The Planning Inspectorate

Appeal Decision

Inquiry Held on 16-18 March 2021
Site visit made on 19 March 2021

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 14 May 2021

Appeal Ref: APP/N1730/W/20/3261194
Former Fleet Police Station, 13 Crookham Road, Fleet GU51 5QQ

- 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 Hart District Council.
- The application Ref 19/02659/FUL, is dated 15 November 2019.
- The development proposed is demolition of existing building and redevelopment of the site to form 31 retirement apartments including communal facilities, retention of existing access, car parking and landscaping.

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing building and redevelopment of the site to form 31 retirement apartments including communal facilities, retention of existing access, car parking and landscaping at the former Fleet Police Station, 13 Crookham Road, Fleet GU51 5QQ in accordance with the terms of the application, Ref 19/02659/FUL, dated 15 November 2019, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. The appeal was lodged against the non-determination of the planning application. The application was reported to the Council's Planning Committee on 11 November 2020 to inform the Planning Committee of the submission of the non-determination planning appeal and to establish what the decision of the Planning Committee would have been had it determined the application. The Planning Committee resolved that it would have refused the application for the following three reasons which are contained in the Planning Statement of Common Ground (SoCG).[1] In summary these are: (i) the proposed development would not provide an adequate level of affordable housing; (ii) the proposed development would not achieve a high-quality design or positively contribute to the overall appearance of the area; and (iii) the proposed development, either alone or in combination with other plans or projects, would be likely to have a significant adverse effect on the Special Protection Area.

3. The application was supported by a number of plans, reports, and technical information. A full list of the plans on which the appeal is to be determined is

[1] Paragraph 2.9

set out at paragraph 2.11 of the Planning SoCG which was agreed by the main parties. The application was also submitted with supporting statements and information which is set out at paragraph 2.12 of the Planning SoCG. The proposal was supported by a Design and Access Statement (DAS), a Planning Statement, information on Greenfield Runoff Rates, a Transport Statement, an Ecological Desk Study, a Shadow Habitats Regulation Assessment, a Ground Investigation Report, an Affordable Housing Viability Statement, a Statement of Community Involvement, a Thames Basin Heath Statement, a Sustainability and Energy Statement and a Planning Statement Addendum.

4. I held a Case Management Conference (CMC) on 11 January 2021. At the CMC the main issues were identified, how the evidence would be dealt with at the Inquiry and timings. In the weeks following the CMC both main parties continued discussions on the appeal to ensure that matters of dispute were clear and that all matters of agreement (non-disputed matters) were documented in either Statements of Common Ground or in draft Planning Conditions such that time on these matters was minimised at the Inquiry. It follows that there are two Statements of Common Ground in this case:

- Planning Statement of Common Ground – 26/01/21
- Viability Statement of Common Ground - 26/01/21.

5. At the Inquiry a Planning Obligation was submitted. The Planning Obligation is made by an Agreement between the Appellant, HSBC UK Bank Plc and Hart District Council under s106 of the TCPA 1990. The Planning Obligation secures the following: (i) an off-site financial contribution in lieu of on-site affordable housing provision of £500,000; (ii) provision of SANG[2] land at Queen Elizabeth Barracks, Sandy Lane, Church Crookham and provision of a SAMM[3] payment of £14,585. The s106 Agreement is signed and dated 10 May 2021 and is a material consideration in this case. A Community Infrastructure Levy (CIL) Compliance Statement was also submitted in support of the Planning Obligation. I return to the Planning Obligation later in this decision.

6. In relation to putative RfR1 (affordable housing), it is clear that agreement has now been reached in relation to an off-site financial contribution towards affordable housing that is secured through a s106 Agreement. Therefore, it is agreed that having regard to development viability, the appeal proposal would provide an adequate level of affordable housing provision. This matter is no longer in dispute and did not form part of the Council's or the Appellant's evidence.

Main Issues

7. In the light of the above I consider the main issues are:

(i) The effect of the design of the proposed development on the character and appearance of the area; and

(ii) The effect of the proposed development on the Thames Basin Heaths Special Protection Area.

[2] Suitable Alternative Natural Greenspace
[3] Strategic Access Management and Monitoring

Reasons

The Appeal Site

8. The appeal site is an L shaped plot of land of approximately 0.29ha. The site slopes down from Crookham Road to the back of the site. The site is currently vacant being formerly a police station. The police station building (now demolished) was constructed in red brick and was located centrally within the site. On the south boundary is a single storey garage block. A tarmac surfaced car park associated with the police station use occupies the north west part of the site with access gained from Crookham Road. A secondary vehicular access is located to the south east from St James Road. The police station building was two storeys in height with a part pitched and part flat roof. An underground fuel tank is recorded on site.

9. To the south west of the site is Walton Close which incorporates three residential properties, separating the site from Walton Close is a brick wall. To the north west is Crookham Road and on the opposite side of the road is Grace Gardens and Fraynes Croft, both incorporate residential properties. To the north east is St James Road and on the opposite side are residential properties which were built in approximately 2010. To the south east is the access road to the Fleet Bowls Club clubhouse and residential dwellings to the rear. The properties in the immediate area range from single storey to three stories in height with the majority being of a brick construction. The site is not within a conservation area.

Description of Development

10. The description of development of the appeal is:

> *"Demolition of existing building and redevelopment of the site to form 31 retirement apartments including communal facilities, retention of existing access, car parking and landscaping."*

11. The proposed apartments would consist of 19 x one-bedroom apartments and 12 x two-bedroom apartments. These would be supported by communal facilities including a one bedroom guest suite, lobby, residents' lounge, and rear garden. The proposal would fall within Use Class C3 (Dwelling Houses).

12. The submitted Planning Statement (para. 2.10) states:

> *"The developments consist of 1- and 2-bedroom apartments and are sold by the Applicant with a lease containing an age restriction which ensures that only people of 60 years or over, or those of 60 years or over with a spouse or partner of at least 55, can live in the development."*

13. The development would have a lodge manager who would be on call during normal working hours and would have an office. There is no warden living on site and no specialist medical support would be provided.

14. The scheme would consist of a single three storey building fronting Crookham Road. The main entrance to the building would be to the west and would also provide access to a car park for 20 vehicles. Vehicular access would be from Crookham Road as per the arrangement for the former police station.

Planning Policy

15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. The parties are agreed that the statutory development plan includes the following documents: (i) The South East Plan (SEP) Saved Policy NRM6; the Hart Local Plan (Replacement) 1996-2006 Saved Policies (HLP06); (iii) the Hart Local Plan (Strategy and Sites) 2032 (HLP32) and the Fleet Neighbourhood Plan (FNP) 2019. The parties are agreed that the policies relevant to this appeal are in these documents and they are listed at paragraphs 3.5-3.8 on page 11 of the Planning SoCG.

16. The development plan identifies the appeal site to be within the Fleet Settlement boundary and approximately 50m south west of the Fleet Town Centre boundary. For the purposes of FNP Policy 10A, the appeal site is identified as being within the Fleet Town Centre Character Area.

17. It is common ground in this case that the development plan is up-to-date. The relevant policies are also agreed and are set out in the Planning SoCG. I shall assess which policies are supportive, neutral or in conflict with the proposed development and the weighting that can be attached to various policies. Then I shall assess taking the plan as a whole, whether or not the appeal scheme complies with the development plan. Then in the light of compliance or breach whether there are material considerations which would outweigh that determination in accordance with the development plan.

18. Both parties are agreed that relevant policy and guidance is contained in the following documents:

- Building for a Healthy Life (2020)
- Government's Technical Housing Standards - Nationally Described Space Standard (2015)
- Hart, Rushmoor and Surrey Heath Strategic Housing Market Assessment 2014 -2032 (2016)
- Hart District Council Urban Characterisation and Density Study (2010)
- Hart District Council Parking Provision Interim Guidance (2008)
- Hart District Council Five Year Housing Land Supply from 1 April 2020 (September 2020)
- Thames Basin Heaths Special Protection Area Delivery Framework (2009)
- Hart Council Community Infrastructure Policy (August 2014)
- Whole Plan and CIL Viability Study December (2016)

19. There is no dispute that the proposal complies with the vision and objectives of the plan in that it gives priority to the redevelopment of previously developed land and that it provides more accommodation for the elderly.[4] There is also agreement that the proposal complies with the following key policies. Firstly, it is agreed that Policy SD1, which deals with sustainable development, is not breached by the proposal. Policy SD1 is the overarching policy in the plan and must be given significant weight.

[4] HLP32 page 32

20. Secondly, there is no dispute that Policy SS1, which sets out the spatial strategy and the distribution of growth, is supportive of the development. The appeal scheme is located in the most sustainable settlement in Hart and is on previously developed land. I note that in meeting the housing requirement of the District, criteria (b) identifies permitting further development within the defined settlement boundaries where this proposal is located. Compliance with Policy SS1 must therefore be given significant weight.

21. Thirdly, both sides accept that Policy H1 (a-c) supports the proposal. The appeal scheme would provide an appropriate mix of dwelling types and sizes having regard to the evidence in the SHMA about housing needs and the size, location and characteristics of the surroundings; it would also provide homes that are accessible and adaptable and it would provide homes that would be made for specialist accommodation having regard to the SHMA.[5] Collectively the proposal complies with Policy H1 and should be given significant weight.

22. Fourthly, Policy H2 is met by the s106 contributions. There is an accepted significant need for further affordable housing in Hart[6] and the policy compliance should be given significant weight. Fifthly, Policy H4 is also supportive of the proposal seeking the provision of specialist accommodation for older persons on sites within settlement boundaries.[7] Significant weight should be given to this policy. Sixthly, the parties agree that the proposal complies with Policy H6 in meeting nationally described internal space standards. Again, significant weight should be given to this policy compliance.

First Issue - the effect of the design of the proposed development on the character and appearance of the area

23. The appeal scheme proposes a three storey L shaped building with the long frontages to Crookham Road (north west) and Walton Close (south west). A communal amenity garden would be provided to the rear of the building on the east part of the site and a car park to the south, accessed from Crookham Road. The main access to the building would be from the access road to the south west. The proposed building would feature a pitched roof, gables, dormer windows and balconies. The predominant elevation material would be red brick, light cream render and brick accents are also proposed. The roof would consist of grey tiling.

24. The Council maintains that the proposed development would result in a poor design response through its failure to integrate and interact successfully with Crookham Road and St James Close; that the proposed elevations lack detail and quality; and that the scheme fails to respond positively to urban design policies and guidance. It is argued that the proposal would not meet the requirements of Policy NBE9 of HLP32, Policy GEN1 of HLP06 or Policy 10 or 10A of the FNP. It is contended that these design policies are highly significant and sufficient in themselves to justify dismissing the appeal. Reference is

[5] Paragraphs 128-131 of HLP32
[6] Paragraph 137 of HLP32
[7] Paragraph 156 of HLP32

made to the Government's increasing emphasis on the need for high quality design and placemaking which is evident from the NPPF, the Planning Practice Guidance, the National Design Guide and Building for a Healthy Life.

25. There was some discussion at the Inquiry about the status of the site and whether it is located within Fleet Town Centre. From the documents that are before me, I consider that the appeal site is not within the Fleet Town Centre for the purposes of the HLP32.[8] However, it is within the Fleet Town Centre Neighbourhood Area for the purposes of the FNP and to which the Urban Characterisation and Density Study (UCDS) and Townscape Analysis Map apply. Although both the HLP32 and the FNP form part of the statutory development plan any conflict in policy must be resolved in favour of the policy which is contained in the last document to become part of the development plan.[9]

26. Both sides agree that the UCDS is a material consideration and it identifies the site to be in Area D: Fleet Road of the Fleet Town Centre Neighbourhood Area. A number of locally listed and positive buildings are identified in the sub area on the Townscape Analysis Map. The UCDS identifies Area D as sensitive to change and identifies a number of characteristics that apply. Policy 10A of the FNP makes clear that proposals will be supported where they have appropriate regard to the design characteristics for the relevant land use in that character area.

27. Although the Council opened its case on the basis that the massing and appearance of the proposed development was in dispute between the parties, no material evidence was led by the Council on that point. The Council confirmed that the points of particular concern in relation to the design of the scheme were the lack of active frontages and local character.

28. As a preliminary point, I note that the site has been vacant for about six years but nowhere has the Council sought to impose a site specific design solution through the development plan nor has it set down a list of requirements for this site or the general area. Instead the Council relies on alleged conflict with Policies NBE9 of HLP32, GEN1 of HLP06 and Policies 10 and 10A of the FNP all of which are generic in nature.

29. With regard to Policy NBE9 of HLP32 the proposal is alleged to conflict with criteria (b) and (g) because of the lack of active elevation. However, there are 10 criteria in the policy and only two are said to be breached. Therefore, even on the Council's case 8 of the criteria are effectively complied with so that overall, the policy is complied with taking the policy as a whole. Secondly, neither criteria (b) or (g) expressly mention active frontage. The Council accepted that neither criteria in the policy mentioned active elevation.

[8] Inset Map 10.1
[9] Section 38(5) of the PCPA 2004 refers. The HLP32 was the last document to become part of the development plan being adopted in April 2020

30. The Council argued that the aims of Policy NBE9 (b) and (g) cannot be met without active elevation. However, I consider the language in HLP32 is clear where the Council considers active frontages are necessary, such as in Policy ED5 and in the area in the Fleet Town Centre in Inset Map 10.1. I cannot accept that criteria (b) and (g) do actually deal with active frontages. Criteria (b) relates to the contribution of the building to public spaces and also access routes and public rights of way. It cannot be inferred that active frontages are implicit in that and the NPPF[10] states that policies must be clearly written and unambiguous. Exactly the same points can be made about criteria (g). This is all about crime and preventing anti-social behaviour. It cannot be inferred that active frontages are implicit here.

31. With regard to Policy GEN1 of HLP06, criteria (i), the Council accepted that this policy is generic in nature and has no express requirement for active elevation here. Moreover, there are numerous criteria in this policy and only one is alleged to be breached. With regard to Policies 10 and 10A of the FNP, I note that this policy was described by the examiner in 2019 as a generic design policy.[11] Furthermore, the Council accepted that the relevant UCDS's guidance[12] for new developments in Area D of the Fleet Town Centre was limited to developments being of two or three storeys and that there were various opportunities for public realm and traffic management opportunities.

32. Overall, it is clear to me that there is no express requirement for active frontages in any of these policies. The development plan simply does not require active frontages on the appeal site.

33. Additionally, the importance of active frontages is overstated by the Council. None of the documents cited in support of the pre-eminence of active frontages affords active frontages the weight given to them by Dr Kruczkowski.[13] Where the NPPF, the National Design Guide and Building for a Healthy Life do mention active frontages, they do so as ways of integrating buildings into their surroundings. This is recognised in the guidance that Dr Kruczkowski, cited at paragraph 2.3 of the Rebuttal PoE: the purpose of an active frontage is to add interest, life, and vitality to the public realm. In my view the proposed design does this, and the proposed development would be fully occupied on a full time basis by 31 occupants at least who would be resident and using the high street on a daily basis. There are no requirements or grading standards in the NPPF or otherwise for appropriate or inappropriate active frontages and, as I saw on my site visit, the activity afforded by the other frontages in the area is limited.

34. Turning to the alleged impact of the proposed development, I note that the proposed building would be set back about 5m from Crookham Road and about 1m below the level of Crookham Road. The Council's principal criticism

[10] Paragraph 16
[11] Mr Moorhouse Appendix 1
[12] Appendix 1, page 12
[13] Dr Kruczkowski's POE paragraph 2.53-2.54

with the proposed development is that its principal façade does not face Crookham Road because the front door does not face Crookham Road, meaning that the frontage to the building could only ever achieve a "Grade D" standard for active frontages. I disagree.

35. It is wrong to say the principal elevation in the building would not be on Crookham Road. The principal elevation is defined by the massing of the proposed development and the location of the main road, which means that the development's principal façade would be the elevation facing Crookham Road. As Mr Jackson confirmed the building would be easily legible and understood by anyone coming to the site and there would be no harm in having the main entrance to the side of the building.

36. The appeal scheme would offer a high degree of social interaction between residents of the development and those walking by it. Some 39 openings face Crookham Road over a frontage of 54 metres. The openings on the building increase the interface of the building with the public realm given that five of the ground floor flats have doors, leading onto patios, which would be used by residents. A further six of the first and second floor flats have Juliette balconies with fully opening doors. The Council's approach highlights a lack of understanding of how to design a scheme which works for the provision of accommodation for older persons. The design which the Council appears to want would not be architecturally workable given the need for a level access to the building and level access internally.

37. In addition, the suggestion that the building could be level with Crookham Road is impractical because of the need for a platform lift and this would decrease the level of interaction with the public realm, as ground floor residents would be level with a busy road so less likely to use or sit on the six patios at the front of the building. Dr Kruczkowski's evidence in chief was that "an active frontage is not made active by having doors". The level of usage by a front door on Crookham Road would be limited in any event. The location of the car park at the rear means that even if there were a front door on the Crookham Road elevation of the building, it would not be regularly used. This is illustrated by the properties in St James' Close. In my view there would be no material harm arising from the design of the appeal scheme.

38. I now turn to the alleged harm to local character. It was very difficult to discern from the Council's evidence what the actual current character of the locality is. There is the guidance in the UCDS's Area D: Fleet Road of the Fleet Town Centre Neighbourhood Area and the locally distinctive character of the site which the Council identified as coming from the Townscape Analysis Map. However, it is clear that not all of the characteristics that apply to the Area D character area are relevant to the appeal site.[14] Indeed, almost none of the characteristics of this area can be seen from the site or are relevant to the immediate surroundings. There is no retail adjacent, there is no Edwardian

[14] UCDS Appendix 1 page 10 Area D: Fleet Road

character, there are no locally listed buildings within view, there is no common building line and there is no view of a 1960's shopping centre. The only points of relevance are that buildings are two-three storeys and that there is a negative building on the proposed site where sensitive development would be welcomed.

39. In my view the local character is highly varied and different with no dominant style, typology, massing, building line, footprint, scale, use or material. The scale and height of the site context is two to three storeys. The site context is mixed and includes detached houses, terraced houses, semi-detached houses, bungalows, and large flatted developments as well as commercial properties. It is obviously wrong to look at character based on a plan alone, which should actually be determined by the context of the site. The appearance of buildings and building materials used in the site context is also mixed. Plainly the site is in a location where the urban transitions into the suburban. In the context of the site, the scheme proposed by the Appellant offers high quality design, which is cohesive with Crookham Road and its surroundings. I cannot agree with the Council that the measured, polite, and benign elevations of this building would be so materially harmful to the existing character as to justify refusal on design grounds.

40. Where Dr Kruczkowski did identify buildings, which made 'positive contributions', that is all he did. He did not identify any characteristics which make them positive, for example in his description of Royal Parade. Dr Kruczkowski failed to identify any local characteristics from the Townscape Analysis Map which the proposal does not comply with save for that the character is about relationships with the street. That is, effectively, a repeat of the Council's case on active frontages which I have already dealt with above.

41. The proposed design would enliven the Crookham Road street scene. The proposed amenity space would be set down and back from the road which would allow some privacy and separation from traffic but would also allow some interaction between the public realm and residents. The boundary treatment is set at a height to allow passing pedestrians visual connection with residents at the front of the building. The setting down of the building is key to dealing with the sloping site levels of about 2m across the site, making the building accessible to all at a single level. The most appropriate location for practical entry to the building is at the south west elevation as designed, where it could be seen from both Crookham Road and the car park and can provide level access to the building.

42. The appeal scheme provides a high quality design. The context analysis within the DAS has identified this site as a transition site between the more urban grain development to the north and the suburban development to the south. The building would be set down into the site, to both create a level access to all points and reduce the height of the building to neighbouring dwellings. The proposal has similar eaves heights to St James Close. The roof would be stepped to break down into elements thereby reducing the overall mass.

Dormers would further visually break up the roof mass. The height, scale and mass are all appropriate for this site and its context. Gables with limited articulation are a feature of the immediate context. The DAS covers a detailed analysis of the materials and features of buildings in the local context. The proposed design therefore positively responds to all aspects of paragraph 127 of the NPPF and is high quality.

43. Drawing all of these threads together I conclude on the first issue that the proposed development is a high quality design which would positively contribute to the overall character and appearance of the area. The proposal would accord with aforementioned development plan policies NBE9 of HLP 32, GEN1 of HLP 06 and Policy 10 and 10A of FNP and with other relevant policy and guidance including that contained in the NPPF.

Second Issue - Effect on Thames Basin Heaths SPA

Assessment of likely significant effects

44. The appeal site is located in proximity to the Thames Basin Heaths Special Protection Area (TBHSPA). It is within the 5 kms SPA Buffer Zone but outside of the 400m `inner exclusion' zone identified within SEP Policy NRM6, HLP32 Policies NBE3 and NBE4 and FNP Policy 17. The TBHSPA is a network of heathland sites which are designated for their ability to provide a habitat for the internationally important bird species of woodlark, nightjar, and Dartford warbler. The area is protected in the UK under the provisions set out in the Conservation of Habitats and Species Regulations 2017 (as amended) (the 'Habitats Regulations'). These bird species are particularly subject to disturbance from walkers, dog walkers and cat predation because they nest on or near the ground.

45. The conservation objectives for the SPA are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the aims of the Habitats Regulations, by maintaining or restoring the extent and distribution of the habitats of the qualifying features; the structure and function of the habitats of the qualifying features; the supporting processes on which the habitats of the qualifying features rely; the population of each of the qualifying features, and, the distribution of the qualifying features within the site. I have had regard to these objectives in undertaking my duties in accordance with the Habitats Regulations.

46. The characteristics of the proposed development coupled with its proximity to the SPA present an increased risk of disturbance to its qualifying features. Natural England (NE) has indicated that it believes that within 5km of the SPA, additional residential development in combination will have significant effects on the Bourley and Long Valley SSSI, which forms part of the TBHSPA. Thus, without mitigation any such proposal is contrary to Habitats Regulations 63 and 64. Mitigation measures in the form of SANG and SAMM contributions are required to be secured to avoid impacts from residents who may recreate upon the SPA. NE also considers that without appropriate mitigation the

proposed development could have an adverse effect on the integrity of the Basingstoke Canal SSI. In order to mitigate these impacts and make the development acceptable foul drainage must be connected to the public sewer.

47. Collectively, SEP Policy NRM6, HLP32 Policies NBE3 and NBE4 and FNP Policy 17 require adequate measures to avoid or mitigate any potential adverse effects on the SPA. The application proposes 31 net additional dwellings (Class C3 use) within the 400m – 5km TBHSPA 'zone of influence'. As such, adequate measures in accordance with the Habitats Regulations and the above development plan policies are required. The Habitats Regulations require the Competent Authority to consider the potential impact that a development may have on a European Protected Site (TBHSPA).

48. The Thames Basin Heaths Joint Strategic Partnership has agreed a 'Thames Basin Heaths Special Protection Area Delivery Framework'[15] to enable the delivery of housing in the vicinity of the TBHSPA without development having a significant effect on the TBHSPA as a whole. The delivery framework is based on avoidance measures and the policy indicates that these measures can take the form of areas of open space (SANG). The delivery framework also states developments can provide SANG or that Local Authorities collect developer contributions towards mitigation measures. This includes the provision of SANG land and joint contributions to the funding of SAMM of the effects of mitigation measures across the TBHSPA.

49. At the application stage, NE originally objected to the proposed development[16] but, following the submission of a Shadow Habitats Regulations Assessment,[17] advised that as long as the Applicant was complying with the requirements of Hart's Avoidance and Mitigation Strategy for the TBHSPA (through a legal agreement securing SANG and SAMM), NE had no objection on the grounds of the impact of the development on the TBHSPA.[18] No such legal agreement was in place at the time the appeal was submitted. As a consequence, the Inspector is now the Competent Authority for the appeal scheme, and it is necessary for me to undertake an Appropriate Assessment (AA).

Appropriate Assessment

50. This AA is necessary to comply with Regulation 63 (1) of the Conservation of Habitats and Species Regulations 2017. It is accepted by the parties that the characteristics of the proposed development coupled with the proximity to the SPA present a likely significant effect in-combination to its qualifying features. The parties also agree that an appropriate Avoidance Strategy which involves the provision of SANG and a financial contribution towards the SPA wide SAMM project would be necessary and sufficient to address the impacts from the proposed development.

[15] CD3.6
[16] Mr Moorhouse's Appendix 4
[17] D 2.7
[18] Mr Moorhouse's Appendix 5

51. Following submission of the appeal, the Appellant has provided a s106 Agreement, with a Deed of Covenant appended, relating to the acquisition of SANG land from a third party[19] at Queen Elizabeth Barracks, Sandy Lane, Church Crookham (Naishes Wood SANG). The s106 Agreement secures the appropriate amount of SANG land as mitigation for the appeal scheme and it also secures a financial contribution to the Council for SAMM. The assumed contribution for the SANG land is £186,600 plus VAT based on an assumed 0.43 ha of SANG Land and 31 units. The s106 Agreement also secures a SAMM contribution of £14,585 to be paid by the owner.

52. I consider that the proposed SANG and SAMM mitigation is likely to be effective as the SANG land was specifically designed to persuade visitors away from the SPA. It is reasonable to conclude that SANG is effective as mitigation and dwellings consented within 5kms of the Thames Basin Heaths SPA with accompanying SANG are not likely to result in an increased number of visitors to the SPA. I also consider the amount of SANG proposed in this case is more than adequate to mitigate for the expected contribution of the proposal to the combined visitor pressure impact on the integrity of the SPA and the SAMM contributions are appropriate to secure management and maintenance of the land in perpetuity.

53. The parties are agreed that the Inspector as Competent Authority can and should in this case find that development proposals would accord with the Habitats Regulations on the basis that the Appellant has secured access to the Naishes Wood SANG by entering into a Deed of Covenant with a third party[20] as set out in the s106 Agreement and by making the SAMM payment.[21] The Council considers that at 17 March 2021 there exists sufficient capacity at Naishes Wood SANG to mitigate any harm from the appeal proposals. In this case I found that the appeal scheme is otherwise acceptable by reference to other issues and therefore it is appropriate to consult NE accordingly.

54. On 29 March 2021 a consultation with NE was undertaken in accordance with the Habitats Regulations. The response from NE confirms its opinion that the proposed SAMM mitigation secured by the s106 Agreement is acceptable. NE also confirms that the amount of SANG land proposed and secured by the s106 Agreement and the Deed of Covenant, is acceptable to address the anticipated effects of the development. This response is consistent with NE's earlier consultation response provided for the appeal, in which it is stated that its objection would be removed if a SANG solution was found. Moreover, the SANG in question has already been opened to the public and is operational. I consider this provides absolute certainty that the SANG mitigation would be secured long before occupation.

55. Having had regard to the views of NE and taking into account that I have found all other matters to be acceptable I am content that with the necessary and sufficient measures secured the proposed development would not adversely affect the integrity of the European Site and its relevant features.

[19] Taylor Wimpey Developments Limited
[20] Ibid
[21] Document 4

56. I am also satisfied on the following matters. Firstly, there is an identified and, prepared SANG at Naishes Wood where access for mitigation purposes will be permitted if permission is to be granted by the Inspector. Secondly, there are no technical impediments to the use of the SANG land. Thirdly, the Council has signed the s106 Agreement. Fourthly, the Appellant is able and willing to pay the amount that is required under the SAMM and SANG arrangements. Finally, there is no evidence to suggest that the capacity which exists at Naishes Wood, is likely to vanish before the transaction is completed and therefore the SANG provision would ensure that the proposal would not give rise to adverse effects to the integrity of the SPA.

57. The Appellant has also confirmed that foul drainage would be connected to the main sewer and has agreed to a condition to ensure that wastewater capacity will be provided to accommodate the additional flows from the development.

58. For all of these reasons therefore I am satisfied that the mitigation described above would be appropriately secured and that it would be sufficient to prevent harmful effects on the integrity and interest features of the TBHSPA so there would be no conflict with the Habitats Regulations. Moreover, there would be no conflict with SEP Policy NRM6, HLP32 Policies NBE3 and NBE4 and FNP Policy 17. On the second issue I conclude there would be no justification to withhold permission.

Other Matters

59. Both parties accept that the proposed development would not result in a material loss of amenity to neighbouring residential occupiers and would meet the requirements of Policy GEN1(ii) of HLP06 and the NPPF paragraph 127(f) in this regard. The quantum of the proposed parking provision at a ratio of 0.65 is appropriate in this instance and would accord with HLP32 Policy INF3d) and FNP Policy 19. Matters relating to ecology and surface drainage can be secured by conditions. There was one objection from a neighbouring occupier on the grounds of noise and disturbance through construction and questioning the need for specialised accommodation for older persons. With regard to noise and disturbance this is a matter that can be dealt with by a planning condition. I have already dealt with the identified need for specialised accommodation for older persons earlier in this decision.

Planning Obligation

60. At the Inquiry, a s106 Planning Obligation was submitted by way of Agreement. The Planning Obligation is made by an Agreement between the Appellant, HSBC Bank PLC, and Hart District Council. A CIL Compliance Statement was submitted with the Planning Obligation. I have considered the Planning Obligation in the light of the CIL Regulations 2010, as amended, the advice in the NPPF and the PPG.

61. Local Planning Authorities should only consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.[22] Regulation 122 of the CIL Regulations, as amended by the 2011 and 2019 Regulations, and paragraph 56 of the NPPF

[22] NPPF paragraph 54

make clear that Planning Obligations should only be sought where they meet all of the following three tests: (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably related in scale and kind to the development.

62. The s106 Agreement secures a financial contribution of £500,000 to be paid by the owners towards the provision of off-site affordable housing. Securing a financial contribution towards off-site affordable housing is necessary to meet the requirements of HLP32 Policy H2. It is directly related to the development and fairly and reasonably related in scale and kind. The financial contribution has been calculated based on the application site, development proposed and viability. The s106 Agreement requires the total affordable housing contribution to be used towards the provision of off-site affordable housing.

63. The s106 Agreement secures a SAMM contribution of £14,585 to be paid by the owners. The owner also confirms that the requisite amount of SANG on the SANG land has been secured by entering into a SANG Agreement. SEP Saved Policy NRM6, HLP32 Policies NBE3 and NBE4 and FNP Policy 17 require adequate measures to avoid or mitigate any potential adverse effects on the TBHSPA. The Conservation of Habitats and Species Regulations 2017 (as amended) require the 'Competent Authority' to consider the potential impact that a development may have on the TBHSPA. Mitigation of the likely significant effect of the development on the TBHSPA is therefore necessary and directly related to the development of 31 Class C3 residential units.

64. The SAMM contribution is fairly and reasonably related in scale and kind to the development. It is based on the tariffs published by NE and agreed by the Hart District Council Cabinet on 01.10.2020 relating to dwelling size and occupancy. The Appellant has secured SANG from a third party and the associated SANG Agreement is appended to the s106 Agreement. The assumed contribution for the SANG land is £186,600 plus VAT. The SANG is fairly and reasonably related in scale and kind to the development. It secures an area of SANG (0.43 hectares) based on occupancy rates of the scheme.

65. In my view, all of the obligations in the Planning Obligation are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests within Regulation 122 of the CIL Regulations and should be taken into account in the decision.

Planning Balance

66. 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. I have identified the relevant policies in this case which are listed at paragraphs 3.5-3.8 of the Planning SoCG. There is no dispute between the parties that the development plan is up-to-date.

67. In all the circumstances of this case I find there is no conflict with any of the development plan policies. I conclude that the appeal proposal accords with the development plan when read as a whole. Paragraph 11c of the NPPF

provides that proposals which accord with an up-to-date development plan should be approved without delay. There is clear evidence before me with regard to the suitability of the site. All the material considerations weigh in favour of the grant of permission.

68. The appeal site is located within the Fleet Settlement boundary. There is no dispute that the proposal complies with the vison and objectives of the plan in that it gives priority to the redevelopment of previously developed land and that it promotes more accommodation for the elderly. It is agreed that the proposal complies with 6 of the key policies in the development plan: HLP32: Policy SD1, Policy SS1, Policy H1 (a-c), Policy H2, Policy H4 and Policy H6. In my view, compliance with these policies can be given very significant weight. The proposal accords with other relevant development plan policies which can be given additional weight. The only conflict which the Council identified with the development plan policies is in respect of design and in particular HLP32: Policy NBE9, HLP06: GEN1 and FNP: Policy 10 and 10A. I have concluded that there would be no breach of any of these policies. The proposed development is a high quality design and accords with the design expectations of the development plan and paragraph 130 of the NPPF which makes clear that design should not be a reason for rejecting the development. There would be no harm arising from the Council's criticism about the frontage of the proposed development or the alleged harm to local character.

69. Moreover, there would be a number of benefits of the appeal scheme which were put forward by the Appellant. These benefits were not undermined to any degree during the Inquiry. I deal with each of these below explaining the weight that I attribute to each shown in the brackets.

70. The following benefits would arise: (i) much needed housing for older people. The Council suggests that the weight to this benefit should be tempered because the residents of the scheme would not be restricted to being aged 85 or over. However, given the needs identified in the SHMA[23] and the average age of residents of the Appellant's development being 79-80, the scheme meets the needs of the Council and significant weight should be given to this benefit. (ii) the development is of previously developed land (substantial weight); (iii) the development would be in a sustainable location (substantial weight); (iv) the development would make optimum use of the site (moderate weight); (v) the development would provide 31 market dwellings and is a clear benefit (substantial weight); (vi) the provision of the Appellant's payment of £500,000 to the delivery of affordable housing would be a significant benefit (substantial weight); (vii) there is a benefit releasing under-occupied housing stock[24] (substantial weight); (viii) the site would provide economic benefits by generating jobs, in the construction and operational phases of the development and by residents spending locally[25] (substantial weight); (ix) there would be social benefits in specialised age friendly housing[26] (substantial weight); (x) the environmental benefits of the scheme are a clear benefit (moderate weight). Cumulatively, these 10 benefits weigh heavily in favour of the appeal scheme especially given the critical need for housing for older people as identified at national level in the NPPF and NPPG and at local level in HLP32.

[23] Figures 14.8 and 14.10 page 212
[24] NPPF paragraph 118(d) and paragraph 131 of HLP32
[25] NPPF paragraph 80
[26] Appeal Decision APP/G5180/W/16/3155059 POE Mr Shellum Appendix 4 paragraph 25

71. Therefore, even if I had reached a contrary conclusion in terms of this appeal and found that there was a conflict with the development plan, any harm which might be identified as arising from the appeal proposal comes nowhere near significantly and demonstrably outweighing the many and varied benefits of the appeal proposal. There is no reason to withhold planning permission in this case and I conclude that the appeal should be allowed.

Planning Conditions

72. A list of suggested conditions was submitted by the Council at the end of the Inquiry (Doc3). I have considered these draft conditions in the light of the advice in paragraphs 54 and 55 of the NPPF and the Government's PPG on the Use of Planning Conditions. The Appellant has agreed to all of the suggested conditions except for Condition 13 which relates to Car Park Management. The Appellant has also agreed in writing to Pre-commencement Condition 3.

73. Condition 1 is the standard timescale condition. Condition 2 is necessary to ensure that the development is carried out in accordance with the approved plans. Condition 3 is required to protect the amenity of nearby residents. Condition 4 is necessary to ensure appropriate surface water drainage provision. Condition 5 is necessary to ensure safe living conditions for future residents. Condition 6 and Condition 7 are required to ensure that the external appearance of the building is satisfactory. Condition 8 is necessary to ensure that adequate refuse storage is provided. Condition 9 is required to reduce the emission of greenhouse gases.

74. Condition 10 is necessary to deliver a net gain in biodiversity. Condition 11 and Condition 12 are required to prevent on-site and off-site flood risk from increasing from the proposed drainage system. Suggested Condition 13 on Car Park Management is not agreed. In my view Condition 13 is unnecessary and unenforceable. It would also introduce no flexibility in the use of the parking spaces for the development which is unsustainable and counter intuitive to the reason the Council has given for the condition. I have deleted this suggested condition.

75. Condition 14 is required to ensure that the development is carried out in accordance with the application and delivers age restricted housing. Condition 15 is required to ensure that the external appearance of the building is satisfactory. Condition 16 is necessary to ensure that the development is provided with adequate parking to prevent the likelihood of on-street car parking. Condition 17 is necessary to ensure that all new homes within the development meet the water efficiency standard of 110 litres/person/day. Condition 18 is required to protect the amenity of nearby residents.

Conclusion

76. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. The appeal is therefore allowed subject to the conditions set out in the attached Schedule.

Harold Stephens

INSPECTOR

SCHEDULE OF PLANNING CONDITIONS (1-17)

Standard Conditions

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

Approved Drawings

2) The development hereby approved shall be carried out in accordance with the following plans:

Location Plan 10103FL PA00
Proposed Site Plan 10103FL PA01 Rev A
Proposed Ground Floor Plan 10103FL PA02
Proposed First Floor Plan 10103FL PA03
Proposed Second Floor Plan 10103FL PA04
Proposed Roof Plan 10103FL PA05 Rev A
Proposed Elevation A - Crookham Rd Elevation 10103FL PA06
Proposed Elevation B - Walton Cl 10103FL PA07
Proposed Elevation C - St James Rd 10103FL PA08
Proposed Elevation D - St James Cl 10103FL PA09
Indicative PV Layout C526-Fleet-Mech
Soft Landscape Strategy 12773_TG_P01 Rev B
Preliminary Drainage Layout PDL-101 Rev A
Proposed Lighting Plan 10103FL- SK001
Parking Swept Path Analysis ATR-101 Rev A

Pre-commencement Conditions

Demolition and Construction Management Plan

3) No development shall commence until a demolition and construction management plan has been submitted to, and approved in writing by, the Local Planning Authority. The Plan shall include details of:

1. A programme of demolition and construction works;
2. Methods and phasing for demolition and construction works;
3. Locations of temporary site buildings, compounds, construction material and plant storage areas;
4. Parking of vehicles of site operatives and visitors;
5. Loading and unloading of plant and materials;
6. Demolition and construction traffic management;
7. Wheel washing facilities;
8. Measures to control the emission of dust and dirt during construction; and
9. A scheme for recycling/disposing of waste resulting from demolition and construction works.

The development shall take place in accordance with the approved demolition and construction management plan.

Detailed Surface Water Drainage Strategy

4) Excluding demolition, no development shall take place until a detailed surface water drainage strategy based on the principles within drawing no. Preliminary Drainage Layout PDL-101 Rev A has been submitted to, and approved in writing by, the Local Planning Authority. The strategy shall include:

1. A technical summary highlighting any changes to the design from that within the approved preliminary drainage layout;
2. Detailed drainage layout drawings at an identified scale indicating catchment areas, referenced drainage features, manhole cover and invert levels and pipe diameters, lengths and gradients;
3. Detailed hydraulic calculations for all rainfall events, including those listed below. The hydraulic calculations should take into account the connectivity of the entire drainage features including discharge location. The results should include design and simulation criteria, network design and results tables, manholes schedules tables and summary of critical results by maximum level during the 1 in 1, 1 in 30, 1 in 100 (plus an allowance for climate change) rainfall events. The drainage features should have the same reference as the submitted drainage layout;
4. Evidence that urban creep has been considered in the application and that a 10% increase in impermeable area has been used in calculations to account for this.
5. Exceedance plans demonstrating the flow paths and areas of ponding in the event of blockages or storms exceeding design criteria.

The development shall take place and retained in accordance with the approved detailed surface water drainage strategy.

Contamination Strategy

5) Excluding demolition, no development shall take place until a detailed decontamination strategy in relation to the underground fuel tank on the site has been submitted to, and approved in writing by, the Local Planning Authority. The development shall take place in accordance with the approved detailed decontamination strategy.

Pre-above Ground Works Conditions

Materials

6) No above ground construction shall take place until details and samples of all external surfaces have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Hard Landscaping

7) No above ground works shall take place until full details of hard landscaping have been submitted to, and approved in writing by, the Local Planning Authority.

Hard landscaping details shall include, as appropriate, proposed finished levels and/or contours, means of enclosure, hard surfacing materials, and lighting features. The approved hard landscaping details shall be implemented prior to occupation of any of the dwellings hereby permitted and retained thereafter.

Refuse Storage and Management

8) No above ground works shall take place until full details of refuse storage and management have been submitted to, and approved in writing, by the Local Planning Authority. Refuse details shall include bin store locations, design details, provision for 4 x 1,100 litre bins for waste and recycling and route(s) to and from the properties for collections. The development shall take place in accordance with the approved refuse storage and management details and retained thereafter.

Photovoltaic Panels

9) No above ground works shall take place until full details of the proposed photovoltaic panels have been submitted to, and approved in writing, by the Local Planning Authority. The development shall take place in accordance with the approved photovoltaic panel details and retained thereafter.

Ecology (Swift Bricks)

10) No above ground works shall take place until details of the quantity and location of swift bricks has been submitted to, and approved in writing by, the Local Planning Authority. The development shall take place in accordance with the approved swift brick details and retained thereafter.

Pre-occupation Conditions

Surface Water Drainage System Maintenance

11) No dwellings shall be occupied until details for the maintenance of the surface water drainage system has been submitted to, and approved in writing by, the Local Planning Authority. The details shall include:

1. Maintenance schedules for each drainage feature type and ownership; and
2. Details of protection measures.

The development shall take place in accordance with the approved surface water drainage system maintenance details and retained thereafter.

Wastewater

12) No dwellings shall be occupied until one of the following has been submitted to, and approved in writing by, the Local Planning Authority:

1. Confirmation that wastewater capacity exists off site to serve the development; or
2. A housing and infrastructure phasing plan agreed with Thames Water; or
3. All wastewater network upgrades required to accommodate the additional flows from the development have been completed.

The development shall take place in accordance with the approved details and retained thereafter.

Compliance Conditions

Age Restriction

13) The age restricted dwellings hereby permitted shall be occupied only by:

1. Persons of 60 years or over.
2. Persons of 55 years or over living as part of a single household who is a spouse or partner of a persons of 60 years or over.

Soft Landscaping

14) Soft landscape shall take place in accordance with drawing no. Soft Landscape Strategy 12773_TG_P01 Rev B. Any such vegetation removed without the Local Planning Authority's consent, or which die or become, in the Authority's opinion, seriously damaged or otherwise defective during a period of five years following occupation shall be replaced and/or shall receive remedial action as required by the authority. Such works shall be implemented as soon as is reasonably practicable and, in any case, replacement planting shall be implemented by not later than the end of the following planting season, with planting of such size and species and in such number and positions as may be agreed with the Authority in writing.

Parking Provision and Retention

15) The development shall not be occupied until the approved parking for mobility scooters, cycles and vehicles has been provided in accordance with drawing no. Proposed Site Plan 10103FL PA01 Rev A. The parking shall be maintained at all times to allow them to be used as such.

Sustainable Water Use

16) All new homes within the development must meet the water efficiency standard of 110 litres/person/day and retained thereafter.

Construction Hours

17) No development, working on the site or delivery of materials shall take place at the site except between 0730 hours to 1800 hours weekdays or 0800 to 1300 hours Saturdays. No development, working on the site or delivery of materials shall take place on Sundays, Bank Holidays or Public Holidays.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms Saira Kabir Sheikh QC	Instructed by Hart DC

She called:

Dr. Stefan Kruczkowski BA (Hons) DipTP, PhD, RPUD, FHEA	Director, Urban Design Doctor Ltd
Mr Rob Moorhouse BSc, MSc, MRTPI	Principal Planning Officer, Hart DC

FOR THE APPELLANT:

Mr Sasha White QC Ms Evie Barden of Counsel	Both instructed by Stuart Goodwill, Planning Issues Ltd

They called

Robert Jackson BArch, MArch, RIBA	Design Director, Planning Issues Ltd
Matthew Shellum BA (Hons), Dip TP	Head of Appeals, Planning Issues Ltd

DOCUMENTS SUBMITTED AT THE INQUIRY:

1. Opening Statement on behalf of the Appellant
2. Opening Statement on behalf of the Council
3. Draft Planning Conditions as at 17.03.2021 submitted by the Council
4. Executed Section 106 Planning Obligation dated 10 May 2021
5. Hart DC Community Infrastructure Levy Compliance Statement
6. Appellant's note confirming acceptance of Pre-commencement Condition 3 submitted by Mr Shellum
7. Closing submissions on behalf of the Council
8. Closing submissions on behalf of the Appellant