

PLANNING COMMITTEE – 14th DECEMBER 2022

APPEAL DECISION UPDATE FORMER LYMINGTON POLICE STATION, SOUTHAMPTON ROAD SO41 9GH 21/10938

DEVELOPMENT: Demolition of the existing building and redevelopment of the site to form 32no. retirement apartments including communal facilities, access, car parking and landscaping.

Applicant: Churchill Retirement Living

Agent: Planning Issues

1. RECOMMENDATIONS

1.1 That the Committee note the content of the report.

2. INTRODUCTION

2.1 The above planning application was considered by Planning Committee at its 8th December 2021 meeting, resolving contrary to officer recommendation, to refuse planning permission.

2.2 Churchill Retirement Living (CRL), the applicant, appealed that decision. A public inquiry was held in April 2022.

2.3 The Council and CRL contested the appeal respectively. Lymington Town Council, Lymington Society, District and Town Councillors and residents appeared to give written representations only.

2.4 The Inspector Dismissed the appeal. A copy of that decision is attached at appendix A to the background papers.

2.5 This report provides a synopsis of the Inspectors reasoning leading to the decision.

3. BACKGROUND

3.1 The planning application was refused for seven reasons.

1. The proposed development would not deliver sustainable development and not create a mixed or balanced community and is thereby contrary to local plan policy HOU1 of the Local Plan 2016-2036 Part One: Planning Strategy which seeks to create a mixed and balanced community by providing a mix and choice of homes by type, size, tenure and cost.

2. The proposed development is of a scale and mass that is considered to be inappropriate and out of keeping with the area resulting in an adverse impact on the character of the surrounding area and the existing character of the adjacent Conservation Area. In these respects, the proposal is considered discordant with local plan policy ENV3 of the Local Plan 2016-2036 Part One: Planning Strategy and saved policy DM1 of the Local Plan Part 2: Sites and Development Management.

3. The proposed development, by reason of the proximity of the proposed apartments

to the maturing protected trees on site, would not allow for these trees to grow into their natural size and form. This is likely to result in the future unsympathetic pruning and potential loss of these trees which would be detrimental to the amenity of the area.

4. The proposal makes insufficient provision for on-site parking to serve the development and inadequate turning on site to enable emergency service vehicles to turn on site and leave in forward gear. The development is likely to lead to additional pressure on on-street parking within the surrounding local area, to the detriment of amenity of the area.

5. The proposed development has insufficient outdoor amenity space. Such a lack of outdoor amenity space would fail to meet the reasonable amenity needs and may consequently adversely impact the health and wellbeing of future residents, contrary to the provisions of policy ENV3 of the Local Plan 2016-2036 Part One: Planning Strategy.

6. Failure to secure mitigation for recreational and air quality impacts on protected New Forest habitats.

7. Failure to secure the provision of Affordable Housing.

3.2 It was common ground between the Council and CRL that Reasons 6 and 7 could be resolved by way of a S.106 legal agreement being completed. An agreement was presented to the Inspector, by agreement, after the Inquiry closed.

4. INSPECTORS ASSESSMENT AND CONCLUSIONS

4.1 Reason 1. Prior to the exchange of evidence, by agreement of Planning Committee, the Council agreed not to defend this reason. The reason for refusal remained and objectors of the scheme sought to present evidence. The Appellants presented evidence to support their case.

4.2 In considering the issue of need for the type of accommodation being proposed the Inspector commented, “the appeal scheme would offer a specialised form of accommodation that is an important part of the mix of housing required to meet the diverse needs of the ageing local population. It also has the potential to reduce the instances of people living in accommodation that is poorly suited to their needs or moving to higher support settings (such as extra care housing and registered care homes) than they require. Consequently, I conclude that the proposal would contribute appropriately to addressing the diversity of housing needs of local people”. (para 26)

4.3 Reason 2. The Councils Conservation Officer consultation response identified ‘Less than Substantial harm’ to the Lymington Conservation area would arise. In undertaking the Heritage Balance, the Planning Officer concluded the public benefits would outweigh the limited harm. The Planning Committee did not accept this conclusion and concluded the harm to heritage assets and the character and appearance of the area was unacceptable and would outweigh the benefits.

4.4 Concluding “that there would be no harm to the setting of the Conservation Area as a designated heritage asset”. (para 48)

4.5 The Inspector also found “the proposed development to be an acceptable design response to the site.

4.6 Reason 3. The Councils Arboricultural consultation response objected to the proposals due to the poor tree-building relationship that would arise. In recommending

approval for the application, the Planning Officer outweighed these concerns in the Planning Balance.

- 4.7 Having considered the potential growth rates of the trees, resilience to pruning, age and contribution to the character and appearance of the area, the Inspector concluded "In the context of the appeal site, it is my judgement that the contribution that the trees make to the character and quality of the surrounding area would not be adversely affected as a consequence of the proposed development. Moreover, any future works to the protected trees would require consent under the TPO regime. This process would ensure that any works are justified in light of the amenity value of the tree in question". (para 63)
- 4.8 Reason 4. Hampshire County Council, as Local Highway Authority, did not object to the application, so were not willing to support the Council in defending reason 4.
- 4.9 In respect the quantum of parking provided, the Inspector concluded "I consider that the appellant's assessment of parking demand for the appeal scheme is reasonably founded. The parking ratio is at the lower end of provision promoted by CRL, but given the highly accessible location of the site, this is justified". (para 76)
- 4.10 Given the level of parking available on Queen Elizabeth Avenue, evident in both the appeal Site Visit and surveys presented, the Inspector considered "that the proposed development would not harm residential amenity or local character in Queen Elizabeth Avenue insofar as on-street parking is concerned. Since there is no existing parking stress, and even worst-case estimates of parking demand could be accommodated on-street, there would also be no environmental harm as a result of emissions from an increased number of vehicles seeking parking spaces or navigating the local road network". (para 80)
- 4.11 Reason 5. In considering the provision of amenity space for residents the Inspector concluded "the proposal would have no harmful effects on the living conditions of future occupiers in terms of the provision of outdoor amenity space, consistent with the aims of ENV3 and the Framework's aims to promote healthy, inclusive and safe communities and achieve well-designed places. In addition, the proposal would accord with the National Design Guide insofar as it seeks the provision of good quality external environments that support the health and well-being of their users". (para's 94 & 95)
- 4.12 Other Considerations. As part of the Planning Balance, the Inspector considers the benefits of the scheme at para's 158-165. The provision of specialist elderly housing attracting very significant weight, the scheme efficiently re-using the brownfield site is given substantial weight, which together with the identified economic, environmental and social benefits of the scheme, carry significant weight in favour of the proposals.

5. APPEAL DECISION REASONS.

- 5.1 In order to determine the Appeal, the Inspector was required to adopt the role of Competent Authority for assessment of the appeal scheme against the Conservation of Habitats and Species Regulations 2017.
- 5.2 Accepted by the Inspector, the impact or additional recreational activities and air quality on protected habitats in the New Forest and Solent could be and were mitigated by the obligations secured by the S.106 legal agreement.
- 5.3 However, the Inspector was not satisfied, with sufficient certainty, that the adverse impacts that would arise from increased Nitrates being discharged from the site in waste water, could be mitigated.

- 5.4 The Council and Appellant had agreed that a condition could be used to ensure the Developer secured offsetting mitigation credits from one of the identified projects around the Solent. The Inspector was not provided with such evidence to give assurance that this approach would meet the requirements of certainty required by the Habitats Regs.
- 5.5 The concern arises from the degree of detail, provided by the parties, to demonstrate the Council does and the Inspector should, have confidence in the deliverability of the offsetting mitigation projects.
- 5.6 The Council has entered into legal agreements with neighbouring Planning Authorities and offsetting project providers to have certainty that the mitigation will be delivered, monitored and enforced. The Inspector does not appear to have recognised that situation in arriving to the decision reached.
- 5.7 This led to a conclusion that “I am unable to conclude that an adverse effect on integrity of the Solent SPA, SAC and Ramsar sites as a result of nutrient discharge from the proposed development, alone or in combination with other plans or projects, can be ruled out”. (para 137)
- 5.8 And when undertaking the Planning Balance “The appeal scheme would fail to comply with Policy ENV1 of the LP Part One, since I have found that it would not adequately mitigate its impacts on international nature conservation sites”. (para 168)

6. CONCLUSIONS

- 6.1 The Inspector could not support the Council on any of the substantive reasons for refusal, finding in favour of the Appellant in all respects.
- 6.2 The Appeal was dismissed, solely in respect of the failure to demonstrate harm to water quality in the Solent habitats could be avoided or mitigated.

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Background Papers:

Appendix A – Appeal Decision.