

**Application Number:** 23/10282 Full Planning Permission  
**Site:** FORMER POLICE STATION, SOUTHAMPTON ROAD,  
LYMINGTON SO41 9GH  
**Development:** Redevelopment of the site to form 32no. Retirement  
apartments including communal facilities, access, car parking  
& landscaping; demolition of existing building  
**Applicant:** Churchill Retirement Living  
**Agent:** Planning Issues Ltd  
**Target Date:** 16/06/2023  
**Case Officer:** Warren Simmonds  
**Officer Recommendation:** Service Manager - Grant  
**Reason for Referral to Committee:** Previous Committee Deferral

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## UPDATE TO COMMITTEE MEMBERS

The application was considered at the previous Committee meeting of 9<sup>th</sup> August 2023 where it was deferred to allow further information to be provided in respect of development viability, including information why a reduction in affordable housing contribution was deemed acceptable on this development.

Members of the committee have been provided with a summary of the viability assessment and have been given the opportunity to ask questions on this issue.

### Viability Assessment

1. When the current application (23/10282) was submitted the applicant provided an Affordable Housing and Viability report (dated March 2023) which concluded that the scheme was unable to make any contribution towards affordable housing
2. The Council engaged the services of Chartered Surveyors Bruton Knowles (BK) to provide an expert assessment of the viability to make a contribution towards off site affordable housing. The BK Review of Applicant's Financial Viability Assessment (dated April 2023) concluded that the proposed development would generate a surplus of approximately £759,031 from which an Affordable Housing contribution can be viably funded.
3. The applicant challenged this in their response to Bruton Knowles review (dated May 2023) with further argument and information to dispute the conclusion of the BK assessment. The applicant's response put forward a revised viability figure of £142,233 on a commercially expedient basis and without prejudice.
4. The applicant's May 2023 position and additional argument was further assessed by BK who (their email 7<sup>th</sup> July 2023) concluded by proposing that a compromise is attempted at an RLV of £1,925,000 and therefore a surplus

for contributions of £390,000 as a matter of expediency in the hope that this might be at a level at which the applicant might be inclined to accept, rather than incur the cost and delay of appeal.

5. The applicant subsequently made (email 11<sup>th</sup> July 2023) a 'without prejudice' offer in the interests of commercial expediency of £300,000 as an off site affordable housing contribution.
6. Further advice was received from BK (email 12<sup>th</sup> July 2023) - With the Applicant offering £300,000, against the BK assessment of £390,000, this is a without prejudice concession of the majority of the sum that BK advise may be able to be reasonably defended as a suitable off site contribution. As discussed previously the market is uncertain and one might envisage that it will deteriorate, rather than improve, over the short term. Therefore, BK can recommend that the Council accepts £300,000 on a similarly without prejudice basis as it is near to the revised proposed sum in the reasoned guidance and removes the risk of a nominal contribution being determined at appeal.
7. Since the deferral of the application, a further report (BK Briefing Note, September 2023) providing an overview and summary of matters pertaining to the viability of the proposal has been provided by Bruton Knowles Chartered Surveyors on behalf of the Council. This Briefing Note will be circulated to Members ahead of the Committee meeting.

#### The September 2023 BK Briefing Note

The Briefing Note provides commentary on changes to Residual Analysis Inputs for the affordable housing contribution and provides a concluding recommendation. The key changes since the previously agreed off site affordable housing contribution are detailed and include:

- A reduction in Gross Development Value
- A poor and potentially deteriorating market
- An increase in build costs, including additional new costs (since the consideration of the previous scheme under 21/10938) relating to updated Part L Building Regulations requirements
- Increased finance costs

The previously agreed contribution towards off site affordable housing for the development under planning application 21/10938 was £959,456 based on a developers return of 20% of gross development value; the same figure has been used when assessing the revised offer. The 20% profit/return is in line with government guidance and has been accepted on other schemes in the district. The report provides advice that with the Applicant offering an off-site affordable housing contribution of £300,000 on a without prejudice basis, it may be high risk to escalate matters to appeal and the Council should consider the possibility of not securing the £300,000, and potentially receiving £0.

The concluding recommendation of the report is that it would be reasonable for the Council to accept £300,000 as an off-site affordable housing contribution, as it is near to the revised proposed sum of £390,000 in the reasoned guidance and removes the risk of a nominal contribution being determined at appeal.

On the basis of the above, it remains the recommendation of officers that Delegated Authority be given to the Service Manager Development Management to **GRANT PERMISSION** subject to:

- i) the prior completion by the applicant/landowner of a planning obligation entered into by way of a Section 106 Agreement to secure appropriate habitats mitigation contributions (as identified in the officer report) and an appropriate contribution towards the off-site provision of affordable housing; and
- ii) the imposition of the conditions set out within the officer report.

## **PREVIOUS COMMITTEE REPORT - AUGUST 2023**

### **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. The need for new homes, and this type of housing
3. Impact on local character, appearance and setting of designated Heritage Assets, including matters relating to site layout and design
4. Highway access/egress and parking
5. Impact on local residential amenities
6. Surface water drainage
7. Air quality
8. Biodiversity on-site and off-site ecological mitigation
9. Nitrate neutrality and potential ecological harm

This application is to be considered by Committee because of the PAR4 recommendation of refusal received from Lyminster and Pennington Town Council.

A copy of the recent appeal decision is appended to this report.

### **2 SITE DESCRIPTION**

The application relates to the former Police Station, located on the western side of Southampton Road, between Queen Elizabeth Avenue to the north, and Eastern Road to the south.

The application site forms an approximately rectangular parcel of land of approximately 0.22 hectares in area. The application site is relatively flat, although is set approximately 200mm higher than Southampton Road. The eastern boundary along the main road is set back from the pavement beyond a grass verge and currently marked by a low wooden picket fence.

The roadside boundary with Queen Elizabeth Avenue currently consists of a wide grassed verge (set behind the pavement) low picket fence with occasional shrub planting, and trees (mature trees towards Southampton Road, less mature extending to the west).

The southern (internal) boundary between the site and the adjacent block of flats at Buckland House comprises a brick wall, which it appears also provides a retaining function as the land to the south is set approximately 200-300mm lower than the general proposal site level.

To the west of the site is The Old Police House (now a private dwelling), the internal boundary between the sites comprises partially of an approx 1m tall brick wall on which a close board wooden fence is attached and in other areas the rear walls of existing police garage buildings.

### 3 PROPOSED DEVELOPMENT

The application seeks permission for the redevelopment of the site to form 32no. retirement living apartments including communal facilities, access, car parking and landscaping, as detailed in the submitted application documents. The mix of the proposed development comprise 21no. one bedroom apartments and 11no. two bedroom apartments.

A vehicular access is proposed from Queen Elizabeth Avenue, creating a new vehicular and pedestrian access (the existing access to Southampton Road from the site is to be closed up and pedestrian footpath and grass verge to be constructed).

The proposed development will provide 12no. car parking spaces for residents, together with parking and charging spaces for recharging battery buggies and cycle parking.

The proposed development is 2.5-3.5 storeys in height under pitched roofs. The third floor is located within the roof space as dormered accommodation. The external facing materials proposed comprise of brick and render.

### 4 PLANNING HISTORY

Proposal	Decision Date	Decision Description	Status	Appeal Description
23/10494 Demolition Prior Notification Application for demolition of former police station and rear garages	26/05/2023	Details not required to be approved	Decided	
22/11402 Demolition of existing building and redevelopment of the site to form 32no. Retirement apartments including communal facilities, access, car parking and landscaping	23/01/2023	Withdrawn by Applicant	Withdrawn	
21/10938 Demolition of existing building and redevelopment of the site to form 32no. Retirement apartments including communal facilities, access, car parking and landscaping	10/12/2021	Refused	Appeal Decided	Appeal Dismissed
03/77391 Installation of 1 airwave collinear antenna mounted on existing pole	01/04/2003	Granted Subject to Conditions	Decided	
XX/LYB/09582 Erection of garage and cycle shed and alterations to store.	02/11/1964	Granted	Decided	
XX/LYB/00844 Erection of a police station, dwelling house, garages and kennels.	21/03/1951	Granted	Decided	
XX/LYB/00347 Use of land for police station.	20/07/1949	Granted	Decided	

## 5 PLANNING POLICY AND GUIDANCE

### **Local Plan 2016-2036 Part 1: Planning Strategy**

Policy CCC1: Safe and healthy communities  
Policy CCC2: Safe and sustainable travel  
Policy ECON1: Employment land and development  
Policy ECON2: Retention of employment sites and consideration of alternative uses  
Policy ENV1: Mitigating the impacts of development on International Nature Conservation sites  
Policy ENV3: Design quality and local distinctiveness  
Policy HOU1: Housing type, size, tenure and choice  
Policy HOU3: Residential accommodation for older people  
Policy IMPL1: Developer Contributions  
Policy IMPL2: Development standards  
Policy STR1: Achieving Sustainable Development  
Policy STR3: The strategy for locating new development  
Policy STR4: The settlement hierarchy  
Policy STR5: Meeting our housing needs  
Policy STR8: Community services, Infrastructure and facilities

### **Local Plan Part 2: Sites and Development Management 2014**

DM1: Heritage and Conservation  
DM2: Nature conservation, biodiversity and geodiversity

### **Supplementary Planning Guidance And Documents**

SPD - Air Quality in New Development. Adopted June 2022  
SPD - Lymington Local Distinctiveness  
SPG - Lymington - A Conservation Area Appraisal  
SPD - Parking Standards  
Ecology and Biodiversity Net Gain – Interim Advice and Information Note

### **Relevant Advice**

NPPF July 2021

### **Constraints**

Plan Area  
Conservation Area: Lymington Conservation Area  
Tree Preservation Order: TPO/0006/15/G2  
Plan Policy Designations  
Built-up Area

## 6 TOWN COUNCIL COMMENTS

### **Lymington & Pennington Town Council**

PAR 4: Recommend Refusal:

- The proposed development is contrary to Local Plan policies STR1, ENV3, HOU1 and DM1(saved policy) and does not comprise sustainable development.

- The Town does not need any further open market elderly persons accommodation. It is already well-provided for and is more than meeting local needs. This is giving rise to an imbalance in the provision of housing to the detriment of other areas of need and in particular affordable housing.
- The proposed scheme would have a detrimental impact on the character of the area, on the setting of the Lymington Conservation Area and would result in the loss of trees, which are important local features. It would also result in a poor level of amenity for residents of existing properties and of the new development and would lead to an increase of on street-parking.
- The purported benefits of the development do not outweigh the harm arising from it.
- Contrary to the applicants view it is not "an agreed principle that affordable housing will not be provided on the site?". The applicant was aware of the fundamental Local Plan requirement for developments of 10 or more dwellings to provide affordable housing. They should, therefore, have made any necessary financial provision for this in their offer to purchase the site.
- The off-site contribution in lieu of providing affordable housing has now been withdrawn in its entirety. The basis of the viability calculations and in particular the requirement for an unrealistic and unreasonable 20% profit margin is not accepted.
- The applicant says they have secured nutrient mitigation on land, which is part of a Natural England approved scheme based at Kings Manor in the Isle of White. No further information has been provided, but if this scheme involves removing land from agricultural production it will be strongly opposed by the Town Council.

## **7 COUNCILLOR COMMENTS**

No comments received

## **8 CONSULTEE COMMENTS**

Comments have been received from the following consultees:

### Consultees

#### **HCC Surface Water**

No objection to the amended surface water drainage strategy

#### **Hampshire Fire & Rescue Service**

Standard letter of advice received re access for fire fighting and fire protection

#### **HCC Highways**

No objection subject to conditions

#### **HCC Countryside Services**

General comments re public rights of way (PROW)

#### **NFDC Conservation**

No objection subject to appropriate conditions being imposed.

#### **NFDC Ecologist**

Comments re habitats mitigation, biodiversity net gain (BNG) and protected species. Conditions recommended.

## **NFDC Environmental Health Contaminated Land**

No objection subject to conditions

## **NFDC Environmental Health (Pollution)**

It is noted that the application is very similar in nature to that submitted in 2021 (ref: 21/10938) - to the extent that a number of reports have been re-submitted as part of the current application, including the noise impact assessment. As such, Environmental Health (Pollution) would reiterate the comments made in respect of the previous application- no objection is raised subject to conditions being applied to any granted permission.

## **NFDC Landscape Team**

Comments provided with respect to site context, landscaping and design.

## **NFDC Tree Team**

No Objection Subject to Condition(s)

## **9 REPRESENTATIONS RECEIVED**

The following is a summary of the representations received.

For: 1

Against: 41

Broad summary of views:

- Excessive scale, out of character,
- Insufficient outdoor space,
- Insufficient affordable housing provision,
- Development should provide housing for young people,
- Insufficient parking provision,
- No need for additional retirement homes in the area,
- Amenity impacts for neighbours (overlooking, overshadowing, noise, odours from bins),
- Highway safety,
- Adverse impact on trees,
- Existing buildings should be retained for their own architectural merit

## **10 PLANNING ASSESSMENT**

### Recent Planning Appeal Decision APP/B1740/W/21/3289313

A significant material consideration to the determination of this application is the recent appeal decision following the Council's refusal of planning application 21/10938 (Appeal reference APP/B1740/W/21/3289313). The appeal decision (dated 18th November 2022) followed an Appeal Inquiry held on 26, 27, 28, 29 April and 3 May 2022.

A copy of this decision is appended to the report.

The Inspector's conclusions are of particular relevance to this application as the current application effectively represents a direct resubmission of the previous appeal scheme, with no material revisions or amendments.

The only differences between the previous appeal scheme and the current application are:

- For the current application the applicant has provided evidence that Churchill Retirement Living have entered into formal contract and thereby secured the required level of nutrient mitigation for the development proposal.
- For the current application the accepted developer contribution towards off-site affordable housing has been amended to £300,000 (see report below).

### Principle of development and housing policy assessment

#### a) General principle

The settlement hierarchy as set out within the adopted local plan provides a guideline to where new development proposals of different types and scales can best be accommodated in a sustainable way, taking into account existing facilities and future potential.

The towns and villages in the Plan Area have been classified into a settlement hierarchy based on the availability within the settlement, or ease of access to, the following services, potentially reducing the need to travel:

- Shops and 'high street' facilities
- Schools, health and community facilities
- Proximity to employment locations and main settlements
- Public transport

The settlement hierarchy identifies three tiers of settlements and sets out the nature and scale of development that would be appropriate for each type of settlement.

Development which is not in accordance with the settlement hierarchy will normally be resisted. The town of Lymington is identified as being within the top tier of the settlement hierarchy (local plan policy STR4 refers) whereby such settlements offer access to a wider range of employment, facilities and services. They are the most sustainable locations for large-scale residential, retail, leisure, cultural and business development to improve their self-containment and to support and consolidate their local service offer. The site of the proposed development is therefore considered to be within an inherently sustainable location where, in the broadest of planning policy contexts, the principle of development can be considered acceptable, subject to accordance with relevant local and national planning policy and guidance.

In respect of the potential for the continued use of the application site as an employment use, officers note the buildings/site is vacant and accept the former Police Station and does not readily lend itself to conversion to offices or other businesses uses and therefore not viable for continued use for employment use. Furthermore, when it was operational as a police station, it could not be said the site/use offered a supporting service to businesses or to the workforce in the local area and the general configuration and condition of the building renders it unsuitable for any other realistic employment use. It is noted that the property was marketed openly by Lambert Smith Hamptons in 2018, however all of the interest generated was for traditional residential or retirement development schemes and no employment related users were interested in acquiring the site.

The former Police Station use, under the parameters of the Local Plan Part 1 is not considered to fall within the definition of 'community facilities'. Paragraph 4.34 of the Local Plan Part 1 sets out that community facilities are sports and leisure facilities, community centres, libraries, places of worship, crematoria and burial space. Notwithstanding this, it is noted that rather than being lost, the Police Station use has been relocated to a new location within Lymington.

#### b) 5-year housing land supply

The Council cannot demonstrate a five-year supply of deliverable housing land. In such circumstances the NPPF (para 11d) indicates that the tilted balance is engaged, whereby in applying the presumption in favour of sustainable development even greater weight should be accorded in the overall planning balance to the provision of new housing (and affordable housing).

#### 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 applicants have stated that on-site provision is not possible because of the particular housing model for assisted living. This has been previously accepted for the proposed redevelopment of the site (planning reference 21/10938) and on other similar schemes within the Council's area (and across the country). The principle of off-site affordable housing provision in the form of an off-site financial contribution is accepted in this case.

National policy provides an incentive for brownfield development on sites containing vacant buildings. Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought. Affordable housing contributions may be required for any increase in floorspace. Vacant Building Credit (VBC) is a consideration in this case and reduces the affordable housing requirement for the proposed development from 50% to 39.5% (equating to 12.64 units of affordable housing).

The applicant has submitted a report on affordable housing and viability for the development. This report highlights how changes in build cost inflation since late 2021 (i.e. the time of the previous application) and a potentially deteriorating market have affected the viability of the proposal to provide an off-site contribution towards affordable housing. The viability of the proposal and the applicant's viability report have been independently assessed by Bruton Knowles Chartered Surveyors on behalf of the Council. Following a thorough assessment it is considered reasonable for the Council to accept a financial contribution of £300,000 towards the provision of off-site affordable housing.

#### d) Older person housing needs

The 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. The evidence for Older Persons housing need comes from the Report for New Forest District Council 'Demographic Projections' (JGC Consulting, July 2017) and the NFDC Local Plan Review Topic Paper SD16 Housing Mix (October 2018). The data shows that New Forest (in line with other areas) is expected to see a notable increase in the older person population with the total number of people aged 55 and over expected to increase by 28% over 20 years to 2036. Topic Paper SD16 highlights a projected need for specialist housing for older persons (2016-36) in the south of the District of 952 bed spaces (and a total projected need of 3,146 across the Plan Area).

One of the main issues identified by the Inspector in the Appeal Inquiry was whether or not the proposal would contribute appropriately to addressing the diversity of housing needs of local people.

The Inspector Permission noted that planning consent was granted for 44 retirement living apartments at Stanford Hill in 2021 and construction is underway. He opined that, even taking the Knights Lodge and Stanford Hill schemes into account, the proposed development for 32 apartments at the former police station would not result in an over provision of comparable specialised housing for older people within the town, given the scale of the need identified.

The Inspector concluded that 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, he concluded that the proposal would contribute appropriately to addressing the diversity of housing needs of local people and, taking all of these matters into consideration, he was satisfied that the proposed development complies with Policy HOU1 of the LP Part One, insofar as it seeks to address the diversity of housing needs of local people at all stages of life by providing a mix and choice of homes by type, size, tenure and cost.

#### 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 plan policy ENV3 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 proposed development takes the form of a predominantly L-shaped development situated approximately centrally within the site, with access off Queen Elizabeth Avenue to the north west with an internal driveway running southwards across the rear of the site to a rectangular parking area at the south west corner.

The proposed main building is of three storey form, with third floor dormered accommodation provided within the roof. The building includes attached two storey elements to the rear (west), also with dormered accommodation within the roof - reading as a three storey element from the western perspective. The materials proposed for the main building consist predominantly of Weston Red multi brick, with areas of coloured render (brick on edge lintel features) under a dark coloured concrete tile roof.

The proposed building, whilst larger than the existing buildings it would replace, is considered to be of a generally appropriate scale, mass and design within the context of the application site and surrounding area, and to propose appropriate external facing materials and finishes. In terms of form, the proposed building carries through a comparable eaves and roof height to that of the modern apartment building (Buckland House) situated to the immediate south. The proposed building is wider in form than the adjoining apartments, however this is considered commensurate with the larger plot size of the application site.

The scale and mass of the proposed building are mitigated by the principal facing elevations being set away from the roadside boundaries of Southampton Road and Queen Elizabeth Avenue, and are further mitigated in terms of the visual impact of the proposal on the surrounding area by reason of the retained mature trees along the length of the eastern boundary with Southampton Road and partially along the northern boundary with Queen Elizabeth Avenue.

### **The Police Station as a Non-Designated Heritage Asset**

The existing Police Station buildings are considered to constitute a non-designated heritage asset (NDHA). As such, its loss will need to be assessed against paragraph 203 of the NPPF 2021 in relation to non-designated heritage assets, whereby the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application.

In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. As the proposal is for total loss of the asset this sits at the highest end of the harm scale and as such the benefits of any scheme should be equally balanced.

In October 2021, Historic England decided not to add the building to the List of Buildings of Special Architectural or Historic Interest. The building was not found to demonstrate a high level of architectural interest or national historic interest, nor was any group value identified.

Moreover, as noted by the Planning Inspector, the identification of the appeal site on the Council's brownfield land register for the provision of approximately 20 dwellings appears to be incompatible with the argument that the former police station is of such heritage value that it should be retained.

In this case, the proposed redevelopment of the site is for the provision of housing, in a context where (i) the Council is currently unable to demonstrate a 5 year housing supply (see above), and (ii) there is an existing and projected demonstrably pressing need (see above) for the type of housing being proposed. It is therefore considered in this case that these matters are sufficient to justify the loss of the existing buildings constituting a NDHA.

### **Impacts on the listed buildings along Southampton Road**

While there are some changes in longer views it is not felt that this causes any meaningful degree of harm to the setting of the listed buildings which forms part of their significance. The Conservation officer did previously consider this matter and has not raised any objections on this basis.

## **Impacts on the setting of the adjacent Conservation Area**

The Council in assessing and determining proposals should have regard to the affect of the proposal on the character, appearance and setting of designated heritage assets (in this case the adjacent Lymington Conservation Area, located to the immediate south of the application site).

The Conservation officer has provided the following comments:

*'This application follows on from a previous submission and having gone through a Public Inquiry appeal. Previous concerns were expressed by the conservation team on the loss of the non-designated heritage asset and some more minor impacts on views gained to and from the Lymington Conservation Area. The previous conservation and design reasons for refusal used these matters in part but added further design and conservation matters beyond the teams original concerns. The appeal decision did not find that these concerns were sufficient to refuse the application.'*

*In light of this appeal decision I would therefore raise no further concerns in relation to the proposal.*

*I would suggest a robust set of conditions covering materials, details and landscape should be applied to any consent given. It would also be worth considering a photographic recording of this non-designated heritage asset in light of its proposed total loss.'*

As noted by the Planning Inspector, though it would be visible from viewpoints within the Conservation Area on Southampton Road and to the rear on Eastern Road, the proposed building would not appear discordant with the development immediately surrounding it. Buckland House and Farringford Court exhibit similarities to the proposed development in respect of their height, mass and residential character.

Overall, the proposed development would not degrade the historic or architectural significance of the Lymington Conservation Area as a whole; it would have a neutral effect. Consequently, it is concluded that there would be no harm to the setting of the Conservation Area as a designated heritage asset.

### Landscape impact and trees

#### **Landscape impact**

The proposed building, whilst larger than the existing buildings it would replace, is considered to be of a generally appropriate scale, mass and design within the context of the application site and surrounding area, and proposes appropriate external facing materials and finishes. In terms of form, the proposed building carries through a comparable eaves and roof height to that of the modern apartment building (Buckland House) situated to the immediate south. The proposed building is wider in form than the adjoining apartments, however this is considered commensurate with the larger plot size of the application site.

The scale and mass of the proposed building are mitigated by the principal facing elevations being set away from the roadside boundaries of Southampton Road and Queen Elizabeth Avenue, and are further mitigated in terms of the visual impact of the proposal on the surrounding area by reason of the retained mature trees along the length of the eastern boundary with Southampton Road and partially along the northern boundary with Queen Elizabeth Avenue.

In these respects the proposal is considered acceptable in terms of landscape impact within the street scene and within the context of the character of the surrounding area.

### **Impact upon Trees**

The site of the Police Station, Southampton Road, Lymington is subject to a Tree Preservation Order (TPO/0006/15) and includes 2 groups of trees. These groups consist of 5 Silver Maples that are situated on the front eastern boundary marked as G1 within the TPO and 2 Silver Maples and 1 Cedar tree that are situated on the northern boundary towards Queen Elizabeth Avenue and marked as G2 within the TPO.

The applicant has submitted an Arboricultural assessment & method statement (Arboricultural Impact Appraisal and Method Statement by Barrell Tree Consultancy, dated 5th December 2022 ref: 18327-AA2-PB).

The comments of the Council's tree officer are as follows:

*'Situated on the eastern boundary of this site is a group of 5x Silver Maple trees that are protected by G1 of Tree Preservation Order 06/15. Along the northern boundary a group consisting of 2x Silver Maples and a Cedar tree within G2 of Tree Preservation Order 06/15. These trees contribute to the amenity of the area and are considered a constraint to development.*

*To support this application an Arboricultural Impact Appraisal and Method Statement by Barrell Tree Consultancy, dated 5th December 2022 ref: 18327-AA2-PB has been submitted. In this document the trees on site have been identified and categorized, using the method set out in BS5837:2012. Broadly I agree with the assessment of these trees.*

*Four trees will be removed to facilitate this development, identified as T10 & G12 within the submitted report. Overall, these trees are graded 'C' trees and of small stature. Given the retention of the larger trees on site the impact of these losses will not significantly affect the overall amenity/screening to the site.*

*In a similar scheme previously submitted for this site I objected on tree grounds due to the proximity of the proposed building to the protected trees. I had concerns regarding future encroachment to the building, shading/obstruction of windows concerns from future residents of perceived threat of failure from the trees which could result in pressure to remove or prune the trees to an extent that they no longer provide any significant amenity. However, during an appeal for the site it was determined by the appeal inspector that these trees could be managed through pruning and my objection did not stand.*

*On this basis I have no objections on tree grounds subject to the conditions'*

In these respects, the proposal is considered acceptable in terms of impact(s) on trees.

### **Highway safety, access and parking**

Hampshire County Council as the relevant Highway Authority have provided a consultation response which identifies the good existing pedestrian and cycle links to the town centre, together with bus links and the availability of rail links from the town to the wider surrounding area. The Highway Authority accept the Trip generation data submitted with the application, and accept the proposed access arrangements

for the site (with comments and advice in respect of servicing (bins) and emergency vehicular access to the site.

The Highway Authority requested additional survey data which has been subsequently provided by the applicant and passed on to HCC. The further/final comments of HCC Highways in relation to this proposal are 'No objection'. In respect of parking provision for the proposed development, the Council's adopted Parking Standards Supplementary Planning Document (SPD), outlines a requirement in respect of older people's housing (active elderly with warden control) for 1 car parking space per residential unit (with an additional 1 space per unit for cycle parking or parking for mobility scooters).

Whilst the proposed development would provide 12no. car parking spaces for residents, together with parking and charging spaces for recharging battery buggies and cycle parking and is therefore significantly less than the standards set out within the SPD, it is material to the consideration of the proposals that the site of the proposed development is located within an inherently sustainable location close to Lymington town centre with its wide range of services and facilities, accessible via a generally flat and level walk, and there are a good range of public transport links within and beyond the locality and surrounding area. In this respect it is considered that, by reason of the particularly sustainable location of the proposed development, a reduced level of on-site parking provision can be considered acceptable in this case.

In considering these issues during the appeal, the Inspector concluded:

*'I conclude that the proposed development would make adequate provision for on-site car parking and that residential amenity would be safeguarded. There is an element of conflict with the Parking Standards SPD (adopted April 2022) in the sense that the appeal proposal provides a lower level of on-site parking than recommended for housing for the active elderly. However, the level of provision is justified in this case by the accessible location of the site and the evidenced lack of parking stress in its immediate vicinity. As a result, I have found that sufficient car parking would be provided. Accordingly, I find no conflict with the SPD or with Policy CCC2 of the LP Part One, which seeks the provision of sufficient car and cycle parking in accordance with the adopted SPD. '*

### Residential amenity

The application site is within the built-up area of the settlement of Lymington, where new development can be considered acceptable in principle, subject to accordance with the policies of the Development Plan and other relevant local and national planning policy guidance. The immediately surrounding area is predominantly residential and therefore a residential use of the application site can be considered a compatible use in principle.

Local plan policy ENV3 deals with design quality, local distinctiveness and has regard to the impact(s) of development on the amenity of adjoining occupiers and uses. In particular, policy ENV3 requires new development to avoid unacceptable effects by reason of visual intrusion or overbearing impact, overlooking, shading, noise and light pollution or other adverse impacts on local character or residential amenity.

In respect of the existing dwellings surrounding the application site, the most sensitive in terms of amenity impacts are considered to be the apartment at Buckland House to the south and the dwelling known as The Old Police House to the rear (west). Impacts on other dwellings to the north and east are mitigated

substantially by the separation distance to the site (separated by roads) and the mitigating impact of retained mature trees along the east and (partial) north boundaries.

It is considered the main proposed building is set-in within the site boundaries sufficiently far to avoid the undue overshadowing of the adjacent Buckland House (which is on the south side) and The Old Police House and would not have an unduly overbearing impact on these adjoining properties.

In terms of overlooking, from the perspective of Buckland House the south facing elevation of the proposed building is formed by two distinct elements - the closest element to the southern boundary is approximately 4.2m from the shared boundary and approx. 6.3m from the north facing elevation of Buckland House. This element of the building is of three storey height but has limited fenestration above ground floor level (1x kitchen window on each of the first and second floors), and other glazing serving internal communal corridors which can be conditioned to be fitted with obscure glazing to preserve the amenity of adjoining occupiers. The more western element of the south facing side elevation includes more glazing and small balconies, but this element is set back from the shared southern boundary (by approximately 17.3m) and is behind (to the west) of the Buckland House apartments. It is considered the separation distance and relationship between the proposed building and the Buckland House apartments is sufficient that no undue overlooking would result.

From the perspective of The Old Police House, the west facing elevation of the proposed building is staggered in distance from the shared western boundary, increasing from approx. 7m at its closest on the northern end, then setting back sequentially to approx. 10m and finally 24m at the southern end. The closest elements (7m distant and 10m distant from the western boundary) at the northern end of the west facing elevation have no windows above ground floor level, except for glazing to provide light to internal communal corridors (which can be conditioned to be obscure glazed). The more southern element of the west facing side elevation includes more glazing and small balconies, but this element is set back from the shared southern boundary (by approximately 24m). It is considered the separation distance and relationship between the proposed building and The Old Police House is sufficient that no undue overlooking would result.

Along the western boundary of the site are proposed bin store and substation. The proposed cycle/mobility scooter store is located to the immediate west of the proposed main building. By reason of their modest single storey scale these outbuildings and substation are not considered likely to result in undue amenity impacts.

A Noise Assessment (24 Acoustics, 27th August 2021) has been submitted by the applicant to demonstrate that road traffic noise and noise from the proposed substation would not have undue amenity impacts on future occupiers (and existing adjoining neighbours). The Noise Assessment concluded that the proposed electrical substation would present a very low risk of disturbance and performance specifications have been provided for acoustic double-glazing and ventilation to habitable rooms in the proposed apartments to mitigate traffic noise.

The Council's Environmental Health Officer (EHO) notes in his consultation response that any noise generated from the substation is predicted to be substantially below the existing background sound level and therefore no specific mitigation is required to control noise.

The impact of traffic noise from adjacent roads upon the development is predicted to be significant and likely to exceed desirable internal noise criteria for the new dwellings; therefore mitigation has been proposed which includes minimum specifications for glazing and ventilation on façades along the roadside, to protect the amenity of intended occupiers.

The EHO considers that providing the proposed mitigation measures are implemented, it is expected that desirable internal noise levels could be achieved. Accordingly, the EHO recommends that a suitable planning is attached to any granted permission requiring that proposed measures are implemented in full prior to first occupation.

### Air quality

The Council's 'Air Quality in New Development' Supplementary Planning Document (SPD) was adopted on 1 June 2022. To make development acceptable the Council will expect mitigation measures to be implemented by the applicant to reduce emissions to air from all proposed development.

The SPD provides guidance on when an Air Quality Assessment will be needed to support a planning application and what the assessment needs to address. Where necessary to enable development to take place, appropriate mitigation measures will be required, the document contains suggested mitigation measures.

In this case, it is appropriate to require the submission of air quality mitigation measures through the imposition of a planning condition.

### Ecology

#### **On site protected species**

The applicant has submitted an Ecological Appraisal for the site (Tetra Tech, June 2021) and a subsequent Bat Emergence Survey report (Tetra Tech, 23.08.2021) which recorded that during the survey no emergences or other roosting activity was observed and consequently the buildings are considered unlikely to support roosting bats. The report concluded that no further mitigation or actions are required in terms of bats.

The report(s) also put forward a scheme of ecological enhancements which, subject to the conditions recommended by the Council's Ecologist, will ensure the development achieves a suitable level of Biodiversity Net Gain (BNG):

#### **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.

## **Habitat mitigation and off-site recreational impact**

Recreational impact from the occupiers on protected areas and species can be managed by a S106 legal agreement or 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 S106 legal agreement or Unilateral Undertaking being submitted in the event of any appeal no objections are raised.

## **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.

Following the dismissal of the previous appeal on, in effect, the single matter of surety of the availability of nutrient mitigation in respect of nitrates, the applicant has provided evidence that Churchill Retirement Living have entered into formal contract with BCM who operate the Kings Manor nutrient mitigation scheme (recognised and accredited by Natural England and the Partnership for South Hampshire).

Since the consideration at appeal of the previous scheme under 21/10938 there are now many mitigation schemes running in the Solent through which developers can buy mitigation credits and these are utilised by many approved schemes within the district. There is a good supply of nitrogen credits across the Solent and, in entering into a contract with BCM to purchase the required quantum of nitrate mitigation credits, it is considered the applicant has demonstrably secured the required level of nutrient mitigation for the development proposal - thereby overcoming the appeal Inspector's previous concerns. To ensure the required mitigation is provided, a Grampian style condition is proposed.

### Developer Contributions

As part of the development, the following will be secured via a Section 106 agreement:

- Infrastructure contribution of £113,707
- Non-infrastructure contribution of £17,078
- Bird Aware Solent contribution of £16,332
- Air quality monitoring contribution of £3,296

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	2882	0	2882	2882	£80/sqm	£314,803.08 *

Subtotal:	£314,803.08
Relief:	£0.00
Total Payable:	£314,803.08

\* The formula used to calculate the amount of CIL payable allows for changes in building costs over time and is Index Linked using the RICS CIL Index

(<https://www.rics.org/uk/products/data-products/rics-community-infrastructure-levy-index/>) and is:

Net additional new build floor space (A) x CIL Rate (R) x Inflation Index (I)

## 11 CONCLUSION

The proposed development is considered acceptable in principle in that it would provide 32 new homes for older people (for which there is a clear, demonstrable need) in a sustainable town centre location, and would make an appropriate (financial) contribution towards the provision of affordable housing in the area.

The impacts of the scheme were considered by an Inspector at a recent Planning Inquiry and it was concluded that the proposal was acceptable on balance in terms of its scale, mass and appearance and its consequent impact on the existing character of the surrounding area (and adjacent Conservation area) and would not result in undue/detrimental impacts in, terms of amenity, environmental/ecological assets, highway safety, or other material considerations relevant to the proposal.

In these respects the proposed development is considered accordant with relevant local plan policies and national planning policy and guidance

## 12 RECOMMENDATION

Delegated Authority be given to the Service Manager Development Management to **GRANT PERMISSION** subject to:

- i) the prior completion by the applicant/land owner of a planning obligation entered into by way of a Section 106 Agreement to secure appropriate habitats mitigation contributions (as identified in the officer report) and an appropriate contribution towards the off-site provision of affordable housing; and
- ii) the imposition of the conditions set out below:

## Proposed Conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development permitted shall be carried out in accordance with the following approved plans:

10109LY-PA10	PROPOSED OUTBUILDING AND SUBSTATION
PA01 D	PROPOSED SITE PLAN
PA02 A	PROPOSED GROUND FLOOR PLAN
PA03 B	PROPOSED FIRST FLOOR PLAN
PA06 A	PROPOSED ROOF PLAN
PA08	PROPOSED ELEVATION 2
PA09 A	PROPOSED ELEVATION 3
PA07	PROPOSED ELEVATION 1
PA04 A	PROPOSED SECOND FLOOR PLAN
PA05 A	PROPOSED THIRD FLOOR PLAN
PA00	SITE LOCATION PLAN
18327-411	TREE PROTECTION PLAN
LY01 01	EXISTING FLOOR PLANS
JBA21183SK02	REV BLANDSCAPE STRATEGY
	ARBORICULTURAL IMPACT & METHOD STATEMENT
	BAT REPORT
	ECOLOGICAL APPRAISAL
	ARCHAEOLOGICAL DESK STUDY
	HERITAGE STATEMENT
	AMENDED SURFACE DRAINAGE STRATEGY(dated 03.05.23)
	TRANSPORT STATEMENT
	TREE PROTECTION PLAN
	NOISE ASSESSMENT (ref: R9201-1 Rev 0, 24 Acoustics Ltd dated 27 August 2021)

Reason: To ensure satisfactory provision of the development.

3. No development shall take place, (including any works of demolition), until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved CMS shall include scaled drawings illustrating the provision for:

- 1) The parking of site operatives' and visitors' vehicles;
- 2) Loading and unloading of plant and materials;
- 3) Management of construction traffic and access routes;
- 4) Details of construction access and construction vehicle tracking;
- 5) Storage of plant and materials used in constructing the development;
- 6) Details of the method of cleaning wheels and chassis of all HGVs, plant and delivery vehicles leaving the site and the means of keeping the site access road and adjacent public highway clear of mud and debris during site demolition, excavation, preparation and construction.

The agreed CMS shall then be adhered to for the duration of construction of the development hereby permitted.

Reason: In the interests of amenity and Highway safety, in accordance with the provisions of local plan policy ENV3.

4. Prior to demolition of the existing building(s) at the site, the tree protective measures recommended by the Barrell Tree Consultancy Arboricultural Assessment and Method Statement (reference: 18327AAJB dated 28 May 2021) and the Tree Protection Plan (reference: 18327-3) shall be installed and thereafter retained for the duration of the construction period for the development hereby approved. No fires, building operations, storage of goods including building materials, machinery and soil, or discharge of any chemical substances, including petrol and diesel, shall be undertaken within the tree protection zones or within the canopy spreads, whichever is the greater, nor shall any change in soil levels or routing of services within those defined areas be carried out.

Reason: To protect the said trees in the interests of the visual amenities and character of the locality, in accordance with Policies ENV3 and ENV4 of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

5. Development shall accord with the submitted details of external materials to be used in external facing walls, roofs, doors and windows, unless otherwise approved in writing by the local planning authority.

Reason: To ensure an acceptable appearance of the building in accordance with Policy ENV3 of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

6. Before development (other than demolition) commences a scheme of landscaping of the site shall be submitted for approval in writing by the Local Planning Authority. This scheme shall include :

- (a) the existing trees and shrubs which have been agreed to be retained;
- (b) a specification for new planting (species, size, spacing and location);
- (c) areas for hard surfacing and the materials to be used;
- (d) other means of enclosure;
- (e) a method and programme for its implementation and the means to provide for its future maintenance.

No development shall take place unless these details have been approved and then only in accordance with those details.

Reason: To ensure that the development takes place in an appropriate way and to comply with Policies ENV3 and ENV4 of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

7. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size or species, unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure the appearance and setting of the development is satisfactory and to comply with Policies ENV3 and ENV4 of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

8. Prior to occupation of the development hereby approved the parking spaces, access(es), manoeuvring space, visibility splays, bin store and cycle/motorised scooter store (with electric charging points) shown on the approved plans shall be provided. The parking spaces shall be retained and kept available for the parking of residents and their visitors only.

Reason: In the interests of amenity and Highway safety, in accordance with policies ENV3 and IMPL2 of the Local Plan 2016-2036 Part One: Planning Strategy.

9. The first floor and second floor window(s)/openings serving internal corridors within south and west facing elevations of the approved building shall be permanently glazed with obscured glass.

Reason: To safeguard the privacy of the adjoining neighbouring properties in accordance with Policy ENV3 of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

10. The building shall not be first occupied until

- (a) details of the treatment of the southern and western boundaries have been approved in writing by the Local Planning Authority, and
- (b) these means of enclosure/details have been implemented in accordance with the details thus approved.

Reason: To ensure that the development takes place in an appropriate way in accordance with Policy ENV3 of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

11. The sheltered apartments comprising the development hereby permitted shall only be occupied by persons of sixty years or over, and the spouse or partner of such a person and in the event of the death of such person, the spouse or partner of such person shall be permitted to remain within the retirement apartments irrespective of whether they are aged sixty years or over.

Reason: To ensure that occupancy is in accordance with the approved details and identified need and to ensure that the parking provision is sufficient to meet the demand of this type of use thereby complying with the Parking Standards SPD and Policy HOU3 and of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

12. Before development commences, a detailed scheme of the means of disposal of surface water from the site shall be submitted to and approved in writing by the Local Planning Authority. Development shall only take place in accordance with the approved details.

Reason: In order to ensure that the drainage arrangements are appropriate and in accordance with Policy ENV3 of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park and the New Forest District Council and New Forest National Park Authority Strategic Flood Risk Assessment for Local Development Frameworks.

13. Details for the long-term maintenance arrangements for the surface water drainage system shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development hereby approved. The submitted details shall include:
- a. Maintenance schedules for each drainage feature type and ownership;
  - b. Details of and timescales for implementation of protection measures;

The agreed maintenance and protection measures shall be implemented thereafter in accordance with the approved details, schedules and timescales.

Reason: In order to ensure that the drainage arrangements are appropriate and in accordance with Policy ENV3 of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park and the New Forest District Council and New Forest National Park Authority Strategic Flood Risk Assessment for Local Development Frameworks.

14. The rating noise level from the proposed substation, determined in accordance with the requirements of BS 4142: 2014 + A1:2019 *Methods for rating and assessing industrial and commercial sound* shall not exceed the prevailing representative background noise level by more than minus 10 dB in any external amenity space or at the nearest habitable room window (under free-field conditions) at The Old Police House or any apartment at Buckland House.

Reason: In the interests of amenity, in accordance with local plan policy ENV3.

15. No construction works above damp proof course level shall take place until a Biodiversity Net Gain (BNG) Management Plan has been submitted to and approved in writing by the local planning authority (covering a minimum period of 30 years). The management plan should include:
- Methods and timetable for delivering BNG;
  - Responsibilities for delivering BNG – during and after construction;
  - Description of the habitats to be managed;
  - Clear timed and measurable objectives in the short, medium, and long-term for BNG - Detail objectives for all habitats (target condition);
  - A commitment to adaptive management in response to monitoring to secure the intended biodiversity outcomes;
  - Details for a formal review process when objectives are not fully reached / roles and responsibilities;

The agreed BNG and management plan shall be implemented and maintained in accordance with the agreed timescales and schedules unless otherwise agreed in writing with the local planning authority.

Reason: To ensure biodiversity net gain for the development, in accordance with local plan policy ENV1, saved local plan policy DM2 and the aims and objectives of the NPPF.

16. No clearance of vegetation clearance (e.g. trees, shrubs and scrub) or building demolition that may be used by breeding birds shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of the vegetation/building for active birds' nests immediately before the vegetation is cleared or works commence and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest(s) on site. Any such written confirmation should be submitted to the local planning authority.

Reason: In the interests of nature conservation and in accordance with saved local plan policy DM2 of the Local Plan Part 2: Sites and Development Management.

17. Prior to the commencement of development, a scheme shall be submitted to and approved in writing by the LPA for the inclusion of integral Swift Bricks within the building(s). The agreed scheme shall show the number, specification of the Swift Bricks and where they will be located, together with a timetable for implementation and commitment to being installed.

Following completion of the dwellings and prior to their first occupation, a report from an appropriately qualified ecologist confirming that all integral Swift Bricks have been installed as per previously agreed specifications and locations together with photographic evidence shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of nature conservation and in accordance with saved local plan policy DM2 of the Local Plan Part 2: Sites and Development Management.

18. Prior to first occupation of any flat, electric vehicle charging points shall be installed in accordance with a scheme that shall have been submitted to and approved in writing by the LPA. The approved scheme shall be retained and maintained in perpetuity unless otherwise agreed in writing by the LPA.

Reason: To ensure suitable provision is made for Electric vehicle charging, in accordance with the requirements of Policy IMPL2 of the Local Plan 2016-2036 Part One: Planning Strategy.

19. Before development commences above ground level, an Air Quality Assessment, to include details of appropriate mitigation, shall be submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the agreed air quality mitigation measures.

Reason: In the interests of amenity and public health, in accordance with the provisions of the Council's Air Quality Assessments in New Development SPD.

20. The development hereby permitted shall not be occupied until:

A water efficiency calculation in accordance with the Government's National Calculation Methodology for assessing water efficiency in new dwellings has been undertaken which demonstrates that no more than 110 litres of water per person per day shall be consumed within the development, and this calculation has been submitted to, and approved in writing by, the Local Planning Authority; all measures necessary to meet the agreed waste water efficiency calculation must be installed before first occupation and retained thereafter; and

A mitigation package addressing the additional nutrient input arising from the development has been submitted to, and approved in writing by, the Local Planning Authority. Such mitigation package shall address all of the additional nutrient load imposed on protected European Sites by the development when fully occupied and shall allow the Local Planning Authority to ascertain on the basis of the best available scientific evidence that such additional nutrient loading will not have an adverse effect on the integrity of the protected European Sites, having regard to the conservation objectives for those sites; and

The mitigation package shall include a timetable for implementation and measures for retention and maintenance of that mitigation package, which shall thereafter be implemented.

Reason: There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some European designated nature conservation sites in the Solent catchment. The PUSH Integrated Water Management Strategy has identified that there is uncertainty as to whether new housing development can be accommodated without having a detrimental impact

on the designated sites within the Solent. Further detail regarding this can be found in the appropriate assessment that was carried out regarding this planning application. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that sufficient mitigation for is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council have had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017.

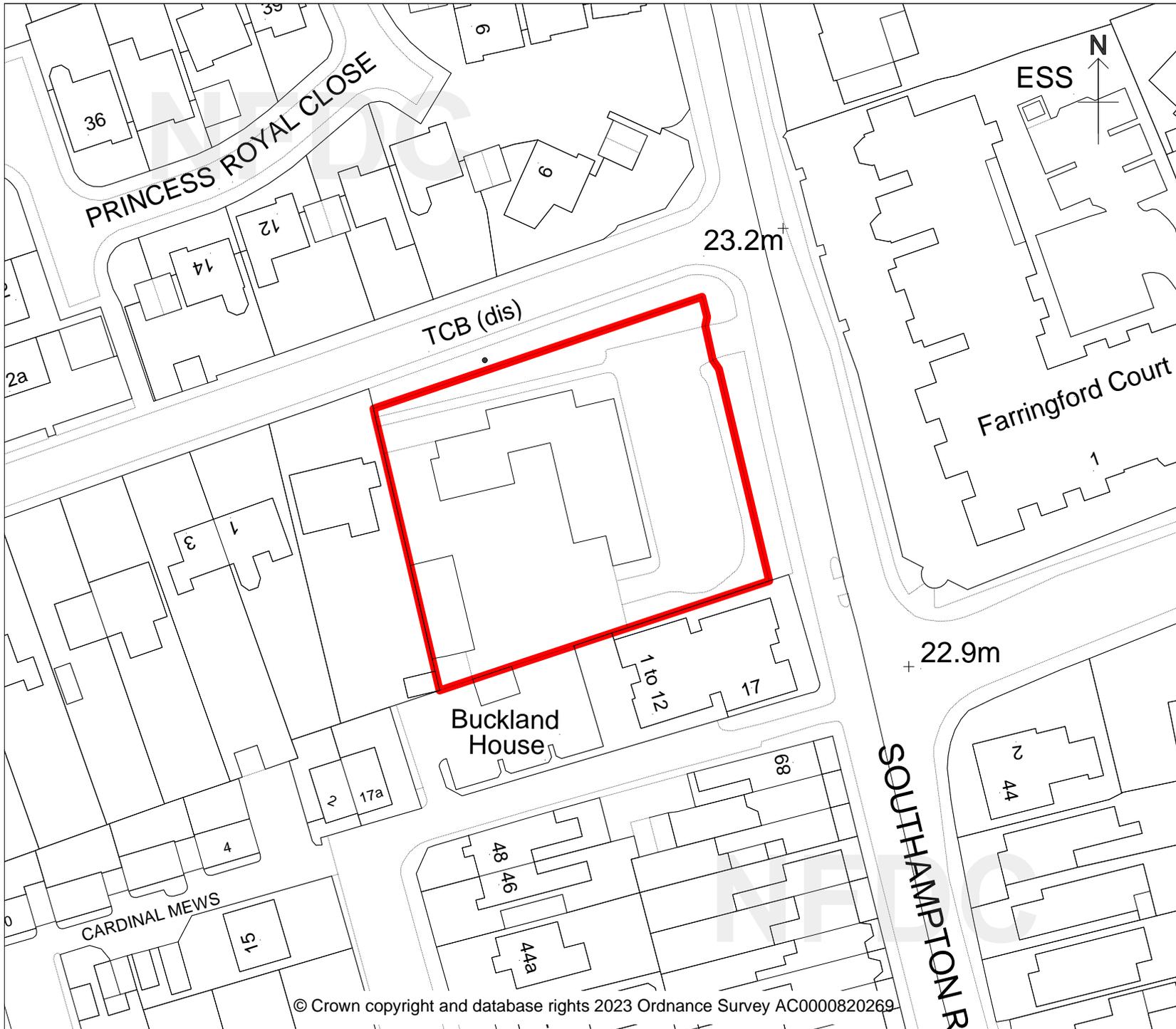
21. Before development commences above ground level;
- (a) details of the treatment of all boundaries of the site shall be submitted to the local planning authority and approved in writing, and
  - (b) those means of enclosure shall be implemented in accordance with the details thus approved before the building is first occupied.

Reason: To ensure that the development takes place in an appropriate way in accordance with Policy ENV3 of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

**Further Information:**

Warren Simmonds

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# New Forest

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New Forest District Council  
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## PLANNING COMMITTEE

September 2023

Former Police Station  
Southampton Road  
Lymington  
23/10282

Scale 1:800

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



## Appeal Decision

Inquiry held on 26, 27, 28, 29 April and 3 May 2022

Site visit made on 28 April 2022

**by Jessica Powis BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 18 November 2022**

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**Appeal Ref: APP/B1740/W/21/3289313**

**Former Lymington Police Station, Southampton Road,  
Lymington, SO41 9GH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Churchill Retirement Living against the decision of New Forest District Council.
  - The application Ref 21/10938, dated 18 June 2021, was refused by notice dated 10 December 2021.
  - The development proposed is demolition of existing building and redevelopment of the site to form 32no. retirement apartments including communal facilities, access, car parking and landscaping.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. A revised site plan (ref: 10109LY-PA01C) was submitted during the course of the appeal. The plan sought to provide space for on-site manoeuvring by emergency vehicles. The revised plan was the subject of further consultation prior to the Inquiry opening and I was provided with a copy of the responses. Having considered the responses, and having regard to the modest extent of the revisions, I am satisfied that no party would be prejudiced by my decision to accept the revised site plan.
3. During the Inquiry, it emerged that the Council had recently adopted (6 April 2022) an updated Parking Standards Supplementary Planning Document (SPD) (CD-31). It was agreed between the parties that as a result, the 2012 version of the SPD (CD-30) had been superseded.
4. Shortly after the Inquiry closed, late submissions were received from Hampshire County Council in relation to the drafting of a proposed condition relating to surface water drainage matters. I sought the views of the main parties on that submission but since the appeal is dismissed for other reasons, I have not reached a finding on the condition. Also after the Inquiry closed, and by prior agreement, I received a completed section 106 agreement containing planning obligations relating to a number of matters. This is considered in my reasoning below.

5. The Council accepts<sup>1</sup> that it cannot demonstrate a five year supply of deliverable housing sites. It is common ground that for the period 2021/22 to 2025/26, there is a housing land supply of approximately 3.07 years, a shortfall of 809 dwellings.
6. The Council's decision on the application included reasons for refusal relating to the effects on European designated sites and the provision of off-site affordable housing. During the course of the appeal, the Council withdrew its objections with regard to these matters on the basis that the proposed development could be made acceptable in these respects through the imposition of conditions and planning obligations. The affordable housing matters are dealt with in a later section of this decision.
7. In terms of the effects on European sites, I am the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations'). As such, I am required to carry out an Appropriate Assessment of the proposed development in circumstances where it would be likely to have significant effects on European sites, alone or in combination with other plans or projects.
8. Therefore, despite the Council's withdrawal of objections on habitats matters, and in light of the Written Ministerial Statement (WMS) on 'Improving Water Quality and Tackling Nutrient Pollution'<sup>2</sup> and the Chief Planning Officer Letter<sup>3</sup> on the same subject, I sought the views of the parties after the closure of the Inquiry about the use of a 'Grampian' condition to secure mitigation of the effects of nitrate discharge on European sites in the Solent.
9. Since my findings in respect of habitats effects have proven to be determinative, this matter forms a main issue in the appeal.

### **Main Issues**

10. The main issues in this appeal are:
  - whether or not the proposal would contribute appropriately to addressing the diversity of housing needs of local people;
  - the effect of the scale and massing of the proposal on the character and appearance of the area, with particular regard to the setting of the Lymington Conservation Area, and effects on non-designated heritage assets;
  - the effect of the proposal on protected trees on the site;
  - whether or not the proposal would make adequate provision for on-site parking and turning areas for emergency service vehicles;
  - the effect of the proposal on the living conditions of future occupiers, in terms of the provision of outdoor amenity space; and
  - the effect of the proposal on European sites.

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<sup>1</sup> Statement of Common Ground, para. 8.4 (CD-56)

<sup>2</sup> Statement made by George Eustice MP (20 July 2022)

<sup>3</sup> 'Nutrient Neutrality and Habitats Regulations Assessment Update' (21 July 2022)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1093278/Chief\\_Planner\\_Letter\\_with\\_Nutrient\\_Neutrality\\_and\\_HRA\\_Update\\_-\\_July\\_2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1093278/Chief_Planner_Letter_with_Nutrient_Neutrality_and_HRA_Update_-_July_2022.pdf)

## Reasons

### *Appeal Site and Proposed Development*

11. The appeal site occupies a corner plot at the junction of Southampton Road and Queen Elizabeth Avenue, to the north of Lymington town centre. The existing L-shaped building and garages were constructed in approximately 1952 for use as Lymington Police Station. The site is now unoccupied.
12. The proposed development would involve the demolition of the existing buildings and their replacement with a single building comprising 32 retirement living apartments together with communal facilities, landscaping and parking.

### *Main Issue 1: Whether the Proposal Addresses Local Housing Needs*

13. The Council's first reason for refusal alleged that the proposed development would not deliver sustainable development or create a mixed and balanced community and would therefore be contrary to Policy HOU1 of the Local Plan 2016-2036 Part One ('LP Part One', adopted July 2020). Before the Inquiry opened, the Council stated that having reflected on the evidence, it would not be defending the grounds relating to a mixed and balanced community and would no longer be alleging conflict with Policy HOU1. Its objection on sustainable development grounds remained and is dealt with under the overall planning balance in a later section of this decision.
14. At the Inquiry, the Council confirmed<sup>4</sup> its view that there is a demonstrated need for housing for older people in the south of the New Forest district and that the proposal would contribute to meeting that need. This position was informed by the identification within the LP Part One of a 12,800 person increase in the population aged over 75 up to 2036, resulting in a significant need for new specialist accommodation for older people district-wide. The projected need for this accommodation in the south of the district, based on the Council's demographic projections and housing mix analysis undertaken for the Local Plan review<sup>5</sup>, was estimated to be around 952 units over the plan period (to 2036), of which 318 would be of the type proposed by the appeal development. These figures were agreed between the parties (CD-56).
15. The Planning Practice Guidance<sup>6</sup> ('the Guidance') describes some of the broad categories of specialist housing for older people, based on the level of support or care services provided. The proposed development falls within the category of 'retirement living or sheltered housing' and would include a lounge, guest suite and communal gardens with a house manager on site during office hours. The apartments would be available to purchase on the open market with a service charge to cover maintenance and upkeep.
16. Notwithstanding the Council's withdrawal of its objection, concerns about the need for the proposed development in Lymington formed a clear theme in the representations of interested parties, and a petition at the application stage attracting approximately 1410 signatures indicated the strength of feeling amongst the local community. Lymington and Pennington Town Council<sup>7</sup> (LPTC), The Lymington Society<sup>8</sup>, the New Forest West Labour Party and local

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<sup>4</sup> Paragraph 3 of ID-12 and paragraph 6.2 of CD-56

<sup>5</sup> Paragraph 8.8 and 8.9 of CD-56

<sup>6</sup> PPG Paragraph 010 Reference ID: 63-010-20190626

<sup>7</sup> ID-4

<sup>8</sup> ID-5, ID-7

- individuals expressed a view that there is an over-provision of older people's housing in the town at the expense of housing for younger people and families, leading to an erosion of the mixed character of the town's population.
17. It is clear that as a district, the New Forest has a considerably older population than the national average, with people aged 65 and over comprising 29.7% of the population in 2020<sup>9</sup>. This is projected to increase over the coming two decades, reaching around 37.4% of the district's population by 2040.
  18. It is noteworthy that within these figures is a projected increase in the population within the district that is aged over 85, from 4.82% in 2020 to 7.89% in 2040<sup>9</sup>. This will inevitably lead to a diverse range of needs in terms of specialised accommodation to help older people adapt to living with mobility difficulties, conditions such as dementia, or requiring help with domestic and self-care tasks. The high levels of owner-occupation among older people in the district (cited by the appellant as approximately 86.12% for those aged 65-74, declining to 82.56% for those aged 85 and over<sup>10</sup>) also indicate a need for market housing that accommodates these varied needs.
  19. I have not been presented with any estimate of the number of units of specialised housing for older people that is likely to be required in Lymington itself, but have seen no evidence to challenge the figures agreed between the Council and the appellant (952 units over the period to 2036, of which 318 units would be of the type proposed in the appeal scheme) which apply to the south of the district. The New Forest district boundary is tightly drawn around the main settlements in the south of the district, with Lymington and New Milton being the only two towns falling within the top tier of the settlement hierarchy identified as a focus for new development in Policy STR4 of LP Part One. It is therefore reasonable to expect that Lymington will play an important role in accommodating the need arising in the south of the district.
  20. Whilst I note the argument that providing additional older people's housing in Lymington could attract more older people into the area, the above analysis offers compelling evidence that whether or not this was the case, a strong need is very likely to arise from the existing population in the local area. I acknowledge that there may also be high levels of need for other types of housing, such as affordable housing and housing for younger people and families, in the town. However, I must determine the application in front of me on its merits.
  21. I have paid close attention to evidence from a number of parties about the current level of supply and vacancy rates of comparable specialised accommodation in Lymington. Various figures have been quoted based on property website searches and data from local estate agents, including in submissions from LPTC<sup>11</sup> and The Lymington Society<sup>12</sup>. I note that some of the vacancy figures include properties that are not directly comparable to the appeal scheme because they offer a different category of care or support, for example Farringford Court (extra care) and Bucklers Mews, Pyrford Gardens and Lynewood Court (age-restricted housing). As a result, it is not possible to derive precise or reliable vacancy levels from these figures.

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<sup>9</sup> APOE-11, section 4.

<sup>10</sup> APOE-11, section 6

<sup>11</sup> In ID-4 and in oral and written representations of LPTC

<sup>12</sup> In ID-7 and the oral and written representations of The Lymington Society

22. The appellant's efforts to do so<sup>13</sup> give a gross vacancy rate of between 8% and 14% for comparable properties in Lymington. The appellant acknowledges that the upper end of this range is higher than industry averages but it attributes this to slower than anticipated sales rates at the Knights Lodge scheme (19 of 44 apartments are not yet occupied) as a result of restrictions associated with the Covid-19 pandemic. I do not consider this analysis to be unreasonable.
23. Permission was granted for 44 retirement living apartments at Stanford Hill in 2021 and construction is underway. The Stanford Hill site is located a short distance to the south of the appeal site and will offer a similar type of property. However, Stanford Hill aside, I note the appellant's analysis<sup>14</sup> that comparable developments in Lymington have been provided at a rate of approximately 2.9 units per annum in the period 1995 to date, compared with provision at an average rate of approximately 10.6 units per annum in the period 1978 to 1994.
24. Consequently, even taking the Knights Lodge and Stanford Hill schemes into account, I do not consider that the proposed development would result in an overprovision of comparable specialised housing for older people within the town, given the scale of the need identified above.
25. I recognise that retirement housing of the type proposed may not be attractive to all older people, many of whom might prefer to live within a neighbourhood with a more mixed demographic. However, I equally consider that the appeal scheme would offer benefits that make it attractive to some older people, for example through the availability of shared facilities, a house manager and opportunities for social interaction.
26. In my view, 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.
27. Taking all of these matters into consideration, I am satisfied that the proposed development complies with Policy HOU1 of the LP Part One, insofar as it seeks to address the diversity of housing needs of local people at all stages of life by providing a mix and choice of homes by type, size, tenure and cost.

### *Main Issue 2: Effect on Local Character and Heritage Assets*

#### Non-Designated Heritage Assets

28. The former police station which currently occupies the appeal site is agreed<sup>15</sup> to be a non-designated heritage asset due to its historic and architectural interest. The main building is a two-storey red brick structure with a broadly L-shaped plan built in the neo-Georgian style. It is a relatively unaltered example of a purpose-built mid-century police station, comprising a simple façade, casement windows and hipped, red clay pantile roof. The building has some local historic

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<sup>13</sup> ID-11

<sup>14</sup> ID-11

<sup>15</sup> Paragraph 8.14 of CD-56

- interest as an example of the development and history of the Hampshire Constabulary. Its setting comprises the surrounding yards, garaging and parts of Southampton Road, Queen Elizabeth Avenue and Eastern Road.
29. The proposed development would necessitate the total loss of the former police station. Paragraph 203 of the National Planning Policy Framework ('the Framework') states that the effect of an application on the significance of a non-designated heritage should be taken into account in determining the application.
  30. In October 2021, Historic England decided not to add the building to the List of Buildings of Special Architectural or Historic Interest (CD-61). The building was not found to demonstrate a high level of architectural interest or national historic interest, nor was any group value identified. While local interest in the heritage value of the building is evident in the submissions of the Council, The Lymington Society and other local residents, the former police station is not identified as an important unlisted building in the Lymington Conservation Area Appraisal (CAA) (July 2002)<sup>16</sup> or as an important building or street frontage in the Lymington Local Distinctiveness Supplementary Planning Document (SPD) (February 2011)<sup>17</sup>.
  31. Moreover, the identification of the appeal site on the Council's brownfield land register for the provision of approximately 20 dwellings appears to be incompatible with the argument that the former police station is of such heritage value that it should be retained. I saw on my visit that the number of residential units anticipated within the brownfield land register could not realistically be achieved through retention and conversion of the existing buildings; they simply do not comprise adequate floorspace.
  32. Taking account of all of the evidence, including my own observations on site, I consider that the building holds limited historic interest and, whilst a well-executed and preserved example of its type, particular architectural interest in terms of rarity or special quality has not been demonstrated. This leads me to find that the former police station is of low heritage significance. The appeal proposal would lead to the complete loss of the asset, which equates to the highest level of harm.
  33. To the immediate west of the appeal site addressing Queen Elizabeth Avenue is the Old Police House, now a dwelling in private ownership. The appellant disputes the Council's position that the Old Police House should also be treated as a non-designated heritage asset.
  34. The Old Police House is a two-storey dwelling exhibiting the same red brick construction and hipped pantile roof as the former police station. There is a pleasing symmetry in the fenestration on the front façade, with a centrally positioned doorway within a sandstone portico.
  35. The records suggest that the Old Police House was designed by the same architect as the former police station and constructed at the same time. The two buildings are situated in close proximity to one another. Read in conjunction with the former police station, the Old Police House holds some historical interest and has some group value. However, the two buildings are now clearly separated by fencing and function independently of one another. A

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<sup>16</sup> Map 7 of CD-33

<sup>17</sup> Character Area 1: Town Centre map of CD-32

number of alterations and extensions have been made to the rear of the Old Police House that somewhat undermine its architectural interest. Overall, I consider it to be of low heritage significance.

36. The former police station lies within the setting of the Old Police House. The loss of the former police station would undoubtedly cause harm to the setting of the Old Police House, which takes its principal value from its close historical, architectural and physical association with the former police station. Without the former police station, the Old Police House would be less legible in its context. In my estimation, the proposed development would give rise to a moderate level of harm to the Old Police House.
37. In this sense, the appeal proposal conflicts with Policy DM1 of the LP Part Two which expects that development proposals will conserve and enhance heritage assets, with particular regard to local character and setting, amongst other things.
38. As required by paragraph 203 of the Framework, the direct and indirect effects of the appeal proposal on the significance of these non-designated heritage assets is carried forward into my overall judgement on the planning balance set out later in this decision.

#### Local Character and Designated Heritage Assets

39. The appeal site sits amongst principally residential development to the north of the town centre. It is bounded along its eastern edge by the A337 Southampton Road which is a main vehicular route into the town. This contributes to the urban character of the locality. The former police station building, set back from the road by a front parking area, signals the previous civic use of the appeal site. Mature trees along the north and east boundaries give the site a pleasant, verdant quality.
40. The appeal site is outside of, but adjacent to, the Lymington Conservation Area and as a matter of common ground falls within its setting<sup>18</sup>. In conducting my assessment of the effects on the Conservation Area, I have paid close attention to the good practice advice<sup>19</sup> from Historic England.
41. The Lymington Conservation Area encompasses an area around the core of the historic town together with the quayside and river frontage to the east. Its significance is derived from its role as an important port dating back to the 12<sup>th</sup> and 13<sup>th</sup> centuries and used to export salt extracted locally, the industry upon which Lymington's prosperity was based. The Conservation Area Appraisal (July 2002)<sup>20</sup> describes how the town's medieval structure has remained largely unaltered to the present day, meaning that the historical development of the town is highly legible. The town's growth in the late 18<sup>th</sup> and 19<sup>th</sup> centuries is also evident in the wealth of buildings of varied historical and architectural interest.
42. The appeal site lies immediately beyond the north-western boundary of the Conservation Area<sup>21</sup>. This part of Southampton Road marks a point of arrival

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<sup>18</sup> Section 3.3 of CD-14

<sup>19</sup> Historic England Good Practice Advice Note 2 (GPA2)(2015) and Good Practice Advice Note 3 (GPA3)(2017)

<sup>20</sup> CD-33

<sup>21</sup> Map 7 of the CAA (CD-33)

into the Conservation Area and is therefore a sensitive setting location from which the Conservation Area is experienced.

43. Due to their pronounced set back from Southampton Road and the presence of the established trees along the northern and eastern boundaries, the existing buildings on the appeal site are not prominent in the local townscape. Whilst the former police station has value in its own right as a non-designated heritage asset as discussed above, it does not contribute materially to the legibility or appreciation of the Conservation Area. Overall, it makes a neutral contribution to the setting of the Conservation Area and as such, its loss would not cause harm to the Conservation Area's significance.
44. The proposed development would replace the existing police station buildings with a taller building with a wider span and modern residential character. The proposed building would comprise three storeys together with dormered accommodation in the roof level, stepping down to two storeys with dormered roof accommodation along the Queen Elizabeth Avenue elevation. It would be set further forward than the existing building and would occupy a considerably larger footprint within its plot.
45. The area to the north of the junction of Eastern Road and Avenue Road with Southampton Road marks a transition point between small-scale, close-knit terraced housing within the Conservation Area to the south and coarser-grained residential development outside of the Conservation Area to the north. This change in density and character of the built form moving north along Southampton Road is described in the Lymington Local Distinctiveness SPD (adopted February 2011) wherein the appeal site sits within Character Area 1: Town Centre. At this junction, the existing developments of Buckland House and Farringford Court stand at greater scale than the surrounding built form and serve to somewhat punctuate the edge of the Conservation Area.
46. Though it would be visible from viewpoints within the Conservation Area on Southampton Road and to the rear on Eastern Road, the proposed building would not appear discordant with the development immediately surrounding it. Buckland House and Farringford Court exhibit similarities to the appeal development in their height, mass and residential character. The proposal would not diminish or overpower the loose 'gateway' effect created by the corner structure of Buckland House and the corner 'tower' of Farringford Court.
47. In this sense, the proposal would not undermine the sense of arrival into the Conservation Area. Neither would its scale or mass be so incongruous as to detract from the rich historic quality of the terraced houses along the western side of Southampton Road that characterise development in the 'Western Zone' of the Conservation Area. Overall, the proposed development would not degrade the historic or architectural significance of the Lymington Conservation Area as a whole; it would have a neutral effect.
48. Consequently, I conclude that there would be no harm to the setting of the Conservation Area as a designated heritage asset. In this sense, the appeal proposal would comply with Policy DM1 of the Local Plan Part Two: Sites and Development Management ('LP Part Two', adopted 14 April 2014) insofar as it seeks to conserve and enhance the historic environment and heritage assets. It would also accord with the requirement of the Framework to give great weight to the conservation of the significance of designated heritage assets.

49. Considering the effect on the character and appearance of the site and surrounding area more widely, for the reasons set out above I find the proposed development to be an acceptable design response to the site. I have found that the height of the building would not be excessive in the site context and the massing would not undermine local distinctiveness. The proposal broadly conforms with the design guidelines set out within the Lymington Local Distinctiveness SPD (2011).
50. I therefore conclude that the scale and massing of the proposal would not have an adverse effect on the character and appearance of the site and surrounding area. There would be no conflict with Policy ENV3 of the LP Part One to the extent that it requires high quality design that contributes positively to local distinctiveness and enhances the character and identity of the locality, including through good architecture.
51. Furthermore, the proposal would satisfy the requirements of the Framework to create high quality buildings and places which reflect local design policies. It would also accord with the ten characteristics of well-designed places set out in the National Design Guide (January 2021).

*Main Issue 3: Effect on Protected Trees*

52. There are eight trees on the appeal site that are subject to a Tree Preservation Order (TPO) (No. TPO/0006/15). The trees fall into two groups:
- G1, which consists of five silver maples (tree numbers T2-T6) running along Southampton Road; and,
  - G2, which consists of two silver maples and one cedar (tree numbers T7-T9) on Queen Elizabeth Avenue.
53. The trees were donated by The Lymington Society and planted as part of a commemorative community planting scheme in 1980. The parties agree<sup>22</sup> that Trees T4 and T5 (both maples) are currently 'C grade' trees, meaning that they are of low quality with a remaining life expectancy of at least 10 years, with the remainder categorised as 'B grade', meaning they are of moderate quality with a remaining life expectancy of at least 20 years. The Council considers that in the current site context the trees have the potential to mature and be considered 'A grade' trees in the future.
54. The trees are of a substantial height and prominence, together forming an important landscape feature in the streetscene. In my view, they make a positive contribution to the character and quality of the area in the vicinity of the site, most notably along Southampton Road and Queen Elizabeth Avenue.
55. It is common ground between the main parties that the construction of the proposed development would not harm the protected trees, subject to the imposition of a condition that controls tree protective and construction measures. However, the Council alleges that once constructed and occupied, the proximity of the proposed building would prevent the trees from growing to their natural size and form and would be likely to give rise to pruning and ultimately potential loss of the trees, to the detriment of the amenity of the

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<sup>22</sup> Section 4 of NPOE-3

area. These concerns were echoed by interested parties including LPTC<sup>23</sup> and The Lymington Society<sup>24</sup>.

56. The proposed building would sit approximately 6 metres from each of the trees, with the exception of T7 which would be at a greater distance due to its position in the north-eastern corner of the site. Six metres is the root protection area (RPA) radius identified for the cedar, with RPA radii of between 3 and 5.4 metres identified for the silver maples. So, the foundations of the proposed building would be in relatively close proximity to the root systems of the trees in some parts of the site and it is possible that this could form a barrier to future root growth and penetration, potentially affecting the stability and growth prospects of the trees.
57. That said, the building would be outside of the RPAs. Moreover, the removal of the current hardstanding in the vicinity of the trees and its replacement with soft landscaping would be likely to improve aeration and porosity of the ground which could promote root intensification. On balance, I do not consider that the proposed building would cause harm to the root systems of the protected trees such that their vitality would be adversely affected.
58. Nonetheless, above ground level the relationship between the building and the protected trees would be relatively close. There would be the potential for shading of some internal and external spaces, seasonal nuisance (such as blocked gutters and slippery footpaths as a result of fallen leaves) and safety concerns from future occupiers<sup>25</sup>. All of these factors are likely to lead to future pressure to manage the growth of the trees through pruning.
59. The appellant acknowledges that the minimum separation distance between trees and buildings is widely accepted to be approximately 2 metres. In the immediate term, Tree T9 (cedar) would need to undergo crown spread reduction to create space for construction and achieve the appropriate separation distance from the building once occupied<sup>26</sup>. I note that these pruning works would be limited to the southern side of the tree and would involve the reduction in the length of branches by 2-3 metres. On this basis, I am satisfied that this pruning event in isolation would have a very limited effect on the contribution that the tree makes to the character of the area.
60. No other pruning works are identified as required to accommodate the appeal scheme. However, all eight of the protected trees are assessed as 'maturing'<sup>27</sup> and it is common ground that they have not yet reached their full height or canopy spread. By the Council's analysis<sup>28</sup>, if the trees were to achieve their full potential in terms of crown spread, there would be significant interaction with the proposed building along its eastern elevation and part of its northern elevation.
61. As the trees continue to grow and spread, the appellant accepts that regular pruning on an approximately three-yearly cycle could be required to maintain the necessary separation distance from the building. Whilst there is some evidence of pruning having taken place around 2008, it is accepted that cyclical

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<sup>23</sup> ID-4

<sup>24</sup> ID-5

<sup>25</sup> As described in BS5837:2012 and NFDC Tree Protection and Development Guidance 2020 (CD-39)

<sup>26</sup> Arboricultural assessment and method statement (CD-15)

<sup>27</sup> Appendix 2 of CD-15

<sup>28</sup> Appendix 4 of NPOE-3

pruning would represent a material change in the level of intervention with the trees compared with the previous use of the site. Although some pruning may have been necessary had the previous use of the site continued, it is clear that a change to residential use at much closer proximity to the trees would give rise to a greater need for intervention.

62. This greater level of intervention has the potential to leave the trees more vulnerable to pathogens leading to disease or poor growth. However, having regard to the established nature and condition of the trees, the characteristics of their species and the modest scale of the cyclical pruning works that might be required, I have seen no evidence to indicate that future intervention works would be likely to lead to serious disease in the trees in this case. For the same reasons, there is a very low likelihood of any of the protected trees being lost altogether as a result of disease arising from future pruning works required for the appeal scheme. Consequently, I do not consider that the proposed development would conflict with paragraph 131 of the Framework which promotes the retention of trees wherever possible.
63. Cyclical pruning of the protected trees could affect their ability to realise their natural shape and form. However, having regard to the likely scale and frequency of the intervention, this would not have a deleterious effect on the height, shape or appearance of the trees. 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.
64. For these reasons, I conclude that there would be no conflict with Policy ENV3 of the LP Part One to the extent that it requires new buildings to be sympathetic to the environment and their context in relation to adjoining landscape features. The appeal scheme would also comply with Policy ENV4 of the LP Part One insofar as it seeks the retention and/or enhancement of landscape features that contribute to distinctive character within settlements, including trees.

#### *Main Issue 4: Adequacy of Parking and Turning Areas*

65. The revised site plan (ref: 10109LY-PA01C) sought to address concerns that there would be insufficient space for on-site manoeuvring by emergency vehicles. At the Inquiry, the Council agreed<sup>29</sup> that so long as the turning area indicated on the revised site plan was kept clear, adequate space would be available for ambulances to turn on site.
66. On the basis of the revised site plan, I am content that there would be adequate space for ambulances and light goods vehicles to turn within the site and exit in a forward gear. The retention of the turning space can be controlled via planning condition. It is unlikely that there would be sufficient space for larger vehicles such as community buses, coaches, refuse trucks and fire engines to manoeuvre within the site but such vehicles could service the site in a satisfactory manner from Queen Elizabeth Avenue.

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<sup>29</sup> Paragraph 22 of ID-12

67. Turning to the provision of on-site car parking, the appeal scheme provides a total of 12 parking spaces for use by future residents, staff and visitors. During the Inquiry, draft condition wording<sup>30</sup> was agreed between the parties to secure the inclusion of two disabled parking spaces as part of this provision.
68. The adopted Parking Standards SPD (CD-31) sets out the recommended car parking standards for the various types of development. Table 9 (Annex 1) of the SPD recommends that housing for the active elderly with warden control provides one parking space per unit of accommodation, equating to a recommendation of 32 spaces for the proposed development. The SPD is clear<sup>31</sup> that in town centre locations, a reduced car parking provision is acceptable where the site is well served by public and active modes of travel, and where the proposal would not exacerbate parking pressure in the local area.
69. The appeal site falls just outside of the town centre boundary denoted on the relevant map in Annex 2 of the SPD but is a short and level walk from the facilities and services of the town centre. There is a doctor's surgery approximately 450 metres away, and a bank, post office, food shops, pharmacy and library within 850 metres<sup>32</sup>. A bus stop is approximately 90 metres from the site on Southampton Road, providing hourly services between Lymington, Lyndhurst and Southampton, plus a local service to Pennington, Hordle and New Milton. Bus links to Bournemouth and Christchurch are also available from the Sports Ground, a short walk from the site to the east of Southampton Road. Although more likely to be used by staff and visitors than residents, there are good cycle links to the town centre and railway station. As such, the site is in an accessible location which is likely to reduce the reliance of future residents on the private car.
70. The appellant's analysis of parking levels at a number of other Churchill Retirement Living (CRL) schemes identifies an average parking demand of 0.28 spaces per apartment, which would equate to a total of 9 spaces for the appeal scheme. It submits that 12 spaces are proposed to accommodate for situations above this average. On this basis, the appeal scheme would provide 0.37 parking spaces per unit. The Council contests this analysis on the basis that looking at parking levels at other CRL sites across the south of England is not the most appropriate way to ascertain parking demand for the appeal scheme.
71. Car ownership data from the 2011 census<sup>33</sup> indicates that the appeal site is situated in an area in which 81% of people aged 65 and over own one or more vehicles. According to the Council's analysis, this is higher than car ownership levels in the other CRL schemes quoted by the appellant<sup>34</sup>. However, I note that the census data is based on middle output areas which for the appeal site covers a large area of the rural New Forest. It is reasonable to expect that car ownership levels within the town of Lymington would be lower than the average for its middle output area since the town offers greater opportunity to access facilities via non-car modes. This is supported by the breakdown of car ownership by ward presented in Annex 3 of the SPD.

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<sup>30</sup> ID-9

<sup>31</sup> Principles PS1, PS2 and PS13 of the SPD

<sup>32</sup> CD-19

<sup>33</sup> Appendix A of NPOE-6

<sup>34</sup> Figure 1.1 of NPOE-6

72. Other relevant considerations are the demographics and personal circumstances of typical purchasers of retirement living schemes. Whilst available to residents aged 60 and over, the average age at first purchase is estimated to be around 79<sup>35</sup>, with anecdotal evidence from the partially-occupied Knights Lodge scheme in Lymington indicating an average resident age of 83. Moves into this type of scheme tend to be driven by a need to down-size domestically, for greater support to continue living independently and by a medical or other need to give up driving. Given these factors, the census car ownership data, which simply categorises the older population as 'aged 65 and over', should be applied with caution.
73. The Council highlighted an application<sup>36</sup> for an extension to car parking at the Hubert Lodge scheme in Hythe as an example of under-provision in other recent CRL schemes. Since consent for the car park extension was granted, the Hubert Lodge scheme provides parking at a ratio of between 0.39 (by the appellant's calculation) and 0.44 (by the Council's calculation) spaces per unit, which is greater than proposed for the appeal scheme.
74. On that specific case, the appellant argues that the original level of parking was found to be acceptable at appeal and the rationale for the extension was that it would be an inexpensive way to maintain additional land acquired as the main construction started. I have not been provided with full details of the parking extension application and it is therefore not possible to know unequivocally why the four additional spaces were applied for. For this reason, it does not necessarily demonstrate that the CRL methodology for calculating parking demand is flawed.
75. I have noted the Council's submissions about parking at the Farringford Court and Belmore Lodge developments spilling over onto surrounding roads. I observed these developments as part of my site visit. Farringford Court provides 'extra care' accommodation, meaning that staffing levels are considerably higher than for the appeal scheme (estimated at 8-10 members of staff per shift versus 1 house manager within office hours for the appeal development). Belmore Lodge is a residential and nursing home which due to the needs of residents and staffing levels means that it is also not directly comparable to the scheme before me. No evidence was presented of parking shortages or their effects at existing CRL sites where there are similar ratios of provision to that proposed for the appeal scheme.
76. Taking all of these matters into account, 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.
77. In the scenario that demand exceeded the spaces provided, the parties agree that the most likely result would be overspill parking on Queen Elizabeth Avenue, which is a residential street with sections of unrestricted parking. On my visits, I saw that most houses on Queen Elizabeth Avenue have off-street parking in the form of driveways and garages and a considerable proportion of on-street parking spaces were unoccupied.

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<sup>35</sup> Homes for Later Living (September 2019) 'Healthier and Happier' (APOE-4)

<sup>36</sup> ID-1

78. A parking survey<sup>37</sup> was undertaken in March 2022 which found, amongst other things, that between 35% and 42% of the total unrestricted spaces available in Queen Elizabeth Avenue (26) were occupied and none of the single yellow line spaces. I am content that the methodology for the survey is robust and the findings are consistent with my observations on site over a number of days. The survey concluded that no roads within a 200 metre walking distance of the appeal site currently experience parking stress. Whilst the survey and my visits were undertaken on weekdays, I have not seen any evidence to indicate that the situation would be materially different at a weekend.
79. Approximately 15-17 unrestricted spaces were found at the time of the survey to be unoccupied in Queen Elizabeth Avenue, in addition to 33 single yellow line spaces, which is a fair reflection of my observations on site. This leads me to find that even in the scenario that parking demand was at the level envisaged by the SPD before adjusting to account for location (32 spaces, one per unit of accommodation), there would be sufficient space within the existing on-street parking provision together with the 12 on-site spaces to meet all of the demand.
80. Given the above, I consider 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.
81. The Council did not allege any specific highway safety harm as a result of overspill parking but this was a concern expressed by some local residents, particularly at school drop off and collection times when Queen Elizabeth Avenue is used by children on scooters and parents with buggies. I visited the site at times used by school traffic and saw some evidence of this. Due to its limited width, and the need for vehicles to wait for oncoming vehicles to pass, speeds during my visit were low and drivers relatively vigilant. Since the existing unrestricted parking areas have the capacity to accommodate any overspill parking, the proposal would be unlikely to give rise to unsafe parking behaviours such as double parking or parking on double yellow lines. Therefore in my view, the level of any potential overspill parking would not be such that it would present an elevated highway safety risk to pedestrians or other road users.
82. For the reasons set out above, I conclude that the proposed development would make adequate provision for on-site car parking and that residential amenity would be safeguarded. There is an element of conflict with the Parking Standards SPD (adopted April 2022) in the sense that the appeal proposal provides a lower level of on-site parking than recommended for housing for the active elderly. However, the level of provision is justified in this case by the accessible location of the site and the evidenced lack of parking stress in its immediate vicinity. As a result, I have found that sufficient car parking would be provided. Accordingly, I find no conflict with the SPD or with Policy CCC2 of the LP Part One, which seeks the provision of sufficient car and cycle parking in accordance with the adopted SPD.

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<sup>37</sup> Appendix 9 of APOE-9

83. Furthermore, the appeal scheme would accord with Policy ENV3 of the LP Part One insofar as it requires new development to integrate sufficient car parking spaces so that realistic needs are met in a manner that is not prejudicial to the character and quality of the street, highway safety, emergency or service access or to pedestrian convenience and comfort.
84. In arriving at this view, I have had regard to the Council's view that though desirable in their own right, the provision of disabled parking spaces would be at a cost to general resident parking. Principle PS6 of the SPD advocates the provision of suitable parking spaces for people with disabilities and the supporting text (paragraph 8.3) recognises that residential developments for elderly persons may require relatively higher provision of disabled spaces. On balance therefore, I consider it important that dedicated provision is made within the site for disabled parking, since there is a high likelihood that it would be required.

#### *Main Issue 5: Outdoor Amenity Space*

85. The outdoor amenity space serving the proposed development would take the form of landscaped gardens running along the northern, eastern and part of the southern edges of the site. Paved areas for outdoor seating would be incorporated, including a communal patio and a small number of private patios immediately outside some ground floor apartments. There would also be modest private balconies on the first and second floors on the south and west elevations of the building.
86. There is no locally-prescribed standard for the quantum of external amenity space to be provided. The proposed amenity areas and patios would cover an area of approximately 839 m<sup>2</sup>, which would represent approximately 38.3% of the total site area (2,189 m<sup>2</sup>). As a proportion of site area, this would sit toward the lower end of amenity space provision in other local schemes cited in evidence<sup>38</sup>, although not markedly so (provision ranging between 34.3% and 44.2% of the total site area).
87. 'Retirement Living Explained: A Guide for Planning and Design Professionals' (2017)<sup>39</sup> stresses that specialist housing for older people should seek to provide quality amenity space, stating that '*quantity is less important where there is a shared garden*'. The proposed scheme does not allow for any expansive lawned areas; the gardens are principally linear in form. However, I am mindful that external amenity space in retirement living schemes is typically used for sitting out and for its aesthetic value and interest, rather than for active play or recreation. The HAPPI Report<sup>40</sup> (2009) highlights that housing for older people should enable '*enough space for tables and chairs as well as plants*'.
88. Examples<sup>41</sup> of other developments delivered by the appellant demonstrate how creative design and planting of smaller or irregularly-shaped spaces can contribute to a high quality environment. The examples also illustrate how delivering and maintaining good quality landscaping schemes forms an important part of the overall package being presented to potential buyers. The

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<sup>38</sup> APOE-13, Section 6

<sup>39</sup> APOE-6

<sup>40</sup> 'Housing for our Ageing Population: Panel for Innovation'

<sup>41</sup> APOE-13, Section 3

Landscape Strategy Masterplan<sup>42</sup> shows the attention that has been paid to achieving a visually appealing and functional external area. Delivery of a well-designed landscaping scheme that follows the principles of the masterplan can be secured by condition.

89. The focus of the external space would be the communal patio area in the south-eastern part of the site. This would sit close to the adjacent Buckland House, which is a three-storey building with windows on its northern elevation. During my site inspection, I saw that due to the position of the windows and the oblique angles involved, there is very limited scope for overlooking of the external amenity space from windows on Buckland House. The attractiveness of the external space would therefore not be compromised by overlooking.
90. There is the potential for shading of the proposed patio area by Buckland House due to its height and proximity, which the Council estimates to be approximately 6.09 metres away at its closest point. Submitted evidence<sup>43</sup> derived from SUN-Calc and aerial photographs indicate that the patio would be affected by shading from Buckland House. Anecdotal evidence presented at the Inquiry from experience on other similar schemes suggests a lower demand for direct sunlight in gardens, with some residents preferring to seek out natural shade.
91. Having visited the site in the late afternoon in April, I found that the location of the proposed patio was not sunny, but did not feel overly gloomy or so shaded as to deter its use. The patio area would be situated approximately between the two ridge peaks of Buckland House which would assist with the availability of daylight throughout the day. The lawned area to the west of the proposed patio, although modest in size, would receive more direct sunlight, especially in the afternoons.
92. There would also be shading of the external amenity areas in the east and north of the site by the proposed building and existing protected trees. This would be more significant in the spring and summer when the trees are in leaf. However, even then it would be a dappled shade and the trees are not so dense as to prevent a reasonable amount of daylight from reaching the amenity areas.
93. Since much of the amenity space would adjoin Southampton Road, there would be some traffic noise, although the existing line of trees and proposed boundary planting would help to form a natural buffer from the road. Given the urban context of the site, where some element of traffic noise is to be expected, this noise would not be detrimental to the residents' enjoyment of the external space. For the same reasons, I do not consider that the proximity of the gardens to the on-site car park would lead to unacceptable disturbance to their enjoyment.
94. Having considered all of the evidence, I conclude that the proposal would have no harmful effects on the living conditions of future occupiers in terms of the provision of outdoor amenity space. Consequently, the proposal would be consistent with the aims of Policy ENV3 of the LP Part One as it relates to achieving high quality design that contributes positively to quality of life by creating spaces that are visually appealing and enjoyable to be in, and avoids

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<sup>42</sup> CD-18

<sup>43</sup> Appendix JRG 5 and JRG 6 of NPOE-1

adverse impacts on residential amenity including through unacceptable overlooking and shading.

95. There would also be no conflict with 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 (January 2021)<sup>44</sup> insofar as it seeks the provision of good quality external environments that support the health and well-being of their users.

#### *Main Issue 6: Effect on European Sites*

##### Procedural Matters

96. The Council's sixth reason for refusal alleges that an adverse impact on the integrity of the Solent Special Protection Area (SPA) and Special Area of Conservation (SAC) due to the effects of nitrate discharge could not, in the absence of a Section 106 agreement, be ruled out. However, in the Statement of Common Ground<sup>45</sup>, it was agreed that "*the Council has imposed the wrong 'standard' reason for refusal at No.6. The issue raised by the reason included on the decision notice, can be dealt with by a condition*".
97. The parties agreed that the reason for refusal should have related to the recreational and air quality impacts of the proposed development on the European sites in the New Forest and Solent. A redrafted version of the sixth reason for refusal was provided<sup>46</sup>.
98. Where a plan or project, either alone or in combination with other plans or projects, would be likely to give rise to significant effects on European sites, the Habitats Regulations require the competent authority to carry out an appropriate assessment before granting consent. I am the competent authority in respect of this appeal and will proceed accordingly.

##### European Sites and Features

99. The Statement of Common Ground identifies the following European sites as potentially affected by the proposed development:
- New Forest Special Area of Conservation;
  - New Forest Special Protection Area;
  - New Forest Ramsar site;
  - Solent and Southampton Water Special Protection Area;
  - Solent and Southampton Water Ramsar site; and,
  - Solent Maritime Special Area of Conservation.
100. The internationally important interest features of the New Forest sites are, in summary: the heaths, woodlands, water and meadow features and the habitats that they provide for species including European honey-buzzard, Hen harrier, Eurasian hobby, European nightjar, Woodlark, Dartford warbler, Wood warbler, southern damselfly and stag beetle.

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<sup>44</sup> CD-24

<sup>45</sup> CD-56, paragraph 2.13

<sup>46</sup> Paragraph 2.14 of CD-56

101. The internationally important interest features of the Solent sites are, in summary: the estuaries, coastal lagoons, intertidal flats, reefs, grazing marsh, sandbanks, mudflats, shifting dunes and salt meadows. These features provide habitats for, amongst other things, Dark-bellied brent goose, Eurasian teal, Ringer plover, Black-tailed godwit, Mediterranean gull, Sandwich tern, Common tern, Little tern, Roseate tern and Desmoulin's whorl snail.

#### Likely Significant Effects

102. By creating 32 additional residential units, it is likely that the proposed development, in combination with other plans and projects, would generate additional recreational pressure on the European sites in both the New Forest and the Solent. Consequently, the appeal scheme would have a likely significant effect on these European sites as a result of recreational disturbance.
103. Similarly, the proposed development is likely to give rise to an increase in transport movements which, when considered in combination with other plans and projects, is likely to have significant effects on the New Forest SPA, SAC and Ramsar due to air quality implications.
104. Furthermore, the proposed development would generate additional wastewater discharge from the site. The consequent increase in nitrates arising from the site, in combination with other plans and projects, is likely to have significant effects on the Solent SPA, SAC and Ramsar.
105. All of these likely significant effects are acknowledged in the appellant's Ecological Appraisal<sup>47</sup> and the Council officer's Planning Committee report<sup>48</sup>.

#### Recreational Pressure

106. A Habitats Regulations Assessment<sup>49</sup> of the LP Part One (adopted July 2020) found that significant effects on both the New Forest and Solent European sites as a result of recreational impacts from any additional residential development in the plan area could not be ruled out. The Council's Appropriate Assessment<sup>50</sup> in respect of recreational impacts of the proposed development came to the same conclusion and this was accepted by the appellant in the Statement of Common Ground<sup>51</sup>.
107. Recreational impacts arise principally from the additional recreational visits made to sensitive designated sites by residents of new dwellings. Increased recreational use of these sites can lead to greater disturbance of birds, whose feeding, nesting and breeding habitats can be interrupted by the presence of humans. The ultimate consequence of this disturbance can be increased bird mortality and reduction in bird populations. In this sense, by creating 32 new residential units the proposed development would, in combination with other plans and projects, adversely affect the integrity of the New Forest and Solent European sites.
108. The Council has produced a Supplementary Planning Document (SPD) entitled 'Mitigation for Recreational Impacts on New Forest European Sites'

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<sup>47</sup> Section 5.1.1 of the Ecological Appraisal, Tetra Tech (June 2021)

<sup>48</sup> Planning Committee Report 8 December 2021 (CD-62)

<sup>49</sup> Habitats Regulations Assessment of New Forest District Local Plan Part 1 (January 2018)

<sup>50</sup> New Forest District Council Appropriate Assessment in relation to recreational impact (CD-40)

<sup>51</sup> Paragraphs 2.14-2.15 of Statement of Common Ground (CD-56)

(adopted 5 May 2021)<sup>52</sup>. The SPD requires all new residential development to contribute toward mitigation measures to avoid adverse effects on the integrity of the New Forest European sites. In a similar vein, the 'Solent Recreation Mitigation Strategy' (December 2017)<sup>53</sup> produced by Bird Aware Solent sets out a range of mitigation measures to which new homes built within 5.6 km of the Solent SPA are expected to contribute financially.

109. The mitigation for these recreational impacts involves the provision of new areas of alternative natural recreational greenspace (ANRG), enhancement of existing greenspace and rights of way within settlements, access and visitor management including the employment of rangers and education initiatives, and monitoring.
110. I have been provided with a lawfully executed planning obligation (dated 4 May 2022) which secures financial contributions to access management and monitoring measures as mitigation of the effects on the New Forest European sites in accordance with Policy ENV1 of the LP Part One and the aforementioned New Forest mitigation SPD (2021). The obligation also secures financial contributions to the Bird Aware Solent project by way of mitigation of effects upon the Solent European sites, as required by the same LP policy and the aforementioned Solent mitigation strategy (2017).
111. In addition to this, an 'infrastructure' contribution for habitats mitigation is included within the obligation (Clause 8). Paragraph 2.8 of the CIL Compliance Statement<sup>54</sup> explains that whilst this element of the contribution is expected to be collected via a CIL payment, the Clause 8 provisions are included to cover any scenario in which no CIL is paid (for example if the development secured CIL relief). This is necessary because the adverse effects cannot be satisfactorily mitigated without it. All of the financial contributions are payable on or before the date of commencement of development.
112. The necessity for these obligations is firmly established by the development plan and supplementary documents. It is clear that they are directly related to the proposed development due to its proximity to the European sites and are fairly related to it in scale and kind, since they are calculated on a per bedroom basis with locally set occupancy rates applied. I have had regard to Natural England's written confirmation<sup>55</sup> that where mitigation measures are limited to collecting a funding contribution that is in line with the strategic approach agreed in the relevant SPD, then no further consultation under Regulation 63 is required. This clearly stated position allows me to conclude that the requirement for consultation<sup>56</sup> in relation to my appropriate assessment has been discharged.
113. Consequently, I am satisfied that the obligations meet all of the relevant legal<sup>57</sup> and policy<sup>58</sup> tests, and together secure effective mitigation of the adverse effects on integrity of the relevant European sites as a result of recreational pressure.

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<sup>52</sup> CD-29

<sup>53</sup> CD-37

<sup>54</sup> CD-59

<sup>55</sup> Appendix C of the Council's Appropriate Assessment for recreational impacts (CD-40)

<sup>56</sup> As per Regulation 63(3) of The Conservation of Habitats and Species Regulations 2017 (as amended)

<sup>57</sup> Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

<sup>58</sup> Paragraph 57 of the Framework

### Air Quality

114. In addition to this, traffic growth as a result of additional residential development has the potential to give rise to significant adverse effects on the New Forest European sites from nitrogen deposition and ammonia emanating from vehicle emissions, especially near main road corridors. Whilst the data is uncertain, the precautionary principle applies, meaning that the effects need to be closely monitored.
115. Consequently, it is possible that the proposed development could, in combination with other plans and projects, adversely affect the integrity of the New Forest European sites. Accordingly, Policy ENV1 of the LP Part One requires that all residential development makes a financial contribution toward monitoring air quality effects within the relevant European sites. The Council's interim position statement on air quality monitoring<sup>59</sup> explains the nature of the monitoring work and sets the contribution at £85 per dwelling (index-linked now translating to £91).
116. The completed Section 106 agreement contains provisions requiring that financial contributions are made toward air quality monitoring at a level that generally accords with the Council's interim position statement. Full payment is due on or before commencement of development.
117. Given the clear policy context, the obligations are necessary to make the development acceptable in planning terms. They are also directly related to the development, in the sense that there is a direct relationship between additional dwellings, increased vehicle movements and therefore potential effects on habitats from exhaust emissions. Being calculated as a standard tariff per dwelling, the obligations are fairly and reasonably related to the development in scale and kind.
118. As with the recreational pressure effects outlined above, I am of the view that the duty to consult with Natural England has been satisfied by its written confirmation that no additional consultation is required where there is compliance with an agreed strategic approach (CD-40). The strategic framework for this contribution is clearly established by Policy ENV1(4)(v) of the LP Part One and the Council's interim position statement (CD-34).
119. I am therefore satisfied that the Section 106 agreement is an effective mechanism for securing the monitoring required to avoid or mitigate adverse effects on the integrity of the New Forest European sites as a result of air quality impacts.

### Nitrates

120. There is sound evidence that high levels of nitrogen and phosphorus input into the sensitive and important water environment in the Solent region are causing eutrophication at the Solent SPA, SAC and Ramsar sites. These nutrient inputs arise in part from wastewater discharged from housing development and result in dense mats of green algae and other effects on marine ecology which pose a risk to the conservation status of the European sites.

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<sup>59</sup> CD-34

121. Advice from Natural England (2020)<sup>60</sup> states that there is uncertainty about the potential for future housing developments across the Solent region to exacerbate these impacts. It advises that one way to address this uncertainty is for all new development to achieve nutrient neutrality in order to mitigate its potential effects on the integrity of the sites. This advice applies to the proposed development due to its location within the Solent catchment area<sup>61</sup> and the nature of development, which would result in a net increase in population and therefore have wastewater implications.
122. Following the precautionary principle, and having regard to the conservation objectives of the sites, I take the view that the proposed development, in combination with other plans and projects, would have an adverse effect on the integrity of the Solent European sites. This finding is consistent with the findings of the Council's Appropriate Assessment in respect of nitrates<sup>62</sup>.
123. The parties have proposed that mitigation in this case could be secured via a Grampian condition that prevents occupation of the proposed development until a mitigation package has been approved in writing by the Council that demonstrates that the additional nutrient loading generated by the proposal would not have an adverse effect on the integrity of the European sites.
124. Work is underway by the Council on a district-wide nitrate mitigation solution that would identify the level of, and options for, mitigation required for the housing development anticipated within the Local Plan. Whilst awaiting the outcome of this work, the Council has applied a Grampian condition to residential permissions, which it submits has not attracted any objection from Natural England or the Environment Agency as statutory consultees. The Council states that the condition has been applied to permissions for over a year and has not identified any problems for its subsequent discharge.
125. However, such an approach is specifically addressed in the Guidance<sup>63</sup>. This sets out very clearly that a positively worded condition is unlikely to pass the test of enforceability and a negatively worded one is unlikely to be appropriate in the majority of cases. Nonetheless, it does note that in exceptional circumstances such a condition may be appropriate where there is clear evidence that the delivery of that development would otherwise be at serious risk, stating that this may apply in the case of particularly complex development schemes, and where the six tests for conditions are also met.
126. The appellant proposes to make financial contributions to an off-site nutrient mitigation scheme. Given that the appeal site is modest in size, comprises brownfield land and is located within an urban area, I am content that off-site mitigation would be appropriate in this case. However, this still requires that there is certainty and transparency about the delivery of mitigation in order to ensure that the identified potential for an adverse effect on the integrity of the European sites is not realised.
127. There are currently no strategic mitigation schemes within the district, although the appellant submitted during the Inquiry that it had a conditional contract in place to buy credits for the 'Heaton Scheme' on the Isle of Wight. The scheme involves agricultural land being taken out of use, with the

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<sup>60</sup> Advice on Achieving Nutrient Neutrality for New Development in the Solent Region version 5 (CD-38)

<sup>61</sup> As shown on Figure 1 of CD-38

<sup>62</sup> New Forest District Council Appropriate Assessment in relation to nitrates effects (CD-40)

<sup>63</sup> PPG Paragraph 010 Reference ID: 21a-010-20190723

reduction in nitrate discharge from that land being offset against the nitrate output from the appeal scheme.

128. I note that in the Stanford Hill appeal<sup>64</sup>, Natural England confirmed that the use of the Heaton Scheme to offset nutrients would be appropriate and a Grampian condition was imposed. However, that appeal, dating from June 2021, had anticipated that an overarching agreement relating to the wider Heaton Scheme was 'imminent'. On the basis of the evidence to this Inquiry, it has still not been delivered. Furthermore, the Stanford Hill appeal was supported by clear information about the nutrient balance, the quantum of land that would be required to mitigate the effects of the scheme, evidence that such land was available within the Heaton Scheme and proof of advanced discussions with the landowner and Isle of Wight Council about securing its delivery.
129. Following my request for further comments on the Guidance requirements after the Inquiry closed, the appellant stated<sup>65</sup> that it had an agreement in principle in place with another mitigation scheme referred to as 'Kings Manor', although this was not supported by evidence. I understand that Kings Manor is also on the Isle of Wight and would address the same water treatment catchment as the Heaton scheme. The appellant contends that the proposed development would discharge to the Pennington Wastewater Treatment Works in the same way as the Stanford Hill scheme and therefore that the land held within the Heaton scheme, and presumably also the Kings Manor scheme, would be appropriate to offset nitrates in the present case.
130. Mindful of Guidance about the cautious use of negatively-worded conditions, I have carefully reviewed all of the evidence on this matter. The WMS<sup>66</sup> and Chief Planning Officer letter (dated 21 July 2022) anticipate a nationally focussed, comprehensive response to the issue of nutrient neutrality through a statutory duty on sewerage companies to upgrade treatment works, albeit this is timetabled for 2030 and the legislation required to support it is not in place, or through a Nutrient Mitigation Scheme, developed with Natural England. This process, which proposes mitigation projects against which developers would be able to purchase 'nutrient credits' is not yet developed to a point where there can be any certainty as to its delivery or timetable. The Chief Planning Officer letter acknowledges that '*(t)o date there has been a high mitigation requirement, to achieve the necessary offsetting of nutrient pollution related to development, as well as an insufficient supply of accessible mitigation.*' While it is noted that this letter refers to the grant of conditions or obligations to secure mitigation, that is in the context of the envisaged national Nutrient Mitigation Scheme.
131. Natural England advice is silent on the question of Grampian-style conditions, although it recognises the difficulties for smaller developments and those on brownfield land in achieving nutrient neutrality. It advocates working with local planning authorities to progress strategic mitigation options that enable this scale of development to come forward. Whilst the Council in this case is progressing strategic solutions, it appears from the evidence before me that that process has not yet reached fruition. The Council's Position Statement on Nutrient Neutral Development (4 September 2019) presents an interim

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<sup>64</sup> Appeal reference: APP/B1740/W/20/3265937

<sup>65</sup> PD-6

<sup>66</sup> 'Improving Water Quality and Tackling Nitrate Pollution' Statement made by George Eustice MP (20 July 2022)

nitrogen mitigation solution which includes suggested wording for a Grampian condition that closely reflects the wording before me.

132. Whilst I acknowledge the alignment between the Council's 2019 position statement and the proposed approach in this case, I am clear that in order to satisfy the provisions of the Habitats Regulations, the delivery of required mitigation must be certain. To my mind, any condition applied for this purpose must successfully demonstrate that the proposal meets the exceptional circumstances for negatively worded conditions identified in the Guidance<sup>67</sup> and must meet the tests for conditions set out in the Framework<sup>68</sup>.
133. Notwithstanding the comments<sup>69</sup> from both of the main parties on the acceptability of a conditional approach, this is not a particularly complex development scheme, nor is there clear evidence that its delivery would be at serious risk without imposition of the condition such as to amount to exceptional circumstances as set out in the Guidance. With anticipated solutions to the availability of strategic sites to manage nutrients within the catchment still being developed, as well as national initiatives to support this underway but not confirmed or in place for this catchment, there is a significant risk of a delay in delivery and a clear level of uncertainty.
134. I am aware of the Council's view that the circumstances and direction of travel presented by the WMS and Chief Planning Officer letter represent exceptional circumstances, however I am not satisfied that this is the case. Even accounting for the shortfall in housing in this case, the demonstrated need for older people's housing and the financial contributions of the scheme to the provision of affordable housing, I do not consider that the exceptional circumstances anticipated by the Guidance have been demonstrated.
135. While I note that the Council and the appellant in this case appear agreed on the conditional approach, and that a previous Inspector has accepted it in relation to a different appeal, such matters are ones of fact and degree. In the present case, there is an absence of information addressing the level of anticipated nitrate discharge and therefore the amount of land that would be required to offset the effects of the proposal such that adverse effects on integrity can be avoided. There is also insufficient evidence that there is capacity within an appropriate offsetting scheme, and little certainty that such a scheme can be funded and secured within a timescale that aligns with occupation of the proposal. For these reasons, it is not possible to conclude that the proposed condition would meet the six tests set out in the Framework, particularly the tests of precision, enforceability and reasonableness.
136. I understand the Council's appetite for flexibility on mitigation, given the rapidly evolving nature of approaches to achieving nitrate neutrality and the time that would pass between consent and occupation of the scheme. However, in this particular case, I do not consider that the degree of flexibility being sought can be achieved within the bounds of the Habitats Regulations. I refer particularly to the obligations upon the competent authority imposed by Regulations 63(5) and (6) and Regulation 70(1) and the adequacy of any planning conditions or obligations proposed in that context. In my planning judgement, the evidence supporting the approach in this case is not sufficient

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<sup>67</sup> PPG Paragraph 010 Reference ID: 21a-010-20190723

<sup>68</sup> Framework Paragraph 56 and PPG Paragraph 003 Reference ID: 21a-003-20190723

<sup>69</sup> PD-5 and PD-6

to provide the necessary level of certainty that the scale of required mitigation is understood and that an appropriate mitigation solution is secured, such that an adverse effect on integrity of the sites can be avoided. In these circumstances, it is not possible to rely on the proposed mitigation to dispel all reasonable scientific doubt as to the absence of adverse effects of the proposed development on the integrity of the European sites.

137. For these reasons, 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.
138. In arriving at this conclusion, I have had regard to the decision of another Inspector to accept the use of a Grampian condition in relation to a site in Norwich<sup>70</sup>. I note that in that case, which concerned a single dwelling, the condition applied pre-commencement, rather than pre-occupation. Whilst I accept that a different conclusion was reached in that case, decisions in relation to the adequacy of mitigation are highly fact-sensitive and this does not alter my reasoning as set out above.

### Appropriate Assessment

139. The proposed development would be likely to give rise to adverse effects on the integrity of the New Forest and Solent European sites in terms of its recreational, air quality and nutrient discharge effects.
140. Policy compliant mitigation of the recreational and air quality effects can be secured by the submitted planning obligations. However, I am not satisfied that mitigation of an adverse effect on the integrity of the Solent European sites in terms of nitrates can be secured by the imposition of a condition.
141. I therefore conclude that the appeal scheme would be unacceptable in the context of the Habitats Regulations. It follows that the proposed development would fail to comply with Policy ENV1 of the LP Part One, which requires new development to mitigate its impacts on international nature conservation sites.

### **Other Matters**

#### *Affordable Housing*

142. One of the Council's reasons for refusing the application related to the absence of an appropriate contribution toward the provision of affordable housing. However, during the course of the appeal, the parties agreed<sup>71</sup> the sum for a financial contribution to the provision of off-site affordable housing and that this could be secured via a planning obligation.
143. A completed Section 106 agreement<sup>72</sup> (dated 4 May 2022) to this effect was received shortly after the Inquiry closed, by prior agreement. Clause 3 of the s106 agreement requires that no more than sixteen of the dwellings are occupied until all affordable housing contribution payments have been made.

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<sup>70</sup> Appeal reference: APP/L2630/W/21/3289198

<sup>71</sup> Statement of Common Ground (CD-56)

<sup>72</sup> PD-3

144. The Council has provided a CIL Compliance Statement<sup>73</sup> (12 April 2022) which sets out the justification for the affordable housing obligations. I have considered this Statement and the content of the agreement itself in the context of the tests for planning obligations contained in the Framework<sup>74</sup> and legislation<sup>75</sup>.
145. I am satisfied that the obligations are necessary to secure the provision of financial contributions to affordable housing as required by Policy HOU2 of the LP Part One and the Framework. Since the appeal scheme comprises a specialised form of housing for older people, I take the view that exceptional circumstances exist in this case warranting the provision of a payment for off-site provision, as opposed to the on-site provision envisaged by the policy.
146. I am content that the obligations are directly related to the proposed development, since it comprises 32 residential dwellings. The Council's Housing Strategy (December 2018) and a statement<sup>76</sup> from the Council's Housing Strategy and Development Service Manager satisfactorily demonstrate how the contributions would be used to deliver affordable homes within the district.
147. I note that the offered sum falls below the target of Policy HOU2(ii) for 50% of new homes to be affordable housing. However, I have considered the Report on Affordable Housing and Viability<sup>77</sup> (October 2021) and agree that taking account of viability considerations, the sum is reasonably related to the development in scale and kind.
148. I find the completed Section 106 agreement to be legally sound and enforceable. Consequently, I am content that the obligations secure an appropriate contribution to the provision of affordable housing.

#### *Effect on Living Conditions*

149. Concerns were raised by local residents about the potential effects of some specific aspects of the proposed development on the living conditions of occupiers of neighbouring properties. One such concern was the potential effect of noise emitted from the proposed electricity substation on the occupiers of the adjacent Old Police House.
150. The technical noise report accompanying the appeal assessed the potential noise emitted from the substation and found that it would be substantially lower than the typical background noise levels measured at the site. A very low risk of disturbance to occupiers of neighbouring properties was predicted and I have not been presented with any evidence to dispute these findings.
151. The appellant confirmed that these conclusions would not be altered by the decision to move the substation within the site as a result of the revised site layout plan and the Council took the view that this would make no material difference to its position that no mitigation for noise would be required. On the basis of this evidence, I am satisfied that there would be no harm to the living conditions of neighbouring residents due to noise emitted from the proposed substation.

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<sup>73</sup> CD-59

<sup>74</sup> Paragraph 57

<sup>75</sup> Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

<sup>76</sup> Appendix 3 of CD-59

<sup>77</sup>

152. Another matter raised by local residents was the possibility of nuisance for neighbours from odour and vermin should arrangements for refuse storage be inadequate. Having reviewed the plans and supporting information, I am content that adequate provision for refuse storage has been made and that it is possible to satisfactorily control the details of the bin store via planning condition. Consequently, there will be no harm to the living conditions of neighbouring residents as a result of odour or vermin related to refuse storage.
153. Concern was also expressed that the proposed building could, due to its height and proximity, feel overbearing, oppressive and lead to a loss of natural light and privacy for occupiers of Buckland House to the south of the site. I observed Buckland House on my site visits and considered the relationship with the proposed building.
154. The southern extent of the proposed building would sit relatively close to Buckland House. However, it would have similar eaves and ridge heights to Buckland House, meaning that it would not feel unduly tall or oppressive. Due to its L-shaped layout, there would be a greater degree of separation between the bulk of the proposed building toward the west of the site and Buckland House. For these reasons, I find that the proposed building would not feel unacceptably close or overbearing to occupiers of Buckland House and I have seen no evidence to demonstrate that there would be a loss of natural light. I am also content that there would be no harmful overlooking from windows or balconies of the proposed building due to the separation distances involved and the use of obscured glazing in windows and doors on the south and west facing elevations, which can be secured by condition.
155. Drawing these matters together, I consider that any potential effects on the living conditions of neighbours have been either mitigated by design or where necessary, can be adequately controlled through the imposition of conditions. Consequently, I find that there would be no harm to the living conditions of occupiers of neighbouring properties as a result of the proposed development.

#### *Effect on Local Health Services*

156. It was put to me that the appeal scheme could place an unacceptable pressure on local primary care services which are already at capacity due to the additional older people who would be resident in the building. However, I was not presented with any specific evidence to support this.
157. The appellant estimates on the basis of experience on other similar developments that a majority of the future residents of the scheme would already live in the local area. On this basis, a proportion of future residents would already be users of the local health services. Given this, and in light of the potential for specialist retirement housing to decrease risks to health and wellbeing, I do not find that the appeal scheme would lead to unacceptable pressure on local primary care services.

#### *Benefits of the Proposed Development*

158. It is not disputed that there is a strong need for new housing in the District and currently a shortage of housing land. Moreover, I have found that there is a clear and compelling need for specialist housing for older people in Lymington. The provision of 32 apartments to help meet this need is a benefit attracting very significant weight in favour of the proposal. The location of the

appeal site, a short level walk from the facilities of the town centre, means that it is accessible and would promote healthy communities, also weighing significantly in favour of the scheme.

159. The appeal site is previously developed land and appears on the Council's brownfield land register. Figure 2.5 of the LP Part One shows that 61% of the local plan area is subject to Framework policies that protect areas or assets of particular importance, indicating the constrained nature of the District for new greenfield housing allocations. In this context, substantial weight must be given to the value of efficiently re-using this vacant brownfield site within the settlement of Lymington for new homes, in line with paragraph 120 of the Framework.
160. In terms of its environmental benefits, the appeal scheme commits to delivering a biodiversity net gain (secured by condition) together with specific nature conservation measures such as water efficiency measures and integral swift bricks. The proposal would generate renewable energy through solar photovoltaic panels and would provide electric vehicle charging points, helping in the shift to a low carbon economy. Combined, I assign moderate weight to the environmental benefits of the appeal scheme. This is notwithstanding my findings in respect of the effects on European sites which are considered further in the Planning Balance, below.
161. During the construction period, the proposal would generate employment in the construction sector and have wider supply chain benefits. I have been referred to a report<sup>78</sup> which estimates that for a typical scheme of 45 retirement apartments, approximately 85 construction jobs are created. Whilst this could be expected to be lower for the appeal scheme which proposes 32 apartments and accepting that the jobs are temporary in nature, these are nonetheless material economic benefits.
162. The same report estimates that once occupied, such a retirement apartment scheme creates approximately 6.4 permanent jobs and adds £13 million in gross value added to the local area through demand for repairs and renovations, management and care and high street expenditure. I once again acknowledge that the appeal scheme would be smaller than the typical scheme to which these figures apply, and that a proportion of residents could be expected to already live and spend in the local area. Nevertheless, it is reasonable to expect that the proposed development would generate additional spending at local businesses, supporting their viability and the vibrancy of the town centre. This aligns with the Framework's aspiration<sup>79</sup> to building a strong, competitive economy by supporting economic growth locally. Together, I judge that the economic benefits of the appeal scheme weigh moderately in its favour.
163. A report<sup>80</sup> submitted in evidence makes the case that retirement apartments such as the appeal scheme can have a range of health and social benefits for individuals by allowing them to maintain their independence for longer, providing opportunities for social interaction and offering suitable accommodation that adapts to their changing needs. At the same time, by offering accommodation tailored to the needs of older people, such

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<sup>78</sup> Homes for Later Living (February 2021) 'Silver Saviours for the High Street' (APOE-3)

<sup>79</sup> Paragraph 81 of the Framework

<sup>80</sup> Homes for Later Living (September 2019) 'Healthier and Happier' (APOE-4)

developments can offer benefits to wider society by taking pressure off public-funded institutional care facilities, home care services and disabled facilities grant funds.

164. I have also been presented with evidence<sup>81</sup> to indicate that retirement apartments facilitate the release of under-occupied housing stock in the local area which has the potential to free up family-sized housing into the market. The proposal would also make financial contributions to the provision of off-site affordable housing contribution, secured by planning obligation, which whilst necessary to comply with the development plan would nonetheless be a social benefit. In my judgement, these social benefits carry significant weight in favour of the appeal proposal.

165. Taking account of all of the above benefits, I consider that they together carry significant weight in favour of the proposed development.

### **Planning Balance**

#### *Accordance with the Development Plan as a Whole*

166. My assessment has found that the proposal would accord with Policies ENV3, ENV4, CCC2 and HOU1 of the LP Part One.

167. I have found that the proposed development would conflict with Policy DM1 of the LP Part Two insofar as the effects on non-designated heritage assets. The proposal would accord with Policy DM1 in respect of the effects on designated heritage assets, namely the Lymington Conservation Area.

168. 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.

169. Policy STR1 of the LP Part One which seeks to achieve sustainable development by requiring new development to make a positive social, economic and environmental contribution to local community and business life. Due to the evident conflict with Policy ENV1, the appeal development would not represent a sustainable form of development and would therefore fail to comply with Policy STR1.

170. Taking these findings together, the conflict that I have identified in relation to Policy DM1 of the LP Part Two and Policy ENV1 and STR1 of the LP Part One leads me to conclude that the proposal does not accord with the development plan as a whole.

#### *Paragraph 11 d) Balance*

171. In light of the absence of a five year supply of deliverable housing sites, it is necessary to assess the proposal against the provisions of paragraph 11 d) of the Framework.

172. Para 11 d) i. states that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Framework footnote 7 sets out a list of those Framework policies to which

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<sup>81</sup> Ball, M (2011) 'Housing Markets and Independence in Old Age: Expanding the Opportunities (APOE-5)

paragraph 11 d) i. refers. Policies covered by footnote 7 of relevance to this appeal are those relating to designated heritage assets and to habitats sites.

173. I have found that there would be no harm to the significance of designated heritage assets as a result of the proposed development. However, I have been unable to rule out the possibility of an adverse effect on the integrity of the Solent European sites as a result of nitrate discharge. Paragraph 181 of the Framework affords the same level of protection as given to European sites (in this context the Solent and Southampton Water SPA and Solent Maritime SAC) to Ramsar sites (which in this context includes the Solent and Southampton Water Ramsar site). Paragraph 182 of the Framework is clear that the presumption in favour of sustainable development does not apply in these circumstances.
174. Consequently, I find that the policies of the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed in this case. The proposal does not benefit from the presumption in favour of sustainable development.
175. In light of this finding, it is not necessary to consider the proposed development against Framework paragraph 11 d) ii., since the 'tilted balance' is not engaged.

#### *Final s38(6) Balance*

176. My determination of this appeal must be made in accordance with the development plan unless material considerations indicate otherwise, as required by Section 38(6) of the Planning and Compulsory Purchase Act 2004.
177. I have found above that the proposal does not accord with the development plan as a whole.
178. The Framework is a material consideration which, as an expression of national Government policy, carries substantial weight. At approximately 3.07 years, the Council's current supply of deliverable housing sites falls significantly short of the five years required by the Framework. This represents a serious under provision in an area where the Council acknowledges the high level of need for housing, including specialist housing for older people.
179. However, I have also found that, due to its potential effects on European sites, the policies of the Framework that protect habitats sites provide a clear reason for refusing the proposed development. The proposal therefore does not benefit from the presumption in favour of sustainable development. This is an important material consideration in the overall s38(6) balance.
180. I therefore conclude that the decision should be taken in accordance with the development plan. Consequently, the appeal must fail.

#### **Conclusion**

181. For the reasons given above, I conclude that the appeal should be dismissed.

*J Powis*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Sasha White KC and Anjoli Foster	Instructed by Planning Issues
<i>They called:</i>	
Nigel Appleton BA MA (Cantab)	Executive Chairman, Contact Consulting (Oxford) Ltd
Robert Jackson BArch MArch RIBA ARB	Design Director, Planning Issues Ltd
Paul White BA(Hons) MPhil MCIfA PIEMA	Head of Heritage, Ecus Ltd
Phil Brophy HNDArb MArborA CEnv MICFor RCarborA	Arboricultural Consultant, Barrell Tree Consultancy
Jessica Lloyd BSc MSc	Principal Transport Planner, Paul Basham Associates Ltd
Matthew Shellum BA(Hons) DipTP MRTPI	Planning Director and Head of Appeals, Planning Issues Ltd

### FOR THE LOCAL PLANNING AUTHORITY:

Gary Grant of Counsel	Instructed by Ian Austin, Solicitor, New Forest District Council
<i>He called:</i>	
James Gilfillan MATCP, MRTPI	Senior Development Management Officer, New Forest District Council
Jonathan Smith BA(Hons) MA PGDip HC MCIfA IHBC	Senior Director – Heritage, RPS
Hannah Chalmers Tech Cert Arb	Senior Tree Officer, New Forest District Council
Ben Chimes BSc(Hons) FCIHT	Principal Consultant, RGP Consulting Engineers Ltd

**INTERESTED PARTIES:**

Councillor Andy Ash-Vie	Chairman of Lymington and Pennington Town Council Planning Committee
Don Mackenzie	Chair of The Lymington Society
Bob Hull DipTP MRTPI	Representing The Lymington Society
Stuart Nundy	New Forest West Labour Party
Councillor Jacqueline England	New Forest District Councillor (Lymington Town ward) and Lymington and Pennington Town Councillor
Bronwen Bridges	Lymington resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

ID-1	NFDC decision notice granting permission for 4 parking spaces at Hubert Lodge and location plan
ID-2	Appellant's Opening Submissions
ID-3	Council's Opening Submissions
ID-4	Lymington and Pennington Town Council – written copy of oral submissions
ID-5	The Lymington Society – written copy of oral submissions
ID-6	NFDC Brownfield Land Register note
ID-7	The Lymington Society – Clarification note on vacancy levels (27/04/22)
ID-8	Internal layout plans for Former Lymington Police Station
ID-9	Proposed revisions to draft condition 6 together with indicative plan
ID-10	Comparison of proposed development with other consented schemes: re-presentation of APOE-13 section 6
ID-11	Note from Nigel Appleton for the Appellant in response to ID-7
ID-12	Closing Submissions on behalf of the Council
ID-13	Closing Submissions on behalf of the Appellant

## **DOCUMENTS SUBMITTED BY AGREEMENT AFTER THE INQUIRY**

PD-1	Comments from Hampshire County Council on surface water drainage condition	3 May 2022
PD-2	Comments from Council on PD-1	5 May 2022
PD-3	Completed section 106 agreement (dated 4 May 2022)	9 May 2022
PD-4	Comments from Appellant on PD-1	12 May 2022
PD-5	Response from Council on request for views on WMS and Chief Planning Officer letter on nitrate mitigation	25 Oct 2022
PD-6	Response from appellant on request for views on WMS and Chief Planning Officer letter on nitrate mitigation	3 Nov 2022