

**IN THE MATTER OF
THE TOWN AND COUNTRY PLANNING ACT 1990**

**AND IN THE MATTER OF
THE FORMER EDWINA MOUNTBATTEN HOUSE,
BROADWATER ROAD, ROMSEY.**

CLOSING SUBMISSIONS

**ON BEHALF OF
THE APPELLANTS**

Introduction:

1. These Closing Submissions are made on behalf of Churchill Retirement Living [‘the Appellants’] in respect of an appeal under s.78 of the T&CPA 1990 against the refusal by Test Valley Borough Council [‘the Council’] to grant permission for a development of 47 retirement living apartments (age-restricted C3) and associated development [‘the scheme’] on the site of the former Edwina Mountbatten House, Broadwater Road, Romsey [‘the site’].
2. The site is previously developed land within the built-up area of Romsey on the edge of the town centre¹. It is currently occupied by a derelict former care-home built in the 1960s. There is acceptance in principle of the demolition of the existing building²

¹ Locationally, therefore, complying with LP Policy COM2 [CD3.1] – see Committee Report [CD8.1] para.8.2

² See SoCG, CD7.2 under ‘Agreed Issues’, section 3.0

(which is agreed to be of no historic or townscape merit³) and the re-development of the site with age-restricted C3 retirement living apartments (for which there is a recognised need⁴). The site is acknowledged to be sustainably located vis-a-vis the services and facilities in the town centre to serve future residents and to and encourage non-car trips⁵.

3. Contrary to officers' recommendation⁶ the Council's planning committee resolved to refuse the application for seven reasons⁷ (summarised as):

- (1) Impact on the Romsey Conservation Area and 'other heritage assets' by developing in their setting;
- (2) Impact on residential amenities of the occupiers of 38-48 and 30-36 Palmerston Street by reason of enclosure and overbearingness;
- (3) Affordable housing;
- (4) Impact on the Solent SPA;
- (5) Impact on the New Forest SPA;
- (6) Public open space contribution;
- (7) Healthcare contribution

4. Reasons 3-7 were at all times able to be overcome by a suitably worded s.106 obligation⁸ and (subject to the debate in respect of public open space⁹) have now been overcome. None is said to justify refusal of permission¹⁰.

5. This left, as at the start of the inquiry, Reasons 1 and 2 as the two operative reasons for refusal.

Main Issues:

6. In the light of the above, the Inspector identified at the start of the inquiry two Main Issues:

³ *ibid*

⁴ *ibid*

⁵ See policy COM2 ('settlement hierarchy'), Test Valley Revised Local Plan (2016), CD3.1

⁶ See Committee Report, CD8.1

⁷ Minutes, CD8.3

⁸ See SoCG, CD7.2

⁹ See below

¹⁰ Webb xx CBKC, Day 4

- (1) The effect of the proposals on the setting of heritage assets (which will become more focussed through the evidence);
- (2) The effect of the proposals on the living conditions of 38-48 and 30-36 Palmerston Street.

The site, the proposal and the development plan:

7. The site lies outside but adjacent to the Romsey Conservation Area and in the setting of a number of listed buildings and the Broadlands Registered Park and Garden. To its south, the site is bounded by a tree-belt along a stream called 'Tadburn Lake' and the busy A27 Bypass Road. Its eastern boundary is Palmerston Street. Its northern boundary is Broadwater Road. To the west lies the carpark and buildings of Crossfield Hall.
8. As such, the site sits in an important location both in townscape and heritage terms, a fact recognised by the Appellants from the outset and to which their scheme design is directly and deliberately addressed with care and sensitivity. It is, however, occupied by the current Edwina Mountbatten House, a defunct care-home dating from the 1960s and now featuring in the Council's Brownfield Register with an estimated dwelling-yield of 40 dwellings¹¹ (equivalent to 120 dph at the site size of 0.3ha¹²).
9. As noted above, the current building is considered to be of no townscape or heritage value¹³. The area in which it lies, south of the Conservation Area is properly characterised as 20th Century urban development resulting from 1960s town planning¹⁴ and is anticipated to accommodate substantial regeneration through the South of Romsey Town Centre Masterplan (2020)¹⁵. The site does not include the tree belt along Tadburn Lake, nor the hedge parallel to Palmerston Street, and the proposed buildings are outside all relevant root protection areas¹⁶.

¹¹ Housing Implementation Strategy, ID8, at Table 6.

¹² Hectarage at para. 2.1 of the SoCG, CD7.2

¹³ SoCG, CD7.2 at Section 3.

¹⁴ Wright xx CBKC, Day 3

¹⁵ CD4.8 – intended to form part of the evidence base to inform the emerging TVLP (now at Reg 18 stage) – Webb xx CBKC, Day 4; Shellum xic, Day 4.

¹⁶ See Tree Protection Plan, CD1.21, Committee Report, CD8.1 at 8.26

10. The proposal is a full application for permission to demolish the existing, derelict 1960s care-home and redevelop the site for 47 retirement living apartments (ie age-restricted C3 use), communal facilities, access, car parking and landscaping. The apartments and residents lounge are proposed to be contained in a C-shaped block of varying 2, 2.5 and 3 stories fronting Broadwater Road, Palmerston Street and the A27 Bypass Road, with a central courtyard containing the resident's patio and communal amenity space facing west. Affordable housing is provided by way of an off-site financial contribution and due contributions are made to social and physical infrastructure, secured through the s.106 planning obligation.
11. The need for this development is undisputed, with an increasing population in need of specialist retirement accommodation (rather than care or hospice accommodation). Mr Shellum's evidence sets out at Section 5¹⁷ the emphasis in national policy on meeting this growing need as well as the particular facts affecting Test Valley, with 21.9% of the population aged above 65 and 10.4% aged above 75%¹⁸. These are above regional and England averages and are set to grow (over 85s are expected to grow by 64.6%, double that of England's growth rate)¹⁹. Romsey itself has 25% of its population aged over 65, over the Borough average, therefore²⁰. The Three Dragons Housing Needs Assessment²¹ establishes a need for 667 retirement living units in Test Valley and specifically an unmet need for between 185 and 323 units for sale in Romsey and surrounding wards²².
12. Responding to this national and local need for older-persons' accommodation²³, Appellants are an award-winning specialist retirement living operator, founded in 1994, who design, construct and then manage their sites, selling leasehold interest to the qualifying residents and maintaining the fabric of the buildings, grounds and communal areas²⁴. To date the Appellants manage over 240 retirement developments across the UK, serving around 10,000 apartment owners.

¹⁷ Shellum proof at CD [...] (NB, attention is drawn to Mr Shellum's response to the wrongly-founded observations of Mr Lees for the Romsey & District Society, ID3; Shellum xic, Day 4)

¹⁸ Shellum proof para. 5.7

¹⁹ Test Valley SHMA (2022), cited at Shellum proof para 5.6

²⁰ Shellum proof at 5.8

²¹ CD1.28

²² See Shellum proof at 5.9 and 5.10

²³ As to which, see further the DAS [CD1.13] Section 1

²⁴ See Jackson proof [CD7.15.1] at Section 1.4

13. As such, in addition to their specialist knowledge of the operational needs of their residents, their business model fosters the principles of good design in terms of attractive architecture, high quality materials and fitness for purpose – the Vitruvian triumvirate of *firmitas, utilitas, venustas* – as reflected in Chapter 12 of the NPPF. The Appellants’ track record of successful place-making is something of which they are rightly proud²⁵.
14. Aligned with this approach of good place-making, and as demonstrated through the written and oral evidence at the inquiry²⁶, the appeal scheme was developed through extensive dialogue with officers of the Council, including the Council’s Conservation Officer, and with engagement with the Design Review Panel, who reported on two previous iterations. As a result, the scheme evolved through the application process such that, by the time of determination, the final scheme – ie that now before the Inspector - received a positive recommendation for approval by the Council’s planning case officer and was supported by the Council’s Conservation Officer²⁷.
15. As such, as at the officer’s committee report, the application could properly be said to *accord with* the relevant policies of the development plan (the Test Valley Revised Local Plan (2022)²⁸). Although the adopted housing numbers in policy COM1 are acknowledged to be out of date, locationally, the proposal in the urban area of Romsey complies with the adopted spatial strategy as embodied in policy COM2; in terms of heritage, no harm to any heritage assets was identified and so compliance with policies E1 and E9 was established; there was considered to be no adverse impact on neighbouring residential amenities, in accordance, therefore, with policy LHW4²⁹.
16. Happily, as will be noted below, that is now once more the evidence of the Council at the end of the inquiry. It is common ground, now, between the Council and the Appellants, that the proposal accords with the development plan and, in line with para. 11(c) of the NPPF, permission should be granted ‘without delay’.

²⁵ See Jackson proof [CD7.15.1] at Section 1.4, Section 4 and Section 5.

²⁶ Principally Mr Jackson and Mr Shellum, but not disputed by the Council’s three consultant expert witnesses

²⁷ Committee Report at CD8.1

²⁸ CD3.1

²⁹ See for the above, the Committee Report [CD8.1]

Benefits of the appeal proposal:

17. Despite the common accord now reached, it is useful to enumerate the acknowledged benefits of the proposal before looking to the now withdrawn Reasons for Refusal. This is because the Appellants and the Council arrived at their shared conclusion that permission should be granted by different routes: the Council that the benefits outweigh the harms to heritage and the Appellants (with officers) that while there were no heritage harms, there were benefits on top.
18. The categories of benefits have never been in dispute and are listed in the SoCG³⁰. However, in her written evidence, Mrs Webb erred both in the weight she gave to some, and in her approach to ameliorating the weight she gave to others³¹. This is all set out in her proof at Section 10, with a table at Section 11 for convenience. For a summary of Mr Shellum's position, see the table at 9.3 of his proof, and the accompanying text at Section 8.
19. Thus, we start with a shared position that the provision of 47 independent retirement apartments is to be given 'substantial' weight. This must be right given all that is said above on national and local need for such development and the requirement to plan for its provision, as recognised by the SHMA, but not provided for in the TVLP (2016).
20. To this Mr Shellum adds 'substantial' for the delivery of housing *per se* relying on the consistent approach of inspectors and the Secretary of State³² that substantial/significant weight is given to boosting housing supply even when the Council can demonstrate a 5-year Housing Land Supply. By contrast Mrs Webb had fallen into error in according only 'little' weight due to the HLS position³³.
21. As to affordable housing, both planning witnesses accorded 'moderate' weight, although Mr Shellum could point to decisions which found that policy-compliant

³⁰ SoCG, CD7.2, Table under para 5 on p. 15

³¹ Webb xx CBKC, Day 4

³² Example appeal decisions at CD6.4 and CD6.5

³³ A position, in any event, likely to be replaced by a sizeable shortfall if the currently consulted NPPF changes take place – see Shellum xic, Day 4

affordable housing (which this proposal delivers, within the confines of viability) could be given ‘significant’ weight³⁴.

22. These are three separate heads of ‘social’ benefits. To them must be added the benefits to residents, including personal, health and fiscal benefits in terms of savings to the NHS and social care budgets. On the basis of the technical survey ‘Healthier and Happier’ report in Appx 2 of his proof, Mr Shellum is correct to afford this ‘substantial’ weight. Telling are the figures of fiscal savings on p. 20, but poignant are the topics to which those figures are attached (falls, loneliness, strokes, cold homes, GP and A&E). Poignant, too, are the ‘well-being’ scores in the charts on p. 21 of residents before and after moving into this type of accommodation.

23. Mrs Webb is right to recognise these social and health benefits as ‘important’³⁵, but conceptually wrong to then reduce the weight to ‘moderate’ by reference to the adverse impacts of the scheme (even if true)³⁶. This is because – as she acknowledged in cross-examination³⁷ - in attributing weight to the elements on the positive side of the scale, it is not proper to adjust each by reference to the content of the negative basket, nor to speculate that the same benefits could be derived from an alternative scheme³⁸. Rather, as she accepted, what must be done is that each positive element is given its weight, each negative element given its weight and *then* the two baskets are considered one against the other.

24. Similar erroneous thinking is to be found in Mrs Webb’s watering down of the positive weight otherwise to be given to ‘redevelopment of brownfield land’³⁹, ‘sustainable location’⁴⁰, ‘efficient use of land’⁴¹, ‘economic benefits’⁴² and ‘release of housing stock’⁴³. Overall, therefore, it is respectfully submitted that both conceptually and in

³⁴ CD6.4

³⁵ Wright proof at 10.26

³⁶ Ibid

³⁷ Webb xx CBKC, Day 4

³⁸ See CD6.6

³⁹ Webb proof at para 10.17

⁴⁰ Ibid 10.20

⁴¹ Ibid 10.22

⁴² Ibid 10.25 – on this one the Inspector’s attention is respectfully drawn to Appx 1 of Mr Shellum’s evidence ‘Silver Saviours of the High Street’.

⁴³ Ibid 10.28

the substance of the judgement made, Mr Shellum's assessment of the weight to the benefits of the scheme should be preferred⁴⁴.

25. That said, it will be recalled⁴⁵ that Mrs Webb's concession that the allegation in Reason for Refusal 2 did not arise had no regard to 'benefits' at all – just simply a recognition that the allegation of harm was irrational on the evidence; and that her concession that the test (para. 208 of the NPPF) in Reason for Refusal 1 was met in this case was made on the basis of *her* assessment of benefits in the Table at para 11.8 of her proof (ie before they were corrected as above).

26. We turn, now, to the allegations of harm as they stood at the start of the inquiry and, hence, the Inspector's two Main Issues.

Main Issue 1 – impact on heritage assets:

27. As regards the relevant heritage assets, it will have been noted that professional officers' support for the appeal scheme was not on the basis of a conclusion under para. 208 of the NPPF (ie that the public benefits arising outweighed heritage harm caused) but, rather, by reference to the fact that the scheme would cause *no harm* to the relevant heritage assets. As a consequence, para. 208 is not even engaged.

28. Indeed, the Committee Report at para 8.21 (correctly) observed that:

*'the approach proposed, informed by the comments of the Conservation Officer, and reflected in the revised proposals, is appropriate and would broadly **enhance** the character of this site situated adjacent [to] the Conservation Area and make a **positive** contribution to sustaining the significance of the surrounding heritage assets.'*⁴⁶(emphasis added)

29. The Minutes of the planning committee⁴⁷ did not elucidate which heritage assets were said by the committee members to be harmed nor, indeed, how the para.208 balance

⁴⁴ Shellum proof, Table at para. 9.3

⁴⁵ Webb xx CBKC, Day 4

⁴⁶ CD8.1

⁴⁷ CD8.3

had been conducted. The Council's Statement of Case⁴⁸ simply identifies the Conservation Area and 'listed buildings'⁴⁹.

30. While unhelpful, this vagueness of focus is perhaps not surprising as the Council's Conservation Officer could not help - she does not consider *any* heritage asset to be harmed – and, as at the time of submitting the Statement of Case⁵⁰ or, indeed, attending the Case Management Conference⁵¹, the Council had not yet found a heritage consultant to provide any more specificity in order to defend the reason for refusal.

31. In response to the Appellants' request at the CMC that the Council identify both the heritage assets said to be harmed and where in the spectrum of 'less than substantial' each harm was alleged to be, the Council did, on 28th June, eventually produce a 'long list' – one far longer than anyone had previously suggested as relevant, including all the listed buildings along the length of Palmerston Street up to the junction with The Hundred, those associated with Fox Mill, and the Broadlands RPG and Red Lodge. Even then, this list still did not identify the degree of harm within the 'less than substantial category'.

32. Mr Wright, the appointed consultant for the Council, explained⁵² that it was not until his second site visit on 15th July, one day before the due exchange date for evidence, that he was able to refine the previous list, delete the three properties at Fox Mill (which was communicated to the Appellants by email on 16th July⁵³) and add a graded 'degree' of 'less than substantial harm' to his evidence – exchanged on 19th July⁵⁴. This grading was communicated to Mrs Webb sometime between 15th and 19th, in order to allow her to populate the Table at paragraph 11.6 of her proof and come to a weighted planning balance⁵⁵.

⁴⁸ CD7.1

⁴⁹ Note: NOT the Broadlands Registered Park and Garden.

⁵⁰ 14th June 2024

⁵¹ 20th June 2024

⁵² Wright xx CBKC, Day 3

⁵³ The original exchange-date for evidence

⁵⁴ The exchange date extended, it was said, to accommodate the late instruction of the Council's 'design' witness, Mr Burns.

⁵⁵ Confirmed, Webb xx CBKC, Day 4

33. The reduced list, with the grading of harm, at last allowed Mr White for the Appellant to represent the Council's position in tabular and graphic form. These are to be found in his Rebuttal⁵⁶. Cross-referencing this to Mrs Webb's attribution of planning weight at her para 11.6 table helpfully focusses the attention on the issues of importance.
34. First, little time need be expended on Red Lodge or Broadlands RPG. While harm to both was considered (and dismissed) by the Heritage Statement⁵⁷ and the Conservation Officer, and the RPG was left out entirely by the Council's Statement of Case⁵⁸, even at its highest, Mr Wright did not accord the harm to be more than 'very low level of less than substantial harm'. Mr White (and officers) consider 'no harm' to be the correct conclusion, but in her para. 208 balance, Mrs Webb only attributes 'little weight' to Mr Wright's identified level of harm. As such, she readily acknowledged that even her finding of positive weight for 47 retirement apartments ('substantial') alone would outweigh the heritage harm to each of these assets and the 'para. 208 test' would be met⁵⁹.
35. Attention turns to the so-called 'Group 1' properties – ie those lining Palmerston Street from 51 The Hundred to 52 Palmerston Street (but excluding the Prezzo Restaurant/Old Manor House, which is considered separately). As is common ground between the parties, although these listed buildings are grouped for analysis, the para. 208 exercise needs to be undertaken for each heritage asset individually⁶⁰. Mr Wright gave a 'graded' level of less than substantial harm, essentially by distance, from 'medium' at 30-52 Palmerston Street opposite the proposal down to 'very low' at the junction with The Hundred. Listed buildings along the northern side of The Hundred were accorded 'no harm' (coloured green on the map appended to Mr White's Rebuttal). Mrs Webb follows that gradation with a 'low-moderate' planning weight, depending on where the individual listed building sits in Mr Wright's gradation.

⁵⁶ CD7.18

⁵⁷ CD 1.18

⁵⁸ CD7.1

⁵⁹ Webb xx CBKC, Day 4 – obviously if her 'benefits' are correctly adjusted, the balance is yet more strongly marked in favour of the development

⁶⁰ Webb xx CBKC, Day 4, Webb table at 11.6 and Council's Opening, ID2

36. For all the reasons explored with Mr Wright in his evidence and Mr White in his⁶¹, it is respectfully submitted that the Conservation Officer was correct to conclude that this carefully considered scheme will cause *no* harm by virtue of being the setting of these listed buildings. Charming though they all are, there is no sense that they derive the majority or even a substantial part of their significance from the appeal site as part of their setting. The dwellings have no historical or functional link with the appeal site, rather representing the progressive in-filling of plots along the length of the street through the late 18th and early 19th centuries. The lower part of Palmerston Street on the western side within which the appeal site sits is, as Mr Wright accepted, the result of 1960s town planning, with a modern road junction and the now derelict 1960s care-home of no aesthetic or historic importance and planned by the Council to be redeveloped at town-centre densities.
37. It is, respectfully, an abuse of language to characterise the appeal site as ‘semi-rural’. It is wholly urban, backing onto the genuine countryside represented by Broadlands Estate on the other side of the 1930s bypass, albeit bounding the tree belt along the Tadburn Lake, which will be preserved in its entirety. As the planning officer and Conservation Officer correctly concluded, this is a scheme which will *enhance* the character and appearance of the site and will *positively* contribute to the sustaining of of the heritage significance of the nearby listed buildings.
38. However, *even if* Mr Wright’s articulation of harm were to be accepted in respect of the listed buildings in ‘Group 1’, Mrs Webb has now acknowledged (contrary to her written evidence) that the public benefits arising from the scheme would (even on her estimation) outweigh any such harm. Para 208 of the NPPF would be met, and so, accordingly would the Reason for Refusal.
39. The same may then be said of the building known as the Old Manor House, now used as a Prezzo Italian Restaurant and associated car park. Even as far back as the tithe map (1840s) there is no evidence that the Manor House had an agricultural function, being rented from the Palmerstons along with the Orchard (of which the appeal site forms a part)⁶². By the late 19thC and through much of the 20th Century, the larger part of the

⁶¹ Wright xx CBKC, Day 3; White xic and xx SD, Day 3.

⁶² There is no evidence of a ‘farmyard’ on the appeal site, as speculated by Mr Wright [Wright xx CBKC, Day 3]

old Orchard was used as a haulier and coal yard by the Ward family. In the early 1960s, the first phase of Edwina Mountbatten House was built on the parcel nearest Palmerston Street, and shortly thereafter, the rest of the coal yard was cleared to accommodate the new Broadwater Road and the second phase of the care home. This is all shown clearly in the map regression in the Heritage Statement⁶³ and the figures and plates in Mr Wright's own evidence, and accepted through cross-examination⁶⁴.

40. The chief heritage significance of the Old Manor House comes, not from its modern setting, but from its age, fabric, history and associational factors. Ironically its particular prominence in the street scene is as a result of the creation of Broadlands Road in the 1960s which smashed through the buildings clustered immediately to its south and placed it on a busy street corner. The appeal scheme, replacing the current undistinguished 1960s care home will not challenge the heritage significance of the Old Manor House, nor be taken to be itself an historic building, so as to confuse the sequence of historical development. Rather, the appeal scheme will show a considered, congruent 21st Century design, in sympathy with the prevailing character and addressing the Palmerston Street frontage, exactly as commended as 'laudable' by the first Design Review Panel⁶⁵.
41. Once more, it is submitted that the planning officer and Conservation Officer were right to conclude as did the Heritage Statement and Mr White that there would be no harm to the significance of the Prezzo/Manor House as a listed building, indeed there would be a positive result. Mr Wright's 'medium' harm (ie half way to vitiating its heritage significance) is, with respect, very far from the mark⁶⁶.
42. Again, that said, having regard to Mrs Webb's evidence, even such a finding does not justify refusal. Mrs Webb attributed 'moderate' adverse weight to the 'medium' less than substantial harm Mr Wright found. That was, under cross examination a level of harm she accepted would be outweighed by the public benefits she herself had

⁶³ CD1.18

⁶⁴ Wright xx CBKC, Day 3

⁶⁵ Jackson Appx C

⁶⁶ Wright xx CBKC, Day 3

identified⁶⁷. Once more, para. 208 is met – on the Council’s own evidence – and Reason for Refusal 1 is met.

43. Lastly, as to the Conservation Area, we may do a similar exercise. Rather than the ‘semi-rural’ edge Mr Wright had sought to describe, the map sequencing showed this area (the ‘white triangle’) progressively developed as an expansion south of the historic town up to and stopping at the Tadburn Lake/Bypass. Although the appeal site was part of a haulier/coal yard from the late 19th Century and Crossfield Hall and its pool (now car park) were erected in the 1930s, significantly, the modern re-development of the whole of the ‘white triangle’, including the appeal site as a care home, occurred in the 1960s and has continued since.

44. Mr Wright accepted that the correct characterisation of the area in which the appeal site lies (removed with similar areas from the Conservation Area as of no historical value⁶⁸) was actually ‘20th Century urban development, the result of 1960s town planning’⁶⁹. Given that in judging harm to the Conservation Area as a whole, ‘substantial harm’ a finding of ‘medium’ less than substantial harm would amount to claiming that re-development of this part of the setting would be half-way to ‘vitiating’ heritage significance of the Conservation Area – such that ‘very much, if not all, of their significance will be drained away’⁷⁰ – Mr Wright fairly acknowledged that such a conclusion would be irrational⁷¹. (In re-examination⁷², he enumerated a revised position as ‘a 4 out of 10’ in the less than substantial spectrum – arguably still unjustifiably high; again, the case officer, Conservation Officer, Heritage Statement and Mr White were correct, it is submitted, to conclude ‘no’ harm).

45. Mrs Webb had claimed that the ‘medium’ less than substantial harm to the Conservation Area should be accorded ‘substantial weight’. In her written evidence and in her evidence in chief, she justified this by reference to the statutory duty in s.72(1) of the T&CP(LB&CA)Act 1990. In cross-examination, she (as she was obliged to) accepted

⁶⁷ Webb xx CBKC, Day 4

⁶⁸ CD4.11

⁶⁹ Wright xx CBKC, Day 3

⁷⁰ See *Palmer* at para 2.2.6 of Mr White’s proof

⁷¹ Wright xx CBKC, Day 3

⁷² Wright rx, Day 3

that s.72(1) does not apply to development in the setting of a Conservation Area⁷³. Any reliance on it in giving elevated weight, therefore, had been erroneous in law.

46. Mrs Webb had, already, however, volunteered to reduce her finding of ‘substantial’ weight in respect of harm to the Conservation Area should, in the light of Mr Wright’s answers under cross-examination, to ‘medium’ weight.

47. While the Appellant would say that is still significantly overplaying the impact on the evidence, it may simply be observed here that that concession by Mrs Webb ineluctably led her to accept that the alleged ‘medium’⁷⁴ harm to the Conservation Area was outweighed by her own characterisation of the benefits as including ‘substantial’ for retirement housing alone. She acknowledged that it would be irrational to conclude that a ‘moderate’ harm on the one side outweighed a ‘substantial’ benefit on the other⁷⁵. As such, the test in para. 208 is met. The Reason for Refusal sets no other test (indeed it imports the wording from the NPPF) and it, too, accordingly is met.

48. The Appellants submit that the characterisation of harm to heritage assets by the Council’s witnesses (even as amended) is a world away from the true position, where the scheme, as recognised by the Council’s officers, will actually *enhance* the site and *positively contribute* to the heritage assets. Similarly, the Appellant submit that Mrs Webb erroneously under-scored the weight to be given to the public benefits of the proposals. However as just rehearsed, even on the Council’s case for heritage harm, and on its pitching of the weigh to be given to the public benefits, Mrs Webb’s evidence was that the test set within Reason for Refusal 1 was met and, accordingly, that Reason for Refusal fell away⁷⁶.

49. As was confirmed by Counsel for the Council, following Instructions, the Council has formally withdrawn Reason for Refusal 1 and no longer opposes the grant of the permission here sought⁷⁷.

⁷³ Webb xx CBKC, Day 4; and acknowledged by SD, on behalf of the Council [Day 4]

⁷⁴ Judged expressly by reference to matters such as para. 205 of the NPPF and the caselaw such as Barnwell Manor and Mordue

⁷⁵ Webb xx CBKC, Day 4

⁷⁶ *ibid*

⁷⁷ SD, Day 4

Main Issue 2: effect on neighbouring residential amenity:

50. As to the other (formerly) operative reason for refusal, this focused on two runs of houses (No.'s 38-48 and 30-36) along Palmerston Street and on an allegation of enclosure and overbearingness in relation to the residential amenity of their occupiers. Importantly, it was *not* an allegation of harm to the townscape or street scene, nor to pedestrians or 'street users', but rather to the living conditions of these identified occupiers. As such, much of Mr Burn's evidence on design in respect, allegedly, of Reason for Refusal 2 is simply off the point and may be ignored. Similarly, where Mrs Webb discusses Reason for Refusal 2 in the context of comparable character or townscape elsewhere, it is off the point and may be ignored.

51. Importantly, in alleging unacceptable resultant living conditions, the Reason for Refusal does not allege impacts on privacy or loss of sunlight/daylight⁷⁸. Mrs Webb draws the test of being overbearing from the Development Control Practice Manual '*where a development would interfere with the outlook from a living room window, to the extent that the building would appear unduly intrusive and oppressive.*'⁷⁹

52. As a consequence of the way in which the Reason for Refusal is framed, the Appellant can demonstrate the acceptability in terms of outlook/enclosure/overbearingness in one simple proposition:

In the absence of an objection in terms of privacy or loss of sunlight/daylight, it would be irrational to conclude unacceptable living conditions by reference to building-height to road-width if that ratio accords with the published guidance on good placemaking.

Very properly, Mrs Webb accepted that proposition⁸⁰. She could hardly do otherwise.

53. Mr Scott and Mr Jackson for the Appellants called upon the Urban Design Compendium, By Design, Manual for Streets and The National Model Design Code, all of which explore design height to width measures in establishing a comfortable sense

⁷⁸ See SoCG

⁷⁹ Webb proof para 9.13

⁸⁰ Webb xx CBKC, Day 4

of enclosure, varying with street type and function⁸¹. Mr Jackson drew out the existing and proposed ratios according to the methodology of the guidance, using the relationship of the proposal with 48 Palmerston Street, that being the closest façade-to-façade distance. The existing relationship is a ratio of 1:3; the proposed is 1:2. This is comfortably within the varying acceptable relationships identified in the guidance (variously 1:3, 1:1.5 and indeed 1:1 in the National Model Design Code)⁸².

54. The height in each case is taken from the eaves of the taller building. This accords with the diagrams drawn from the guidance in both Mr Scott's evidence and Mr Jackson's. Mr Burns, however, appears to have misinterpreted the drawings as using ridge heights; Mr Jackson explained such a reading of the drawings would be in error⁸³.

55. Mr Burns continued to argue that some other height should be taken than the eaves. He wanted regard to the eaves of the dormers; he also wanted regard to the ridge of the recessive roof plane⁸⁴. Both of these would be an erroneous approach to measuring the height for the purpose of the guidance. The dormers are minor upstanding features in the roofscape, and the height is never taken from the ridge of a recessive roof plane, a matter Mr Burns himself acknowledged⁸⁵. However, as Mr Burns had not done the exercise himself (and actually had got his estimate badly wrong – a typo he called it⁸⁶), the Appellants undertook a theoretical measurement *de bene esse*, resulting in the blue and pink notations on ID7.

56. The result is that it is now demonstrated that, on the correct methodology of measurement (ie to eaves height), the proposal (1:2) meets recommended comfortable street height to width relationships for good placemaking; that if the dormers are erroneously taken into account (1:1.5) it does so; and, even if the wholly unjustified measurement to the ridgeline is taken (1:1.163) it does so.

57. These height figures, it will be recalled all use the height above the datum of the existing road level (ie accounting for the 1.67m step up on the site – thereby overcoming Mrs

⁸¹ See Scott proof and Jackson proof plus Clarification evidence CD7.15.1 and 7.15.2, and ID7.

⁸² See Scott proof p. 23, para 5.20

⁸³ Jackson xic and xx SD, Day 2

⁸⁴ Burns xx CBKC, Day 1

⁸⁵ *ibid*

⁸⁶ *ibid*

Webb's concern about the 'elevated' slab level⁸⁷). In addition, as the façade-to-façade measurements were taken at No. 48 Palmerston Street, so the ratios increase as one moves north, if the relationship with No.48 is in accordance with guidance on good placemaking, No's 38-46 cannot be less so. And lastly, the run of houses 30-36 Palmerston Street actually faces down Broadwater Road, where this issue of building height to road width simply does not arise.

58. All of the above was accepted by Mrs Webb through cross-examination. As such she was compelled to agree that for 30-36 Palmerston Street, Reason for Refusal is simply not applicable, and that for 38-48 Palmerston Street, given that the proposed relationships accord with the guidance on good place-making, it would be irrational to conclude that the resultant living conditions of the existing occupiers would be rendered unacceptable. As such, she acknowledged that Reason for Refusal 2 did not arise on the facts of this case⁸⁸.

59. Accordingly, as with Reason for Refusal 1, the Council withdrew its objection under Reason for Refusal 2 and confirmed that it no longer opposed the grant of planning permission⁸⁹.

Open space provision:

60. There is a dispute covered in the s.106 round table session as to whether the proposed syphoning of monies to public open space provision complies with the Reg 122 CIL tests. Mr Shellum considers that it does not, and those monies should instead be directed to increased affordable housing provision.

61. The matter remains for the Inspector to determine, but the s.106 obligation provides for either eventuality and it is agreed that this matter does not go to the issue of whether permission should be granted⁹⁰.

⁸⁷ Webb xx CBKC, Day 4

⁸⁸ Webb xx CBKC, Day 4

⁸⁹ SD, Day 4

⁹⁰ Webb xx CBKC, Day 4 and confirmed SD, Day 4

Conclusions:

62. This is a scheme which fully complies with the Government's definition of 'sustainable development':

- There is a pressing need for older persons accommodation, which is recognised by the Council and reflected in national policy.
- There is a pressing need for housing of all sorts, which is undeniable whatever the 5-year HLS situation is or will be.
- The scheme makes its agreed contribution to much-needed affordable housing.
- It will provide social benefits for its residents, savings to the public purse on health and social care
- It will provide a more than proportionate boost to local spending.
- All this on a derelict, previously developed site in the built-up area close to the town centre.
- It is agreed to cause no harm to neighbouring residential amenities.
- As to heritage impact, it is agreed that there is no harm to heritage assets or that any such harm is outweighed by the public benefits of the proposal.

63. Accordingly, the appeal scheme is commended to the Inspector to be granted permission, precisely as concluded by the professional officers advising the Council.

64. The Appellants find (along with officers) no heritage harm and no harm to neighbouring amenity. Being entirely, therefore, in accordance with the development plan, the scheme should be granted permission 'without delay', as advised by para. 11(c) of the NPPF.

65. At the conclusion of its evidence, the Council has agreed that neighbouring residential amenity is not an allegation it can sustain and has withdrawn it. If and insofar as there were to be any harm to heritage assets, the Council now accepts that the weight of public benefits means that the scheme passes the test in para. 208 of the NPPF.

66. Accordingly, on the Council's case, national and local policy on protecting heritage assets is met – once more the appeal would be judged as in accordance with the development plan and para 11(c) would be engaged.

67. In any event, on the Council's evidence at the end of this inquiry, it no longer alleges that para. 11(d)(i) of the NPPF would prevent permission being granted and, turning to para 11(d)(ii) the harms would not significantly and demonstrably outweigh the benefits; accordingly the NPPF would urge that permission should be granted.

68. Consequently, the Council no longer opposes the appeal or the grant of planning permission. The Appellant respectfully urges the Inspector that this is the only appropriate decision in the light of the evidence heard.

69. This much needed, beneficial development should be granted permission, in the public interest.

CHRISTOPHER BOYLE KC,

20th August 2024.

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