



Appeal Decision

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

Site visit made on 28 April 2022

by Jessica Powis BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

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

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

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

1. The appeal is dismissed.

Procedural Matters

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 It was agreed between the parties that as a result, the 2012 version of the SPD (CD-30) had been superseded.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

5. The Council accepts¹ that it cannot demonstrate a five year supply of deliverable housing sites. It is common ground that for the period 2021/22 to 2025/26, there is a housing land supply of approximately 3.07 years, a shortfall of 809 dwellings.
6. The Council's decision on the application included reasons for refusal relating to the effects on European designated sites and the provision of off-site affordable housing. During the course of the appeal, the Council withdrew its objections with regard to these matters on the basis that the proposed development could be made acceptable in these respects through the imposition of conditions and planning obligations. The affordable housing matters are dealt with in a later section of this decision.
7. In terms of the effects on European sites, I am the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations'). As such, I am required to carry out an Appropriate Assessment of the proposed development in circumstances where it would be likely to have significant effects on European sites, alone or in combination with other plans or projects.
8. Therefore, despite the Council's withdrawal of objections on habitats matters, and in light of the Written Ministerial Statement (WMS) on 'Improving Water Quality and Tackling Nutrient Pollution'² and the Chief Planning Officer Letter³ on the same subject, I sought the views of the parties after the closure of the Inquiry about the use of a 'Grampian' condition to secure mitigation of the effects of nitrate discharge on European sites in the Solent.
9. Since my findings in respect of habitats effects have proven to be determinative, this matter forms a main issue in the appeal.

Main Issues

10. The main issues in this appeal are:

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

¹ Statement of Common Ground, para. 8.4 (CD-56)

² Statement made by George Eustice MP (20 July 2022)

³ 'Nutrient Neutrality and Habitats Regulations Assessment Update' (21 July 2022)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1093278/Chief_Planner_Letter_with_Nutrient_Neutrality_and_HRA_Update_-_July_2022.pdf

Reasons

Appeal Site and Proposed Development

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

Main Issue 1: Whether the Proposal Addresses Local Housing Needs

13. The Council's first reason for refusal alleged that the proposed development would not deliver sustainable development or create a mixed and balanced community and would therefore be contrary to Policy HOU1 of the Local Plan 2016-2036 Part One ('LP Part One', adopted July 2020). Before the Inquiry opened, the Council stated that having reflected on the evidence, it would not be defending the grounds relating to a mixed and balanced community and would no longer be alleging conflict with Policy HOU1. Its objection on sustainable development grounds remained and is dealt with under the overall planning balance in a later section of this decision.
14. At the Inquiry, the Council confirmed⁴ its view that there is a demonstrated need for housing for older people in the south of the New Forest district and that the proposal would contribute to meeting that need. This position was informed by the identification within the LP Part One of a 12,800 person increase in the population aged over 75 up to 2036, resulting in a significant need for new specialist accommodation for older people district-wide. The projected need for this accommodation in the south of the district, based on the Council's demographic projections and housing mix analysis undertaken for the Local Plan review⁵, was estimated to be around 952 units over the plan period (to 2036), of which 318 would be of the type proposed by the appeal development. These figures were agreed between the parties (CD-56).
15. The Planning Practice Guidance⁶ ('the Guidance') describes some of the broad categories of specialist housing for older people, based on the level of support or care services provided. The proposed development falls within the category of 'retirement living or sheltered housing' and would include a lounge, guest suite and communal gardens with a house manager on site during office hours. The apartments would be available to purchase on the open market with a service charge to cover maintenance and upkeep.
16. Notwithstanding the Council's withdrawal of its objection, concerns about the need for the proposed development in Lymington formed a clear theme in the representations of interested parties, and a petition at the application stage attracting approximately 1410 signatures indicated the strength of feeling amongst the local community. Lymington and Pennington Town Council⁷ (LPTC), The Lymington Society⁸, the New Forest West Labour Party and local

⁴ Paragraph 3 of ID-12 and paragraph 6.2 of CD-56

⁵ Paragraph 8.8 and 8.9 of CD-56

⁶ PPG Paragraph 010 Reference ID: 63-010-20190626

⁷ ID-4

⁸ ID-5, ID-7

individuals expressed a view that there is an over-provision of older people's housing in the town at the expense of housing for younger people and families, leading to an erosion of the mixed character of the town's population.

17. It is clear that as a district, the New Forest has a considerably older population than the national average, with people aged 65 and over comprising 29.7% of the population in 2020⁹. This is projected to increase over the coming two decades, reaching around 37.4% of the district's population by 2040.
18. It is noteworthy that within these figures is a projected increase in the population within the district that is aged over 85, from 4.82% in 2020 to 7.89% in 2040⁹. This will inevitably lead to a diverse range of needs in terms of specialised accommodation to help older people adapt to living with mobility difficulties, conditions such as dementia, or requiring help with domestic and self-care tasks. The high levels of owner-occupation among older people in the district (cited by the appellant as approximately 86.12% for those aged 65-74, declining to 82.56% for those aged 85 and over¹⁰) also indicate a need for market housing that accommodates these varied needs.
19. I have not been presented with any estimate of the number of units of specialised housing for older people that is likely to be required in Lymington itself, but have seen no evidence to challenge the figures agreed between the Council and the appellant (952 units over the period to 2036, of which 318 units would be of the type proposed in the appeal scheme) which apply to the south of the district. The New Forest district boundary is tightly drawn around the main settlements in the south of the district, with Lymington and New Milton being the only two towns falling within the top tier of the settlement hierarchy identified as a focus for new development in Policy STR4 of LP Part One. It is therefore reasonable to expect that Lymington will play an important role in accommodating the need arising in the south of the district.
20. Whilst I note the argument that providing additional older people's housing in Lymington could attract more older people into the area, the above analysis offers compelling evidence that whether or not this was the case, a strong need is very likely to arise from the existing population in the local area. I acknowledge that there may also be high levels of need for other types of housing, such as affordable housing and housing for younger people and families, in the town. However, I must determine the application in front of me on its merits.
21. I have paid close attention to evidence from a number of parties about the current level of supply and vacancy rates of comparable specialised accommodation in Lymington. Various figures have been quoted based on property website searches and data from local estate agents, including in submissions from LPTC¹¹ and The Lymington Society¹². I note that some of the vacancy figures include properties that are not directly comparable to the appeal scheme because they offer a different category of care or support, for example Farringford Court (extra care) and Bucklers Mews, Pyrford Gardens and Lynewood Court (age-restricted housing). As a result, it is not possible to derive precise or reliable vacancy levels from these figures.

⁹ APOE-11, section 4.

¹⁰ APOE-11, section 6

¹¹ In ID-4 and in oral and written representations of LPTC

¹² In ID-7 and the oral and written representations of The Lymington Society

22. The appellant's efforts to do so¹³ give a gross vacancy rate of between 8% and 14% for comparable properties in Lymington. The appellant acknowledges that the upper end of this range is higher than industry averages but it attributes this to slower than anticipated sales rates at the Knights Lodge scheme (19 of 44 apartments are not yet occupied) as a result of restrictions associated with the Covid-19 pandemic. I do not consider this analysis to be unreasonable.
23. Permission was granted for 44 retirement living apartments at Stanford Hill in 2021 and construction is underway. The Stanford Hill site is located a short distance to the south of the appeal site and will offer a similar type of property. However, Stanford Hill aside, I note the appellant's analysis¹⁴ that comparable developments in Lymington have been provided at a rate of approximately 2.9 units per annum in the period 1995 to date, compared with provision at an average rate of approximately 10.6 units per annum in the period 1978 to 1994.
24. Consequently, even taking the Knights Lodge and Stanford Hill schemes into account, I do not consider that the proposed development would result in an overprovision of comparable specialised housing for older people within the town, given the scale of the need identified above.
25. I recognise that retirement housing of the type proposed may not be attractive to all older people, many of whom might prefer to live within a neighbourhood with a more mixed demographic. However, I equally consider that the appeal scheme would offer benefits that make it attractive to some older people, for example through the availability of shared facilities, a house manager and opportunities for social interaction.
26. In my view, the appeal scheme would offer a specialised form of accommodation that is an important part of the mix of housing required to meet the diverse needs of the ageing local population. It also has the potential to reduce the instances of people living in accommodation that is poorly suited to their needs or moving to higher support settings (such as extra care housing and registered care homes) than they require. Consequently, I conclude that the proposal would contribute appropriately to addressing the diversity of housing needs of local people.
27. Taking all of these matters into consideration, I am satisfied that the proposed development complies with Policy HOU1 of the LP Part One, insofar as it seeks to address the diversity of housing needs of local people at all stages of life by providing a mix and choice of homes by type, size, tenure and cost.

Main Issue 2: Effect on Local Character and Heritage Assets

Non-Designated Heritage Assets

28. The former police station which currently occupies the appeal site is agreed¹⁵ to be a non-designated heritage asset due to its historic and architectural interest. The main building is a two-storey red brick structure with a broadly L-shaped plan built in the neo-Georgian style. It is a relatively unaltered example of a purpose-built mid-century police station, comprising a simple façade, casement windows and hipped, red clay pantile roof. The building has some local historic

¹³ ID-11

¹⁴ ID-11

¹⁵ Paragraph 8.14 of CD-56

interest as an example of the development and history of the Hampshire Constabulary. Its setting comprises the surrounding yards, garaging and parts of Southampton Road, Queen Elizabeth Avenue and Eastern Road.

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

¹⁶ Map 7 of CD-33

¹⁷ Character Area 1: Town Centre map of CD-32

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

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

Local Character and Designated Heritage Assets

39. The appeal site sits amongst principally residential development to the north of the town centre. It is bounded along its eastern edge by the A337 Southampton Road which is a main vehicular route into the town. This contributes to the urban character of the locality. The former police station building, set back from the road by a front parking area, signals the previous civic use of the appeal site. Mature trees along the north and east boundaries give the site a pleasant, verdant quality.
40. The appeal site is outside of, but adjacent to, the Lymington Conservation Area and as a matter of common ground falls within its setting¹⁸. In conducting my assessment of the effects on the Conservation Area, I have paid close attention to the good practice advice¹⁹ from Historic England.
41. The Lymington Conservation Area encompasses an area around the core of the historic town together with the quayside and river frontage to the east. Its significance is derived from its role as an important port dating back to the 12th and 13th centuries and used to export salt extracted locally, the industry upon which Lymington's prosperity was based. The Conservation Area Appraisal (July 2002)²⁰ describes how the town's medieval structure has remained largely unaltered to the present day, meaning that the historical development of the town is highly legible. The town's growth in the late 18th and 19th centuries is also evident in the wealth of buildings of varied historical and architectural interest.
42. The appeal site lies immediately beyond the north-western boundary of the Conservation Area²¹. This part of Southampton Road marks a point of arrival

¹⁸ Section 3.3 of CD-14

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

²⁰ CD-33

²¹ Map 7 of the CAA (CD-33)

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

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

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

Main Issue 3: Effect on Protected Trees

52. There are eight trees on the appeal site that are subject to a Tree Preservation Order (TPO) (No. TPO/0006/15). The trees fall into two groups:
- G1, which consists of five silver maples (tree numbers T2-T6) running along Southampton Road; and,
 - G2, which consists of two silver maples and one cedar (tree numbers T7-T9) on Queen Elizabeth Avenue.
53. The trees were donated by The Lymington Society and planted as part of a commemorative community planting scheme in 1980. The parties agree²² that Trees T4 and T5 (both maples) are currently 'C grade' trees, meaning that they are of low quality with a remaining life expectancy of at least 10 years, with the remainder categorised as 'B grade', meaning they are of moderate quality with a remaining life expectancy of at least 20 years. The Council considers that in the current site context the trees have the potential to mature and be considered 'A grade' trees in the future.
54. The trees are of a substantial height and prominence, together forming an important landscape feature in the streetscene. In my view, they make a positive contribution to the character and quality of the area in the vicinity of the site, most notably along Southampton Road and Queen Elizabeth Avenue.
55. It is common ground between the main parties that the construction of the proposed development would not harm the protected trees, subject to the imposition of a condition that controls tree protective and construction measures. However, the Council alleges that once constructed and occupied, the proximity of the proposed building would prevent the trees from growing to their natural size and form and would be likely to give rise to pruning and ultimately potential loss of the trees, to the detriment of the amenity of the

²² Section 4 of NPOE-3

area. These concerns were echoed by interested parties including LPTC²³ and The Lymington Society²⁴.

56. The proposed building would sit approximately 6 metres from each of the trees, with the exception of T7 which would be at a greater distance due to its position in the north-eastern corner of the site. Six metres is the root protection area (RPA) radius identified for the cedar, with RPA radii of between 3 and 5.4 metres identified for the silver maples. So, the foundations of the proposed building would be in relatively close proximity to the root systems of the trees in some parts of the site and it is possible that this could form a barrier to future root growth and penetration, potentially affecting the stability and growth prospects of the trees.
57. That said, the building would be outside of the RPAs. Moreover, the removal of the current hardstanding in the vicinity of the trees and its replacement with soft landscaping would be likely to improve aeration and porosity of the ground which could promote root intensification. On balance, I do not consider that the proposed building would cause harm to the root systems of the protected trees such that their vitality would be adversely affected.
58. Nonetheless, above ground level the relationship between the building and the protected trees would be relatively close. There would be the potential for shading of some internal and external spaces, seasonal nuisance (such as blocked gutters and slippery footpaths as a result of fallen leaves) and safety concerns from future occupiers²⁵. All of these factors are likely to lead to future pressure to manage the growth of the trees through pruning.
59. The appellant acknowledges that the minimum separation distance between trees and buildings is widely accepted to be approximately 2 metres. In the immediate term, Tree T9 (cedar) would need to undergo crown spread reduction to create space for construction and achieve the appropriate separation distance from the building once occupied²⁶. I note that these pruning works would be limited to the southern side of the tree and would involve the reduction in the length of branches by 2-3 metres. On this basis, I am satisfied that this pruning event in isolation would have a very limited effect on the contribution that the tree makes to the character of the area.
60. No other pruning works are identified as required to accommodate the appeal scheme. However, all eight of the protected trees are assessed as 'maturing'²⁷ and it is common ground that they have not yet reached their full height or canopy spread. By the Council's analysis²⁸, if the trees were to achieve their full potential in terms of crown spread, there would be significant interaction with the proposed building along its eastern elevation and part of its northern elevation.
61. As the trees continue to grow and spread, the appellant accepts that regular pruning on an approximately three-yearly cycle could be required to maintain the necessary separation distance from the building. Whilst there is some evidence of pruning having taken place around 2008, it is accepted that cyclical

²³ ID-4

²⁴ ID-5

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

²⁶ Arboricultural assessment and method statement (CD-15)

²⁷ Appendix 2 of CD-15

²⁸ Appendix 4 of NPOE-3

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

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

Main Issue 4: Adequacy of Parking and Turning Areas

65. The revised site plan (ref: 10109LY-PA01C) sought to address concerns that there would be insufficient space for on-site manoeuvring by emergency vehicles. At the Inquiry, the Council agreed²⁹ that so long as the turning area indicated on the revised site plan was kept clear, adequate space would be available for ambulances to turn on site.
66. On the basis of the revised site plan, I am content that there would be adequate space for ambulances and light goods vehicles to turn within the site and exit in a forward gear. The retention of the turning space can be controlled via planning condition. It is unlikely that there would be sufficient space for larger vehicles such as community buses, coaches, refuse trucks and fire engines to manoeuvre within the site but such vehicles could service the site in a satisfactory manner from Queen Elizabeth Avenue.

²⁹ Paragraph 22 of ID-12

67. Turning to the provision of on-site car parking, the appeal scheme provides a total of 12 parking spaces for use by future residents, staff and visitors. During the Inquiry, draft condition wording³⁰ was agreed between the parties to secure the inclusion of two disabled parking spaces as part of this provision.
68. The adopted Parking Standards SPD (CD-31) sets out the recommended car parking standards for the various types of development. Table 9 (Annex 1) of the SPD recommends that housing for the active elderly with warden control provides one parking space per unit of accommodation, equating to a recommendation of 32 spaces for the proposed development. The SPD is clear³¹ that in town centre locations, a reduced car parking provision is acceptable where the site is well served by public and active modes of travel, and where the proposal would not exacerbate parking pressure in the local area.
69. The appeal site falls just outside of the town centre boundary denoted on the relevant map in Annex 2 of the SPD but is a short and level walk from the facilities and services of the town centre. There is a doctor's surgery approximately 450 metres away, and a bank, post office, food shops, pharmacy and library within 850 metres³². A bus stop is approximately 90 metres from the site on Southampton Road, providing hourly services between Lymington, Lyndhurst and Southampton, plus a local service to Pennington, Hordle and New Milton. Bus links to Bournemouth and Christchurch are also available from the Sports Ground, a short walk from the site to the east of Southampton Road. Although more likely to be used by staff and visitors than residents, there are good cycle links to the town centre and railway station. As such, the site is in an accessible location which is likely to reduce the reliance of future residents on the private car.
70. The appellant's analysis of parking levels at a number of other Churchill Retirement Living (CRL) schemes identifies an average parking demand of 0.28 spaces per apartment, which would equate to a total of 9 spaces for the appeal scheme. It submits that 12 spaces are proposed to accommodate for situations above this average. On this basis, the appeal scheme would provide 0.37 parking spaces per unit. The Council contests this analysis on the basis that looking at parking levels at other CRL sites across the south of England is not the most appropriate way to ascertain parking demand for the appeal scheme.
71. Car ownership data from the 2011 census³³ indicates that the appeal site is situated in an area in which 81% of people aged 65 and over own one or more vehicles. According to the Council's analysis, this is higher than car ownership levels in the other CRL schemes quoted by the appellant³⁴. However, I note that the census data is based on middle output areas which for the appeal site covers a large area of the rural New Forest. It is reasonable to expect that car ownership levels within the town of Lymington would be lower than the average for its middle output area since the town offers greater opportunity to access facilities via non-car modes. This is supported by the breakdown of car ownership by ward presented in Annex 3 of the SPD.

³⁰ ID-9

³¹ Principles PS1, PS2 and PS13 of the SPD

³² CD-19

³³ Appendix A of NPOE-6

³⁴ Figure 1.1 of NPOE-6

72. Other relevant considerations are the demographics and personal circumstances of typical purchasers of retirement living schemes. Whilst available to residents aged 60 and over, the average age at first purchase is estimated to be around 79³⁵, with anecdotal evidence from the partially-occupied Knights Lodge scheme in Lymington indicating an average resident age of 83. Moves into this type of scheme tend to be driven by a need to down-size domestically, for greater support to continue living independently and by a medical or other need to give up driving. Given these factors, the census car ownership data, which simply categorises the older population as 'aged 65 and over', should be applied with caution.
73. The Council highlighted an application³⁶ for an extension to car parking at the Hubert Lodge scheme in Hythe as an example of under-provision in other recent CRL schemes. Since consent for the car park extension was granted, the Hubert Lodge scheme provides parking at a ratio of between 0.39 (by the appellant's calculation) and 0.44 (by the Council's calculation) spaces per unit, which is greater than proposed for the appeal scheme.
74. On that specific case, the appellant argues that the original level of parking was found to be acceptable at appeal and the rationale for the extension was that it would be an inexpensive way to maintain additional land acquired as the main construction started. I have not been provided with full details of the parking extension application and it is therefore not possible to know unequivocally why the four additional spaces were applied for. For this reason, it does not necessarily demonstrate that the CRL methodology for calculating parking demand is flawed.
75. I have noted the Council's submissions about parking at the Farringford Court and Belmore Lodge developments spilling over onto surrounding roads. I observed these developments as part of my site visit. Farringford Court provides 'extra care' accommodation, meaning that staffing levels are considerably higher than for the appeal scheme (estimated at 8-10 members of staff per shift versus 1 house manager within office hours for the appeal development). Belmore Lodge is a residential and nursing home which due to the needs of residents and staffing levels means that it is also not directly comparable to the scheme before me. No evidence was presented of parking shortages or their effects at existing CRL sites where there are similar ratios of provision to that proposed for the appeal scheme.
76. Taking all of these matters into account, I consider that the appellant's assessment of parking demand for the appeal scheme is reasonably founded. The parking ratio is at the lower end of provision promoted by CRL, but given the highly accessible location of the site, this is justified.
77. In the scenario that demand exceeded the spaces provided, the parties agree that the most likely result would be overspill parking on Queen Elizabeth Avenue, which is a residential street with sections of unrestricted parking. On my visits, I saw that most houses on Queen Elizabeth Avenue have off-street parking in the form of driveways and garages and a considerable proportion of on-street parking spaces were unoccupied.

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

³⁶ ID-1

78. A parking survey³⁷ was undertaken in March 2022 which found, amongst other things, that between 35% and 42% of the total unrestricted spaces available in Queen Elizabeth Avenue (26) were occupied and none of the single yellow line spaces. I am content that the methodology for the survey is robust and the findings are consistent with my observations on site over a number of days. The survey concluded that no roads within a 200 metre walking distance of the appeal site currently experience parking stress. Whilst the survey and my visits were undertaken on weekdays, I have not seen any evidence to indicate that the situation would be materially different at a weekend.
79. Approximately 15-17 unrestricted spaces were found at the time of the survey to be unoccupied in Queen Elizabeth Avenue, in addition to 33 single yellow line spaces, which is a fair reflection of my observations on site. This leads me to find that even in the scenario that parking demand was at the level envisaged by the SPD before adjusting to account for location (32 spaces, one per unit of accommodation), there would be sufficient space within the existing on-street parking provision together with the 12 on-site spaces to meet all of the demand.
80. Given the above, I consider that the proposed development would not harm residential amenity or local character in Queen Elizabeth Avenue insofar as on-street parking is concerned. Since there is no existing parking stress, and even worst-case estimates of parking demand could be accommodated on-street, there would also be no environmental harm as a result of emissions from an increased number of vehicles seeking parking spaces or navigating the local road network.
81. The Council did not allege any specific highway safety harm as a result of overspill parking but this was a concern expressed by some local residents, particularly at school drop off and collection times when Queen Elizabeth Avenue is used by children on scooters and parents with buggies. I visited the site at times used by school traffic and saw some evidence of this. Due to its limited width, and the need for vehicles to wait for oncoming vehicles to pass, speeds during my visit were low and drivers relatively vigilant. Since the existing unrestricted parking areas have the capacity to accommodate any overspill parking, the proposal would be unlikely to give rise to unsafe parking behaviours such as double parking or parking on double yellow lines. Therefore in my view, the level of any potential overspill parking would not be such that it would present an elevated highway safety risk to pedestrians or other road users.
82. For the reasons set out above, I conclude that the proposed development would make adequate provision for on-site car parking and that residential amenity would be safeguarded. There is an element of conflict with the Parking Standards SPD (adopted April 2022) in the sense that the appeal proposal provides a lower level of on-site parking than recommended for housing for the active elderly. However, the level of provision is justified in this case by the accessible location of the site and the evidenced lack of parking stress in its immediate vicinity. As a result, I have found that sufficient car parking would be provided. Accordingly, I find no conflict with the SPD or with Policy CCC2 of the LP Part One, which seeks the provision of sufficient car and cycle parking in accordance with the adopted SPD.

³⁷ Appendix 9 of APOE-9

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

Main Issue 5: Outdoor Amenity Space

85. The outdoor amenity space serving the proposed development would take the form of landscaped gardens running along the northern, eastern and part of the southern edges of the site. Paved areas for outdoor seating would be incorporated, including a communal patio and a small number of private patios immediately outside some ground floor apartments. There would also be modest private balconies on the first and second floors on the south and west elevations of the building.
86. There is no locally-prescribed standard for the quantum of external amenity space to be provided. The proposed amenity areas and patios would cover an area of approximately 839 m², which would represent approximately 38.3% of the total site area (2,189 m²). As a proportion of site area, this would sit toward the lower end of amenity space provision in other local schemes cited in evidence³⁸, although not markedly so (provision ranging between 34.3% and 44.2% of the total site area).
87. 'Retirement Living Explained: A Guide for Planning and Design Professionals' (2017)³⁹ stresses that specialist housing for older people should seek to provide quality amenity space, stating that '*quantity is less important where there is a shared garden*'. The proposed scheme does not allow for any expansive lawned areas; the gardens are principally linear in form. However, I am mindful that external amenity space in retirement living schemes is typically used for sitting out and for its aesthetic value and interest, rather than for active play or recreation. The HAPPI Report⁴⁰ (2009) highlights that housing for older people should enable '*enough space for tables and chairs as well as plants*'.
88. Examples⁴¹ of other developments delivered by the appellant demonstrate how creative design and planting of smaller or irregularly-shaped spaces can contribute to a high quality environment. The examples also illustrate how delivering and maintaining good quality landscaping schemes forms an important part of the overall package being presented to potential buyers. The

³⁸ APOE-13, Section 6

³⁹ APOE-6

⁴⁰ 'Housing for our Ageing Population: Panel for Innovation'

⁴¹ APOE-13, Section 3

Landscape Strategy Masterplan⁴² shows the attention that has been paid to achieving a visually appealing and functional external area. Delivery of a well-designed landscaping scheme that follows the principles of the masterplan can be secured by condition.

89. The focus of the external space would be the communal patio area in the south-eastern part of the site. This would sit close to the adjacent Buckland House, which is a three-storey building with windows on its northern elevation. During my site inspection, I saw that due to the position of the windows and the oblique angles involved, there is very limited scope for overlooking of the external amenity space from windows on Buckland House. The attractiveness of the external space would therefore not be compromised by overlooking.
90. There is the potential for shading of the proposed patio area by Buckland House due to its height and proximity, which the Council estimates to be approximately 6.09 metres away at its closest point. Submitted evidence⁴³ derived from SUN-Calc and aerial photographs indicate that the patio would be affected by shading from Buckland House. Anecdotal evidence presented at the Inquiry from experience on other similar schemes suggests a lower demand for direct sunlight in gardens, with some residents preferring to seek out natural shade.
91. Having visited the site in the late afternoon in April, I found that the location of the proposed patio was not sunny, but did not feel overly gloomy or so shaded as to deter its use. The patio area would be situated approximately between the two ridge peaks of Buckland House which would assist with the availability of daylight throughout the day. The lawned area to the west of the proposed patio, although modest in size, would receive more direct sunlight, especially in the afternoons.
92. There would also be shading of the external amenity areas in the east and north of the site by the proposed building and existing protected trees. This would be more significant in the spring and summer when the trees are in leaf. However, even then it would be a dappled shade and the trees are not so dense as to prevent a reasonable amount of daylight from reaching the amenity areas.
93. Since much of the amenity space would adjoin Southampton Road, there would be some traffic noise, although the existing line of trees and proposed boundary planting would help to form a natural buffer from the road. Given the urban context of the site, where some element of traffic noise is to be expected, this noise would not be detrimental to the residents' enjoyment of the external space. For the same reasons, I do not consider that the proximity of the gardens to the on-site car park would lead to unacceptable disturbance to their enjoyment.
94. Having considered all of the evidence, I conclude that the proposal would have no harmful effects on the living conditions of future occupiers in terms of the provision of outdoor amenity space. Consequently, the proposal would be consistent with the aims of Policy ENV3 of the LP Part One as it relates to achieving high quality design that contributes positively to quality of life by creating spaces that are visually appealing and enjoyable to be in, and avoids

⁴² CD-18

⁴³ Appendix JRG 5 and JRG 6 of NPOE-1

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

95. There would also be no conflict with the Framework's aims to promote healthy, inclusive and safe communities and achieve well-designed places. In addition, the proposal would accord with the National Design Guide (January 2021)⁴⁴ insofar as it seeks the provision of good quality external environments that support the health and well-being of their users.

Main Issue 6: Effect on European Sites

Procedural Matters

96. The Council's sixth reason for refusal alleges that an adverse impact on the integrity of the Solent Special Protection Area (SPA) and Special Area of Conservation (SAC) due to the effects of nitrate discharge could not, in the absence of a Section 106 agreement, be ruled out. However, in the Statement of Common Ground⁴⁵, it was agreed that *"the Council has imposed the wrong 'standard' reason for refusal at No.6. The issue raised by the reason included on the decision notice, can be dealt with by a condition"*.
97. The parties agreed that the reason for refusal should have related to the recreational and air quality impacts of the proposed development on the European sites in the New Forest and Solent. A redrafted version of the sixth reason for refusal was provided⁴⁶.
98. Where a plan or project, either alone or in combination with other plans or projects, would be likely to give rise to significant effects on European sites, the Habitats Regulations require the competent authority to carry out an appropriate assessment before granting consent. I am the competent authority in respect of this appeal and will proceed accordingly.

European Sites and Features

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

⁴⁴ CD-24

⁴⁵ CD-56, paragraph 2.13

⁴⁶ Paragraph 2.14 of CD-56

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

Likely Significant Effects

102. By creating 32 additional residential units, it is likely that the proposed development, in combination with other plans and projects, would generate additional recreational pressure on the European sites in both the New Forest and the Solent. Consequently, the appeal scheme would have a likely significant effect on these European sites as a result of recreational disturbance.
103. Similarly, the proposed development is likely to give rise to an increase in transport movements which, when considered in combination with other plans and projects, is likely to have significant effects on the New Forest SPA, SAC and Ramsar due to air quality implications.
104. Furthermore, the proposed development would generate additional wastewater discharge from the site. The consequent increase in nitrates arising from the site, in combination with other plans and projects, is likely to have significant effects on the Solent SPA, SAC and Ramsar.
105. All of these likely significant effects are acknowledged in the appellant's Ecological Appraisal⁴⁷ and the Council officer's Planning Committee report⁴⁸.

Recreational Pressure

106. A Habitats Regulations Assessment⁴⁹ of the LP Part One (adopted July 2020) found that significant effects on both the New Forest and Solent European sites as a result of recreational impacts from any additional residential development in the plan area could not be ruled out. The Council's Appropriate Assessment⁵⁰ in respect of recreational impacts of the proposed development came to the same conclusion and this was accepted by the appellant in the Statement of Common Ground⁵¹.
107. Recreational impacts arise principally from the additional recreational visits made to sensitive designated sites by residents of new dwellings. Increased recreational use of these sites can lead to greater disturbance of birds, whose feeding, nesting and breeding habitats can be interrupted by the presence of humans. The ultimate consequence of this disturbance can be increased bird mortality and reduction in bird populations. In this sense, by creating 32 new residential units the proposed development would, in combination with other plans and projects, adversely affect the integrity of the New Forest and Solent European sites.
108. The Council has produced a Supplementary Planning Document (SPD) entitled 'Mitigation for Recreational Impacts on New Forest European Sites'

⁴⁷ Section 5.1.1 of the Ecological Appraisal, Tetra Tech (June 2021)

⁴⁸ Planning Committee Report 8 December 2021 (CD-62)

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

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

⁵¹ Paragraphs 2.14-2.15 of Statement of Common Ground (CD-56)

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

109. The mitigation for these recreational impacts involves the provision of new areas of alternative natural recreational greenspace (ANRG), enhancement of existing greenspace and rights of way within settlements, access and visitor management including the employment of rangers and education initiatives, and monitoring.
110. I have been provided with a lawfully executed planning obligation (dated 4 May 2022) which secures financial contributions to access management and monitoring measures as mitigation of the effects on the New Forest European sites in accordance with Policy ENV1 of the LP Part One and the aforementioned New Forest mitigation SPD (2021). The obligation also secures financial contributions to the Bird Aware Solent project by way of mitigation of effects upon the Solent European sites, as required by the same LP policy and the aforementioned Solent mitigation strategy (2017).
111. In addition to this, an 'infrastructure' contribution for habitats mitigation is included within the obligation (Clause 8). Paragraph 2.8 of the CIL Compliance Statement⁵⁴ explains that whilst this element of the contribution is expected to be collected via a CIL payment, the Clause 8 provisions are included to cover any scenario in which no CIL is paid (for example if the development secured CIL relief). This is necessary because the adverse effects cannot be satisfactorily mitigated without it. All of the financial contributions are payable on or before the date of commencement of development.
112. The necessity for these obligations is firmly established by the development plan and supplementary documents. It is clear that they are directly related to the proposed development due to its proximity to the European sites and are fairly related to it in scale and kind, since they are calculated on a per bedroom basis with locally set occupancy rates applied. I have had regard to Natural England's written confirmation⁵⁵ that where mitigation measures are limited to collecting a funding contribution that is in line with the strategic approach agreed in the relevant SPD, then no further consultation under Regulation 63 is required. This clearly stated position allows me to conclude that the requirement for consultation⁵⁶ in relation to my appropriate assessment has been discharged.
113. Consequently, I am satisfied that the obligations meet all of the relevant legal⁵⁷ and policy⁵⁸ tests, and together secure effective mitigation of the adverse effects on integrity of the relevant European sites as a result of recreational pressure.

⁵² CD-29

⁵³ CD-37

⁵⁴ CD-59

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

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

⁵⁷ Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

⁵⁸ Paragraph 57 of the Framework

Air Quality

114. In addition to this, traffic growth as a result of additional residential development has the potential to give rise to significant adverse effects on the New Forest European sites from nitrogen deposition and ammonia emanating from vehicle emissions, especially near main road corridors. Whilst the data is uncertain, the precautionary principle applies, meaning that the effects need to be closely monitored.
115. Consequently, it is possible that the proposed development could, in combination with other plans and projects, adversely affect the integrity of the New Forest European sites. Accordingly, Policy ENV1 of the LP Part One requires that all residential development makes a financial contribution toward monitoring air quality effects within the relevant European sites. The Council's interim position statement on air quality monitoring⁵⁹ explains the nature of the monitoring work and sets the contribution at £85 per dwelling (index-linked now translating to £91).
116. The completed Section 106 agreement contains provisions requiring that financial contributions are made toward air quality monitoring at a level that generally accords with the Council's interim position statement. Full payment is due on or before commencement of development.
117. Given the clear policy context, the obligations are necessary to make the development acceptable in planning terms. They are also directly related to the development, in the sense that there is a direct relationship between additional dwellings, increased vehicle movements and therefore potential effects on habitats from exhaust emissions. Being calculated as a standard tariff per dwelling, the obligations are fairly and reasonably related to the development in scale and kind.
118. As with the recreational pressure effects outlined above, I am of the view that the duty to consult with Natural England has been satisfied by its written confirmation that no additional consultation is required where there is compliance with an agreed strategic approach (CD-40). The strategic framework for this contribution is clearly established by Policy ENV1(4)(v) of the LP Part One and the Council's interim position statement (CD-34).
119. I am therefore satisfied that the Section 106 agreement is an effective mechanism for securing the monitoring required to avoid or mitigate adverse effects on the integrity of the New Forest European sites as a result of air quality impacts.

Nitrates

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

⁵⁹ CD-34

121. Advice from Natural England (2020)⁶⁰ states that there is uncertainty about the potential for future housing developments across the Solent region to exacerbate these impacts. It advises that one way to address this uncertainty is for all new development to achieve nutrient neutrality in order to mitigate its potential effects on the integrity of the sites. This advice applies to the proposed development due to its location within the Solent catchment area⁶¹ and the nature of development, which would result in a net increase in population and therefore have wastewater implications.
122. Following the precautionary principle, and having regard to the conservation objectives of the sites, I take the view that the proposed development, in combination with other plans and projects, would have an adverse effect on the integrity of the Solent European sites. This finding is consistent with the findings of the Council's Appropriate Assessment in respect of nitrates⁶².
123. The parties have proposed that mitigation in this case could be secured via a Grampian condition that prevents occupation of the proposed development until a mitigation package has been approved in writing by the Council that demonstrates that the additional nutrient loading generated by the proposal would not have an adverse effect on the integrity of the European sites.
124. Work is underway by the Council on a district-wide nitrate mitigation solution that would identify the level of, and options for, mitigation required for the housing development anticipated within the Local Plan. Whilst awaiting the outcome of this work, the Council has applied a Grampian condition to residential permissions, which it submits has not attracted any objection from Natural England or the Environment Agency as statutory consultees. The Council states that the condition has been applied to permissions for over a year and has not identified any problems for its subsequent discharge.
125. However, such an approach is specifically addressed in the Guidance⁶³. This sets out very clearly that a positively worded condition is unlikely to pass the test of enforceability and a negatively worded one is unlikely to be appropriate in the majority of cases. Nonetheless, it does note that in exceptional circumstances such a condition may be appropriate where there is clear evidence that the delivery of that development would otherwise be at serious risk, stating that this may apply in the case of particularly complex development schemes, and where the six tests for conditions are also met.
126. The appellant proposes to make financial contributions to an off-site nutrient mitigation scheme. Given that the appeal site is modest in size, comprises brownfield land and is located within an urban area, I am content that off-site mitigation would be appropriate in this case. However, this still requires that there is certainty and transparency about the delivery of mitigation in order to ensure that the identified potential for an adverse effect on the integrity of the European sites is not realised.
127. There are currently no strategic mitigation schemes within the district, although the appellant submitted during the Inquiry that it had a conditional contract in place to buy credits for the 'Heaton Scheme' on the Isle of Wight. The scheme involves agricultural land being taken out of use, with the

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

⁶¹ As shown on Figure 1 of CD-38

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

⁶³ PPG Paragraph 010 Reference ID: 21a-010-20190723

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

128. I note that in the Stanford Hill appeal⁶⁴, Natural England confirmed that the use of the Heaton Scheme to offset nutrients would be appropriate and a Grampian condition was imposed. However, that appeal, dating from June 2021, had anticipated that an overarching agreement relating to the wider Heaton Scheme was 'imminent'. On the basis of the evidence to this Inquiry, it has still not been delivered. Furthermore, the Stanford Hill appeal was supported by clear information about the nutrient balance, the quantum of land that would be required to mitigate the effects of the scheme, evidence that such land was available within the Heaton Scheme and proof of advanced discussions with the landowner and Isle of Wight Council about securing its delivery.
129. Following my request for further comments on the Guidance requirements after the Inquiry closed, the appellant stated⁶⁵ that it had an agreement in principle in place with another mitigation scheme referred to as 'Kings Manor', although this was not supported by evidence. I understand that Kings Manor is also on the Isle of Wight and would address the same water treatment catchment as the Heaton scheme. The appellant contends that the proposed development would discharge to the Pennington Wastewater Treatment Works in the same way as the Stanford Hill scheme and therefore that the land held within the Heaton scheme, and presumably also the Kings Manor scheme, would be appropriate to offset nitrates in the present case.
130. Mindful of Guidance about the cautious use of negatively-worded conditions, I have carefully reviewed all of the evidence on this matter. The WMS⁶⁶ and Chief Planning Officer letter (dated 21 July 2022) anticipate a nationally focussed, comprehensive response to the issue of nutrient neutrality through a statutory duty on sewerage companies to upgrade treatment works, albeit this is timetabled for 2030 and the legislation required to support it is not in place, or through a Nutrient Mitigation Scheme, developed with Natural England. This process, which proposes mitigation projects against which developers would be able to purchase 'nutrient credits' is not yet developed to a point where there can be any certainty as to its delivery or timetable. The Chief Planning Officer letter acknowledges that *'(t)o date there has been a high mitigation requirement, to achieve the necessary offsetting of nutrient pollution related to development, as well as an insufficient supply of accessible mitigation.'* While it is noted that this letter refers to the grant of conditions or obligations to secure mitigation, that is in the context of the envisaged national Nutrient Mitigation Scheme.
131. Natural England advice is silent on the question of Grampian-style conditions, although it recognises the difficulties for smaller developments and those on brownfield land in achieving nutrient neutrality. It advocates working with local planning authorities to progress strategic mitigation options that enable this scale of development to come forward. Whilst the Council in this case is progressing strategic solutions, it appears from the evidence before me that that process has not yet reached fruition. The Council's Position Statement on Nutrient Neutral Development (4 September 2019) presents an interim

⁶⁴ Appeal reference: APP/B1740/W/20/3265937

⁶⁵ PD-6

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

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

132. Whilst I acknowledge the alignment between the Council's 2019 position statement and the proposed approach in this case, I am clear that in order to satisfy the provisions of the Habitats Regulations, the delivery of required mitigation must be certain. To my mind, any condition applied for this purpose must successfully demonstrate that the proposal meets the exceptional circumstances for negatively worded conditions identified in the Guidance⁶⁷ and must meet the tests for conditions set out in the Framework⁶⁸.
133. Notwithstanding the comments⁶⁹ from both of the main parties on the acceptability of a conditional approach, this is not a particularly complex development scheme, nor is there clear evidence that its delivery would be at serious risk without imposition of the condition such as to amount to exceptional circumstances as set out in the Guidance. With anticipated solutions to the availability of strategic sites to manage nutrients within the catchment still being developed, as well as national initiatives to support this underway but not confirmed or in place for this catchment, there is a significant risk of a delay in delivery and a clear level of uncertainty.
134. I am aware of the Council's view that the circumstances and direction of travel presented by the WMS and Chief Planning Officer letter represent exceptional circumstances, however I am not satisfied that this is the case. Even accounting for the shortfall in housing in this case, the demonstrated need for older people's housing and the financial contributions of the scheme to the provision of affordable housing, I do not consider that the exceptional circumstances anticipated by the Guidance have been demonstrated.
135. While I note that the Council and the appellant in this case appear agreed on the conditional approach, and that a previous Inspector has accepted it in relation to a different appeal, such matters are ones of fact and degree. In the present case, there is an absence of information addressing the level of anticipated nitrate discharge and therefore the amount of land that would be required to offset the effects of the proposal such that adverse effects on integrity can be avoided. There is also insufficient evidence that there is capacity within an appropriate offsetting scheme, and little certainty that such a scheme can be funded and secured within a timescale that aligns with occupation of the proposal. For these reasons, it is not possible to conclude that the proposed condition would meet the six tests set out in the Framework, particularly the tests of precision, enforceability and reasonableness.
136. I understand the Council's appetite for flexibility on mitigation, given the rapidly evolving nature of approaches to achieving nitrate neutrality and the time that would pass between consent and occupation of the scheme. However, in this particular case, I do not consider that the degree of flexibility being sought can be achieved within the bounds of the Habitats Regulations. I refer particularly to the obligations upon the competent authority imposed by Regulations 63(5) and (6) and Regulation 70(1) and the adequacy of any planning conditions or obligations proposed in that context. In my planning judgement, the evidence supporting the approach in this case is not sufficient

⁶⁷ PPG Paragraph 010 Reference ID: 21a-010-20190723

⁶⁸ Framework Paragraph 56 and PPG Paragraph 003 Reference ID: 21a-003-20190723

⁶⁹ PD-5 and PD-6

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

137. For these reasons, I am unable to conclude that an adverse effect on integrity of the Solent SPA, SAC and Ramsar sites as a result of nutrient discharge from the proposed development, alone or in combination with other plans or projects, can be ruled out.
138. In arriving at this conclusion, I have had regard to the decision of another Inspector to accept the use of a Grampian condition in relation to a site in Norwich⁷⁰. I note that in that case, which concerned a single dwelling, the condition applied pre-commencement, rather than pre-occupation. Whilst I accept that a different conclusion was reached in that case, decisions in relation to the adequacy of mitigation are highly fact-sensitive and this does not alter my reasoning as set out above.

Appropriate Assessment

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

Other Matters

Affordable Housing

142. One of the Council's reasons for refusing the application related to the absence of an appropriate contribution toward the provision of affordable housing. However, during the course of the appeal, the parties agreed⁷¹ the sum for a financial contribution to the provision of off-site affordable housing and that this could be secured via a planning obligation.
143. A completed Section 106 agreement⁷² (dated 4 May 2022) to this effect was received shortly after the Inquiry closed, by prior agreement. Clause 3 of the s106 agreement requires that no more than sixteen of the dwellings are occupied until all affordable housing contribution payments have been made.

⁷⁰ Appeal reference: APP/L2630/W/21/3289198

⁷¹ Statement of Common Ground (CD-56)

⁷² PD-3

144. The Council has provided a CIL Compliance Statement⁷³ (12 April 2022) which sets out the justification for the affordable housing obligations. I have considered this Statement and the content of the agreement itself in the context of the tests for planning obligations contained in the Framework⁷⁴ and legislation⁷⁵.
145. I am satisfied that the obligations are necessary to secure the provision of financial contributions to affordable housing as required by Policy HOU2 of the LP Part One and the Framework. Since the appeal scheme comprises a specialised form of housing for older people, I take the view that exceptional circumstances exist in this case warranting the provision of a payment for off-site provision, as opposed to the on-site provision envisaged by the policy.
146. I am content that the obligations are directly related to the proposed development, since it comprises 32 residential dwellings. The Council's Housing Strategy (December 2018) and a statement⁷⁶ from the Council's Housing Strategy and Development Service Manager satisfactorily demonstrate how the contributions would be used to deliver affordable homes within the district.
147. I note that the offered sum falls below the target of Policy HOU2(ii) for 50% of new homes to be affordable housing. However, I have considered the Report on Affordable Housing and Viability⁷⁷ (October 2021) and agree that taking account of viability considerations, the sum is reasonably related to the development in scale and kind.
148. I find the completed Section 106 agreement to be legally sound and enforceable. Consequently, I am content that the obligations secure an appropriate contribution to the provision of affordable housing.

Effect on Living Conditions

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

⁷³ CD-59

⁷⁴ Paragraph 57

⁷⁵ Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

⁷⁶ Appendix 3 of CD-59

⁷⁷

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

Effect on Local Health Services

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

Benefits of the Proposed Development

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

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

159. The appeal site is previously developed land and appears on the Council's brownfield land register. Figure 2.5 of the LP Part One shows that 61% of the local plan area is subject to Framework policies that protect areas or assets of particular importance, indicating the constrained nature of the District for new greenfield housing allocations. In this context, substantial weight must be given to the value of efficiently re-using this vacant brownfield site within the settlement of Lymington for new homes, in line with paragraph 120 of the Framework.
160. In terms of its environmental benefits, the appeal scheme commits to delivering a biodiversity net gain (secured by condition) together with specific nature conservation measures such as water efficiency measures and integral swift bricks. The proposal would generate renewable energy through solar photovoltaic panels and would provide electric vehicle charging points, helping in the shift to a low carbon economy. Combined, I assign moderate weight to the environmental benefits of the appeal scheme. This is notwithstanding my findings in respect of the effects on European sites which are considered further in the Planning Balance, below.
161. During the construction period, the proposal would generate employment in the construction sector and have wider supply chain benefits. I have been referred to a report⁷⁸ which estimates that for a typical scheme of 45 retirement apartments, approximately 85 construction jobs are created. Whilst this could be expected to be lower for the appeal scheme which proposes 32 apartments and accepting that the jobs are temporary in nature, these are nonetheless material economic benefits.
162. The same report estimates that once occupied, such a retirement apartment scheme creates approximately 6.4 permanent jobs and adds £13 million in gross value added to the local area through demand for repairs and renovations, management and care and high street expenditure. I once again acknowledge that the appeal scheme would be smaller than the typical scheme to which these figures apply, and that a proportion of residents could be expected to already live and spend in the local area. Nevertheless, it is reasonable to expect that the proposed development would generate additional spending at local businesses, supporting their viability and the vibrancy of the town centre. This aligns with the Framework's aspiration⁷⁹ to building a strong, competitive economy by supporting economic growth locally. Together, I judge that the economic benefits of the appeal scheme weigh moderately in its favour.
163. A report⁸⁰ submitted in evidence makes the case that retirement apartments such as the appeal scheme can have a range of health and social benefits for individuals by allowing them to maintain their independence for longer, providing opportunities for social interaction and offering suitable accommodation that adapts to their changing needs. At the same time, by offering accommodation tailored to the needs of older people, such

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

⁷⁹ Paragraph 81 of the Framework

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

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

164. I have also been presented with evidence⁸¹ to indicate that retirement apartments facilitate the release of under-occupied housing stock in the local area which has the potential to free up family-sized housing into the market. The proposal would also make financial contributions to the provision of off-site affordable housing contribution, secured by planning obligation, which whilst necessary to comply with the development plan would nonetheless be a social benefit. In my judgement, these social benefits carry significant weight in favour of the appeal proposal.

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

Planning Balance

Accordance with the Development Plan as a Whole

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

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

168. The appeal scheme would fail to comply with Policy ENV1 of the LP Part One, since I have found that it would not adequately mitigate its impacts on international nature conservation sites.

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

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

Paragraph 11 d) Balance

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

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

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

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

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

Final s38(6) Balance

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

Conclusion

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

J Powis

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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

FOR THE LOCAL PLANNING AUTHORITY:

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

INTERESTED PARTIES:

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

DOCUMENTS SUBMITTED AT THE INQUIRY

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

DOCUMENTS SUBMITTED BY AGREEMENT AFTER THE INQUIRY

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