

NEW FOREST DISTRICT COUNCIL

Town & Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004)

The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI: 2000/1625) as amended.

Appeal by Renaissance Retirement Ltd against the decision of New Forest District Council to refuse permission to demolish existing buildings and the erect 44 sheltered apartments for the elderly with associated access, mobility scooter store, refuse bin store, landscaping and 34 parking spaces at:

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

Proof of Evidence

PINS Ref: APP/B1740/W/20/3265937

LPA Ref: 20/10481

James Gilfillan. MATCP, MRTPI.

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1. INTRODUCTION AND SCOPE OF EVIDENCE

Introduction

- 1.1 This is an appeal under section 78 of the Town and Country Planning Act 1990 (as amended) against the decision of NFDC to refuse permission to demolish 4 houses and erect a block of 44 retirement flats at Stanford Hill, Lymington.

Name and Qualifications

- 1.2 My name is James Gilfillan. I am a chartered town planner and hold the degrees of BA(Hons) and MA in Town and Country Planning from the University of Manchester. I am employed by New Forest District Council as a Senior Development Management Officer. I held a similar post at Bournemouth, Christchurch & Poole Council for 18 years, the majority being at BoP prior to LGR in 2019.

Scope of Evidence

- 1.3 The application was refused by notice dated 14 October 2020 for six reasons, as set out in full on the case officer report and decision notice (**CD 3.2**).
- 1.4 Those reasons were; failure to deliver sustainable development; failure to deliver development to contribute positively to local distinctiveness; harm to heritage assets; harm to protected wildlife species on site; harm to protected habitats off site; and harm to the amenity of adjoining residential properties.
- 1.5 As set out in the Statement of Case and agreed in the Statement of Common Ground, the Council will defend reasons for refusal 1, 2 and 3.
- 1.6 It is expected that reason for refusal 5 will have been resolved by way of S.106 agreement(s).
- 1.7 The submission of additional information by the Appellant, with their grounds of appeal, have satisfied the concerns set out in reasons for refusal 4 and 6.

Sustainable Development.

- 1.8 This Proof of Evidence shall set out why the scheme fails to deliver sustainable development as expected by NPPF section 2 and adopted Local Plan Part 1 policy STR1.

Impact on character and appearance including heritage matters

- 1.9 In respect of the second reason for refusal, detailed evidence to justify this reason for refusal is given by Mr Warren Lever Senior Conservation and Building Design Officer, NFDC.
- 1.10 In respect of the third reason for refusal Mr Lever will demonstrate the harm caused by the development to the significance of designated heritage assets.
- 1.11 The appellants' case is that the 'less than substantial harm' to heritage assets which would be caused by the development would be outweighed by the public benefits of the development. The Council acknowledges that there are benefits of the development but considers that the benefits do not justify the proposals.
- 1.12 In order for the Inspector to carry out the 'balancing' exercise set out at paragraph 196 of the NPPF in which less than substantial harm to heritage assets should be weighed against public benefits of a proposal, this Proof sets out at section 6 assessment of the public benefits to be balanced against the harm to heritage assets described by Mr Lever.
- 1.13 In order for the Inspector to carry out the Planning Balance, including determining the appeal in accordance with S. 38(6) of the Planning and Compulsory Purchase Act 2004, this proof sets out the balance of benefits arising from compliance with the development plan against conflicts with the plan leading to harm from the scheme and whether any other material considerations should be considered.

2. DESCRIPTION OF SITE AND ITS SURROUNDINGS

- 2.1 The appeal site is situated on the east side of Stanford Hill, the A337, in Lymington a main route into the town. It consists of a site combined from 4 existing residential plots, each occupied by a detached house or bungalow.
- 2.2 The site is within the identified settlement boundary and within 300m of the Town Centre as identified on Policies Map 5a 'Lymington Town Centre' to the Local Plan part 2. Appendix (**JRG1**)
- 2.3 The existing four detached dwellings have individual appearance, each have vehicle accesses, from Stanford Hill, serving hard frontages of differing extents, contained within mature landscaped boundaries.
- 2.4 The site adjoins the Lymington Conservation Area, along the north and rear boundary of 'The Rise', the northerly most dwelling, which can be seen in the map of the Conservation Area appraisal. (**CD4.5**)
- 2.5 Residential properties adjoin the site on three sides, with Bucklers Mews and Court to the north, detached houses on Belmore Road to the rear and 'Concorde' a detached house to the south.
- 2.6 Opposite across the A337 is a modern residential estate development set in landscape grounds, separated from the road by mature landscape.
- 2.7 Also across the A337 there are grade II listed buildings in close proximity to the site at:
Hill House (1-2 Highfield);
Down House (3-4 Highfield); and
5 Highfield & Highfield Ridge (5-6 Highfield) Highfield
that fall within the Lymington Conservation Area and shown on map 7 included in the Lymington Conservation Area appraisal at (**CD4.5**)
- 2.8 The ground falls from north to south across the extent of the site and continues respectively in both directions.

2.9 More detailed assessment and description of the site and context is provided in Mr Lever's Proof.

3. DESCRIPTION OF APPEAL PROPOSALS

- 3.1 The development the subject of this appeal is illustrated on the submitted plans and described in the appellant's Planning Statement and Design & Access Statement. In brief, the submitted application seeks to demolish the existing 4 dwellings and erect a 'T' shaped block of 44 sheltered apartments for persons over the age of 60, comprising 29 x 2 bed and 15 x 1 bed units. The building includes an office and communal lounge, on the ground floor, and a guest suite and motorised buggy store, on the lower ground floor. The proposed apartments would be provided within a single building that would be part 3-storey and part 4-storey.
- 3.2 The scheme proposes 2 new vehicle access points, one for entry from, and one for egress to, Stanford Hill (A337). This would serve 34 parking spaces, arranged in a linear strip along the frontage and a courtyard to the rear north-east corner, where an electricity sub-station is proposed to be located.
- 3.2 Green roofs would be laid and the grounds landscaped to provide shared communal gardens with seating.

4. RELEVANT PLANNING HISTORY

4.1 Appeal Site

2019, (19/11180) planning application to demolish the 4 existing dwellings and erect a block of 45 sheltered flats was refused, the report and decision notice can be found at Appendix (**JRG2**)

4.2 This decision was subject to an appeal, joined to this appeal, but was withdrawn before the statement of case was submitted.

4.3 Adjoining the north boundary of the site: Bucklers Court and Bucklers Mews.

1993, planning application to demolish a builders yard and erect 53 units of sheltered residential accommodation in flats and houses was approved and built.

5. RELEVANT PLANNING POLICIES

- 5.1 The starting point for decision making is the statutory development plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material planning considerations indicate otherwise.

The Statutory Development Plan

- 5.2 The statutory development plan for the area comprises the following documents¹:
- i) The Local Plan Part 1: Planning Strategy adopted 2020
 - ii) The Local Plan Part 2: Sites and Development Management adopted 2014
 - iii) Saved policies (CS7, CS19 and CS21) of the Local Plan Part 1: 'Core Strategy' (2009); and
 - iv) Saved policy DW-E12 Protection of Landscape Features of the New Forest District Plan First Alteration 2005.
 - v) The Hampshire Minerals and Waste Local Plan 2013

The Local Plan Part 1: Planning Strategy 2020

- 5.3 The plan should be read as a whole, however Policies which have a bearing on the appeal proposals in the Local Plan Part 1 are as follows:

STR1 Achieving sustainable development

STR2 Protection of the countryside

STR3 Strategy for locating new development

STR4 Settlement hierarchy

STR5 Meeting our housing need

ENV1 Mitigating impact - International Nature Conservation sites

ENV3 Design quality and local distinctiveness

HOU1 Housing type, size and choice

HOU2 Affordable housing

¹ Policy DW-E12; Protection of Landscape Features (saved from the Local Plan First Review 2005), and The Hampshire Minerals and Waste Local Plan (adopted October 2013). These are not relevant to this appeal.

HOU3 Residential accommodation for older people

CCC2 Safe and sustainable travel

IMPL1 Developer contributions

IMPL2 Development standards

A copy of the policies are found at **CD4.1**

The Local Plan Part 2 (Sites and Development Management) adopted 2014

5.4 Policies which have a bearing on the appeal proposals in the Local Plan Part 2 are as follows:

Policy DM1 Heritage and Conservation

Policy DM2 Nature Conservation and Biodiversity

A copy of the policies is attached at **CD4.3**.

Other Policy Documents and Guidance.

5.5 Other relevant policy documents and guidance advice not covered in other proofs.

Mitigation for European Sites SPD 2014

5.7 Recognising the proximity to and sensitivity of protected habitats to increased recreational use, the SPD sets the framework for mitigation and identifies a suite of projects and strategies to mitigate the effects of development of different scales and locations across the district proportionate to the proposed use.

5.8 The mitigation covers on and off site projects and divides projects and costs in to revenue and capital streams. The later being infrastructure is normally covered by CIL, but is captured by S.106 agreements in the event CIL is not liable or relief is secured, but the mitigation is still secured in order to ensure an Appropriate Assessment is passed.

5.9 The SPD is provided at **CD4.6**

Natural England Advice note for achieving Nutrient Neutral Development for new

development in the Solent region. 2020.

- 5.9 Working strategically across the South Hampshire region, Natural England prepared this advice note to support LPA's and applicants by setting the context of protected habitats and the likely significant effects of additional nutrients in the Solent arising from development occurring across the region.
- 5.10 Recognising the effect of the Habitats Regulations requirements, the note sets a framework for identifying the scale of the harm arising from development and options for mitigation and delivering nutrient neutral development, in order for an Appropriate Assessment to be passed.
- 5.11 The advice note can be found at **CD7.1**

Bird Aware Solent Strategy 2017.

- 5.10 This sets the impact of and framework for protecting Solent habitats relied upon by migrating birds, by managing increased visits to the waters edge around the Solent, where additional recreational activities result in conflict and disturbance.
- 5.11 It identifies a suite of projects and roles seeking to influence visitor behaviour and activities to limit the impact on the protected habitats and mitigate the harm identified and sets costs to deliver these largely revenue based solutions to be secured from new development, in order for an Appropriate Assessment to be passed.
- 5.12 The strategy is available at **CD7.19**

Air Quality Monitoring. 2021

- 5.13 Identified as part of the Habitats Regs Assessment of the then emerging Local Plan, the impact of additional vehicle trips generated by housing growth on air quality has led to concerns regarding nitrogen deposition and ammonia on parts of the New Forest SAC and SPA.
- 5.14 At this time, as set out in adopted policy ENV1, a contribution is sought towards monitoring air quality in sensitive location in order to better understand the situation. This may emerge in to a strategy for mitigation over the life of the plan if monitoring

indicates likely significant effects can not be ruled out.

5.15 The Councils interim position is set out at **CD7.18**

National Planning Policy Framework (NPPF) 2019

6. THE COUNCIL'S CASE

6.1 There are four main issues in this appeal which arise from the reasons for refusal now being supported by the Council. These issues are born out of the application of the development plan and Framework policies on sustainable development, design and heritage, the need to weigh public benefits against less than substantial harm (paragraph 196) and the planning balance:

- i) The effect of the proposed development on the character and appearance of the area;
- ii) The effect of the proposed development on the significance of designated heritage assets;
- iii) Assessment of the public benefits of the scheme and the weight to be attributed to them; and
- iv) The planning balance, including under section 38(6) of the 2004 Act, para 196 of the NPPF, and para. 11 of the NPPF.

6.2 Considered in full below, this proof of evidence will focus on points iii) and iv). Points i) and ii) are defended in full by the Proof of evidence of Mr Lever.

6.3 In summary of i) Mr Lever concludes;

“I have defined where the local authority has set out a clear commitment to good design and responding to local distinctiveness and the design policies set out in its development framework. I feel that the scheme is in conflict with the clear advice set out within the NPPF and defined at paragraph 130 in relation to achieving well design places. My opinion is that the proposed development is of poor design that fails to take the opportunities available for improving the character and quality of this area.”

6.4 In summary of ii) Mr Lever concludes;

“The proof sets out how that setting contributes to that significance and then how the proposal causes harm by its impacts upon those factors. The proof of evidence sets out how this site currently contributes to defining the significance of the conservation area and also the setting and outlook of the listed buildings. It is felt that this setting is intrinsic to significance and the current site helps to better reveal these heritage assets. Through the above assessment the authority finds that the proposed development due to its scale, mass, position and height in a key location would harm the significance of the conservation area, the identified listed buildings. My opinion under the tests set out in NPPF is a finding of less than substantial harm to the significance of a listed buildings and the conservation area and this gives rise to a strong presumption against planning permission being granted.”

6.5 Having concluded that less than substantial harm to the significance of designated heritage assets would occur, it is necessary to balance that harm against the alleged public benefits of the scheme and the weight to be applied.

6.6 Thereafter the 'planning balance' should be undertaken to determine whether the scheme would deliver sustainable development in accordance with adopted policy STR1 and the NPPF, or whether material planning considerations indicate otherwise.

6.7 Firstly the benefits of the scheme as agreed by the Statement of Common Ground and the weight to be applied will be considered;

- Provision of Housing;
- Provision of sheltered market housing in a local authority area where there is an identified significant need for homes for older people.
- Social benefits by providing appropriate accommodation for older people, including helping them live independently for longer, help reduce costs to the social care and health systems and offering to create site support networks.
- Economic benefits, including during construction and increased residents spend locally;
- Environmental benefits, including delivering homes in an urban area, in close proximity to services and facilities, reducing reliance on the private car and meeting the 10% biodiversity net gain.

6.8 The Provision of Housing.

6.9 Agreed as Common Ground, the Council can not demonstrate beyond doubt, at the time of this appeal, that it has a 5 year supply of land for Housing. This is largely predicated on strategic allocated sites not proceeding as rapidly as was presented to the Inspectors at the Local Plan examination. An explanatory note is found at appendix **(JRG3)**

6.10 That note concludes approximately 4 years worth of Housing land.

- 6.11 The Council has an up-to-date strategy for the delivery of the required homes over the plan period. That plan will deliver a significant boost to housing in the district on suitable sites and in a plan led way, in accordance with the Framework.
- 6.12 By adopting the Local Plan Pt1 Planning Strategy in 2020, the Council has identified the right amount of land in the right places to support growth, this is clearly set out in adopted policy STR5 **CD4.1**. This recognises 60% of housing need will come from large scale planned strategic allocations. The policy goes on to identify the approach to deliver the remaining 40% on existing allocations and new allocations on planned sites as part of the impending review of the Local Plan Part 2 site allocations.
- 6.13 The site does not fall within any of these sites and would be a windfall site. The policy does not identify a requirement, based on past trends, to rely on windfall sites, of this scale to achieve the identified housing needs over the plan period.
- 6.14 The most up to date Housing Delivery Test results, for the period 2018-19 confirm a measurement of 108% against the policy STR5 adopted trajectory. The published extract from the letter from MHCLG can be found at Appendix (**JRG4**).
- 6.15 Whilst that suggests delivery is currently matching need, the scheme subject to this appeal would fall to be delivered after 2021, it would contribute to the increased trajectory of 400 homes pa, over the 2021-2026 period.
- 6.16 Given the reliance on strategic sites to deliver a large amount of the need of the plan period and the longer timescales for delivery of such sites, as evidenced by the position statement on meeting the 5yr housing land supply requirements, appendix (**JRG3**), there is likely to be a need for smaller allocations and windfall to make up much of the provision in the forthcoming 5 year period.
- 6.17 The scheme would make provision of 40 additional units (net), which would contribute 10% of the annual requirement. Ensuring the scheme is delivered in the short term, when there may be a shortfall of housing land available to meet needs, by way of reduced time period for implementation there would be moderate benefit arising.
- 6.18 Provision of sheltered housing.

- 6.19 Policy HOU1 recognises a need for all sizes, tenures and styles of housing, setting an indicative mix of sizes and tenures at table 6.1(New Forest Local Plan para. 6.5) (CD4.1). The resident population of the plan area is aging and living longer. The majority of older residents will continue to live in mainstream housing, and many will prefer to remain in their existing homes and live independently as long as possible (NFLP 6.23). The adopted plan recognises need for new specialist accommodation during the plan period, especially for the very elderly (NFLP 6.24).
- 6.20 The Local Plan at para.6.24 recognises there is significant need to provide new specialist accommodation during the plan period. Whilst no absolute number of units has been included in the plan, para.6.24 does go on to give an indicative figure of 1/5th of the total number of homes, approximately 2000, to include sheltered and extra care housing.
- 6.21 However the significant need is directed towards the very elderly and be designed to be suitable for the changing needs of older people.
- 6.22 In the first 5 years the plan places priority on increased extra care accommodation, with higher level of support and renewal or replacement of general residential care homes with those better able to serve specialist intensive care needs, such as dementia (NFLP 6.25).
- 6.23 The scheme largely matches the definition of Sheltered accommodation provided by the PPG Reference ID: 63-010-20190626
- **Retirement living or sheltered housing:** This usually consists of purpose-built flats or bungalows with limited communal facilities such as a lounge, laundry room and guest room. It does not generally provide care services, but provides some support to enable residents to live independently. This can include 24 hour on-site assistance (alarm) and a warden or house manager.

But there is little to distinguish it from open market housing, or readily meet the needs of the aging population and the greater physical support and interventions likely to be required for them to truly live independently.

- 6.24 However there remains a place in the housing market for such a format, but minor weight should be applied to the benefits to overall supply of delivering the sheltered housing proposed by the appellant.

6.25 Providing appropriate accommodation for older people, including helping them live independently for longer, help reduce costs to the social care and health systems and offering to create site support networks.

6.26 It is common ground that the PPG indicates Sheltered Housing schemes could help reduce the costs to the social care and health systems, however the scheme does not provide any on site care, nor are such packages offered by the appellant.

6.27 Local Plan Policy HOU3 (**CD4.1**) promotes the delivery of homes that enable older people to continue to live independently, encouraging developments are built to standards capable of adaption to meet the future needs of older people and others with care needs.

6.28 The appellant has supported their case with analysis of need for elderly accommodation in the District (Contact Consulting. Appendix 10 to the Appellants Statement of Case), by the inability of residents to be able to undertake one of more domestic tasks such as;

Routine housework or laundry;
Shopping for food;
Getting out of the house;
Doing paperwork or paying bills

Considered 'instrumental activities of daily living', whilst not fundamental to functioning, are important aspects of living independently. The scheme presents no evidence that it would support residents in these tasks.

6.29 The same report assesses need based on the inability of residents to manage at least one self-care task such as;

Having a bath or shower, washing face or hands;
Using the toilet;
Getting up and down stairs;
Getting around indoors;
Dressing or undressing
Getting in and out of bed;
Eating, including cutting up food and taking medicine;

Considered 'activities of daily living' relating to personal care and mobility about the house that are basic to daily living. The scheme presents no evidence that it would support residents in these tasks, many of which should be readily accepted as supporting residents to live independently and for longer in their own home.

- 6.30 Whilst the principle of reducing demand on mainstream social and health care systems is a positive benefit of sheltered accommodation it is not clear that the scheme delivers a format for such benefits to be realised. I would apply very low benefits in terms of its potential to reduce the demand on social care and health systems.
- 6.31 Local Plan Policy IMPL2 (**CD4.1**) seeks to deliver development adaptable to the future needs of residents, most particularly at (i) requiring additional accessibility in accordance with part M4 of the Building Regulations, especially for sheltered housing. It is not clear what level of Part M4 the appellant intends to achieve, however a condition could secure compliance with part M(4)3 in order to ensure units are adaptable to the evolving needs of occupiers, especially as they approach the older age categories when greater physical support is likely to be required and where demand is predicted to grow significantly over the plan period.
- 6.32 Imposition of and compliance with such a standards would accord with development plan policies and deliver benefits to support the needs of the aging population, enhancing the benefits of the scheme towards reducing demand on social and health care systems.
- 6.33 Economic benefits during construction and increased residents spend locally.
- 6.34 Short term employment in construction has a very minor benefit for the economy. There is nothing about the scale or nature of the scheme or its design or construction, that supports specialist and local specific construction skills, inherently important to the local area and economy.
- 6.35 Given the proximity to Lymington, residents of any development on this site are more than likely to choose to spend time and money in shops and leisure facilities, so whilst such a benefit would occur, it is unlikely that the spend and contribution to vitality and viability arising from this sheltered housing scheme would be materially greater than that of open market housing.

- 6.36 Furthermore due to the size of Lymington as a town it supports and relies on a wide catchment and therefore the benefits for local services and facilities, from this scheme alone would be very low and not fundamental to the success or retention of those commercial services.
- 6.37 Delivering homes in an urban area, in close proximity to services and facilities, reducing reliance on the private car.
- 6.38 This accords with the sequential approach of directing development to different settlements based on the scale of the proposal and size of the settlement ensures proportionate infrastructure and services are available to support the development in accordance with Local Plan Policies STR3 & STR4. **(CD4.1)**
- 6.39 In this case the site is in a good location to support the social, health and welfare needs of occupiers of the development, however given the scale of Lymington, it is not considered that the existing infrastructure and facilities supporting those needs locally, require this development in order to support their viability and long term retention.
- 6.40 However given the location of the site within the built up area, development is not precluded in principle and such benefits would weigh in favour of any development of the site greater than existing, it is considered that the benefits of the siting of 44 units in such an accessible location would be minor benefits of the scheme.
- 6.41 In addition the range of services available would support any resident, in some way, living at the site and are not just a benefit to those qualifying to live in an older persons sheltered accommodation scheme.
- 6.42 There are off site air quality, habitat and highway capacity benefits to reducing reliance on the private car, however they arise from any scheme on this site and would be proportionate to the scale of the development.
- 6.43 Enhanced use of land in urban areas is a benefit that contributes to Local Plan Policy STR1 (i) and in principle is given significant weight as a benefit. However maximizing the use of such urban land can not be considered in isolation of the design consequences of such an approach.

- 6.44 Meeting the 10% bio-diversity net gain.
- 6.45 Bio-diversity net gain would have environmental benefits, but are proportionate to the existing quality and quantity of ecology on site and not the scale of the scheme in question, as such, the same ecological benefits would be likely to arise for a smaller scheme without the same design problems. Whilst a requirement of making the scheme acceptable it is given negligible weight as a benefit.
- 6.46 Other benefits presented by the Appellant.
- 6.47 Financial benefits would be achieved from payment of CIL and receipt of the New Homes Bonus. The former is related to pooled monies, with all other qualifying developments, to deliver infrastructure to mitigate the impact of the development. The latter is a Government incentive that the Council may secure, but is not considered to justify allowing poor development. The weight applied to these benefits should be very minor.
- 6.48 Provision within the scheme of a communal lounge will benefit residents and make it easier for them to engage with other residents to give and receive the mutual benefit of living in such a community. This is largely a pre-requisite of delivering a sheltered accommodation scheme. As such whilst the residents of this scheme may benefit greatest from such a space, its inclusion offers no extra benefit over the principle of delivering sheltered accommodation to meet the need for specialist elderly accommodation.
- 6.49 Census data used to inform the SHMA2014 recognised greater propensity for older households to under occupy, the opportunity for those residents to 'down-size' is accepted, which in turn releases some housing capacity back in to the open market, potentially available to families, this in turn is a benefit. However there is no guarantee that such turn over would occur within the plan area, nor is it in the appellants or councils control and is a consequence of increased housing availability across the board.
- 6.50 Being built to modern standards of insulation and energy efficiency, as required by the Building Regulations, would have environmental benefits, as would any development scheme undertaken on site. There is no evidence of intentions to deliver above those standards or provide on site sources of renewable energy generation.

- 6.51 Furthermore, there is nothing about the 'Sheltered Accommodation' category of housing that would render the scheme any more energy efficient than open market housing in the same building. Whilst the generous flat sizes would have benefits for residents, they would limit the efficiency of seeking optimal use of the site, reducing the energy efficiency per resident, compared to flats built to the Technical Housing Standards sizes. This is given very little weight as a benefit.
- 6.52 Whether any harm to heritage assets would be outweighed by the proposed development's public benefits.
- 6.53 The appellants' case, as submitted to the Council and as pursued at this appeal is that the scheme would not cause harm to the significance of identified heritage assets, however should 'less than substantial harm' to heritage assets be concluded, then in accordance with NPPF para.196, such harm would be outweighed by the public benefits of the development which are compelling.
- 6.54 The Proof of Mr Lever demonstrates that less than substantial harm to the significance of the designated heritage assets close to the site would arise.
- 6.55 The Inspector is directed by para 193, of the framework, that great weight should be given to conservation of the assets.
- 6.56 As indicated by the Inspector at Lymington Bus Station appeal (**CD10**) para.25 "the combination of harms I have identified would be less than substantial. Nevertheless, harm to designated heritage assets is a matter to which the Courts have indicated I should give considerable weight and importance in the planning balance. The totality of harms in these cases is therefore a highly significant factor that weighs heavily against the schemes."
- 6.57 There is a need for housing, including specialist housing for the elderly. The former would have a moderate benefit if delivered over the short term, the latter, minor benefit due to its limited differences with open market housing.

- 6.58 Some of the benefits identified above, such as predicted local spend and reduced impact on social and health care services, are not guaranteed to occur or are within the gift of the appellant or council to deliver.
- 6.59 Economic benefits from employment during construction would be short lived and can not be guaranteed to support a local workforce.
- 6.60 In dismissing both the Hythe Police Station appeal (**CD6.9**) and Lymington Bus Station appeal (**CD6.10**) with similar contextual and balancing circumstances to this appeal, the respective Inspectors concluded that these benefits would not outweigh the identified harm to heritage assets. And in the case at Lymington Bus Station, the Inspector opined that there was nothing before her to indicate that many of these benefits could not be achieved in a way that would be less harmful to the heritage assets.
- 6.61 Whilst increased use of land in the urban area is a significant benefit, with positives for a greater supply of housing in the urban area, close to services and facilities reducing reliance on the private car, it is the increase in use of the site that leads, in part, to the harm to the significance of heritage assets.
- 6.62 Unlike the uncertainty of benefits for residents spend locally and reduced reliance on social and health care services, the impact of the development and the harm to the significance of heritage assets would occur.
- 6.63 The scheme does not replace buildings that currently harm the significance of the heritage assets, or deliver a new building that provides public benefits by better revealing the significance of the heritage assets or preserving the significance of the conservation area or the listed buildings.
- 6.64 The moderate and minor benefits of delivering housing, as elderly sheltered accommodation, respectively, combined with the short term, unpredictable economic benefits and the limited ability of the scheme to evolve to support the needs of aging residents would not deliver sufficient public benefits to outweigh the less than substantial harm to heritage assets the conservation of which great weight should be applied.

7.0 The Planning balance, S.38(6), and any other material considerations

- 7.1 The starting point for decision making is the statutory development plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material planning considerations indicate otherwise.
- 7.2 The documents comprising the development plan and the relevant policies are listed above at para's 5.2-5.4
- 7.3 The scheme, as defended at this appeal, was determined to conflict with the following policies;
- STR1 Achieving sustainable development;
 - ENV3 Design quality and local distinctiveness,
 - Of the Local Plan Pt1: Planning Strategy 2020,
 - And;
 - DM1 Heritage and Conservation,
 - Of the Local Plan Pt2: Sites and Development Management Policies 2014.
- 7.4 Benefits of the scheme have been identified above and can, subject to conditions, demonstrate a degree of compliance with the following remaining policies listed at 5.3-5.4.
- 7.5 New Forest Local Plan Pt1: Planning Strategy 2020. **(CD4.1)**
- 7.6 STR2 – Protection of the Countryside. The scheme would be within the built up area away from the boundary with either Cranborne Chase AONB, or New Forest National Park boundaries. Delivering development in urban areas such as Lymington, reduces the pressure to expand settlements in to close proximity with those areas with more sensitive characters.
- 7.7 STR3 – Strategy for locating new development. The development has been directed towards an accessible location and will contribute towards vitality and viability. The policy does require a high standard of design that maintains and enhances local character and amenity, which the scheme doesn't deliver.

- 7.8 STR4 – Settlement Hierarchy. The site is within Lymington, included in the largest settlements in the hierarchy listed, where there is access to a wider range of employment, facilities and services. Appropriate for large scale developments, that for residential development are 50 dwellings. The policy does not preserve the settlements listed as ‘Towns’ for large scale developments only, and the scheme being a medium scale development, at 44 dwellings, would be appropriate to its location.
- 7.9 STR5 – Meeting our Housing Needs. Sets the strategic approach to the delivery of housing and trajectory for their delivery. Predominately relying on strategic allocations, but recognising existing smaller allocations in the Local Plan Pt2 and to be identified in a review of that development plan document. The windfall nature of the site is not readily identified as being required to deliver the numbers identified, however as indicated above at **6.17 and appendix (X)** this scheme if delivered early could contribute to the need for housing delivery in the short term in advance of strategic sites delivering.
- 7.10 ENV1 – Mitigating impacts on International Nature Conservation Sites. Identifies the framework of protected habitats where likely significant effects would occur in and close to the plan area. Identifies a mitigation strategy. In this respect the mitigation is off site and would consist of financial contributions and nitrate neutrality projects to be secured by appropriate S.106 and conditions in order to pass an appropriate assessment of the Habitats regulations.
- 7.11 HOU1 - Housing type, size, tenure and choice. Indicates that there needs to be a diverse choice of housing available across all sites at all stages of life by providing a mix of choice of homes. The scheme proposes a mix of 1 and 2-bed units and increases supply of homes directed at the elderly.
- 7.12 HOU2 – Affordable Housing. Imposes the national threshold for qualifying at schemes of 11 or more units, but proposes different benchmark delivery percentages for different areas within the plan area. The scheme qualified for assessment but failed to deliver any affordable housing, having followed the assessment requirements of IMPL1. The policy accepts that viability considerations prevent the scheme from making such a contribution and does not pursue a reason for refusal in relation to the lack of an affordable housing contribution for that reason. However, in reaching a balanced view on the benefits and impact of the scheme, the lack of affordable housing is a relevant matter to take into account, particularly given that the provision of

affordable housing is an important objective of the Local Plan, representing 69% of the annual housing requirement (NFLP 6.13)

- 7.13 HOU3 – Residential Accommodation for older people. Positively supports alterations to allow residents to stay in their homes as they age and delivery of homes designed to be adaptable to changing needs and delivery of housing types suitable for older people. The scheme proposes specialist accommodation for elderly residents. There are no specific targets for numbers of units to be delivered in the plan period, the need being absorbed in to the overall housing needs and the policy encourages all sites to deliver a proportion of its accommodation suitable for older people.
- 7.14 CCC2 – Safe and Sustainable travel. The scheme was considered to provide sufficient parking and whilst it encourages installation of infrastructure to support the use of electric vehicle, in this case the provision of a store room with electric buggy charging equipment would be an equivalent.
- 7.15 IMPL1 – Developer Contributions. Sets the principle of contributions required to make the development acceptable and offers flexibility to preserve scheme viability. In accordance with HOU2 above, a financial appraisal of the schemes viability was presented and its inability to remain viable whilst delivering affordable housing was accepted.
- 7.16 IMPL2 – Development Standards. Requires developments to incorporate measures to minimise their environmental benefits and be adaptable to the needs of occupiers over their life time. Conditions could be used to ensure such standards are met.
- 7.17 New Forest Local Plan Pt2: Sites and DM policies 2014 (**CD4.3**)
- 7.18 DM2 – Nature Conservation, bio diversity and geo diversity. Directed towards protecting or mitigating harm of 'UK' protected habitats and protecting protected species and their local habitats, promoting on site bio-diversity gain. The location of the site does directly impact on important features of nature conservation and has demonstrated it can deliver 10% bio-diversity net gain on site.
- 7.19 Turning to those policies identified in the reasons for refusal, the conflict with ENV3 and DM1 have been covered in detail by the proof of Mr Lever, but briefly addressed

as to their contribution to the planning balance. STR1 – Achieving Sustainable Development will be covered in greater detail below.

- 7.20 ENV3 – Design Quality and Local Distinctiveness. Requires development to achieve high quality design that contributes positively to local distinctiveness. Detailed analysis of the way the scheme conflicts with this policy has been presented to the Inquiry. The failure to deliver a high quality design that contributes to local distinctiveness leads to conflict with the adopted guidance in the Lymington local distinctiveness SPD.
- 7.21 Whilst the policy does not take such a strong stance, the pre-amble to the policy at para. 5.45 references the approach of para.130 of the framework, where decision makers are directed to refuse development of poor design.
- 7.22 DM1 – Heritage and Conservation. Requires development preserves and seeks to enhance the historic environment and heritage assets. Although adopted in 2014, this was after the original NPPF in 2012 and remains very closely aligned to the approach and expectations of decision making in section 16 of the NPPF 2019.
- 7.23 The harm to heritage assets has been identified and the public benefits of the scheme weighed against them, concluding at para.6.64 above, that the less than substantial harm is not outweighed.
- 7.24 STR1 – Achieving Sustainable Development. Expects all development to make a positive social, economic and environmental contribution to community and business life in the plan area. The full policy wording is at **(CD4.1)**
- 7.25 The scheme is considered to comply with the first (unnumbered) section as it delivers development within a settlement boundary, in a manner that is appropriate for and proportionate to the nature and size of the settlement, where there is sufficient supporting infrastructure, this weighs in favour of the scheme and contributes positively to achieving sustainable development.
- 7.26 Subsection i), due to its proximity to Lymington town centre, the site is sustainable and accessible. The development proposes a mix of 1 and 2-bed units, there is likely to be a mix of values associated with flats that have garden views, balconies or terraces compared with those with views across the road frontage. There would not be a mix of tenure or any affordable housing provided, however the provision of sheltered

residential accommodation contributes to the overall mix in the wider community, directed towards older residents, although does not appear to embed adaptability in to its built fabric to meet future needs of residents.

- 7.27 The recently adopted development plan has adopted a strategy to significantly increase the delivery of homes in a manner that accords with this strand of sustainable development. The scheme does not readily support the strategy as identified, but nevertheless does provide housing, in a specialist form for older residents, for which there is need.
- 7.28 This makes a minor positive contribution to the delivery of a sustainable development.
- 7.29 Subsection ii), due to the size, scale and layout of the proposed scheme and its design, the scheme fails to take a context led approach to its siting and layout, that fails to maintain local distinctiveness, fails to create a high quality townscape, fails to sustain or enhance the heritage and amenity value of the plan area.
- 7.30 This has been clearly articulated above in consideration of the failure to comply with Policies ENV3 and DM1 and in the proof of Mr Lever.
- 7.31 This has a significant negative contribution to the delivery of a sustainable development.
- 7.32 Subsection iii), the scheme would deliver a 10% bio-diversity net gain. Recreation and air quality impact on protected habitats in the New Forest and Solent, arising from the development leading to likely significant effects, are capable of being mitigated and it is expected a S.106 agreement will be completed prior to the inquiry.
- 7.33 The negative contribution of the development to water quality in the Solent, by way of additional nutrients in waste water would also give rise to likely significant effects. A solution to secure mitigation is being prepared. The LPA would be content with a solution by way of Grampian condition, however should that approach be deemed unacceptable then likely significant effects could not be ruled out.
- 7.34 Should the appropriate mitigation be secured the scheme would make a minor contribution towards the delivery of a sustainable development.

- 7.35 Subsection iv), the scheme does not deliver development that generates economic growth or investment but does deliver residents in close proximity to services and facilities, that would contribute to the vitality and viability of the town and those services and reduce reliance on the private car.
- 7.36 Any on site employment in grounds and building maintenance is unlikely to be greater than generated by the existing 4 houses. Employment of an on site manager would be expected as part of the scheme meeting the definition of a sheltered housing scheme.
- 7.37 Overlapping with i) the benefit of the location within the identified settlement a minor positive contribution would be made, by the scheme, towards delivering a sustainable development.
- 7.38 Subsection v), residents would be safe from flooding, pollution and climate change. Conditions could mitigate the impact from off site surface water run off, however the scheme does not positively address climate change through the use of on site sources of renewable energy generation.
- 7.39 It is acknowledged that as a residential scheme in a largely residential area the scheme would not involve activities at odds with those prevailing, requiring consideration.
- 7.40 As such the scheme would have a largely neutral impact on delivery of a sustainable development.
- 7.41 Subsection vi), it is not explicit in the documents supporting the scheme what, if any, future proofing has been embedded in the scheme. The Local Plan recognises significant need for specialist housing for the elderly, but in older age groups that this scheme accepts and with greater support and mobility needs, it would be inherently appropriate for adaptability to the changing needs of residents to be embedded within the scheme.
- 7.42 In this respect there is no positive contribution towards delivering a sustainable development.
- 7.43 The combined effect of these considerations presents a scheme with minor economic and social benefits, but even after taking account of the location and need for housing,

a scheme with significantly negative environmental consequences. The scheme therefore does not comply with Policy STR1.

7.44 Delivery of sustainable development underpins the planning system, in this case the very strong conflict with policies ENV3 and DM1 contribute to the failure of the scheme to comply with STR1 and would not deliver a sustainable development, such conflict outweighs the benefits arising from compliance with those policies considered above at 7.6 – 7.18.

7.45 Whilst that indicates the appeal should be refused for failing to accord with the development plan, the decision maker should consider any material considerations that may also add weight to the case.

7.46 Other Material Considerations.

7.47 In light of the position statement provided at appendix (**JRG3**) a 5year housing land supply can not be demonstrated at this time. Due to the harm of the scheme to the significance of heritage assets, I consider footnote 6 to para 11 of the framework is engaged and the Inspector is respectfully invited not to apply the tilted balance.

7.48 Should the Inspector conclude that there is no harm to the significance of heritage assets, or that such harm is outweighed by public benefits then the application of the tilted balance is accepted.

7.49 However the harm to the character and appearance of the area arising from the poor design of the scheme as identified by the proof of Mr Lever in respect of reason for refusal 2 would demonstrate that NPPF para.130 is engaged and the Inspector is directed towards refusal of planning permission in any event.

7.50 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out a general duty as respects listed buildings in the exercise of planning functions:

In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

7.51 In this case, it has been demonstrated that the development would adversely affect the setting of listed buildings and it is highly desirable to preserve that setting. Preservation would only be achieved through dismissal of this appeal.

8.0 Conclusions

- 8.1 This proof has set out that the appeal scheme would not deliver sustainable development, a requirement at the heart of the planning system.
- 8.2 The proof of Mr Lever demonstrates the poor design of the scheme would conflict with design policies and local distinctives. As directed by the NPPF the poor design of the scheme should in itself be reason to dismiss the appeal.
- 8.3 Mr Lever has demonstrated that the scheme would cause harm to the significance of heritage assets and whilst the scheme would deliver public benefits, those benefits would not outweigh the harm.
- 8.4 The inability of the council at this time, to demonstrate a 5year supply of land for housing should not engage the tilted balance due to the harm to the significance of heritage assets.
- 8.5 There are no other material considerations that would direct the Inspector away from determining the appeal in accordance with the development plan.
- 8.6 The Inspector is respectfully request to support the Local Planning Authority, by resisting this unsustainable development, in protecting the distinctiveness of Lymington and preserving the significance of heritage assets, by dismissing this appeal.

9.0 Habitats Regulations.

- 9.1 The Habitat Regulations Assessment of the Local Plan concluded that likely significant impacts on the integrity of the European sites, could not be ruled out unless a satisfactory level of mitigation was provided.
- 9.2 In respect of recreational activity occurring on protected habitats arising from new residential development the Council has adopted a Mitigation Strategy (**CD4.6**) which allows new residential development to proceed in compliance with the Habitat Regulations. Every planning permission for residential development determined by the Council is made conditional upon an appropriate level of mitigation being provided in accordance with the Strategy.
- 9.3 In respect of delivering nitrate neutral development in order to preserve water quality in the Solent, the Council has been working with other South Hampshire authorities, Natural England and the Environment Agency to identify the scale of harm, solutions and proportionate mitigation.
- 9.4 Natural England is aware that NFDC are working on a New Forest Nutrient Mitigation Strategy and that until the strategy is adopted an interim approach has been decided that requires applicants to either produce a site-specific mitigation scheme that achieves nutrient neutrality or better, or the use of a Grampian condition to ensure the provision of an avoidance and mitigation scheme prior to occupation of the development. Provided that the development achieves nutrient neutrality through an agreed site-specific nutrient mitigation scheme or through a mitigation package outlined by the Grampian condition, Natural England is satisfied that the applicant has mitigated against the potential adverse effects of the development on the integrity of the European sites.
- 9.5 Natural England has produced guidance on how to calculate nitrogen budgets for developments. The calculations compare the existing land use to the proposed land use in terms of nitrate loading and use assumptions on water use and occupancy rates to help planning applicants determine whether nitrogen will come from the site (either through run off or via the sewage system) if permission was granted. Natural England has advised that achieving nitrate neutrality on smaller sites and brownfield developments is likely to require off-site mitigation.
- 9.6 The Council has engaged in securing access to land capable of delivering a reduction in nitrates discharging in to the Solent. A draft agreement between NFDC,

Isle of White Council, the LPA in which the project is located and the Land Owner, Mr Heaton, is being prepared and at the time of writing is with the Isle of White Council for review.

- 9.7 The project on farm land owned by Mr Heaton, removes farm land from agricultural use and uses it to plant appropriate tree species, thereby reducing the use of fertilizers and consequential run off in to the Solent. The project has been accepted by Natural England as an appropriate means of mitigating the additional waste water discharge from the site.
- 9.8 Once the agreement is in place the appellant would then be able to apply to NFDC to secure credits at the project, equivalent to the scale of impact of the appeal scheme. This offers sufficient security that the use of a Grampian condition would be appropriate and give the Inspector confidence at the point of decision making that an appropriate assessment of the Habitats Regs could be passed.
- 9.9 The condition put forward for use is as follows.

The development hereby permitted shall not be occupied until:

- a) 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;
- b) 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
- c) All measures forming part of that mitigation package have been provided to the Local Planning Authority.

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.

9.10 This condition is also included in the list of conditions agreed with the Appellant presented to the Inquiry.

9.11 Notwithstanding the Councils position that the appeal should be dismissed, should the Inspector be minded to allow the appeal, he is invited to impose this condition, in order to ensure likely significant effects do not occur.