

## CD6.26

### Appeal Decision – Bristol

#### **Preface:**

This appeal decision is important because it deals with an allowed scheme for older people's housing in the context of a demonstrable 5-year land supply which is relevant to the consideration of the appeal scheme. The Inspector recognised that the development plan has no specific policy for the delivery of sites and no allocated sites are allocated for such development. In this context, the benefit was given very substantial weight.

The relevant paragraphs referenced in the Appellant's proof are highlighted yellow.



## Appeal Decision

Inquiry held on 1-4 August 2023

Site visit made on 1 August 2023

**by I A Dyer BSc (Eng) FCIHT**

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

**Decision date: 8<sup>th</sup> November 2023**

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**Appeal Ref: APP/P0119/W/23/3318362**

**Land at Former Staple Hill Infant School, Page Road, Bristol BS16 4NE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Churchill Retirement Living Ltd against South Gloucestershire Council.
  - The application Ref P/22/05589/F, is dated 13 September 2022.
  - The development proposed is redevelopment of the site to form 42 retirement apartments, including communal facilities, car parking and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for redevelopment of the site to form 42 retirement apartments, including communal facilities, car parking and landscaping at Land at Former Staple Hill Infant School, Page Road, Bristol BS16 4NE in accordance with the terms of the application, Ref P/22/05589/F, dated 13 September 2022, subject to the attached schedule of conditions.

### Preliminary Matters

2. Prior to the Inquiry, the appellants amended their plans with the intent of resolving the issue of safety of the highway and access, and parking provision. The revised arrangement is shown on drawing 10121SH- PA01 Rev B. I consider the amendments are of a minor nature and therefore accept the revised plans on the basis that no party would be prejudiced by my doing so and I will return to this matter later.
3. The Council is currently the landowner. Therefore, at present it cannot enter into a planning obligation as this would, in effect, be an agreement with itself. Therefore, prior to the Inquiry the appellants submitted a draft obligation in the form of an Agreement under Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2012 (the Section 111 Agreement). Attached to this, in the form of an annex, was a draft copy of an Agreement under Section 106 of the Town and Planning Act 1990 (the draft Section 106 Agreement). The effect of the Section 111 Agreement is to bind the parties to signing the draft Section 106 Agreement when the land is transferred from the Council.
4. Prior to closing the Inquiry, signed and dated copies of the Section 111 Agreement were provided. The draft Section 106 seeks to provide a financial contribution towards affordable housing for which provision would usually be made on site. In this case, the parties agree that this is not possible and that it

should be provided off-site. The draft Section 106 Agreement also makes provision for improvements to public open space. There was discussion of the Section 111 Agreement and draft Section 106 Agreement at the Inquiry. I have taken account of the agreement and draft agreement in my decision.

5. I have received a signed Statement of Common Ground (SoCG) between the Council and the appellants. This was updated during the Inquiry and a copy of the revised SoCG provided to me at that time. I have taken the revised SoCG into account in my decision.

### **Main Issues**

6. The Council have set out in their written statement their reasons for refusal of planning permission had they determined the application. Initially these were: -
  - i. The effect of the proposal on the character and appearance of the site and the surrounding area;
  - ii. Whether the proposal would provide satisfactory living conditions for future occupiers, with particular reference to private amenity space;
  - iii. Whether the proposal makes appropriate provision for the parking of cars, with particular reference to any effect on the safe and efficient operation of the public highway;
  - iv. Whether the proposal would provide safe access for all users;
  - v. Whether the proposal makes appropriate provision for public open space; and: -
  - vi. Whether the proposal makes appropriate provision for affordable housing.
7. Subsequently the appellants submitted plan no 10121 SH-PA01 RevB. The Council has stated that the revised scheme addresses its concerns regarding the parking of cars, the safe and efficient operation of the public highway and the provision of safe access for all users. Similarly, the parties have agreed that the proposed draft Section 106 Agreement, which would be secured by the Section 111 Agreement, secures a financial contribution to off-site affordable housing such that appropriate provision would be secured. These are matters of common ground between the parties and I see no reason, on the basis of the evidence before me, to dispute their conclusions in these regards.
8. Having come to the conclusions above the main issues in the appeal are: -
  - The effect of the proposal on the character and appearance of the site and the surrounding area;
  - Whether the proposal would provide satisfactory living conditions for future occupiers, with particular reference to private amenity space; and: -
  - Whether the proposal makes appropriate provision for public open space.

## Reasons

### Character and appearance

9. Policy PSP1 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan (2017) (the PSPP) sets out a framework for assessing the effect of proposed development on the local distinctiveness of the area in which it would sit. It sets out a two-stage process, the first being to demonstrate that there is an understanding of the buildings and characteristics that make a particularly positive contribution to the distinctiveness of the area/locality. The second task requires that, based on that understanding, the proposal responds constructively to that distinctiveness.
10. There is agreement between the parties that the appellants have, through their Design and Access Statement submitted with the application, and later in evidence, demonstrated a general understanding of the character areas and notable features which are present. There is, however, dispute as to whether the proposal satisfies the second requirement of Policy PSP1 and would respond appropriately to that local distinctiveness.
11. The site is currently vacant but was occupied by a former school building. This, and the adjacent building were similar in style and detailing, and both were Locally Listed Buildings (LLBs). Whilst the original building within the site has been demolished, its neighbour remains and is still an LLB. The site lies in an area identifiable as having a number of large, stand-alone buildings, generally set well back from Page Road in landscaped plots. This, despite the massing of the buildings, gives the area a spacious feel, to which a series of spaces, including car parks and public open space, contribute. The adjacent LLB is a distinctive building featuring extensive use of local pennant stone, of darker hues and a rougher texture, with extensive detailing in smoother Bath stone, which has a much paler tone.
12. The analysis by the appellants identifies that in the wider area there are several character areas, including a compact urban core of the high street, a less compact suburban area of dwellings, and a denser area of terraced dwellings.
13. Older buildings, particularly in the urban core and around Sandwell Road, feature the extensive use of the Pennant and Bath stone, the Pennant stone being used for front wall construction, and the Bath stone providing detailing. This detailing, in the form of quoins, cornices and detailing around openings, is often quite ornate.
14. The spacious, verdant feel of the area immediately surrounding the site, and the use of natural stone and extensive detailing in the contrasting material are positive features of the area.
15. The housing stock in the area of suburban dwellings are generally of more mixed design, ranging from late Victorian to contemporary. There is more extensive use of brick and render as finishes.
16. Most of the buildings in the area are 2- to 3-storey in height, with traditional pitched roof construction.
17. My attention has been particularly drawn to a recently constructed block of flats facing onto Kendall Road, identified by the Council in its Density and

Character Study (2022) (the DCS) as a building with positive design features. This is a flatted development, which is of three storeys in height, with a flat roof, constructed of grey brick, which the Council identifies as intended to blend with both the grey render and the natural grey stone used in the wider area.

18. The proposal introduces a four-storey block, articulated on its primary frontages, facing onto Page Road, by three storey projecting elements featuring projecting balconies. The lower three storeys would be faced in a buff concrete brick on the projecting elements, with a contrasting darker, brown concrete brick in the recessed areas. Darker, brown, cast stone banding would be incorporated at ground floor level and as a single band at upper level. The building is set back approximately 2.5-3.5 metres from the boundary with the highway.
19. The top storey is set back on the primary frontages by between 1.5-2.6 metres and faced in a grey render. A slightly pitched roof, incorporating solar panels would complete the proposed building.
20. By introducing a building of the scale and massing proposed, which would occupy extensive frontages close to the footway, the proposal would create a sense of enclosure close to the road, undermining the sense of spaciousness which I have identified above as a positive feature of the area. This effect would be increased by the difference in height between the ground within the site and the footway. This reduction in spaciousness would, in this case, amount to harm.
21. Setting-back of the top storey, an architectural technique to diminish the effect of massing of a building, is used elsewhere in modern buildings in the locality of the proposal, particularly flatted development of a similar scale to the proposed development. The appellants have provided 3D model images of the proposal to demonstrate that, from the footways of Page Road close to the boundary, the parapet of the third storey would conceal the upper storey and visually reduce the overall bulk of the proposal. However, a sense of increased enclosure from the scale and massing of the building would remain, and the harm that I have identified would not be effectively mitigated.
22. The height of the building is comparable to its neighbour, the LLB, and other buildings nearby. However, the LLB and other larger-scale buildings in the area that make a positive contribution to the area, such as Staple Hill Primary School, are set well back off the street and, in the case of the school, set at a lower level, with the result that the sense of spaciousness is retained.
23. The Kendall Road development that I refer to above presents a three-storey façade to the street, again with minimal setback. However, in that case, the building is of an overall scale and massing that reflects the dwellings around it and produces no great degree of additional enclosure of the street scene as a result.
24. Design detailing of the new building would, to a great degree, reflect that of more modern buildings in the area, rather than older buildings, particularly in the use of materials and simple detailing around openings.
25. The LLB provides strong examples of positive detailing, including the extensive use of natural stone in both general construction and detailing, and a complex

pitched roof, which can assist in reducing massing. The proposed building includes references to the positive design features of this building in regard to the use of materials, such as the colour and tone of bricks in response to the frequently used local stone, and the cast stone banding as a design feature. Such an approach has been used successfully in the Kendall Road development.

26. The designer has taken this step deliberately, seeking to produce a building of modern appearance, referencing positive features on nearby buildings of modern design, notably the Kendall Road Development and others in the wider area, rather than take a pastiche approach seeking to replicate traditional design features more faithfully. Neither approach is wholly without merit and different design approaches can lead to equally valid design solutions of good quality. Similarly, a block of flats, which is, essentially, what is proposed here, would be of a form following on from its function. Different design approaches could equally well provide a suitable design, albeit of differing appearance.
27. I find that, although simpler window features have been incorporated in the design than has been used in other recent developments in the wider area that have used natural stone, the approach taken in the design of the proposal building is equally valid in referencing the local materials and has been used successfully. I therefore consider that, by use of a suitably worded condition controlling the final selection of materials, this approach is acceptable.
28. Whilst references to the LLB used in detailing could have been more overt I find no basic harm would result from the approach to detailing taken by the appellants. I also note that the Council have not identified any specific harm to the important or significant features of the LLB.
29. In terms of other aspects of good design, the appellants have drawn on their extensive experience in the provision of developments of this type. Materials have been chosen for their longevity, to reflect the long-term commitment of the appellants to the site, of which they would retain the freehold.
30. The appellants have further used their experience to inform the design so as to satisfy the needs of future occupiers. There was much discussion at the Inquiry about the implications of the proposed density of development within the site.
31. The development of the site would be denser than the guidance provided in the DCS. The nature of the development is such that future occupiers are often seeking to downsize their accommodation and also enable them to give up their private car. Such factors lead to provision of smaller, more easily maintained units and reduced levels of car parking when compared to more general housing provision. This reduces demands on space within the development, leading to comparatively more units accommodated within the site. There is a finite availability of brownfield land with the level of access to services that future occupiers require, and there is a high level of competition between different land uses for such land as is available. I therefore find that, of itself, the issue of density is not a determinative factor in the acceptability, or otherwise, of the proposal, but is a factor, the implications of which must be taken into account.
32. Summarising these issues, I find that the proposal would provide a durable design, fit for purpose and whilst I do not find the overall design of the proposal, as a stand-alone building, would be unacceptable, its position on the

site in the form proposed would harm the spaciousness of the area, an important characteristic of the locality.

33. I note that prior to the submission of the application a request for pre-application advice was made for a flatted development with a similar footprint and appearance, of three storeys. That response advised that the addition of a fourth floor should be considered. It is clear that the appellants have relied on the Council's response to that request to a significant degree. However, the advice provided by the Council was not binding, either on them or me. I have, in any case, determined the appeal before me on its own merits.
34. I therefore conclude that the proposed development would have a harmful effect on the character and appearance of the site and the surrounding area. It would thus be contrary to Policies CS1 of the South Gloucestershire Local Plan Core Strategy (2013) (the Core Strategy) and PSP1 of the PSPP which seek, amongst other things, to ensure that for all new development siting, form, scale, height, massing, detailing, colour and materials, are informed by, respect and enhance the character, distinctiveness and amenity of both the site and its context and respond constructively to the buildings and characteristics that make a particularly positive contribution to the distinctiveness of the area/locality. In reaching this conclusion I have had regard to Part 12 of the National Planning Policy Framework (the Framework).

#### Living conditions

35. The proposed development would make a range of provision for future occupiers to experience the outside environment. Flats on the first or second floors would benefit from either a Juliette balcony or a traditional balcony. Those on the third floor would be provided with either a Juliette balcony, or a terrace provided by the set-backs of the elevations facing the highway.
36. The balconies at first and second floors provide marginally less than 5m<sup>2</sup> of space, which Policy PSP43 of the PSPP identifies should be provided for a 1- or 2- bedroom flat.
37. The appellants provided a plan (Plan No 10121SH – PA13; Balcony Area) which indicated that, by increasing the depth of the balcony by 47mm, an area of 5m<sup>2</sup> could be provided, suggesting that this could be secured by the imposition of a suitably worded planning condition. However, at the Inquiry, the Council agreed that, in practical terms, this increase of balcony area would make no practical difference to how it would be used and there was no dispute that the plan showed that, for both options, it would be possible to accommodate a small table, such as a bistro table, and two chairs.
38. I am mindful of the sub-text accompanying Policy PSP43, that "In terms of the usability of space, the size of the external amenity space should, as a minimum, accommodate a table and chairs suitable for the size of dwelling". Given the proposed end users, I consider such provision appropriate to the size of the flats, whether 1- or 2- bedrooms are provided. Similarly, the terraces on the third floor provide suitable sitting-out spaces, being more generous than the balconies.
39. The provision of Juliette balconies with openable full height doors, which feature in 11 of the 42 flats, would provide an opportunity for future occupiers to sit at an open window and enjoy fresh air. However, given their position

relative to the mass of the building and facing direction, many of the windows would be shaded from direct sunlight. Nonetheless, some residents may prefer such an arrangement, given that there would be a reduction in ongoing maintenance of the accommodation for them and may prefer to avoid sitting in direct sun while having access to open air. For such occupiers, these flats may provide an attractive option. One flat, on the first floor would have no outdoor private amenity space, nor a Juliette balcony.

40. The ground floor flats have French doors with patios outside. However, the land outside would be in communal ownership. This produces a conflict between the visual perception of the patios, which would link the patios to the flat, and legal ownership, which would not. In practical terms, and this was confirmed in the Inquiry by the appellants, the occupiers take over the exclusive use of the patios for their own use and for invited guests. For all practical purposes these patios would provide the same function as private amenity spaces, and I have considered them as such.
41. The majority of the patios and all of the balconies face the street, providing future occupiers with opportunity to experience the comings and goings in the public realm. These facilities would, however, be elevated above street level, giving a degree of separation and limiting overlooking. Further, the patios would be separated from the adjacent footway by substantial walls and railings, providing an additional degree of separation from the street. In these circumstances I do not consider that occupiers of the ground floor flats would experience an unacceptable degree of intrusion or overlooking from the street, whilst feeling a degree of inclusion and interaction with the wider community.
42. Policy PSP43 of the PSPP acknowledges that higher density development may be appropriate in some locations and circumstances, and that in such circumstances the standards as set out will be relaxed. However, such a relaxation must be justified by overall good design in terms of access to fresh air and daylight, such as the use of well-designed and managed communal space.
43. The proposed development is designed and marketed as a form of communal living, whilst maintaining a high degree of independence for occupiers. Communal spaces would be available for use by occupiers, in the form of an "owners' lounge" and external spaces. The lounge would make provision for indoor social activities for a large number of people and makes provision for coffee-making and other catering activities.
44. Outside, there are three main areas identified as providing amenity space, together with the area between the building and Page Road. The latter contains patios for some of the ground floor flats between the building and Page Road. However, these would, as I have identified above, be subsumed to all intents and purpose, into a private area for the adjacent flats. Thus, I do not regard this as providing any meaningful contribution to the facilities to be enjoyed by all occupiers.
45. The main external community amenity is provided by a large patio and its adjoining amenity space located adjacent to the owners' lounge. This would allow future occupiers to sit out and enjoy fresh air whilst socialising.
46. The adjoining open space would be reduced somewhat by the presence of patios for two ground floor flats, which would, as noted above, be taken over



for use by the occupiers of those flats. The degree of privacy for these patios, and for windows of the flats facing onto this area would be reduced by the communal use of the area.

47. However, I am mindful of the communal nature of the development and, in moving into such a development, a degree of close interaction with other residents would be anticipated as part of the everyday experience. Further, intrusion could, to a degree, be mitigated by the skilful use of planting to prevent directly intrusive activity, as has been done elsewhere, and as I observed at New Pooles Lodge, Fishponds, during the site visit. Such mitigation could be provided by the imposition of a suitably worded planning condition requiring details of planting and other landscaping.
48. I have limited information to demonstrate the degree of impact the proposed building would have on light reaching the communal patio area. However, given the orientation of the building and the position of the patio and associated amenity space it is likely that it would lie in shade for much of the day. Whilst some occupiers may prefer to sit out of direct sunlight, others may prefer to experience direct sun, particularly in winter, when its rays would be less fierce.
49. A second amenity space is provided across the car park from the building. It contains a large tree, which will be retained. The appellants propose that this area would create a less formal opportunity for contemplative enjoyment. It may appeal to those wishing to distance themselves, for a time, from the main community, or, since this area is more likely, by virtue of its position and openness, to those wishing to experience greater amounts of direct sunlight.
50. Whilst accessed across a car park, this area would be likely to experience only low numbers of vehicular movements, and these at low speed, reflective of its function. As such the separation from the main building is unlikely to deter persons accessing it, and may, in fact, prove an attraction for some. The area is, however, adjacent to the boundary with Staple Hill Pre-school and may, at times, experience noise disturbance from activity within the pre-school site. I am also conscious that the area would be accessed by means of steps, and this may deter or obviate its use by those with mobility issues.
51. The final area is situated in the corner of the site between the building and the pre-school, and adjacent to Page Road. It is acknowledged by the appellants that this area would, of the three, be likely to be the least used by the occupiers, being small and out of the way. It is a matter of agreement that this area would have limited value for active use. However, as a landscaped area it would, in common with the other areas within the site that would be planted and landscaped, contribute to the visual amenity of occupiers, both in outlook from within flats, and as occupiers walk through the site and sit out.
52. In the wider neighbourhood lies Page Park, a large public open space. The parties agree that this would be a likely destination for future occupiers seeking to enjoy the open air. Whilst it is some distance away, I observed during the site visit that the area is generally level and side streets are provided with mobility crossings. The park would, therefore, be accessible on foot or using a mobility scooter. The proposal would make provision for the secure storage of mobility scooters. I consider, therefore, that the park would provide an effective opportunity for occupiers to supplement the private community

amenity space within the proposal for outdoor enjoyment, particularly as space within the development is limited for more active pursuits.

53. Bringing these matters together, the site would provide for a variety of needs of occupiers, depending on personal choice and ability. The appellants have explained that they rely to a significant degree on their experience in providing this type of accommodation so that it will satisfy the needs and aspirations of future occupiers. When considering those occupiers and their needs I am mindful that the proposal is intended for sheltered accommodation to meet the needs of over 60's with varying degrees of mobility. As the population of the development ages, it is likely that their abilities will alter and here I am particularly conscious of mobility and general health.
54. I find that the proposal, in providing for the variable needs of individuals likely to live in the proposal, makes appropriate provision for the needs of future residents in balancing provision of private and communal space, and indoor and outdoor community space such that it would satisfy their needs. The nearby public open space would also make a significant contribution to the amenity of those future residents able to access it.
55. I therefore conclude that the proposal would provide satisfactory living conditions for future occupiers, with particular reference to private amenity space. It would, therefore, comply with the aims of Policies PSP8 and PSP43 of the PSPP in as much as these seek to avoid the creation of unacceptable living conditions or have an unacceptable impact on the amenity of occupiers of new development. In reaching this conclusion I have had regard to Part 12 of the Framework.

#### Provision for public open space

56. There is no dispute between the parties that the proposed development is for specialist older persons accommodation aimed at active and independent people over the age of 60.
57. The appellants have identified that the proposal would provide an appropriate level of support for the active elderly, albeit that levels of activity would be likely to diminish, along with mobility, with age. The appellants identify, based on their experience, that wellbeing benefits provide an important incentive for their customers to take up the accommodation.
58. Both parties agree that Page Park is accessible to residents of the proposed development. I have identified above that Page Park would provide an important opportunity for future residents of the proposal to supplement the communal open amenity space provided within the development itself for sitting out or walking. Further, Page Park would provide opportunity for more active pursuits, such as bowling and tennis. This is an important factor in offsetting the limited private amenity space, and, indeed, the shared open air communal space provided within the development. Without such an opportunity, the quality of amenity available to residents would be significantly reduced.
59. The Council has identified, through an audit of existing provision, a shortfall in all typologies of open space within reasonable access of the proposed development. This has not been disputed by the appellants.

60. Policy CS24 of the Core Strategy, requires that where existing informal recreational open space, outdoor sports facilities, and natural/semi-natural spaces are inadequate in terms of providing for the quantity, quality and accessibility to meet the projected needs arising from the future occupiers of new development, those occupiers' needs must be met by the new development, together with provision for subsequent management and maintenance.
61. The parties have provided a draft Section 106 Agreement, secured by a Section 111 Agreement, which seeks to secure contributions to off-site provision of infrastructure to address the increased pressure that the proposal would place on existing infrastructure by virtue of the increased population in the area.
62. There is dispute, however, as to whether the contributions set out within the draft Section 106 satisfy the three tests for planning obligations of necessity, to make the development acceptable in planning terms; direct relationship to the development; and fair and reasonable relation in terms of scale and kind to the development (the tests).
63. The Council has calculated the Public Open Space (POS) contribution should be £111,135, based on the occupation of the development by 48.5 residents using a lower rate specific financial figure for retirement complexes. This figure has not been disputed by the appellants. This overall figure is comprised of three separate contributions, relating to informal recreational open space (IROS), natural and semi-natural open space (NSNOS), and outdoor sports facilities (OSF).
64. The Council's Community Infrastructure Officer (CIO) has identified a shortfall of outdoor sports provision in the locality, and the need to improve the quality of facilities for bowls and tennis, both activities which the more active future residents could enjoy and gain a health benefit from.
65. Similarly, residents would gain health and wellbeing benefits from simple pursuits such as walking in the open air. The CIO, in response to consultation, identified, in regard to NSNOS, that there were several sites for tree planting accessible to future occupiers of the site, and, in regard to IROS, a green wall on Staple Hill High Street, Kendall Road. Such provision would improve the quality of the outdoor environment and provide encouragement for future occupiers to actively experience it.
66. Whilst the CIO identified additional contributions for provision and maintenance of allotments, this has not been pursued in the overall figure.
67. The CIO, in their response to consultation, sets out the Council's justification as to how the contribution meets the tests for planning obligations.
68. Based on the evidence before me I find that the proposed contribution, and all of its constituent parts, are necessary to make the development acceptable in planning terms and that there is a direct relationship to the development as they provide facilities that will directly contribute to the health and wellbeing of future occupiers of the development, relating to an identified, and evidenced need for supporting infrastructure.

69. The CIO has provided details of the basis of the calculation of the base contribution rate to justify why the Council consider it fair and reasonable in terms of scale and kind to the development.
70. Whilst the appellants have questioned the costs of maintenance of items such as trees, the Council has provided a summary of average provision and maintenance costs for the infrastructure, based on industry costs for infrastructure acceptable to appropriate national bodies, and explained their means of testing these for value for money.
71. The appellants question whether the maintenance contributions are justified, as they argue that it would be inappropriate to use such contributions to support shortfalls in revenue budget. Nevertheless, whilst the Council have provided, through the response of the CIO, an evidential basis for the scale of costs to be incorporated within their calculations, no data has been provided by the appellants to challenge this. I therefore find the Council's evidence compelling as to the reasonableness of the scale and kind of the contributions.
72. I therefore find that a requirement for such contributions is necessary to make the development acceptable in planning terms, directly related to the development and fairly related in scale and kind to the development.
73. Whilst the purposes of the contributions set out in the "heads of terms" of the draft Section 106 Agreement is in more general terms than was done by the CIO, I am satisfied that they adequately encompass the purposes for which the contribution is sought. The Council is subject to oversight and their disposal of the funds can be verified at a later date. Should the Council have failed to spend the contribution for the intended purpose within a reasonable time limit, the funds would be returned.
74. In conclusion, I find that the proposal would, through the proposed contribution set out within the draft 106 Agreement, make appropriate provision for public open space. By so doing the proposal is made compliant with the aims of Policies CS6 and CS18 of the Core Strategy, which, together, seek to secure infrastructure and community facilities to mitigate development impacts on existing communities and provide for the needs arising from the development, including financial contributions towards their maintenance where appropriate. Moreover, the through the provisions within the draft Section 106 Agreement the proposal would accord with the aims of Parts 5, 8 and 12 of the Framework.
75. I have found that requirement for the "Public Open Space" contribution is fully justified and passes the tests. It must, therefore, remain as an operable requirement of the future Section 106 Agreement that will be secured by means of the Section 111 Agreement.

### **Other Matters**

#### Car parking

76. The proposal makes provision for car parking within the site. Whilst the Council initially raised concerns regarding car parking provision, I note that this matter has now been resolved between the main parties. Nonetheless, I have considered the concerns of interested parties in this regard. There is no substantive evidence before me that the proposal would result in an unacceptable increase in competition for on-street car parking in the area.

## Policy

77. The adopted development plan precedes the current Framework and so I must consider whether the policies that are most important in the determination of this appeal are out of date. Policies are not simply out of date due to the age of the development plan. Whether, or not, they are out of date is a matter of their consistency with the aims of the Framework.
78. Whilst many policies are relevant to the proposed development, the policies within the adopted development plan which I consider most relevant to this appeal are Policy CS1 of the Core Strategy and Policies PSP1, PSP8 and PSP43 of the PSPP as these are the policies covering the most pertinent areas of disagreement between the parties. In considering the aims of the policies above I have found that these policies are broadly in accord with the aims of the Framework and so I afford them full weight. Thus, the basket of most important policies is not out of date.
79. As there are policies within the development plan that are relevant to the proposal and the most important policies for determining the appeal are not out of date, the “tilted balance” in paragraph 11 d) of the Framework does not apply in this regard.

## Benefits of the Scheme

80. My attention has been drawn to an appeal decision at Former Fleet Police Station, 13 Crookham Road, Fleet GU51 5QQ<sup>1</sup> and the weight attached therein by the inspector to the benefits and harms identified in that case. Although the planning system must exhibit a high degree of consistency in decisions and how they are determined, the circumstances of each appeal differ in detail. I am not fully appraised of the details of evidence in that case and so the factors contributing to the weight attached may differ between the cases. I have, in any case, determined this appeal on the merits of this case based on the evidence before me.

## Social

81. The proposal would provide 42 additional market dwellings. There is disagreement between the parties as to whether the Council is able to demonstrate a five-year supply of Housing Land (5YSHL). There is agreement of the general scale of the requirement, this being about 7,200 dwellings. Against this figure, the 42 dwellings would only make a modest inroad into the required overall need. Irrespective of the Council’s housing land supply, the Government are seeking to significantly increase the supply of housing. The numbers of homes to be supplied within the figure for the 5YSHL are not a maximum and, as there is no evidence before me that 42 additional dwellings would lead to an over-supply in the market, this addition to the supply of homes is a benefit.
82. It was common ground that in this site specific circumstance substantial weight should be afforded to the provision of 42 dwellings, as market housing. I have no evidence before me which contradicts this conclusion.
83. Moreover, it must be borne in mind that the homes that would be provided in this case are specialist older persons accommodation, for which the Planning

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<sup>1</sup> PINS REF: APP/N1730/W/20/3261194

Policy Guidance (PPG)<sup>2</sup>, describes the need as critical. There is an established need for such accommodation, and it has been identified that demand is growing. I am mindful of paragraph 62 of the Framework, which states that, in the context of delivering a sufficient supply of homes, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies, including for older people.

84. The need for such accommodation has been established, within the West of England Local Housing Needs Assessment (2021), as 3,669 units of owned sheltered housing in 2035, and a current need of 2,624 units. Against this the Council have, in recent years provided very limited amounts of specialist older persons' accommodation, and, whilst there is dispute regarding the exact number, the figure provided by the appellants of 40 since 2019, indicates a very low quantum of delivery, which is not contradicted in evidence.
85. The Council have identified that they do not receive significant numbers of applications for this type of housing. This would seem to be because suitable sites, in locations appropriate to accommodate the specific needs of future occupiers, in terms of access to services, transport and other factors, are scarce, and this scarcity results in high levels of competition with uses who seek similar locations, such as convenience stores.
86. The development plan has no specific policy for the delivery of sites, and no allocated sites are allocated for such development. Further, there is no foreseeable resolution proposed. In this vacuum and with no likely solution to resolve this in the near future the contribution that would be made by the proposal to the availability of owned sheltered housing for older persons attracts very substantial weight by virtue of the provision as specialist housing.
87. Similarly, the proposal, through a contribution within the draft Section 106 Agreement, provides affordable housing. There is an identified need in the area for such housing of some 6,000-7,500 dwellings, although the Council has a strategy for addressing this going forward. Whilst none is provided within the site, this would not detract from the usefulness of such provision, and I consider that the provision of the financial contribution nonetheless carries weight. By making off-site provision, the total number of housing units provided by the proposal is increased beyond the 42 within the site. Accordingly, in view of the identified need, I give the provision of affordable housing linked to this proposal substantial weight.
88. There would be resultant social benefits from the proposal in regard to the wellbeing of future occupiers. The appellants cited the findings of a document<sup>3</sup> to demonstrate increases in wellbeing amongst future occupiers and demonstrating healthcare. However, again, the evidence here is cast into doubt by the comparison within the document, in terms of healthcare, to accommodation with higher levels of on-site care.
89. Whilst the document only takes wellbeing data from those who choose to move into such accommodation as the proposal provides, and the wellbeing of others, who choose to remain in their own dwellings is not considered for comparison, those who choose to move into the accommodation provided do experience an improvement in their wellbeing, for whatever reason. Whilst

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<sup>2</sup> Paragraph: 001 Reference ID: 63-001-20190626

<sup>3</sup> Healthier and Happier (2019)

living in such accommodation may not be the choice of all older people, the proposal would provide this option. Others would still be free to choose an alternative. Given the doubt as to the actual saving in healthcare I therefore allot moderate weight to these social benefits.

#### Environmental

90. The site is in a sustainable location, and this is a matter attracting significant weight in its favour.
91. The site is vacant brownfield land and is currently not utilised for any useful purpose. I am also mindful of the constraints on availability of suitable sites. The proposal would, therefore, accord with the aims of paragraph 120 (c) and (d) of the Framework which, together with other parts of the Framework, encourage the use of such sites and suggests that doing so should be given substantial weight. On the evidence before me this combination of benefits should, taken together as these are facets of the same issue, be given that substantial weight.
92. The proposal would provide an increase in the overall density of development in the area. I am mindful that the Framework, in Part 11, seeks to optimise the use of land. In this regard, density is a factor in determining whether a proposal makes 'optimum use' of a site. The Framework refers to "appropriate densities", and there is a balance between how much development can be contained within a site, and other factors, including the effect of such densification on the character and appearance of the site and the area. Whilst the proposal provides a significant increase in development of the site, it does so at the expense of the character and appearance of the area, and so the benefits of densification are tempered. In view of this I find that the benefits gained by increasing the density attract moderate weight in my deliberations.

#### Economic

93. In providing an additional 42 dwellings to the area, the proposal would be likely to provide economic support to the businesses in the High Street. Whilst, since the Covid-19 pandemic, shopping habits may have changed, with more reliance on internet shopping, the proximity of the high street and its shops and services, on the way to Page Park, would nonetheless be likely to result in an increase in trade for these businesses. It was established that a large proportion of residents are likely to be local to the area and would already provide support to local businesses. Nonetheless there would likely be an increase in the number of households shopping as a result of the development. I am mindful, here, of the aims set out in Part 7 of the Framework for planning policies and decisions to support the vitality of town centres.
95. In terms of job creation, the proposal would, undoubtedly create work in the construction industry, providing not just employment, but training and experience. The appellants produced evidence<sup>4</sup> identifying employment creation resulting from the development of older persons accommodation. However, that study concentrated on development that provided higher levels of care for occupiers and so would not be entirely applicable here. However, there is no substantive evidence before me to demonstrate, that the quantum of

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<sup>4</sup> Silver Saviours of the High Street (2021)

employment provided by the construction work would be markedly different from any redevelopment of the site.

96. Whilst developments providing higher levels of care would create additional jobs, the staffing level of the proposal before me would not need to provide that level of support and so would create fewer jobs. This notwithstanding, there would be jobs created, of a temporary nature in the construction industry, and of a more permanent nature in the development itself.
97. The proposal would be likely to free up larger family homes by future occupiers downsizing as they move in. This would provide opportunities to make more effective use of under-occupied family housing stock. As occupiers take advantage of the scope created to expand into family homes, through movement up the housing "ladder", there would be increased economic activity in the housing market.
98. Taking these factors into account, overall, given the scale of the development, these matters provide a significant economic benefit.

### **Planning obligation**

99. There was no dispute between the main parties that the draft Section 106 Agreement would make appropriate provision for affordable housing in accordance with development plan policy. The Council confirmed that it was on the basis of such provision that it was able to withdraw their objection in regard to such provision.
100. At the Inquiry, there was dispute that the Public Open Space contribution satisfied the tests set out in National policy. As will be seen above I have concluded that it does.
101. On this basis, and on the basis of the evidence before me, I consider that the provisions of the draft Section 106 Agreement are necessary to make the development acceptable in planning terms, directly related to those harms that would otherwise result from the proposed development and fairly and reasonably relate in scale and kind to those harms.
102. I am satisfied that the future Section 106 Agreement can be secured through the provisions of the Section 111 Agreement provided.

### **Conditions**

103. The conditions suggested by the parties as set out in their SoCG have been considered in light of the advice contained within the National Planning Practice Guidance and the Framework. Where necessary I have amended some of the conditions for clarity.
104. Condition 1, limiting the time within which the development must commence, is necessary to comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning Compulsory Purchase Act 2004, and to prevent the accumulation of unimplemented planning permissions.
105. Condition 2, which identifies the approved plans in accordance with which the development must be built, is necessary to provide certainty in what the permission authorises.



106. Condition 3 requires the submission of external materials. This is necessary to ensure that the appearance of the building is satisfactory.
107. Condition 4 requires the submission of a revised Sustainable Energy Statement. This is necessary to ensure compliance with adopted national and local sustainability policies.
108. Condition 5 ensures that a suitable Photovoltaic System is provided as part of the scheme. This is necessary to ensure that the scheme complies with local and national policies to reduce the use of fossil fuels and control climate change in accordance with the aims of Part 14 of the Framework.
109. It is necessary, in the interests of the future amenity of occupiers, that suitable landscaping of the development is provided. This would also ensure that the appearance of the development is satisfactory. This is secured through the imposition of Conditions 6 and 7.
110. Condition 8 secures ecological mitigation measures and is necessary to ensure that the proposal accords with the aims of Part 15 of the Framework to conserve the natural environment. To minimise light pollution and nuisance it is necessary to impose Condition 9.
111. Condition 10 secures an Ecological Enhancement Plan. This is necessary to ensure that the development would achieve the aims of Part 15 of the Framework to enhance the natural environment.
112. Condition 11 requires the submission and approval by the LPA of a construction environmental management plan (CEMP: Biodiversity). This is necessary to ensure the survival and protection of any important species and those protected by legislation that could be adversely affected by the development and to secure the aims of Part 15 of the Framework to conserve and enhance the natural environment. As any works within the site have potential to disturb any wildlife that has colonised the site or is foraging within it, it is necessary for this the CEMP: Biodiversity to be agreed before any works take place. The necessity for this condition and its wording has been agreed with the appellants.
113. The area within which the site lies has, historically, been used for mining operations. Conditions 12 and 13 are necessary to ensure that any risk associated with these that would affect the site are identified and suitably addressed. As persons working on the site may be affected by such hazards, any hazard must be identified and addressed prior to any works commencing, and this is reflected in the wording of Condition 12. The appellants have agreed the necessity for this condition and its wording.
114. To safeguard public health, Condition 14 is required to ensure that an assessment be made of the potential for the land to be contaminated and, if contamination is found, a strategy to address this. This assessment and strategy must, as it is necessary to find out this information and have measures identified to deal with it prior to any disturbance of the ground that could lead to the release of contaminants, be in place before the commencement of any works on site that could do so. The appellants have agreed the necessity for this condition and its wording.
115. It is necessary to establish that an appropriate scheme can be provided to drain the site of surface water. This is achieved by Condition 15. The form of

the drainage system may affect the design of the scheme and so needs to be established in advance of the commencement of works on site. The appellants have agreed the necessity of this condition and its wording has been agreed with them.

116. To safeguard the amenity of future occupiers it is necessary to ensure that parking and access arrangements are made available prior to their moving in. This is achieved through the imposition of Condition 16.
117. Condition 17 restricts the hours of construction operations to safeguard the living conditions of local residents.
118. Condition 18 is necessary to ensure the protection of trees in and around the site during construction work.
119. Condition 19 is required to control occupancy to the demographic of people for which the development was proposed and upon which this appeal was determined.
120. The Council suggested a condition requiring the thermal analysis of the scheme and its approval prior to commencement. The scheme would need to comply with the Building Regulations in this respect and so the suggested condition is unnecessary.

### **Planning balance and conclusion**

121. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."
122. Therefore, bringing these matters together, I have identified that the proposal would result in harm to the character and appearance of the site and the surrounding area and is therefore in conflict with the development plan. Given the importance that the Framework and national policy places upon 'good design', this is a matter weighing against the proposal.
123. This harm is, however, outweighed by the benefits that I have identified above, particularly those accruing from the critical need for this type of accommodation (specialist older persons accommodation) and the scarcity of available suitable sites along with the economic, social and environmental benefits I have identified.
124. The matter of the 5YSHL remains outstanding. However, I have found that, on a normal balance, the benefits of the proposal significantly outweigh the harms. Even were I to find that the Council is unable to demonstrate a 5YSHL, the result of the application of a tilted balance cannot alter the outcome of this appeal and so it was not necessary for me to consider this matter further.
125. Whilst I have found that the proposal would result in harm to the character and appearance of the site and the surrounding area, and is, therefore, in conflict with Policies PSP8 and PSP43 of the PSPP, there are material considerations, including the policies in the Framework that indicate that a decision can be made other than in accordance with the development plan and

any adverse impacts of granting planning permission would not outweigh the benefits.

126. For this reason, and having taken into account all other matters raised, I conclude that the appeal should be allowed, subject to the Conditions attached.

*I A Dyer*

INSPECTOR

## **APPEARANCES**

### **For the appellants**

Christopher Boyle KC  
instructed by Planning Issues Ltd, who called: -

Landmark Chambers

Mr Matthew Shellum BA(hons) DIPTP MRTPI  
Planning Director and Head of Appeals

Planning Issues Ltd

Mr Rob Jackson BArch March RIBA ARB  
Design Director, Southwest Design Department

Planning Issues Ltd

### **For the Council**

Mr Charles Merrett  
instructed by South Gloucestershire Council, who called: -

Francis Taylor Building

Ms Suzanne D'Arcy MSc PG Dip BSc(Hons) MRTPI  
Principle Planning Officer

South Gloucestershire Council

Mr Matt Haslam  
Senior Planning Officer (Urban Design)

South Gloucestershire Council

Carl McClure  
Principal Policy Officer

South Gloucestershire Council

Lucy Paffett  
Principal Planning Officer

South Gloucestershire Council

Eileen Medlin  
Senior Planning Officer

South Gloucestershire Council

Marie Bath

Development Manager

South Gloucestershire Council

Eileen Paterson

Strategic Major Sites Manager

South Gloucestershire Council

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

### **By the appellants**

Plan No 10121SH – PA13; Balcony Area.

Opening submissions.

Signed Revised Statement of Common Ground dated 2 August 2023.

Signed Agreement under Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2012 dated 2 August 2023 with annexed draft copy of an Agreement under Section 106 of the Town and Country Planning Act 1990.

Closing submissions.

### **By the Council**

South Gloucestershire Council Density and Character Study (2022).

Opening submissions.

Statement by Councillor Katie Cooper.

Decision notice for planning application Council Ref: P22/04365/RM: Erection of 145 no. dwellings with associated landscaping and infrastructure, with access, appearance, landscaping, layout and scale to be determined (Approval of Reserved Matters to be read in conjunction with outline permission PK12/1913/O (as amended under applications PK15/5230/RVC, PK16/2449/RVC, PK17/0039/NMA, PK17/4826/RVC, P19/6296/RVC, P21/02991/NMA and P22/05330/RVC) at Parcels PL2, PL4A, PL4B & PL5B Land At North Yate New Neighbourhood South Gloucestershire.

Closing submissions.

## SCHEDULE OF CONDITIONS

1. Development shall commence within 3 years of the date of this decision.
2. The development shall be carried out in accordance with the following drawings:

Plan	Drawing Ref No.
Site Location Plan	10121SH-PA00
Site Layout Plan	10121SH- PA01 Rev B
Ground Floor Plan	10121SH- PA02
First Floor Plan	10121SH- PA03
Second Floor Plan	10121SH- PA04
Third Floor Plan	10121SH- PA05
Roof Plan	10121SH- PA06
Page Road (West Elevation)	10121SH- PA07
Page Road (South Elevation)	10121SH- PA08
North and East Elevations	10121SH- PA09
3D Model Views	10121SH- PA10
Extent of Canopy of Tree T1	10121SH- PA11
Proposed Tree Protection Structures	10121SH- PA12

3. Prior to the commencement of above ground development details and samples of the roofing and external facing materials proposed to be used shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
4. Prior to commencement of any above ground works, a revised Sustainable Energy Statement shall be submitted to and approved in writing by the Local Planning Authority. The statement shall demonstrate how the scheme will meet adopted national and local sustainability policies, reduce emissions of greenhouse gases, and be adapted to the direct impacts of climate change during the lifetime of the scheme.
5. Prior to commencement of above ground development of the scheme hereby approved, details of the proposed PV system including location, dimensions,

design/technical specification together with calculation of annual energy generation (kWh/annum) and associated reduction in residual CO<sub>2</sub> emissions shall be submitted to and approved in writing by the Local Planning Authority.

The projected annual yield and technical details of the installed system shall be provided by a Micro-generation Certification Scheme (MCS) approved installer. The impact of shading on the annual yield of the installed PV system (the Shading Factor) should be calculated by an MCS approved installer using the Standard Estimation Method presented in the MCS guidance.

The approved PV system shall be implemented in accordance with the approved details prior to first occupation of the development and maintained thereafter.

6. Prior to the occupation of the development hereby approved, a detailed planting plan, specifying the location, species, stock size, planting centres and quantities of all tree and structure planting and a landscape maintenance plan shall be submitted to and approved in writing by the Local Planning Authority. The planting shall be carried out in the first planting season following its approval. The landscape maintenance plan shall be for a period of at least 5 years and shall include details of the arrangements for its implementation, scope and frequency of annual maintenance work and replacement of dead and diseased specimens. Development shall be carried out in accordance with the approved schedule.
7. Prior to the occupation of the development hereby approved, details of all boundary treatments and hard landscaping surface treatments, including proposed levels and any soil retention/retaining walls that may be required, together with a supporting schedule of proposed manufacturer hard landscaping materials and site furniture products shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the details so approved.
8. The development shall proceed in strict accordance with the Mitigation Measures provided in the Preliminary Ecological Appraisal (Tyler Grange, September 2022).
9. Prior to the first occupation of the development, the location and specification of all proposed external lighting is to be submitted to the Local Planning Authority for review. All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior consent from the Local Planning Authority.
10. Prior to occupation, an Ecological Enhancement Plan showing the location and specifications of biodiversity enhancements shall be submitted to and approved in writing by the Local Planning Authority. This includes, but is not limited to, bat and bird boxes and wildlife friendly planting.



11. No development shall take place (including ground works or vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall be written in accordance with BS42020, including mitigation details on bats, birds, reptiles and hedgehogs as well as any pollution prevention measures. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

12. No development shall commence until: -

- a) a scheme of intrusive investigations has been carried out on site to establish the risks posed to the development by past shallow coal mine workings; and;
- b) any remediation works and/or mitigation measures to address land instability arising from past shallow coal mine workings, as may be necessary, have been implemented on site in full in order to ensure that the site is safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

13. Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

14. No development shall commence until: -

- a) A preliminary risk assessment (a Phase I desk study) submitted to the Local Authority in support of the application has established whether any unacceptable risk(s) exist on the site as represented in the Conceptual Site Model and identified them. A scheme for detailed site investigation must be submitted to and approved in writing by the Local Planning Authority prior to being undertaken to address those unacceptable risks identified. The scheme must be designed to assess the nature and extent of any contamination and must be led by the findings of the preliminary risk assessment. The investigation and risk assessment scheme must be compiled by competent persons and must be designed in accordance with the Environment Agency's "Land Contamination: Risk Management" guidance". The detailed site investigation and risk assessment must be undertaken in accordance with the approved Scheme and a written report of the findings produced. This report must be approved by the Local Planning Authority prior to any development taking place.

- b) Where the site investigation identifies remediation is required, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to identified receptors must be prepared and is subject to the approval of the Local Planning Authority in advance of undertaking. The remediation scheme must ensure that the site will not qualify as Contaminated Land under Part 2A Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
  - c) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development, other than that required to carry out remediation.
  - d) Following the completion of the measures identified in the approved remediation scheme a validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval of the Local Planning Authority prior to the occupation of any buildings.
  - e) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where necessary a remediation scheme must be prepared, these will be subject to the approval of the Local Planning Authority. Following the completion of any measures identified in the approved remediation scheme a validation report must be prepared, which is subject to the approval in writing of the Local Planning Authority prior to the occupation of any buildings.
15. No development shall commence until surface water drainage details including SUDS (Sustainable Drainage Systems e.g. soakaways if ground conditions are satisfactory), for flood prevention; pollution control and environmental protection have been submitted to and approved in writing by the Local Planning Authority. The drainage system shall be constructed in accordance with the approved details and maintained thereafter.
16. The development hereby approved shall not be occupied until the access and parking arrangements have been completed in accordance with the approved plans. The access and parking arrangements shall be maintained thereafter.
17. No construction shall take place outside of the hours of Monday to Friday 0730 to 1800 and Saturday 0800 to 1300.
18. All development shall take place in accordance with Barrell Tree Consultancy Arboricultural report, received by the Council on 26<sup>th</sup> 2022 and drawings numbered 22049-AA3-PB and Barrell Plan Ref: 22049-5 and 10121SH-PA01.

19. Each dwelling hereby permitted shall be occupied only by: -

- i. A person aged 60 years or over;
- ii. A person aged 55 years or older living as part of a single household with the above person in (i); or
- iii. A person aged 55 years or older who were living as part of a single household with the person identified in (i) who has since died.

**END OF CONDITIONS**