

Application Number: 20/10481 Full Planning Permission

Site: SITE OF THE RISE AND THREE NEIGHBOURING
PROPERTIES, STANFORD HILL, LYMINGTON SO41 8DE

Development: Demolition of existing buildings and the erection of 44 sheltered
apartments for the elderly with associated access, mobility scooter
store, refuse bin store, landscaping and 34 parking spaces.

Applicant: Renaissance Retirement Limited

Agent: Pegasus Planning Group Ltd

Target Date: 04/08/2020

Case Officer: Stephen Belli

Extension Date: 09/09/2020

1 SUMMARY OF THE MAIN ISSUES

The key issues are:

1. Principle of development, sustainability and wider policy implications including affordable housing and other development related contributions
2. Highway access/egress and parking
3. Impact on local character, appearance and setting of designated Heritage Assets, including matters relating to site layout and design
4. Impact on local residential amenities
5. Biodiversity on-site and off-site ecological mitigation
6. Nitrate neutrality and potential ecological harm
7. Surface water drainage

This application is to be considered by Committee because of the differing views of the Town Council.

2 SITE DESCRIPTION

The application site lies roughly on a north-south alignment and adjoins the A337 road known locally as Stanford Hill, located within the built-up area of Lymington and within the identified settlement boundary as set out in the NFDC Local Plan Part 2. The site is located within 300 metres to the north east of Lymington High Street. The site lies immediately adjacent to the Lymington Conservation Area the boundary of which runs along the party boundary with Bucklers Court a development of sheltered housing built in the early 1990s on land formerly occupied by a builder's yard. The Conservation Area doglegs along the eastern boundary of the property known as The Rise (one of four dwellings currently occupying the site). Bucklers Court comprises a 2 to 2.5 storey building block extending along the

highway with development in depth running to the rear of the site. The current development site occupies a prominent and elevated position on the edge of the Conservation Area with a pronounced drop in levels as one proceeds in a southerly direction away from the High Street and on towards Pennington.

The site at present is occupied by four detached dwelling houses of varying 20th century age of 1.5 to 2.5 storey height all fronting onto the highway with individual vehicular access points. To the east of the site lies further residential development. To the west lies an open green area fronting the A337 with a further modern estate development well set back beyond the green. To the north-west of the site lies an area of housing known as Highfield which is orientated to look south towards Pennington and the A337. Six of these dwellings are Listed as being of special architectural interest. The row of housing on Highfield is also included within the Conservation Area.

The site occupies a transition area between the higher density development to the north in the Conservation Area and running then into the High Street and town centre, and the lower density of individual houses occupied by the site and its general environs. Each of the dwellings contained within the site has an extended linear garden running to the east away from the road of some 25-40 metres in length containing a number of small trees, shrubbery and some larger boundary trees.

3 PROPOSED DEVELOPMENT

The proposed development is for full planning permission for the demolition of the four existing dwellings and the erection of a part 4 storey, part 3 storey block along the A337 with a further 3 storey block at a right angle running to the rear.

The development for sheltered housing will provide a total of 44 self-contained apartments for persons over the age of 60. The proposal is for 29 no. 2 bed apartments and 15 no. 1 bed apartments. The apartments will be provided with a total of 34 car parking spaces (including visitor spaces) arranged in a linear strip along the road in one block of parking, with a further rear courtyard in the north eastern corner of the site. The car parking areas will be accessed via two new access points with a one way in and out system. The access into the site will be directly adjacent to the Bucklers Court development with an egress point onto the A337 in the southern corner of the site. The façade of the building will be faced in a mixture of mostly render with some facing brick in a neo-Georgian style with the building broken into various elements of varying height.

The applicant's agent in their planning statement set out the changes to the revised proposals presented in this application and summarise them as follows:

- Revised access arrangement to Stanford Hill;
- Loss of 1 no. apartment (and subsequently revised mix to 15 no. one-bed apartments and 29 no. two-bed apartments);
- Reduction in height and massing to the rear of the building;
- Obscure glazing introduced on terrace and landscaping enhanced to improve amenity to 'Concorde' (adjacent property);
- Proportionate increase in car parking;
- Increased landscaping;

- Revised drainage strategy to incorporate 'bio bubble' on-site treatment apparatus to reduce nitrate output.

4 PLANNING HISTORY

NFDC/92/50342 53 units of sheltered accommodation & access alts (demolish existing) (Site to north of current application site) – Approved October 1993

19/11180 – 45 apartments refused December 2019 - appeal lodged

5 PLANNING POLICY AND GUIDANCE

Local Plan 2016-2036 Part One: Planning Strategy

STR1 Achieving sustainable development
 STR2 Protection of the countryside
 STR3 Strategy for locating new development
 STR4 Settlement hierarchy
 STR5 Meeting our housing need

ENV1 Mitigating impact - International Nature Conservation sites
 ENV3 Design quality and local distinctiveness

HOU1 Housing type, size and choice
 HOU2 Affordable housing
 HOU3 Residential accommodation for older people

CCC2 Safe and sustainable travel

IMPL1 Developer contributions
 IMPL2 Development standards

Local Plan Part Two 2014

DM1 Heritage and conservation
 DM2 Nature conservation and biodiversity

Supplementary Planning Guidance And Documents

SPD Mitigation Strategy for European Sites

SPD Parking standards

SPD Housing design, density and character

SPD Lymington Local Distinctiveness

Central Government advice _

National Planning Policy Framework 2019

- Section 2 Achieving sustainable development and the tests and presumption in favour Including tilted balance
- Section 5 Delivering a sufficient supply of homes
- Section 9 Promoting sustainable transport
- Section 11 Making effective use of land including appropriate densities

- Section 12 Achieving well designed places
- Section 15 Conserving and enhancing the natural environment
- Section 16 Conserving and enhancing the historic environment

National Design Guide 2019

6 PARISH / TOWN COUNCIL COMMENTS

PAR4: Recommend Refusal.

- The proposal is over-development of the site. The development impacts on the approach to Lymington. It does not match the nearby Conservation area. The conservation report is very critical. The design quality does not support local distinctiveness. Ridge heights higher than the established make the building over-dominant. Proposed development is too bulky and large. The application proposes a structure whose mass is inappropriate on the boundary of the urban / suburban approach to Lymington, especially given the local character in proximity to listed buildings and the Conservation Area. Development is contrary to Core Strategy Policy CS2 and CS3, Policy 11 and 13 of the Emerging Local Plan Review Part 1 and the Lymington Local Distinctiveness SPD together with government advice as set out in the NPPF 2019.
- Does not meet housing needs. Does not address affordable housing needs. Will not address the needs of local older people. Whilst there is ample provision of residential accommodation for older people (Policy 18 of the new Local Plan) there is an acute shortage of affordable housing (Policy 17) in the town. Therefore Policy 17, which sets a target of 50% affordable housing, must take precedence. A development plan for this site should be able to meet the requirements of Policy 17 and make a substantial contribution, whereas this applicant proposes to make none.
- There is a surplus of housing in the area for the elderly. Lymington has a higher proportion of age 60 - 74 residents than other local areas. There is a concern that this application may draw in more people in that age bracket instead of accommodating local residents who would be moving out of housing stock locally, thereby freeing up housing stock for younger families.
- Number of parking spaces is inadequate and does not meet NFDC guidelines.
- Highways have not visited the site or taken the traffic issues into account. Concern remains over the entry and exit points onto the A337 and associated junctions nearby. There are safety issues with two streams of traffic approaching the dropped kerb entrance/exit of the development from Highfield and Lymington town.
- Trees on the site are threatened.
- There is no mitigation for existing flooding problems on Stanford Hill and Belmore Road.
- In support of NHS concerns and cannot see the benefit of this development to the local economy.

- Overbearing large building block in such close proximity to residents of Bucklers Mews, particularly no.14 and no.15. Results in a loss of privacy. Unacceptable location with dominance over property 'Concorde. Location of sub-station impinges and impacts on residents and their right to quiet living without background noise and emissions.
- The ecology report recommends refusal of the package treatment plant as it is not appropriate for mitigating nitrate and will not meet Environmental Agency regulations. Dwellings do not meet nitrate-neutral requirements. Does not support Conservation species & Habitat Reg 2017.

7 COUNCILLOR COMMENTS

No comments received

8 CONSULTEE COMMENTS

Comments have been received from the following consultees: Full details are available to view on line.

NFDC Ecologist

Initial comments – Objects as on site waste treatment plant unacceptable and contrary to guidance. Adverse impact on protected areas and nitrate neutrality not proven. Biodiversity net gain not proven (BNG); concerned regarding impact on protected bat species; bird species adequately catered for in suggested enhancement scheme.

Updated comments 18 August - I am content based on the evidence presented that the >10% BNG can be delivered on-site with the amendments made to landscaping at ground level and incorporating appropriately specified and sized green roofs – I would be willing to condition the approval of the final specification. I am likewise reassured and content that there is a suitable mechanism approach for ensuring the green roofs are maintained in the long term. I can confirm that my query with respect to bat potential in trees proposed to be felled has been satisfactorily addressed.

I will defer to you on the issue of the certainty regarding nitrate mitigation. I note that the calculations have been updated with the occupancy rates as per my e-mail of 06/08/2020 which from my perspective is accepted.

NFDC Conservation

Objected previously to earlier scheme. Noted revised proposals but maintains objections regarding impact on Conservation Area and setting of nearby Listed Buildings. See detailed response letter dated 8 June 2020.

NFDC Trees

No objections on tree grounds to this proposal, subject to condition requiring tree protection during all construction works.

The submitted Arboricultural Assessment & Method Statement by Barrell Tree Consultancy Ref: 19028-AA-PB dated 17/04/20 and accompanying Tree Protection Plan provide sufficient measures to show that these trees can be adequately protected through out the construction of this development.

Hampshire County Council Highways

No objections subject to conditions - Detailed comments set out in response letter dated 12 June 2020. In essence no objection to revised traffic access arrangements. Parking provision is a matter for the District Council to satisfy itself on. No objections on traffic generation grounds as was the case previously. Stage 1 safety audit on new access arrangements has been undertaken and any necessary changes can be dealt with via planning conditions and a later S278 Highways Agreement. Recommend conditions - Construction Management Plan, wheel cleaning scheme, car parking areas to be provided prior to occupation, all highway works completed prior to occupation including all new signage.

Hampshire County Council Lead Local Flood Risk Authority

Initial comments – objects as insufficient information has been submitted to demonstrate that surface water drainage is adequate or appropriate to serve this development. See detailed response letter dated 1 June 2020

Update comments 3 September

In summary, while we accept that there is a viable outfall, the information provided is not sufficient to demonstrate that flood risk will not be increased on or off site and therefore we consider our response to be a holding objection on the grounds of insufficient information.

Further update 24 September

No objections subject to conditions being imposed to deal with surface water issues.

Natural England

Object - On site waste water treatment plant is not acceptable particularly because of high failure rates, fluctuation in efficiency, and issues around long term management as well as potential discharges into local sewers. Nitrate neutrality not secured and impact on protected areas cannot be ruled out. Alternative mitigation proposals are therefore required.

No objection to habitat mitigation impact from additional recreational pressure subject to contributions being secured.

Biodiversity net gain should be secured on site.

Southern Water Authority

No objections subject to conditions requiring full details of foul and surface water drainage scheme to be agreed. However, package on site treatment plan is not acceptable. See detailed comments in our letter dated 4 June 2020.

9 REPRESENTATIONS RECEIVED

Objections _

21 letters received raising the following issues

- Traffic and access impact – very busy area. Development will exacerbate current problems, and congestion in the area

- Proposed new access provisions still dangerous
- Inappropriate location and design having an adverse impact on heritage assets and character of the town as you enter and leave, urban sprawl, no local distinctiveness
- Insufficient demand for this type of accommodation, Lymington is already saturated
- Impact on amenity of nearby residents from building blocks so close, overlooking and location of electricity substation, increase in noise and disturbance
- Lack of adequate health services exacerbated by additional older residents
- 'Brownfield' development of this nature should not include gardens and inappropriate redevelopment of existing dwellings.

In addition

- Lymington Society objected to earlier scheme and see no great improvement with this proposal.
- Bournemouth and Christchurch Hospitals NHS Foundation Trust consider that a contribution of £63,633.00 is required to meet additional care costs required as a direct result of any permission granted. Objection raised otherwise. Evidence provided to support their claim.

In support or neutral comments

Two letters raising making the following comments

- No real harm to Listed Buildings or Conservation Area
- Parking needs to be increased, charging points, consider needs of future residents not current, affordable housing for young families needed, concerned about infrastructure being able to cope

In addition

- Hampshire Swifts recommend appropriate mitigation be put in place in the event of an approval to encourage protected species.

10 PLANNING ASSESSMENT

The current application is a revised scheme following the refusal of application 19/11180 for 45no. dwellings issued on 20th December 2019. Members are referred to the earlier officer report which sets out the issues and reasons for refusal in full. That application is now the subject of an appeal held in abeyance awaiting the outcome of the current application. The following link can be used to access the earlier report.

<https://newforest.gov.uk/article/1051/View-or-Comment-on-a-Planning-Application>

There were 10 reasons for refusal which in brief were as follows

1. The proposal does not represent sustainable development under Paragraph 11d of the NPPF;

2. The proposed design is unacceptable by virtue of detailed design, site layout, mass, bulk, height and scale;
3. The impact on Lymington Conservation area and the Grade II Highfield listed buildings result in less than substantial harm that is not off-set by public benefits;
4. The proposed access is not safe and adequate and will result in an unacceptable impact on highway safety;
5. The relationship with neighbouring properties at Concord and Nos. 14 and 15 Bucklers Mews would result in unacceptable overlooking and overbearing impact;
6. The proposal would result in unacceptable impacts upon protected species within the site;
7. The proposals have insufficient bio-diversity enhancement and retention of existing features of nature conservation value,
8. The scheme represents a potential for adverse impact from increased nitrate discharge into the Solent and there is no appropriate assessment to demonstrate compliance with the Habitat Regulation's 2017;
9. No affordable housing is secured against the development;
10. Inadequate details to demonstrate satisfactory surface water drainage.

Principle of Development and housing policy assessment

a) General principle

The site lies in one of the largest towns in the District in what might be considered as a sustainable location within easy walking distance of a range of facilities such as retail, health care and other community facilities. The site also lies close to public transport opportunities. However, the definition of sustainable development as set out in the National Planning Policy Framework 2019 covers matters relating to environmental, social and economic development. Consequently, whilst the site is located in an area where new residential development is usually permitted this is subject to wider considerations than just the site's general location.

In their Planning Statement the applicants set out the benefits that would be derived from this development. In particular the applicants point to the current need for housing for the elderly within the Council's area, as well as helping to meet the Council's current lack of supply in general terms. The design they claim will also make a positive contribution to the appearance of the area. There will also be other related benefits such as employment during the build stage and on-site employment for those staff needed to run the facility (3 full time employees). New housing of this type may also free up other market housing albeit there is no guarantee that the new units will be occupied by local people and it is highly unlikely that any freed-up units will be affordable. There is a need therefore to balance the applicant's suggested benefits of the scheme against any adverse impacts.

b) 5-year housing land supply

The applicants contend that the Council does not have a 5 year housing land supply. Since the adoption of the new Local Plan however this position has now changed. The Council has published both a report setting out its 5 year supply and confirmation from Central Government that the Housing Delivery Test has been met with a current supply of 6.1 years. Where a LPA cannot demonstrate an adequate 5 year housing land supply then the NPPF requires a tilted balance to allow the development unless it is proven that the harm significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

c) Affordable Housing

Policy HOU2 now requires developments outside the Waterside area of 11 dwellings or over to provide 50% affordable housing on site with a tenure mix target of 70% affordable rent and 30% intermediate or affordable home ownership including shared ownership. The NPPF provides a wider definition of affordable housing which includes discount market sales and starter homes.

There are two ways in which affordable housing is normally realised i.e. on-site delivery or off-site financial contribution to acquire a serviced plot. The applicant's submission that on-site provision is difficult because of the particular housing model for assisted living is generally borne out with other schemes throughout the Council's area. That leaves consideration that an off-site financial contribution should be made. In this case the calculation for off-site contribution is of the order of £750,000.

This proposal however offers no affordable housing on site citing the difficulty of mixing tenures where sheltered housing of the type proposed is to be provided. The applicants also offer no off-site contribution either citing viability issues. The applicants have submitted a viability statement setting out their reasons. In terms of development costs the applicants point to the cost of acquiring the four properties currently occupying the site which when added to build and other costs makes the scheme not viable if affordable housing is included. Independent valuation puts the four dwellings having a total valuation of the order of £3.7million. In assessing costs the developer also includes CIL and habitat mitigation which between them amount to some £430,000

The Council have assessed the viability case through their own independent assessment. The Council's policy requirements are clear through the Local Plan policy but both the Local Plan and Government policy as expressed through the NPPF and Planning Practice Guidance recognise that affordable housing may not always be viable at the policy compliance target or indeed not at all given the development costs associated with a proposal.

The Council's advisors have produced a report which can be found on the web site in the documents list for this application. The summary of that report concludes that whilst there may be some difference of opinion on build costs, the justification put forward by the developer is generally sound. The benchmark land value, existing use value and developer's profit are all considered reasonable. Given this position Officers have concluded that the developer's case of nil affordable housing is reluctantly accepted.

d) Older person housing needs

The new Local Plan expresses an evidence based approach which indicates that the Council's area includes a population which is ageing and likely to be in need of older person accommodation both in terms of specialist housing and purpose designed housing types that allow occupiers to maintain their independence. The Plan states it is likely that over the plan period up to 2036 an increase of 12,800 persons will be over the age of 75. Policy HOU3 encourages housing types designed to be suitable for older persons be included in development proposals where appropriate, along with more specialist extra care and C2 care home type facilities. The supporting text to the policy states the significant need in this sector is likely to be more towards specialist care rather than the type of sheltered accommodation proposed here but nevertheless officers have no evidence to rebut the applicant's proposal. Anecdotal evidence from local residents who have responded to the application is not of such weight as to warrant a refusal on these grounds. The market demands will be a factor in the provision of such accommodation and this rests with the developer to ascertain.

Design, site layout and impact on local character and appearance of area

The Council has a range of policy advice covering design, local distinctiveness and local impact. Policy ENV3 has replaced the earlier Core Strategy policy CS2, and the Lymington Local Distinctiveness SPD are key considerations in this case along with Section 12 of the NPPF and the more recent Government Design Guidance.

The previous application contained the following reason for refusal

The proposal is considered to be contrary to Core Strategy Policy CS2 and CS3, Policy 11 and 13 of the Emerging Local Plan Review Part 1 and the Lymington Local Distinctiveness SPD, together with government advice as set out in the NPPF 2019, with particular reference to paragraphs 127 and 130, and Government Design Guidance. The proposal by virtue of its site layout, scale, mass, and position in a prominent location does not positively contribute to local distinctiveness and sense of place. The proposal is considered to be unsympathetic in terms of its overall design and site layout, mass, bulk, height and scale in this key and sensitive location in Lymington.

Policy ENV3 does not diminish the requirements to provide a high quality development that is appropriate in its design, scale, mass, location and sensitive to this part of Lymington.

The views of the Council's Conservation and Building Design Officer indicate that the development is not appropriate in design terms and that the amendments made do not go any near far enough to warrant a positive recommendation. Both the Case Officer and the Conservation Officer have consistently expressed the view that this size of building in this particular location is not appropriate. In addition, the chosen design represents a panoply of different design styles without any coherence and with a massive and deep floor plan extending along the site frontage and in depth into the rear verdant area of the site. The minor changes to the earlier submission do not overcome the earlier objections.

Impact on Lymington Conservation Area and Listed Buildings including their setting

The Council in assessing and determining proposals which affect the character, appearance and setting of designated heritage assets (in this case the Lymington Conservation Area and the Grade II Listed Buildings at Highfield) are required to consider the following matters under the Listed Buildings and Conservation Areas Act 1990

- S66 duty - special regard to desirability of preserving the building or its setting etc.
- S72 duty – special attention to the desirability of preserving or enhancing the character or appearance of the area

Significance of the heritage asset

Setting - wider rather than narrower meaning

Substantial harm (complete loss) – exceptional circumstances

Less than substantial harm – weighed against the public benefit

The views of the Conservation and Urban Designer are set out in his detailed consultee response. The previous application resulted in a refusal reason as follows based on the impact on heritage assets

By virtue of its scale, mass, position and height in a key location near to and impacting on the setting of Designated Heritage Assets, the proposed development fails to satisfy the statutory tests as set out in the Listed Buildings and Conservation Areas Act 1990 as set out in Section 66 and 72. The proposal does not preserve or enhance the setting of the Lymington Conservation Area or the Listed Buildings at Highfield causing less than substantial harm which is not offset by any public benefits that might accrue from the development. The proposal is considered to be contrary to Core Strategy Policy CS2 and CS3, Local Plan Part 2 Policy DM1, Policy 11 and 13 of the Emerging Local Plan Review Part 1, the Lymington Local Distinctiveness SPD, and with government advice as set out in the NPPF 2019.

The applicant's agent has rebutted the views expressed and considers the relevant assessment on impact on the significance of the heritage assets has not been properly carried out. He asserts the level of impact on the significance of the assets will be neutral. In addition, photo montages of the development and its impact have also been provided. Neither of these documents change officer views in that the significance of the assets is harmed and that the level of this harm is not outweighed by the perceived benefits of the scheme as set out in the NPPF para 196 test.

NPPF para 192 requires a LPA in determining applications to take account of in this case the desirability of new development making a positive contribution to local character and distinctiveness.

NPPF para 193 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

The NPPF provides a definition of sustainable development being one which achieves, economic, social and environmental objectives. Given the objections raised both on design grounds and in respect of the harm to the significance of designated heritage assets officers consider that the earlier refusal on the grounds that the development should not be considered as sustainable development still applies.

Highway safety, access and parking

a) Highway access and internal site layout

The previous application was refused for the following reason

The proposal is contrary to Core Strategy Policy CS2, Policy 13 of the Emerging Local Plan Review Part 1 and Section 9 and 12 of the NPPF 2019 in that it proposes an access and egress from the site which could potentially conflict with other road users given the current circulation pattern of traffic and local junction arrangements. The proposal does not demonstrate a safe and adequate access into and out of the site. It is considered that there would be an unacceptable impact on highway safety based on the plans as submitted.

The earlier scheme has now however been significantly amended to create two access points one in only and one out only very much as shown previously but with the addition of a right turn lane and alterations to the current highway to be included with the new application. The Highway Authority have been pointed to the concerns expressed but have commented that they have no objections subject to conditions and the necessary Section 278 Agreement to deal with alterations to the public highway. No objections are raised to the internal arrangements or to pedestrian and vehicular access routes, nor to provision for service vehicles such as refuse lorries.

b) Trip generation and highway capacity

The Highway Authority are satisfied that the development can be accommodated. They raised no concerns previously and this remains their position.

c) Car and cycle parking

The proposed development puts forward a total of 34 car parking spaces and no cycle parking other than within an enclosed storage area dedicated to motorised buggies. The standard for this size of development is 1 space per unit. Cycle spaces should also be provided on a ratio of 1 space per unit for long stay and 1 loop/hoop per every 2 units for short stay. The standards confirm part of the cycle parking can be dedicated to motorised buggies instead. That said some cycle parking should be shown on the plans

The Highway Authority point out that parking standards are a matter for the LPA taking into account the location and accessibility of the site to other facilities and public transport options. In this case the site is located close to local facilities and transport opportunities so an adherence to the standard is not considered essential.

Local Plan policy IMPL2 now requires electric charging points within parking areas. A reasonable number of such points should be made available to serve the development. None are shown at present.

Notwithstanding the concerns raised by the Town Council and local objectors there are no substantive highway safety grounds to refuse this amended scheme subject to the imposition of the conditions as suggested by the Highway Authority and to cover the issues relating to electric charging and cycle parking noted above. In terms of the site access the detailed Section 278 Agreement should be based on the submitted plans. Any significant variation in the details of the new access may trigger the need for a new permission or variation of condition. The Highway Authority also suggest a construction method statement and wheel cleaning facility for construction traffic along with other details.

Residential amenity

The last application was subject of a refusal reason as set out below

The proposal is considered to be contrary to Core Strategy Policy CS2 and Policy 13 of the Emerging Local Plan Review Part 1 which requires an acceptable relationship between any development proposal and its immediate neighbours and not to cause a loss of privacy, amenity or to be generally inappropriate in terms of the relationship between buildings. The proposal is also considered to be contrary to the advice contained in Section 12 of the NPPF 2019 which requires well designed places. The impact of the development is particularly unacceptable in terms of the relationship of the buildings to Concord to the south and Nos. 14 and 15 Bucklers Mews to the north east by virtue of the extent of overlooking and loss of privacy, and the closeness and oppressive impact of a large building block in such close proximity.

The applicants have sought to address the issues raised last time with this amended proposal. In particular the building closest to 14-15 Bucklers Mews has been reduced in height from a three storey building with accommodation on each floor to a single storey building with a flat roof. The impact on the properties adjoining has been markedly reduced along with any overlooking to what is now an acceptable level. That still leaves no 14 Bucklers Mews with the prospect of having a new electricity substation located less than 2 metres from the front wall of that property. This is considered un-neighbourly and creating an unacceptable amenity loss. The substation should therefore be moved and parking re-arranged if necessary. There should be a landscape buffer strip between the main car park and these two properties of at least 2 metres depth measured from the common boundary. This will also reduce noise impact of parking so close to the front elevation of the two properties and provide a better relationship.

The other property referred to in the earlier refusal reason Concord now has an improved relationship with the new development by virtue of privacy screens to balconies at first floor level. That still leaves a second lounge window to flat 33 and a bedroom window to flat 34 directly facing Concord and creating some overlooking but at the distance involved this is not considered to be so harmful as to warrant a recommendation of refusal... The applicants have shown some tree planting on this boundary and this should provide an effective screen from such a high level.

Objections have also been received from some property owners to the east on Belmore Road but given the limited windows on the rear elevation block and the 50 metre plus distance between those windows and the dwellings on Belmore Road there are no substantive grounds to object.

Subject to the above matters being resolved any impact on adjoining amenity can be considered at an acceptable level. A reason for refusal has been put forward to cover the unacceptable impact on 14 and 15 Bucklers Mews in respect of the proximity of an electricity substation and noise and disturbance from car parking close to the boundary.

Impact on trees

Members are referred to the views of the Council's Tree Officer set out below. Currently this site consists of four separate dwellings on generous garden plots. The majority of trees within these gardens are small ornamental garden species with no public amenity value. However, to the rear of High Bank is a maturing oak tree which has good form and character. To the rear of Hill View are Cedar trees,

the public amenity value of these trees is currently restricted but if this development was to be constructed then these trees would be important features to this site and therefore are considered a constraint to development.

The submitted Arboricultural Assessment & Method Statement by Barrell Tree Consultancy Ref: 19028-AA-PB dated 17/04/20 and accompanying Tree Protection Plan provide sufficient measures to show that these trees can be adequately protected through out the construction of this development.

No objections are raised by officers subject to a condition that the works are carried out in accordance with the arboricultural statement.

Notwithstanding the comments made by the Town Council there are no substantive grounds to refuse this application based on impact on trees of importance.

Ecological impact

a) Biodiversity Net Gain (BNG)

BNG essentially is measured using a DEFRA metric as the site currently exists. It is then re-measured in accordance with a development proposal. The site as developed needs to show a 10% net gain in biodiversity value over the site as exists and undeveloped. This can be achieved in a number of ways such as planting and introduction of bird and bat boxes for example. This concept has been recently introduced through the Environment Bill, and more recently through the new Local Plan and Cabinet Report of July this year which requires schemes of this size to demonstrate BNG. This has pre-empted the Environment Bill enshrining the need to demonstrate BNG into law. Policy STR1 of the Local Plan refers.

The revised proposal has provided a detailed landscaping plan and set of proposals to illustrate how BNG can be achieved. This has been the subject of consultation with the Council's ecologist who has now withdrawn his earlier objection. The BNG scheme must be implemented and maintained over a 30 year period following the completion of the development. The mechanism for monitoring it is suggested should be through either a S106 legal agreement or a Unilateral Undertaking setting out a management regime. The applicants have agreed to a long term monitoring regime with the mechanism to be confirmed in the event of an appeal against any refusal. The Council will require this to be effectively demonstrated in the event of an appeal.

b) On site protected species

In this case the existing dwellings within the site do have nature conservation importance in that there is a destruction of known bat roosts and other features which exhibit the potential for accommodating bats. The Council in determining such applications where this issue arises must engage with the Habitat Regulations. There is a separate need for a European Protected Species license to be granted prior to any works taking place.

In his earlier response to the previous application the Council's Ecologist has provided further information on another planning application case where the same issues arose to clarify the requirements and duties imposed on the planning authority or competent authority in the event of an appeal against a refusal.

The reference to Habitats Regulations in my response is in relation to the protection afforded to species which is separate from protected sites such as SPA/SAC

In reaching a planning decision, a competent authority such as the Council must have regard to the requirements of the Habitats Directive

The Directive only allows unlawful activity such as loss or disturbance of the resting places of species in cases where there are imperative reasons of overriding public interest why the operation should be carried out, and decision makers should also be satisfied that there is no satisfactory alternative, and that any action licensed will not be detrimental to the maintenance of the population of the species at favourable conservation status in its natural range. These criteria are often referred to as the 'three tests'.

1. That the purpose of the work meets one of those listed in the Habitats Regulations – in this case overriding public interest;
2. That there is no satisfactory alternative; and
3. That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status (FCS) in their natural range.

Guidance suggests that need and alternatives can be demonstrated by development being acceptable in planning terms (e.g. in accordance with policies).

These tests are also applied by Natural England when assessing an application for a Protected Species Licence - such licences are required when resting places are disturbed or destroyed by activities such as development, irrespective of whether planning consent is required or not.

In reaching a planning decision a LPA should be reasonably confident that a licence is likely to be capable of being issued.

It is advisable for a case officer to record their decision in respect of the tests, preferably as part of their report

An application for a species licence is normally required to provide evidence of how planning permission has considered the tests in order to assist Natural England's considerations.

Notwithstanding the recommendation below is one of refusal, the Council at this stage considers that the mitigation strategy put forward is acceptable and that the third test, i.e. maintenance of the population of the species concerned at a favourable conservation status can be met and that the necessary wildlife protection can be dealt with as part of a European Protected Species Mitigation Licence. The Council's Ecologist raises no objection in this regard. The on-site presence of protected bat species will require a European Protected Species Mitigation License before works can begin. The timing of the works also needs to be controlled and mitigation measures put in place to replace the lost roost facilities on site.

That said the Council at this time does not consider the Habitat Directive tests have been satisfied and will retain its reason for refusal as set out previously. The Council considers that tests 1 and 2 have not been satisfied. In the event of an appeal an Inspector will be required to carry out the duty imposed by the Directive.

In our function as a Local Planning Authority we are required to consider the likelihood of a licence being granted (by the licensing authority – Natural England

and 'have regard for the Habitats Directive'). It should be noted that Natural England applies the tests on a proportionate basis; thus the justification required increases with the severity of the impact on the species or population concerned. The roosts identified would be considered to be low conservation status. That said the first two tests still need to be complied with.

c) Habitat Mitigation and off-site recreational impact

Recreational impact from the occupiers on protected areas and species can be managed by a Unilateral Undertaking offering to pay the appropriate contributions. The applicants have agreed to do so in the event of an approval recommendation. Subject to a Unilateral Undertaking being submitted in the event of any appeal no objections are raised.

d) Nitrate neutrality and impact on Solent SAC and SPAs

In accordance with the Conservation of Habitats and Species Regulations 2017 ('the Habitat Regulations') an Appropriate Assessment has been carried out as to whether granting permission which includes an element of new residential overnight accommodation would adversely affect the integrity of the Solent Coast European sites, in view of that site's conservation objectives having regard to nitrogen levels in the River Solent catchment. The Assessment concludes that the proposed development would, in combination with other developments, have an adverse effect due to the impacts of additional nitrate loading on the Solent catchment unless nitrate neutrality can be achieved, or adequate and effective mitigation is in place prior to any new dwelling being occupied. In accordance with the Council Position Statement agreed on 4 September 2019, these adverse impacts would be avoided if the planning permission were to be conditional upon the approval of proposals for the mitigation of that impact, such measures to be implemented prior to occupation of the new residential accommodation. These measures to include undertaking a water efficiency calculation together with a mitigation package to addressing the additional nutrient load imposed on protected European Sites by the development. A Grampian style condition has been used in the past.

At the present time the Council does not have any projects in place and cannot either be certain of the level of contribution required on a pro rata basis dependant on the quantum of development proposed. It is likely the Council will not be in a position to do so until Autumn of 2020. This information has been shared with the applicant. They have declined to accept a Grampian condition because of the uncertainty created.

The applicant has responded to suggest an alternative approach using a habitat mitigation scheme that is already set up on the Isle of Wight. This works by the developer buying nitrate credits dependant on the measured impact of their scheme. The scheme then allows the developer to buy credits on the mitigation land. The land in question will be taken out of active farming and planted with woodland. This will then act as a compensatory drop in nitrate enrichment into the same catchment area on the Solent (in this case the mitigation land lies on the western part of the island facing Lymington). Such schemes have already been successfully used by developers in the Fareham Borough Council area and have been part of the extensive discussion and work that has been undertaken on nitrates through the Partnership for Urban South Hampshire (PUSH). The scheme can be regulated by a Section 106 Agreement entered into between the developer, the current application site owners, the mitigation land owner (on the Isle of Wight), the LPA, and the LPA who are the enforcing Authority which in this case is the Isle of Wight Council. A model agreement has been provided to demonstrate the principles of how this would work. Natural England have been advised of this new

approach and their response is anticipated prior to the Committee meeting, they have been party to the work through PfSH.

On the basis that such a scheme will need a separate Appropriate Assessment under the Habitat Regulations, the LPA should carry out such an Assessment. A Shadow Appropriate Assessment has been submitted by the developers Natural England has been consulted for comment though the LPA are the Competent Authority. Subject to their comments this shadow assessment could be adopted by the LPA. As the application has a number of issues that have led to a recommendation of refusal it has not been appropriate for your officers to progress the drafting of the Section 106. . The LPA whilst confirming the principle of this new approach is acceptable will need to include a reason for refusal referencing the lack of a mechanism for securing this mitigation.

Surface water drainage

Members are referred to the current holding objection of the Hampshire Local Lead Flood Authority. The applicants The applicants have discussed these matters with the LLFA and provided further details. The LLFA have now withdrawn their objection subject to conditions being imposed on any permission.

Developer contributions

As part of the development, subject to any relief being granted the following amount Community Infrastructure Levy will be payable:

Type	Proposed Floorspace (sq/m)	Existing Floorspace (sq/m)	Net Floorspace (sq/m)	Chargeable Floorspace (sq/m)	Rate	Total
Dwelling houses	4535	720	3815	3815	£80/sqm	£392,064.62 *
Subtotal:	£392,064.62					
Relief:	£0.00					
Total Payable:	£392,064.62					

11 CONCLUSION

Whilst some of the earlier reasons for refusal have now been overcome it is still considered that there are objections to the proposal based on the design, scale and mass and location of the building, together with its impact on designated heritage assets and two adjoining properties. In addition, the Council is obliged to offer reasons for refusal based on potential harm to European protected species and areas. In that regard the Council is not convinced that the benefits of the scheme in bringing housing forward is outweighed by these objections. Neither is there considered to be an overriding social benefit given the complete lack of affordable housing. The balance on this occasion is therefore judged to be one of refusal.

12 OTHER CONSIDERATIONS

Bournemouth and Christchurch NHS Trust

Throughout the preparation of the Council's Local Plan Review 2016-2036 Part One: Planning Strategy we have not received any indication from the Southampton NHS Trust of a requirement for increased service delivery based on the proposed housing delivery within the plan area. As the proposals do not meet the definition for infrastructure then any contribution would need to be secured via a S106 agreement.

For a contribution to be legally secured it would need to meet the tests of Regulation 122 of the CIL Regulations 2010 (as amended) namely:

- *necessary to make the development acceptable in planning terms;*
- *directly related to the development; and*
- *fairly and reasonably related in scale and kind to the development*

Their request states it to be required for service delivery but it is not clear how this would be achieved in relation to this specific development. The contribution requested does not appear to meet the test of Regulation 122

The response provided indicates some evidence to support their claim that a contribution of is required to make the development acceptable. The Council needs therefore to take a view on whether or not this is reasonable and required on this occasion taking into account the particular circumstances of this application and the other potential benefits that will flow from the development.

The Council considers that the development is not able to provide any off-site financial contribution towards affordable housing as the applicants consider the scheme is not viable because of other costs. The Council considers that the development is not able to provide the key policy-based requirement on this occasion and that other non-policy-based requirements should not take precedence.

13 RECOMMENDATION

Refuse

Reason(s) for Refusal:

1. The proposed development is not considered to constitute sustainable development as set out in NPPF section 2 and Policy STR1 of the New Forest Local Plan Part One: Planning Strategy (2016-2036). The proposal is limited in terms of the benefits in economic terms with no significant social benefits, and directly results in demonstrable environmental harm.

2. The proposal is considered to be contrary to New Forest Local Plan Policy (2016-2036) ENV3 and the Lymington Local Distinctiveness SPD, together with government advice as set out in the NPPF 2019, with particular reference to paragraphs 127 and 130, and Government Design Guidance. The proposal by virtue of its site layout, scale, mass, and position in a prominent location does not positively contribute to local distinctiveness and sense of place. The proposal is considered to be unsympathetic in terms of its overall design and site layout, mass, bulk, height and scale in this key and sensitive location in Lymington.
3. By virtue of its scale, mass, position and height in a key location near to and impacting on the setting of Designated Heritage Assets, the proposed development fails to satisfy the statutory tests as set out in the Listed Buildings and Conservation Areas Act 1990 as set out in Section 66 and 72. The proposal does not preserve or enhance the setting of the Lymington Conservation Area or the Listed Buildings at Highfield causing less than substantial harm which is not offset by any public benefits that might accrue from the development. The proposal is considered to be contrary to New Forest Local Plan (2016-2036) Policy ENV3, New Forest Local Plan Part 2 Policy (2014) DM1, the Lymington Local Distinctiveness SPD, and with government advice as set out in the NPPF 2019.
4. The proposal has a direct impact on protected wildlife species within the site and fails to demonstrate that the impact on those species is sufficiently offset by any imperative reasons of overriding public interest, in that there is insufficient social or economic benefits that accrue from the development and the Council is not satisfied that there are no reasonable alternatives to providing this development on this particular site. The applicant has provided no substantive evidence that alternative sites within Lymington have been properly and adequately considered. The proposal does not comply with local and national policy for the reasons set out above and does not pass the required tests as set out in the Conservation of Habitats and Species Regulations 2017. The proposal is therefore considered to be contrary to New Forest Local Plan Policy (2014) DM2 and New Forest Local Plan (2016-2036) Policy ENV1
5. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that sufficient mitigation is provided against any impacts which might arise upon the designated sites. The proposal will result in a new unit of overnight residential accommodation which will potentially have an adverse impact through greater nitrates being discharged into the Solent catchment area thereby having an adverse impact on the integrity of the Solent Special Protection Area (SPA) and Special Areas of Conservation (SAC). A precautionary approach is required to be adopted and in the absence of a completed Section 106 Agreement an adverse impact on the integrity of the SPA and SACs cannot be ruled out. As such, the proposal does not accord with Regulation 63 of the Conservation of Species and Habitats Regulations 2017 in that at present there is inadequate mitigation in place. The proposal is therefore contrary to the provisions of the Conservation of Species and Habitats Regulations 2017, and New Forest Local Plan (2016-2036) Policy ENV1.

6. The proposal is considered to have a detrimental impact on neighbouring amenity in particular with regard to the position of an electricity sub station close to the boundary of Nos. 14 and 15 Bucklers Mews, together with the close proximity of car parking. These create an unacceptable relationship between the development and the adjoining properties and is considered to be contrary to Policy ENV3 of the New Forest Local Plan (2016-2036)

Further Information:

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PLANNING COMMITTEE

October 2020

Item No:

The Rise and Three
Neighbouring properties
Standford Hill, Lymington SO41 8DE
20/10481

Scale 1:1250

N.B. If printing this plan from
the internet, it will not be to
scale.

