheme would provide homes to meet the growing need for, and undersupply of, housing for older people, for which there is very clear evidence, in accordance with the objectives of Core Strategy Policies H4, Site Allocations Plan Policies HG2 and HG2-20 and the National Planning Policy Framework. It would not materially harm the housing land supply position in Leeds and would not impair the ability to deliver the housing requirement set out in Core Strategy Policy SP6 or the distribution of housing in Policy SP7.
47. The proposed food store would bring benefits in terms of greater competition and choice of outlet. The degree of local support and the clear evidence of overtrading in other Wetherby stores are strongly indicative of an unfulfilled retail need which has not been addressed through any recent development plan document. The scheme would pass the sequential and impact

assessments sought by Core Strategy Policy P8 and the vitality and viability of Wetherby town centre would not be harmed. The scheme would not undermine the centres-first approach in Core Strategy Policy SP1, SP2 and SP8.

48. The development would protect designated heritage assets, in accordance with Core Strategy Policies G1, P10 and P11, UDP Policies GP5, N14 and N19 and Wetherby Neighbourhood Plan Policies ENV1 and H2, which together aim to ensure that development is appropriate to its context, respects the character of its surroundings and protects heritage assets. The very minor harm to the setting of Grange View would be significantly outweighed by the public benefits of the scheme.
49. The proposal would accord with Core Strategy Policies LD1, SP13, P10 and P12, and UDP Policies N19 of the UDP, and Policy LAND 2 of the Natural Resources and Waste Plan which together aim to ensure that development respects green infrastructure. The evidence for a biodiversity shortfall must be treated with caution, but even if the shortfall indicated by the metric calculation were taken at face value, the loss of biodiversity would be limited and the conflict with Policy G9 would be far outweighed by the benefits of the scheme.
50. Subject to the attached conditions, the living conditions of nearby residents would be protected. The scheme would be well-designed and appropriate to its purpose as a development for older persons' accommodation and would accord with Policy P10 of the Core Strategy and Policy GP5 of the UDP.
51. The highways improvements, whilst necessary for the development to go ahead, would provide wider benefits for pedestrians, cyclists and bus users and the scheme would bring employment and economic benefits.
52. The scheme would make very good use of an allocated, brownfield site within the urban area, in accordance with Core Strategy Policy SP1, to deliver old persons' housing and a food store, for which there is a clear need. The many benefits of the scheme far outweigh the scheme's conflict with Policy GP1 of the 2006 UDP which resists land uses on site allocations other than those for which the site was specifically allocated. The proposal would accord with the development plan as a whole.
53. I have taken into account all the other matters raised but they do not alter the balance of my conclusions. For all the above reasons, the appeal is allowed.

*Jonathan Bore*

INSPECTOR

## **ANNEX 1**

### **Housing land supply and the contribution of the Care Home to housing supply on the site allocation**

1. Leeds has 7.7 years' supply of housing based on the Core Strategy housing requirement, or 6.1 to 6.3 years based on local housing need and the standard method calculation (the Core Strategy being over 5 years old), though the latter figures are not fully representative of the current supply position, which has not yet been updated.
2. There are two approaches that can be taken towards evaluating the numerical contribution to housing delivery from the care home.
3. The first is to recognise that each of the units is a home for someone to live, and to count them in full towards the indicative delivery figure for the housing allocation. Taking this approach, the scheme would deliver 92 dwellings as a headline figure, including 84 care home units and 8 independent senior living homes. Added to the 7 already provided elsewhere on the allocated site, the total housing provision on the allocated site would amount to 99, or 115% of the indicative site capacity in Policy HG2-20.
4. The second approach is to carry out the kind of exercise that would be undertaken for 5 year housing land supply purposes, having regard to the approach in Planning Practice Guidance. This would use the ratio of 1.58 care home rooms to every dwelling released for new occupation, a ratio derived from a census-based headship rate. Taking this approach the housing delivery figure would be 61 homes on the appeal site and 68 on the allocated site, which is 79% of the indicative capacity. However, there is no explicit support for such discounting in Policy HG2-20, despite its reference to older persons' housing.
5. There is no adequately-evidenced justification for adjusting this ratio to 2:1, as suggested by the Council, to discount homes released outside the local authority area. Such an approach would appear inconsistent with that taken towards new homes generally, which are fully counted towards housing provision wherever their new occupiers come from and wherever a previous home might have been released.

## **ANNEX 2**

### **Conditions**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the approved plans listed in the plans and specifications below:

Site Location Plan/Red Line/OS Plan 2808 P402B 08.03.2023

Care Home Proposed Ground Floor Plan 22384-CWA-ZZ-XX-A-03102-6  
08.03.2023

Care Home Proposed First Floor Plan 22384-CWA-ZZ-XX-A-0311P-6  
08.03.2023

Care Home Proposed Second Floor Plan 22384-CWA-ZZ-A-0312P-7  
21.03.2023

Care Home Proposed Third Floor Plan 22384-CWA-ZZ-A-0313P-7  
21.03.2023

Care Home Proposed Roof Plan 22384-CWA-ZZ-A-03142-6 08.03.2023

Care Home Proposed Elevations Sheet 1 22384-CWA-ZZ-DR-A-0315P-6  
08.03.2023

Care Home Proposed Elevations Sheet 2 22384-CWA-ZZ-DR-A-0316P-6  
08.03.2023

Care Home Proposed Elevations Sheet 3 22384-CWA-ZZ-DR-A-0317P-6  
08.03.2023

Care Home Proposed Sections 22384-CWA-ZZ-DR-A-0318P-6 08.03.2023

Proposed Ground and first floor plan(s), food store 2808 P101D  
08.03.2023

Proposed Roof Plan 2808 P103B 08.03.2023

Proposed elevation(s) 2808 P201C 08.03.2023 LPA

Sections/Cross Sections 2808 P310A 08.03.2023

Proposed Sections 12, 13 and 14 2808 P306A 17.09.2024

Proposed Sections 15, 16 and 17 2808 P307A 17.09.2024

Drainage Strategy (food store) 21638-DR-C-0100-1P10 08.10.2024

Drainage Strategy (care home and senior living units) 21638-DR-C-0100-2P10 08.10.2024

Permeable Construction Plan 21638-DR-C-0102P2 08.10.2024

Existing and Proposed Sections 1, 2 and 3 2808 P302A 17.09.2024

Existing and Proposed Sections 4, 5 and 6 2808 P303A 17.09.2024

Existing and Proposed Sections 7, 8 and 9 2808 P304A 17.09.2024

Sections/Cross Sections 2808 P305A 17.09.2024

Proposed Springfield Site Plan 22384-CWA-ZZ-DR-A-0301-10P-14  
16.08.2024 HT1

Proposed Plans/ Elevations 22384-CWA-ZZ-XX-DR-A-0320P14  
16.08.2024 HT1

Proposed Elevations 22384-CWA-ZZ-XX-DR-A-0321P14 16.08.2024 HT2

Proposed Plans/ Elevations 22384-CWA-ZZ-XX-S-DR-A-0322P10  
18.08.2023 HT3

Proposed Plans/ Elevations 22384-CWA-ZZ-XX-S-DR-A-0323P10  
18.08.2023

Proposed Site Sections 22384-0303P-15 08.10.2024

Proposed Site Plan – Master Plan 2808 P403V 17.09.2024 GA Proposed  
Site Plan – Master Plan Contours 2808 P409B 17.09.2024 LPA

Proposed Lidl Site Plan 2808 P411L 17.09.2024

Proposed Lidl Boundary Treatment 2808 P413C 18.08.2023

Proposed Lidl Surface Treatment 2808 P414E 17.09.2024

Landscape Plan (food store) R/2631/1L 31.10.2024

Overall Landscape Masterplan R/2631/2R 31.10.2024

Proposed Access Arrangement Drawing 21/302/TR/002 REV E 30.08.2024

Footway Improvements Drawing 21-302-TR-005 REV E 30.08.2024

Tree Removal Plan (Existing Layout) SJA TRP 23568-051a 31.10.2024

Tree Removal Plan (Proposed Layout) SJA TRP 23568-052c 31.10.2024

Tree Protection Plan SJA TPP 23568-041e 31.10.2024

3. Prior to occupation of the food store hereby approved, the care home and senior living units shall be constructed and made available for use.
4. A plan showing the anticipated phases of the development shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. Phases of the development shall thereafter be carried out in accordance with the submitted plan, unless otherwise approved in writing by the local planning authority, and any reference to 'phase' or 'phases' in the conditions below shall refer to the phases detailed in the plan thereby approved.
5. No development including demolition shall take place until a Stage II report in respect of land contamination taking into account the findings of the Phase I Desk Study report (Report C9299, rev D dated February 2023) has been submitted to and approved in writing by the local planning authority. Where remediation measures are shown to be necessary in the Phase II report and/or where soil or soil forming material is being imported to site,

development (excluding demolition) shall not commence until a remediation strategy demonstrating how the site will be made suitable for the intended use has been submitted to, and approved in writing by, the local planning authority. The remediation strategy shall include a programme for all works and for the provision of verification reports. All reports shall be prepared and approved by a suitably qualified and competent person.

6. If remediation is unable to proceed in accordance with the approved remediation strategy, or where significant unexpected contamination is encountered, the local planning authority shall be notified in writing immediately and operations on the affected part of the site shall cease. The affected part of the site shall be agreed with the local planning authority in writing. An amended or new remediation strategy and/or soil importation strategy shall be submitted to and approved in writing by the local planning authority prior to any further remediation works which shall thereafter be carried out in accordance with the revised approved strategy. All reports shall be prepared and approved by a suitably qualified and competent person.
7. Remediation works shall be carried out in accordance with the approved remediation strategy. On completion of those works, a verification report shall be submitted to the local planning authority in accordance with the approved programme. The site or phase of a site shall not be brought into use until such time as all verification information has been approved in writing by the local planning authority. All reports shall be prepared and approved by a suitably qualified and competent person.
8. Prior to the commencement of any phase of development a construction environmental management plan (CEMP) shall be submitted to and approved in writing by the local planning authority in respect of that phase. The CEMP shall put in place measures to retain and protect the biodiversity habitat units and biodiversity hedgerow units as shown to be retained on site in Ecological Impact Assessment Report No: 14802\_R01e (Revision E), 18 August 2023, by Tyler Grange Group Ltd and include the following: a) risk assessment of potentially damaging construction activities; b) identification of "biodiversity protection zones"; c) measures to avoid or reduce impacts during construction; d) location and timings of sensitive works to avoid harm to biodiversity features, including nesting birds, bats, amphibians and hedgehogs; e) the times during construction when specialist ecologists need to be present on site to oversee works; f) the role of a responsible person (Ecological Clerk of Works) and lines of communication; g) the use of protective fences (to BS 5837), exclusion barriers and warning signs. The approved CEMP in respect of each phase of development shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.
9. No works shall commence to building B01 (as defined in Appendix 2 of the Ecological Impact Assessment ref. 14802\_R01e\_BP\_CWE dated 18 August 2023) unless the local planning authority has been provided with either: a) the mitigation method statement and licence issued by Natural England pursuant to regulation 53 of the Conservation of Habitats and Species Regulations 2010 authorising the specified activity to go ahead; or b) (Where a Low Impact Class Licence is used) a copy of the site registration

form, licence return and the confirmation e-mail from Natural England that the site has been registered, together with a statement from the appointed ecologist of the proposed mitigation and compensation roosting features; or c) a statement in writing from an appropriately qualified ecologist to the effect that it does not consider that the specified activity will require a licence. Works shall be carried out in accordance with the subsequently approved details.

10. Prior to the commencement of development of any phase, a plan shall be submitted to and approved in writing by the local planning authority of integral bat roosting and bird nesting features (for species such as House Sparrow and Swift) within buildings within that phase. The agreed plan shall show the number, specification of the bird nesting and bat roosting features and where they will be located, together with a timetable for implementation and commitment to being installed under the instruction of an appropriately qualified bat consultant. All approved features shall be installed prior to first occupation of any building within that phase on which they are located and retained thereafter.
11. Prior to the commencement of development, a method statement for the control and eradication of Cotoneaster shall be submitted to and approved in writing by the local planning authority. The method statement will include post-treatment monitoring of the site to ensure a continuous 12-month period of time occurs where none of the species is identified growing on the whole site. If any Cotoneaster is identified as growing on-site during the 12-month monitoring period then treatment shall resume and continue until a continuous 12-month period during which none occurs. The agreed method statement shall thereafter be implemented in full.
12. Each phase of development shall not be occupied until all areas shown on the approved plans to be used by vehicles, including roads, footpaths, cycle tracks, loading and servicing areas and vehicle parking space within that phase have been fully laid out, surfaced and drained such that loose materials and surface water does not discharge or transfer onto the highway. These areas shall not be used for any other purpose thereafter.
13. Each phase of development shall not be occupied until a car park and servicing management plan for that phase has been submitted to and approved in writing by the local planning authority. The plan shall include the control and management of deliveries and servicing, duration of stay, means of monitoring and control of parking, and allocation of parking to different uses within the development. The development shall thereafter be operated in accordance with the approved plan.
14. The parking to the senior living homes (and associated visitor parking), to numbers 2, 4 and 6 Micklethwaite View (and associated visitor parking), to numbers 2, 4, 6 and 8 Grange View (and associated visitor parking) and care home hereby approved as show on the approved masterplan (drawing no. 2808 P403, rev. V) shall remain designated as such, for the residents of the associated dwellings and residents, staff and visitors of the care home, for the lifetime of the development.
15. Prior to the commencement of each phase of development, a construction method statement in respect of that phase shall be submitted to and approved in writing by the local planning authority. The approved statement

shall be adhered to throughout the construction period. The statement shall provide for: (i) the parking of vehicles of site operatives and visitors; (ii) details of access, storage, parking, loading and unloading of all contractors' plant, equipment, materials and vehicles including workforce parking; (iii) storage of plant and materials used in constructing the development; (iv) the erection and maintenance of security hoarding where appropriate; (v) wheel washing facilities; (vi) measures to control the emission of dust and dirt during construction including those generated by vehicles; (vii) interim and temporary drainage measures during demolition and construction, and full details of persons responsible for maintaining such temporary systems; (viii) a scheme for recycling/disposing of waste resulting from construction works; and (ix) details of construction hours.

16. Prior to occupation of each phase of the development, electric vehicle charging points shall be implemented to car parking spaces as indicated 'EV' on the approved drawing no. 2808 P403 Rev V. The facilities will thereafter be retained as such for the lifetime of the development.
17. Works above the ground floor slab level in each phase shall not commence until full details of cycle and motorcycle parking and facilities in respect of that phase have been submitted to and approved in writing by the local planning authority. The approved cycle and motorcycle parking and facilities shall be provided prior to first occupation of the development and retained thereafter for the lifetime of the development.
18. The disabled parking shown on the approved plans shall be laid out prior to first occupation of any phase within the development and retained for the life of the development.
19. Prior to occupation of the development, the off-site highway works for the site access as shown in principle on plans 21/302/TR/002 Rev E and shall be fully delivered.
20. Prior to commencement of the development, details of the off-site highway works for footway widening on A58 and Boston Road, shown indicatively on plan 21-302-TR-005E, and provision of a signalised pedestrian crossing on Boston Road shall be submitted and approved in writing by the local planning authority, along with a road safety audit for these works, and the works shall be completed in accordance with the approved details prior to the first occupation of the development.
21. Each phase of the development hereby permitted shall not be occupied until details for the provision of bin stores (including siting, materials and means of enclosure) and (where applicable) storage of wastes and access for their collection within that phase shall be submitted to and approved in writing by the local planning authority. The approved measures shall be implemented in full before the use commences and shall be retained thereafter for the lifetime of the development.
22. Prior to the first use of each phase of the development, details and specifications of the proposed solar photovoltaic panels and air source heat pumps shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

23. Prior to construction of the food store and care home, specification details demonstrating the BREEAM standard of 'excellent' for the development, shall be submitted to, and agreed in writing by the local planning authority. The development shall be carried out in accordance with details as agreed, unless otherwise agreed in writing by the local planning authority.
24. Within six months of the completion of construction of the food store, an assessment/certification demonstrating the BREEAM standard of 'excellent' for the development has been achieved, shall be submitted to, and agreed in writing by the local planning authority.
25. Prior to the construction of the care home and senior living dwellings, details demonstrating compliance with a water standard of 110 litres per person per day shall be submitted to and agreed in writing with the local planning authority. Where this standard is not met, detailed justification shall be provided for this departure. The development shall be carried out in accordance with the approved details.
26. Prior to the construction of the senior living dwellings, full details shall be submitted to and approved in writing by the local planning authority of the dwellings which meet M4(2), M4(3) wheelchair adaptable dwellings and M4(3) wheelchair accessible dwellings standard, as set out in Part M Volume 1 (Approved Document) of the Building Regulations 2010. The approved details shall be implemented prior to occupation and retained thereafter.
27. Construction of external walls and roofing to any building subject of this permission shall not take place until details including samples have been submitted to and approved in writing by the local planning authority. The walls and roofs shall be constructed from the approved materials.
28. Prior to the construction of any phase of the development, details of windows and door openings, boiler vents, flues and other means of ventilation, rainwater goods and external lighting proposed within that phase shall be submitted and approved in writing by the local planning authority. The scheme shall be implemented and retained in accordance with the approved details.
29. Opening hours of the food store hereby permitted shall be restricted to 08:00 hours to 22:00 hours Monday to Saturday, and any six consecutive hours between 10:00 and 18:00 hours on Sundays.
30. Deliveries to the food store hereby permitted shall take place between 08:00 and 20:00 hours Monday to Saturday, and during opening hours on Sundays.
31. No works shall commence (including any demolition, site clearance, ground works or drainage etc.) until all existing trees, hedges and vegetation shown to be retained on the approved plans are safeguarded in accordance with a written arboricultural method statement submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved method statement and monitored by a suitably qualified arboriculturist or suitably qualified person. No equipment, machinery or materials shall be used, stored or burnt within any protected area. Ground levels within these areas shall not be altered, nor any excavations undertaken including the provision of any underground

services/drainage, without the prior written approval of the local planning authority.

32. Within 5 years of occupation, no approved retained tree, hedge or bush shall be cut down, uprooted or destroyed nor any tree be pruned, topped or lopped or suffer root severance other than in accordance with the approved plans and particulars without the prior written approval of the local planning authority. In the event of any such works being carried out, a replacement planting scheme, including timescale for its implementation, shall be submitted to and approved in writing by the local planning authority, and thereafter implemented in accordance with the agreed timescale.
33. Each phase within the development hereby permitted shall not be occupied until full details of both hard and soft landscape works, including a landscape management plan and an implementation programme for that phase, have been submitted to and approved in writing by the local planning authority. All hard and soft landscaping works shall be carried out in accordance with the approved details and completed in accordance with the implementation programme.
34. Development shall not commence within any phase until details of gradients and existing and proposed ground levels associated with gardens, access paths, drives and parking areas associated with the approved development within that phase have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
35. If within a period of five years of the completion of the landscaping of any phase, any tree, hedge or shrub, or any replacement, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree, hedge or shrub of the same species and size shall be planted in the same location no later than the first available planting season, unless otherwise agreed in writing by the local planning authority.
36. No development shall take place until a programme of archaeological recording has been carried out by an appropriately qualified and experienced archaeological organisation or consultant, in accordance with a written scheme of investigation submitted to and approved in writing by the local planning authority.
37. The development shall be undertaken in accordance with the approved Drainage Impact Assessment (ref. 21638-DIA-001, Rev C). The works shall be fully implemented in accordance with the approved scheme before the development is brought into use.
38. The recommended mitigation scheme for noise protection, as per report NIA/10310/22/10484/v3 (dated 17.8.23, submitted 18.3.23) shall be implemented in full prior to the occupation of the care home and any dwelling, and prior to first operation of the food store, and shall be retained thereafter.
39. Deliveries to the food store shall be carried out in accordance with the 'Delivery Noise Management Plan', Appendix D of report NIA/10310/22/10484/v3 (dated 17.8.23, submitted 18.3.23) for the lifetime

of the approved development, unless otherwise agreed in writing with the local planning authority.

40. Before development takes place, details of fixed plant and equipment including extract ventilation and air conditioning systems shall be submitted to and approved by the local planning authority. The systems shall be installed and maintained in accordance with the approved details and retained for the lifetime of the development unless agreed in writing by the local planning authority. Noise from fixed plant and equipment including extract ventilation and air conditioning systems and activities within the external areas serving the food store shall be limited to a level no higher than the existing background noise level (L90) when measured at noise sensitive premises, with the measurements and assessment made in accordance with BS4142:2014.

## **APPEARANCES**

### FOR THE APPELLANT:

Sasha White KC, instructed by Thomas Willshaw of Lichfields

#### **He called:**

|                                                 |                       |
|-------------------------------------------------|-----------------------|
| Jonathan Wallace BA (Hons) MSc MRTPI            | Lichfields            |
| Nick Bridgland MA (Hons) MA FSA Scot IHBC MCIfA | Lichfields            |
| Matthew Usher BA (Hons) March PGDip             | Corstorphine & Wright |
| Simon Jones Dip Arb (RFS) FARborA RCarborA      | SJAtrees              |
| Stuart Lumb                                     | Rollits LLP           |

### FOR THE LOCAL PLANNING AUTHORITY:

Martin Carter, Barrister, instructed by Amy Davis, Leeds City Council

#### **He called:**

|                                         |                    |
|-----------------------------------------|--------------------|
| Adam Harvatt BA (Hons) BSc MSc          | Leeds City Council |
| Clare Wallace BA (Hons) MA,             | Leeds City Council |
| Helen Tipping BA (Hons) DipLA CMLI      | Leeds City Council |
| Matthew Brook BA (Hons) MA PGCert MRTPI | Leeds City Council |
| Stella Spriggs BA (Hons) MA             | Leeds City Council |

### INTERESTED PARTIES:

Mark Beattie, local resident

Cllr Alan Lamb, local councillor, ex-chairman of Wetherby NP (who also read a statement on behalf of Mr Catton of Wetherby Civic Trust)

Cllr Mulhall, Wetherby town councillor

## **DOCUMENTS**

CD1.01 to CD1.88: Application documents and plans on which the local planning authority made its decision

CD2.01 to CD2.03: Committee report and decision notice

CD3.01 to CD3.07: National and local planning policy and other guidance

CD4.01 to CD4.08: Other local planning documents

CD5.01 to CD5.03: National policy and guidance

CD6.01 to CD6.54: Appeal documents

CD7.01 to CD7.07: Appellant proofs

CD8.01 to CD8.10: Leeds City Council proofs

CD9.01 to CD9.07: Interested party representations

ID01 to ID17: Documents submitted during the inquiry

## **PLANS**

As per the list in Annex 2 Condition 2 of this decision.