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## Appeal Decision

Inquiry commenced on 9 March 2021

Site visit made on 28 April 2021

**by Frances Mahoney MRTPI IHBC**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 21 June 2021**

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**Appeal Ref: APP/K3605/W/20/3263347**

**Homebase, New Zealand Avenue, Walton-on-Thames Surrey KT12 1XA**

- 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 Senior Living Urban (Walton) Limited against the decision of Elmbridge Borough Council.
  - The application Ref 2020/0832, dated 31 March 2020, was refused by notice dated 21 October 2020.
  - Development comprising 222 units of care accommodation with associated communal facilities, landscaping, parking, accesses (vehicular and pedestrian), public realm, bicycle stores and sub-station following demolition of existing buildings.
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### Decision

1. The appeal is allowed and planning permission is granted for a development comprising 222 units of care accommodation with associated communal facilities, landscaping, parking, accesses (vehicular and pedestrian), public realm, bicycle stores and sub-station following demolition of existing buildings at the site of Homebase, New Zealand Avenue, Walton-on-Thames, Surrey in accordance with the terms of the application, ref 2020/0832, dated 32 March 2020, subject to the conditions set out in the schedule set out at the end of this decision.

### Preliminary matters

2. The Inquiry sat from the 9-11 March, 16-19 and 22 March 2021 with an unaccompanied site visit on 28 April 2021.
3. The above description of development is not that which was originally set out on the planning application form. Following an exchange on the appropriate Use Class to categorise the nature of the residential units, along with a clarification of the name of the applicant, an amended description was agreed between the parties<sup>1</sup>. The change in essence clarifies the nature of the development being proposed. I am satisfied the change was made early enough in the process<sup>2</sup> so that the proposal was considered, and a decision made by the Council, on the basis of this description. Therefore, the consideration of this appeal should be similarly based.

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<sup>1</sup> Inq Doc 37.

<sup>2</sup> Not long after the original planning application was submitted.

4. At the site visit I noted that the works of demolition had already been completed and much of the rubble removed from the site leaving it construction ready<sup>3</sup>.
5. The Council refused planning permission for seven reasons<sup>4</sup>. At the Inquiry the Council did not defend reasons for refusal three to seven. They were satisfied that through the terms of the completed S106 agreement<sup>5</sup> these matters could be appropriately dealt with. I have no reason to question the position of the Council in this regard and therefore do not propose to consider these matters further.

### **Planning Policy**

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for the District includes the Elmbridge Core Strategy (July 2011) (CS) and the Elmbridge Local Plan Development Management Plan (April 2015) (DMP)<sup>6</sup>.
7. Both the CS and the DMP pre-dates the National Planning Policy Framework (the Framework) and the weight to be ascribed to these policies is dependant on their degree of consistency with the policies within the Framework<sup>7</sup>.
8. The Council is engaged in the preparation of a new Local Plan through which they seek to deliver new and affordable homes supported by infrastructure and services, but delivered in such a way that also protects and enhances the distinctive character and environment of the Borough. Work commenced in 2016. Strategic options were consulted upon initially and the Council then considered the feedback from residents and others and carried out further studies and assessments accordingly. An options consultation was undertaken towards the end of 2019 focusing on the delivery of homes, including affordable housing. In 2020 the vision, objectives and direction for development management policies was also consulted upon. Clearly progress is being made, particularly in the face of the difficulties we have all being living with over the last year or so. However, the emerging Local Plan is not sufficiently advanced or examined and therefore, I can give it little or no weight in my decision-making.
9. As a result, it is the policies of the CS and the DMP which prevail alongside Government policy centred on the Framework.
10. It is an agreed position between the appellant company and the Council that only a 3.96 years supply of housing land can be demonstrated<sup>8</sup>.
11. Paragraph 11, footnote 7 of the Framework is clear where a Council cannot demonstrate a five-year supply of deliverable housing sites, the policies which are most important for determining the application are out-of-date. That position is qualified in that they are not to be ignored. It is for the decision-

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<sup>3</sup> These works of demolition were permitted development as confirmed by the Council by issuing a Prior Approval dated 3 July 2020 – Appendix 2 to the Planning Position Statement.

<sup>4</sup> CD3.3.

<sup>5</sup> Inq Doc 44.

<sup>6</sup> This was produced under the commitment made in the CS to produce further Local Plan documents.

<sup>7</sup> Framework para 213.

<sup>8</sup> Statement of Common Ground (SofCG) para 9.3.

maker to determine the weight to be attributed to the conflict with those policies. This is a matter I will return to later in the decision.

12. The Council has also produced a series of Development Management Advice Notes which were intended to assist applicants when considering new homes in the Elmbridge Borough. I note that the Council has confirmed that the interpretation and application of the relevant development plan policies are consistent with but not dependant upon the Advice Notes<sup>9</sup>. These notes do not appear to have been adopted by the Council and so provide advice, but I can ascribe only limited weight to the content in the decision-making process. It is the policies of the development plan which prevail.

### **Matters for consideration<sup>10</sup>**

#### *Impact on streetscene*

13. The appeal site is located on the edge of the Town Centre of Walton-on-Thames on a site previously occupied by a rather uninspiring retail 'shed', occupied by Homebase, along with an associated expanse of car parking. This corner site<sup>11</sup> has considerable visual prominence in the streetscene and being separated from the main Town Centre development by the A244, it serves as a site of transition between the large scale multi-storey development of the Heart<sup>12</sup>, which includes predominantly retail and eateries at ground floor level with apartments above, and the green open expanse of the Cricket Ground and recreation park off to the south.
14. A significant row of mature trees along the New Zealand Avenue frontage of the appeal site links into an intervening small mature woodland which runs to the west and south of the appeal site. The shady tree canopy provides a welcoming verdant and natural area<sup>13</sup> to sit and enjoy a slower pace of activity from the hubbub of the Town Centre. Well-trodden paths through this wooded area link through to the 'pay and display' car park next to the Cricket Pavilion, skirt the cricket pitch, and then link the Ashley Park Recreational area with neighbouring streets. This area of green space is clearly valued by local residents and was described as a 'green lung' within the urban sprawl of this part of the Borough.
15. To the east and south-east of the appeal site are the distinguished residencies of the Ashley Park Development. Domestic in scale the homes are set in pleasant mature, verdant landscaped gardens, all served from barrier controlled private roads.
16. The proposed design response to the appeal site takes into consideration the site context of the dense urban development of the Town Centre, along with the adjacent mature suburban residential development and wider woodland/park setting to the south.
17. The proposed built form fronting onto New Zealand Avenue would mirror the scale and height of the Heart Town Centre development on the opposite side of

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<sup>9</sup> Mantio email dated 12 April 2021.

<sup>10</sup> Essentially these are matters raised by the interested parties and dealt with at the round table session at the Inquiry, not ones which the Council offered any evidence or opposition to the proposal.

<sup>11</sup> Corner of Ashley Park Avenue and New Zealand Avenue.

<sup>12</sup> Including the Sainsburys building – New Zealand Avenue including development between 2-7 or 8 storeys.

<sup>13</sup> Including the presence of birds and other wildlife. I observed a mature fox foraging around the car park and on the appeal site.

the road, creating a sense of enclosure to the space either side of the main road. The frontage would be well defined by a generous set back from the main road allowing for the retention and safe-guarding of the mature frontage trees and the creation of an attractive public realm, maintaining the already identified linkage of New Zealand Avenue through to the woodland and parkland to the east and south.

18. The proposed contemporary design adopts a façade of division into bays with windows and balconies slightly recessed to create profile and light and shade, resulting in a sense of relief and depth to the expanse of the 8 storey building. That mass and design approach is continued into the proposed leg of the building which would front onto the woodland to the west. However, as the building would turn the corner into Ashley Park Avenue the proposed height and massing would reduce down to 4 stories adopting a series of juxtaposed angular, gable-ended elements which breaks up the building into what can be loosely described as a more domestic scale of development. Whilst not seeking to replicate the character and appearance of the established houses of the Ashley Park development this design approach would result in a complementary visual association which would add to the overall quality of the area<sup>14</sup>.
19. At ground level on the New Zealand Avenue frontage, running directly in line with the main throughfare between the Heart and the Sainsbury element of the Town Centre<sup>15</sup>, crossing the main road via the pelican crossing, the design proposes a pedestrian link passing through to a central plaza and then beyond out into the woodland to the south. This would be a landscaped walkway available for public use with space within the plaza area to linger. The proposed design would embrace this central area with apartments inward facing. The permeability of the scheme that the snaking route would create from the Town Centre to the park and beyond is an expression of the intention of creating a development which seeks to establish connections with the wider community.
20. The central plaza is proposed to be landscaped to draw the verdancy of the trees on the New Zealand Avenue frontage, as well as the park woodland to the south, through the development creating a green corridor far removed from the rather stark hard surfaces of the pedestrian areas within the Heart development just across the road. It would also be made available for community uses such as Farmers markets or exhibitions<sup>16</sup>.
21. The proposed design would be visually attractive and sympathetic to local character with an interesting layout responding to its context establishing a strong sense of place. The arrangement of the buildings and associated spaces would create an attractive and welcoming place to live, work and visit<sup>17</sup>. CS policy CS20 sets out that accommodation for older people should utilise creative design and be of high-quality specification.

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<sup>14</sup> Framework para 127 a).

<sup>15</sup> Nettlefold Walk into Studio Plaza.

<sup>16</sup> This community use and creation of increased green amenity space for the enjoyment of the wider community would make a positive contribution to the advancement of equality and good relations.

<sup>17</sup> Framework para 127 b) to d).

### *Impact on trees<sup>18</sup>*

22. A number of the trees on the appeal site are covered either individually or as groups by Tree Preservation Order EL 92/04<sup>19</sup>. The preserved trees which form part of the frontage avenue of trees along New Zealand Avenue and Ashley Park Avenue are proposed to be retained. The Arboricultural Report and supplementary information<sup>20</sup> sets out how these trees are to be protected during construction works and the improvement of their rooting environment for their long-term retention and well-being. The trees proposed for removal are located more centrally to the appeal site and whilst their loss would be unfortunate, they do not form part of the road-side avenues.
23. The proposed scheme includes in the order of 60 new trees to be planted which would certainly mitigate the impact of the loss of the preserved trees, particularly as these would be spread throughout the design layout, including the frontages and public areas.
24. The one regrettable loss would be the Kowhai tree which is of significant commemorative value having been given by the New Zealand High Commission in 1970 in recognition of the support of the people of Walton-on-Thames and Weybridge for the care shown to the personnel of the New Zealand armed forces, whilst hospitalised in the area after World War 1. The tree was re-dedicated in 2005 in commemoration of the on-going association. The appellant company has been engaged in consultations with the New Zealand High Commission to agree a meaningful way forward to maintain that element of commemoration through the planting of a replacement tree with appropriate explanatory signboards to ensure the significance of the association is not lost. The inclusion of a sculpture within the landscaped central plaza could also be a permanent expression of a time when conflict across the world cost so many lives and yet the selfless contribution of local people offering care to soldiers so far from home is still remembered and valued by their home country.
25. Whilst I acknowledge that some trees, including preserved trees, would be lost as a result of the proposed development, the main structure of avenue trees would be retained and enhanced through appropriate care and management. Significant additional tree planting would be undertaken to mitigate the loss of existing trees and would be incorporated within the comprehensive landscaping design which is integral to the overall design strategy of the development. In this way the existing trees to be retained would form part of an appropriate and effective landscaping scheme<sup>21</sup>.

### *Highways*

26. The Council was advised on highway implications by the Highway Authority (Surrey County Council (SCC)). This body raised no objections subject to appropriate conditions and improvements to pedestrian crossings and the payment of the Travel Plan auditing fee<sup>22</sup>. As a result, this was not a matter in opposition pursued by the Council<sup>23</sup>.

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<sup>18</sup> SofCG para 9.26 -the Council accept the loss of some TPOed trees.

<sup>19</sup> CD8.15

<sup>20</sup> CD2.1.3.

<sup>21</sup> Framework para 127 b).

<sup>22</sup> Dealt with via S106 agreement.

<sup>23</sup> SofCG paras 9.18-9.21.

27. However, concerns were raised by interested parties in relation to the following matters:

- a) Impact on local levels of traffic congestion with associated implications for air quality;
- b) Safety of road users in relation to the vehicular entrance and exit to the appeal site;
- c) Impact on existing on-street parking provision and availability in the context of the adequacy of the level of car parking to be provided for future residents, staff and visitors.

- *a) Impact on local levels of traffic congestion – air quality*

28. The now demolished Homebase had 146 associated car parking spaces. By its very nature associated vehicular movements were likely to be relatively short stop-over journeys whilst using the store. The Transport Assessment<sup>24</sup> bears out this assessment, where at paragraph 5.7, it concludes that the trip generation associated with the proposed development would be less than half that previously connected with the use of the site as a retail unit. On that basis the level of traffic generated by the proposed scheme would be considerably less than that experienced as part of the Homebase site occupation. In conjunction with the appellant company's initiatives in respect of reducing car ownership by the provision of more sustainable means<sup>25</sup>, the proposal would have a positive impact on the levels of traffic congestion in the immediate locality<sup>26</sup>.

29. Consequently, it follows that with significantly reduced generated vehicular trips, the proposed scheme would have a positive impact on air quality in the immediate vicinity. The Air Quality Assessment<sup>27</sup> looked more closely at the wider implications of the proposed development for air quality and concluded that it would not give rise to any adverse impacts with regards to air quality or pollution, including light and noise, a conclusion with which the Council concurred and I have no reason to defer from.

- *b) Highway safety – scheme access*

30. The proposed scheme would take access from Ashley Park Avenue much as Homebase did when it was in operation<sup>28</sup>. In fact, the proposed exit point would be a re-configured version of the main Homebase car park access. A new entrance would be provided some 60 metres south of the exit providing an in-out, one-way access arrangement which would minimise car manoeuvring within this frontage area.

31. There is no suggestion that the proposed design of the access points themselves or the one-way access arrangement would not meet the requirements of the Highway Authority. Having concluded that the proposed

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<sup>24</sup> CD1.2.17.

<sup>25</sup> Car Club, Travel Plan & Village Transport Services – secured by conditions and within the S106 agreement.

<sup>26</sup> I am aware there is some concern over congestion and parking stress during the construction phase of the development. However, this has been taken into account within the Construction Management Plan, including lorry routing, which is secured by condition.

<sup>27</sup> CD1.2.1.

<sup>28</sup> It was claimed that Ashley Park Avenue was a private street. The Council confirmed that the road is only a private street from the point of the location of a gate across the road beyond the access to the public car park adjacent to the Cricket Pavilion.



development would generate less vehicular movements than the previous retail use, and in the knowledge that Ashley Park Avenue is blocked off beyond the proposed entry access with only the Cricket Club, Park and the public car park, along with Ashley Park Crescent sharing access from this road, I do not consider that the proposed access arrangements to the development poses a risk to highway safety as it is alleged.

- *c) Impact on existing on-street parking provision and adequacy of on-site car parking provision*

32. There already exists some time limited on-street parking in Ashley Park Avenue across the side frontage to the appeal site. There are also two car parks within easy walking distance available for visitors and possibly staff to use<sup>29</sup>. Nonetheless, I recognise this area is likely to be subject to parking stress being so close to the Town Centre.
33. Ashley Park Crescent and Avenue, beyond their gates, are private roads and it is clear from the signage that this is the case and that there is to be no unauthorised parking with CCTV in place.
34. Following an individual assessment of the number of car parking spaces required for this development and, in the context of the nature of the parking in the immediate area, it was agreed that a total of 112 car parking spaces would be provided<sup>30</sup>. 98 of these would be within the basement, accessed via a car lift, along with 14 spaces at ground level, close to the main building entrance which would be available for key staff<sup>31</sup> and visitors. Secure cycle storage would also be provided in the basement area as well as at ground level.
35. I am conscious that this is a town centre location where there is ready access to public transport<sup>32</sup>. Further the appellant company, secured via the S106 agreement, would offer a car club programme offering shared vehicles to those who do not wish to use their own car. A shuttle bus is also proposed to be provided for residents for local trips out and appointments, along with a Travel Plan<sup>33</sup>.
36. With the availability of nearby car parks for visitors, along with the mitigating measures offered by the appellant company and, in light of the advice of the Highway Authority and the Council, any overspill parking associated with the development would be likely to be minimal.

*Impact on living conditions of existing residents<sup>34</sup>*

37. The proposed development would represent a transitional form of development stepping down from the multi-storey development of the Town Centre to the domestic scale of Ashley Park. Concerns expressed by local residents, centre on the potential for loss of privacy and outlook.
38. The apartments of the Heart, fronting onto New Zealand Avenue, are set in a distinctly urban, town centre location. In such a location it is reasonable to

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<sup>29</sup> One immediately behind the appeal site adjacent to the Cricket Pavilion and the other as part of the Heart/Sainsburys shopping centre. Both, in the main, would incur a charge to park.

<sup>30</sup> Agreed between the Highway Authority and the appellant company.

<sup>31</sup> Particularly those with peripatetic responsibilities within the wider community.

<sup>32</sup> Buses and trains.

<sup>33</sup> Both secured via the S106 agreement.

<sup>34</sup> SofCG para 9.15 – the Council do not object on this matter.

expect that some mutual awareness of other residences would be apparent. Even from street level indirect surveillance by passers-by of the immediate balcony areas of the apartments is possible to varying degrees. Here the noise and activity of this busy commercial area are characteristic of the environment setting of the apartments and the levels of privacy would not be as one would expect in an area more of a domestic scale. The relationship between the apartments either side of the Nettlefold Walk is a good example of such town centre apartment living.

39. In this instance the separation distance between the proposed frontage block and the Heart would be in the order of 43.53 metres<sup>35</sup>. This would be of sufficient isolation to maintain reasonable levels of privacy in the context of town centre living for both existing residents and the future residents of the proposed development.
40. The outlook from the apartments in the Heart would change were the proposed development to proceed. It would replace the Homebase store and car park with a much larger multi-storey building, which I have already concluded would be of a quality, contemporary design which would mirror the general form of the Heart itself. The new building would not be of an unusual form, mass or scale of building from those within the immediate locality. Therefore, whilst different from the building which had occupied the site previously, in the town centre, urban context, it would not be incongruous and would still provide a pleasant outlook for existing residents.
41. The separation distances between the houses fronting Ashley Park Avenue and the proposed development would be slightly less than across New Zealand Avenue. However, the Ashley Park Avenue element of the proposed building does reduce down to, in the main, 4 stories set more angularly to the street and, with the front of the existing houses also not addressing the street squarely the opportunities for direct invasive overlooking would be minimised.
42. The mature front gardens of the Ashley Park Avenue houses, as well as the remaining avenue trees and proposed landscaping within the parking/drop off and pick up/entrance area of the scheme, would also serve to restrict mutual observation between the developments on either side of the road. This existing and proposed planting would also serve to filter views of the development for existing residents. Their previous outlook of the Homebase building and parking area can only be improved upon by the quality of the design proposed.
43. In respect of whether the proposal would unacceptably overshadow existing properties causing a loss of sunlight and daylight a full assessment was carried out and submitted at the time the planning application was considered<sup>36</sup>. The Council set out its evaluation of that assessment in their Committee Report at paragraphs 9.4.3 – 9.4.6<sup>37</sup>. Taking into account the separation distances between the proposed development and the neighbouring homes along with the orientation of the buildings one to another I have no reason to question that appraisal nor the overall conclusion that the proposed development would not result in any adverse loss of light or privacy to the existing neighbouring residents.

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<sup>35</sup> Inquiry Doc 9.

<sup>36</sup> CD1.2.6.

<sup>37</sup> CD3.1.



- *Overall conclusion on the impact on streetscene, trees, highways and living conditions*
44. The appeal proposal would represent development of a high quality and inclusive sustainable design, integrating sensitively with the locally distinctive townscape, urban landscape and protecting the amenities of those within the area. In this way the relevant terms of CS policies CS3, CS17 and DMP policy DM3 would not be compromised.
45. Further, the development would not have an unacceptable impact on highway safety, and with the general cumulative impact of the identified highway matters having a positive effect on the road network from that of the previous use, there is no question of the impacts being severe<sup>38</sup>.

### **Main issues**

46. So, having considered the matters raised by interested parties I shall now turn to the main issues in contention between the Council and the appellant company. These can be expressed as follows:
- whether the proposed care accommodation (C2 use class – residential institutions) would be an appropriate response to the development of the appeal site, making efficient use of land, in the context of a pressing unmet general housing need (including affordable housing) in the Borough; and
  - whether the proposal would undermine the promotion of a diversity in the mix of uses within the Town Centre with particular regard to the impact on its vitality and viability.

*Whether the appeal proposal is an appropriate response to the development of the appeal site.*

47. As a precursor to consideration of this matter as a whole it is necessary to establish what need there is for a development of this type in the context of the available supply.
- *The nature of the development*
48. The appeal proposal is for care accommodation in Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended)<sup>39</sup>. More specifically it would provide extra care housing for older people being 65 years and over with care needs<sup>40</sup>. The delivery of care would support residents existing care needs on entry, and should those needs change, and increase, the facilities and services available would be capable of responding accordingly.
49. As a minimum, personal care needs would amount to 2.5 hours per week. Schedule 5A of Appendix 1A of the completed S106 agreement sets out a list, which is not exhaustive, of elements of personal care. There was considerable debate over whether having a cleaner come in once a week or using the on-site hairdresser would be considered as part of the personal care package to enable someone to 'fudge' qualifying for residency.

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<sup>38</sup> Framework para 109

<sup>39</sup> Specified within the terms of the S106 agreement.

<sup>40</sup> This would be through the scheme being purpose built along with the presence of a domiciliary care provider (could provide 24 hour care packages). The care would include personal care, nursing care and dementia care. A qualifying person would be someone over 65 years of age who has demonstrated a need through an assessment by a suitably qualified person for the minimum care package.

50. Within Appendix 1A of the S106 the word 'assistance' is repeated throughout. A qualifying person would be someone over 65 years of age who has demonstrated a need through a qualifying person assessment by a suitably qualified person for the minimum care package and the regulated provider of domiciliary care would be registered with the Care Quality Commission<sup>41</sup>.
51. The terms of the S106 agreement and the explanation of the promoted model of the scheme occupancy, provides some reassurance that the proposal for C2 use would not be diluted in some way, resulting in an increasing degree of growth of C3 residential accommodation within the development.
52. There was concern expressed that the spouses or partners of the qualifying person who, themselves may not require assistance, may, in sad circumstances, end up alone in the apartment. When considered in isolation such a resident would not strictly comply with the terms of the definition of a qualifying person. However, this is not likely to be a common occurrence to a point of tipping the overall balance of the C2 use into C3 and it would seem an uncaring and insensitive action to expect a bereaved resident to leave. No doubt they themselves may require assistance over time and in any event would still be paying the management fee to cover the assistance package even if they did not require assistance in the immediate future<sup>42</sup>.
53. 193 Guild Living Residences would be available as private ownership options (leasehold). The other 29 units would be Guild Care Residences and Suites. These would be for rental and would offer larger accommodation seeking to support residents who still wish to live with independence but may have an escalating range of different health/care needs above the minimum, up to and including 24 hour care<sup>43</sup>. Guild Living Residences would also be capable of further adaptation to accommodate increasing care needs.
54. The promoted care model primarily seeks to provide residents with appropriate care in their own home with the offer of increasing their package of care over time as their health circumstances change. The level of care on offer would be akin to that available within a specialist nursing home setting in some cases. Residents would be able to remain in their own familiar surroundings whilst having appropriate care readily available to them. The Guild Care Suites and Residences would also offer step down care for those coming out of hospital if required.
55. The proposed development would also provide services and facilities for use by residents along with the wider community. It is proposed that the café and restaurant<sup>44</sup> at ground floor level would be open to the public and the gym and wellness centre would be accessible to the public through membership. The central plaza and green spaces, linking through from the Town Centre to the woodland and Park to the south, would also draw the public through the development. All of these elements would offer the opportunity for interaction between residents and the local community. I will return to whether the

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<sup>41</sup> Service provider definition in the S106 agreement.

<sup>42</sup> This could be a factor in any decision for them whether to remain or not. This reasoning also justifies the adoption of schedule 5A within the S106 in preference to the terms of schedule 5B. Schedule 5A meets the tests for planning obligations set out in Reg 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (CIL).

<sup>43</sup> Being available for rent would allow for a more rapid move should care needs dictate.

<sup>44</sup> This would include further hospitality space for social gatherings and private functions.

- availability of the public facilities would actually be practicable in the circumstances of their design, location and management, later in this decision.
56. The aim of the Commissioning Statement produced by SCC covering Elmbridge Borough Council, entitled Accommodation with care, residential and nursing care for older people April 2019 onwards<sup>45</sup>, is to maximise independence, choice and control<sup>46</sup>. The Statement promotes a diverse range of accommodation with care options for people with a range of disabilities and needs. It would allow people, regardless of their financial circumstances, to access settings where the built environment and onsite support can address their current and future needs, and this would reduce the risk of having to access more restrictive environments as a result of crisis.
57. When measured against mainstream housing and care homes, extra care is considered by SCC as being in greatest shortage and that the increasing availability of attractive extra care options would reduce the likelihood of older people moving directly into a care home as their care needs increase. The offered reasoning for this is that extra care gives older people the opportunity to live in settings which are designed with increasing needs in mind, with shared facilities which encourage community living, and with care and support readily available should they need it. Housing with Care seems to me to be the overwhelming identified direction of care provision into the future for the County and consequentially the Borough. This model of Housing with Care embraces extra care along with enhanced sheltered housing.
58. Taking all of the above elements into account it is clear to me that this development is being promoted on the basis of a sound and thought through model to care for those whose care needs change as time progresses, and not to massage the entry requirements to admit those who have not yet reached a point of requiring assistance.
59. This model would allow the potential for those over 65, who are already experiencing a degree of requirement for care, to down-size to a new home where their long term care needs could be accommodated without the necessity for a later move to a nursing home. There is a growing awareness of a move away from residential care, to keep people in their own homes for as long as possible and this model of extra care contributes to the fulfilment of this objective.
- *The need for extra care housing.*
60. The National Planning Practice Guidance (PPG) has identified that the need to provide housing for older people is 'critical', given the projected increase in the number of households aged 65 and over accounts for over half of all households.
61. Paragraph 61 of the Framework advises that planning policies should assess and reflect the size, type and tenure of housing needed for different groups in the community, including older people.

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<sup>45</sup> CD4.18.

<sup>46</sup> It is noted that the Commissioning Statement has not been formally adopted by the Council but it does form part of the evidence base informing the progression of the new Local Plan and has been produced by a tier of county government with some responsibilities, particularly in respect of direction, for the provision of care for the elderly. Therefore, it can be taken into account as a material consideration, to which I give some weight in these circumstances.

62. CS policy CS20 indicates that the Council would support development of specialist accommodation for older people in suitable locations to help to deliver the targets for housing provision for older people in Elmbridge.
63. To establish if the proposed development addresses national policy and is supported by CS policy CS20 it is necessary to consider whether there is such need for a C2 scheme of the size proposed in Elmbridge. The Council's position is that there is no proven short or medium term need for extra care or nursing care accommodation in the Borough and that the Town Centre of Walton-on-Thames is well served by elderly accommodation schemes<sup>47</sup>. The applicant company take the converse view.
64. The terms need and demand have been very much mixed in the evidence and supporting documents. The term need implies a requirement for or a necessity. Demand as an economic principle would normally refer to a consumer's desire to purchase goods and services, in this case C2 accommodation, along with appropriate care packages. However, I have noted that in the Commissioning Statement, the defined future demand for extra care in Elmbridge is actually an expression of need supported by a calculation, using the nationally recognised methodology of Housing Learning and Information Network (Housing LIN). I have considered it accordingly.
65. The Elmbridge Borough Assessment of Local Housing Needs (ALHN) dated March 2020 sets out that by 2035 the number of those aged 65 or over in the Borough is projected to be 35,500<sup>48</sup>. This represents a 37% increase on 2020 figures. Within this, the rate for the more senior groups that are more likely to place serious demand on care and health services is higher – a 46% increase is projected for those 75 or over (5,900 increase) and a 80% increase for those 85 or over (3,500 increase).
66. In terms of tenure, the number of couples over 65 owning their own homes outright in the Borough is 82%, with another 8% holding mortgages. 90% of owner-occupiers over 65 under-occupy their homes, including 64% with two extra bedrooms or more. This indicates a considerable scope for downsizing<sup>49</sup>, and also, with a high percentage of owner-occupiers, in an area of high property values, appreciable spending power to make a move to a more appropriate home for those older households with changing needs, with the passage of time.
67. Assessing the need for private extra-care housing draws on the advice in the PPG - Housing for older and disabled people<sup>50</sup>. At paragraph 63-004 reference is made to the possible need to assess future need for specialist accommodation for older people, including extra care by means of online tool kits and it specifically mentions SHOP@ (Strategic Housing for Older People Analysis Tool), which is a tool for forecasting the housing and care needs of older people. The Inquiry included a 'beauty contest' of possible assessment tools and their evolution<sup>51</sup>. Whatever model is used, its output will be determined by the assumptions on which it relies.

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<sup>47</sup> SofCG section 10.

<sup>48</sup> 18% of the Elmbridge population: this is projected to increase to 23% by 2035.

<sup>49</sup> The consequential release of potential family homes onto the market is a benefit of the proposal of some weight.

<sup>50</sup> Gardner proof Appendix A7.

<sup>51</sup> Inq doc 12.

68. Shop@ was the analysis tool of choice for the Council, although it was a starting point as adjustments were made. The fact it was mentioned within the PPG was taken as indicating a good place to start for analysis. However, I am conscious the mention of SHOP@ does not offer a firm endorsement of the product, nor does it suggest this is the only tool which can be utilised.
69. Since the PPG was published<sup>52</sup> Housing LIN removed SHOP@ as a readily available (free) online tool. It is, however, still available from Housing LIN on the basis of commissions<sup>53</sup>.
70. Housing LIN as part of their Analysis Tool Review<sup>54</sup> has identified that there is a need to consider if the methodology, parameters and prevalence rates<sup>55</sup> within the SHOP@ tool are relevant to replicate the current and predicted market conditions. A refinement to the tool is promoted as a recognition that the leasehold sector will grow in most areas of the country, especially the more affluent, at a greater rate than the public sector. In respect of trends within the service areas leasehold Extra Care is recognised as a growth area for certain more affluent areas. Taking into account the outcomes of the ALHN I give this trend significant weight in the context of Elmbridge Borough.
71. The appellant company favour the SHOP toolkit as they consider the prevalence rates better fit the relevant circumstances in Elmbridge<sup>56</sup> the key aspects of which follow:
- (a) a very affluent, property-owning cohort of residents aged 75+, growing in size;
  - (b) some examples of completed and permitted Housing with Care, so that one is not starting from a baseline market without any examples for the market to consider; and
  - (c) a proactive commissioning authority (SCC) which has specifically targeted a substantial increase in Housing with Care and away from care home provision.
72. The parties suggest that the assessment of need is a choice between the SHOP and SHOP@ outcomes. I do not see it as being so black and white. As already indicated each analytical tool kit is only as good as the built-in assumptions. These vary between the toolkits which makes comparison difficult, particularly as full details of neither analysis model are readily available. The argument over whether SHOP was unsubstantiated or that SHOP@ prevalence rates were outdated was not helpful particularly as we were unable to test the toolkit assumptions.
73. SHOP was still in use in other local authority settings in 2018 and its shelving by Housing LIN could, as the appellant company suggest, be part of a commercial strategy, much as SHOP@ has been taken back in-house, now only available for commercial gain. We just don't know.

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<sup>52</sup> 26 June 2019.

<sup>53</sup> It was clarified that Housing LIN accepted commissions to undertake housing needs assessments from both the public and private sector subject to there not being a conflict of interest – Inq Doc 6.

<sup>54</sup> Gardner Appendix 5.

<sup>55</sup> Can be considered as provision rates.

<sup>56</sup> It has been noted that SHOP was withdrawn by Housing LIN in April 2020.

74. There continues to be considerable uncertainty around the assessment of need. I am conscious that the Surrey County Council Commissioning Statement sets out that there is no single, recognised methodology for identifying future residential and nursing care need. They chose to use the Housing LIN methodology although they are specific about which one it is.
75. The County Council strategic direction is to maximise the impact of preventative services, provide additional support to carers and to diversify the range of community support on offer, so that people are able to live in their own homes for longer. They have an ambitious programme for the next 20 years for a more diverse range of accommodation with care options for people with a range of disabilities and needs, with the aim to maximise independence, choice and control. It would allow people, regardless of their financial circumstances, to access settings where the built environment and onsite support can address their current and future needs, and this would reduce the risk of having to access more restrictive environments as a result of crisis<sup>57</sup>.
76. The prevalence rates for extra care and enhanced sheltered together, as defined by the Council are as follows<sup>58</sup>:
- SHOP@ 45 per 1000 people over 75; and
  - Housing in Later Life/SHOP: 65 per 1000 people over 75
77. This is a significant difference which makes a considerable variation to the overall assessment of need. I am conscious that these prevalence rates do not take into account that there may be those in the age cohort 65-74 years of age who also require Housing with Care<sup>59</sup>. In my view it would be unsafe to assume that those in that age bracket would not need appropriate housing for their care needs.
78. Each party also took a different view on what the catchment area should be in respect of the generation of the need figures. The Council concentrated on the local authority area, whilst the appellant company drew their net wider using a market assessment area, which is presented as an industry standard of a 5 mile catchment. I understand the reasoning for adopting this cross-boundary area<sup>60</sup>, but it does not sit well with the other elements of evidence which are specifically related to Elmbridge Borough. I do recognise that some potential consumers would come from further afield than the Borough boundaries, either in respect of wanting to move nearer family, or chasing a particular product or location. Such an appraisal of need beyond Borough boundaries, which could be reliably factored into an assessment, is questionable outside of the

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<sup>57</sup> CD 4.18.

<sup>58</sup> These are as reflected by the Council – they take into account pre-adjustments for an agreed tenure split (73% leasehold, 27% rental) and for health of the local population. I have noted the comments of the appellant company in respect of whether to include a health adjustment or not. The Council has indicated that their assessment is based on census data of some age and centres on those over 75 years of age whose activities are limited a lot. I am considering these figures with a firm 'health' warning as this does not take into account those within the 65-74 age range who could be eligible for residency, nor does it define the limits between 'limited a little' and 'limited a lot', along with the appellants claim that the time lapsed Census data in conjunction with longevity, healthy life expectancy and the lasting effects of the pandemic could suppress need for housing with care in favour of maintaining existing levels of residential care provision. I am also conscious that the population of 75+ year old residents is projected to increase in the Borough overtime.

<sup>59</sup> The appellant company offered the statistic, which was not challenged, that one in five residents in Housing with Care is likely to be 65-74 years of age (Some 20% of residents within housing with care schemes are between 65-74 years of age – an agreed point in Position Statement – Need for Housing with Care). This is borne out by the qualifying age for residency of the proposed development as 65.

<sup>60</sup> Cross-boundary between local authority areas.



formulation of the new local plan. In such a dense urban area of London Boroughs, it may be a factor to be considered in the duty to co-operate. Therefore, the local authority area seems to me to be a better fit in terms of assessing the area of need to be appraised.

79. The prevalence rates should be dependant on the Commissioning Strategy and current service provision. SCC Commissioning Strategy for Elmbridge is one of a movement away from nursing care to a future emphasis on Housing with Care. To consider this further it is necessary to consider current service provision in this product space.

- *Supply*

80. Within the Agreed Position Statement – Need for Housing with Care<sup>61</sup> it is an agreed point that existing provision of private housing with care in the Borough is 116 units<sup>62</sup> and proposed supply of private extra care in Elmbridge is 119 units<sup>63</sup>.

81. The point in contention is whether the 44 units at Whitely Village should be included as part of the supply. These have yet to be constructed but form part of an extant planning permission which includes the provision of an extra 44 care home units, including communal and ancillary facilities. Whitely Village is a housing charity supporting the health and wellbeing of older people. Their focus is to support the health and wellbeing of up to 450 older people who are unable to buy or rent their own home on the open market. They do, however, offer residential and nursing care for those who can self-fund as well as a limited number of purchase leasehold options.

82. The Whiteley Trust helpfully provided some indication of at what stage the Charity finds itself<sup>64</sup>. They do not know when the 44 units would come forward. This may depend on state funding as they are not in a position financially to self-fund. They did not rule out the provision of the units for private leasehold, but they did emphasise their primary focus is on provision for the poor and elderly people.

83. In considering whether the Whiteley units are deliverable the site has planning permission in place and it is consequently a suitable location for development. However, there is considerable doubt whether the development would be achievable with a realistic prospect that housing would be delivered on the site within five years. By the Trust's own assertion their intentions are uncertain. Their first intention would be to obtain state funding for the development to build homes for the elderly of an affordable nature.

84. Bearing in mind that permission was given in May 2017 and, as at March 2021<sup>65</sup> there was no indication that the project had moved forward in any direction, I consider, in these circumstances, there is clear evidence that the permitted development would not be achievable with a realistic prospect that the homes would be delivered on the site within five years. Therefore, the 44 units should not be included in the future supply and the supply both existing and permitted is as set out above.

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<sup>61</sup> CD9.37.

<sup>62</sup> 51 units at Edward Place in Walton on Thames and 65 units at Austin Place in Weybridge.

<sup>63</sup> 43 units under construction at Campbell House in Weybridge (under construction) and 76 units at Audley Fairmile in Cobham (planning permission granted May 2020).

<sup>64</sup> Inq Doc 14.

<sup>65</sup> The date of the informative email Inq Doc 14.

*– Overview on future housing provision for older people*

85. Having established supply, it is now necessary to consider the overall picture.
86. The consideration of the beauty contest of toolkits to calculate need for Housing with Care essentially results in a comparison of apples with pears as elements in the various models vary and assumptions are inconsistent<sup>66</sup>.
87. The SCC Commissioning Statement, whilst dated April 2019 onwards, is a leaping off point and one which adopts the methodology of Housing LIN. Whilst not specified, it is likely that this would have been SHOP@. It uses a prevalence rate of 25/1000 for extra care. This needs to be adjusted to include enhanced sheltered housing<sup>67</sup> at 20/1000 and the split tenure of 73/27<sup>68</sup> applied. It produces a need figure of 493 units with a population aged 75+ in 2025 being 15,000. Purely based on this figure up to 2025 with a supply of 235 there is a net need of 258. I am conscious that these figures do not pay any regard to those between 65 and 74 years of age who may generate further uncertain levels of need. Figures into the future suggest an upward trend for unmet need, but considering up to 2025 is sufficient to make the point.
88. I have also considered whether the COVID 19 pandemic may influence levels of demand into the future. I have no reason to question the appellant company's assertion that Housing with Care performed well in keeping residents safe. There is some logic to this as residents have their own self-contained apartments which provide some safe space for individuals. Staff would also have been available to assist with shopping, care, obtaining medicines etc. It is likely there may be some initial reluctance to consider a move to such a development<sup>69</sup> post-pandemic, but the drivers for people to move to an environment where appropriate care can be provided will still be there. Therefore, I give this factor little weight in my consideration.
89. Therefore, in respect of future housing provision the appeal proposal would make a significant contribution to this specific area of housing need to which I give considerable weight.
- Whether the proposal is an appropriate response to the development of the appeal site when weighed against other development needs*
90. Having established the need for the proposed development the Council then asks that the challenge to balance the competing demands for different uses in an area, where suitable development land is scarce, should be considered. This situation of the scarcity of development land is not uncommon in dense urban environments. The Council's aim is to establish if the proposal is an efficient use of land in this context.
91. CS policy CS1 identifies that new development will be directed towards previously developed land within the built-up area. The appeal site is just such a site.
92. The term 'efficient use of land' appears in the Framework at paragraph 123 c). This paragraph appears under the heading of 'Achieving appropriate densities'. There is no question that the appeal proposal, in respect of density, layout,

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<sup>66</sup> As much as can be ascertained from the evidence before me.

<sup>67</sup> Agreed point.

<sup>68</sup> Agree point.

<sup>69</sup> Or any move to more communal living.

design, impact on local character and setting, and the promotion of sustainable travel modes does not make efficient use of the land in that context and does not offend Development Plan policy nor associated policies in the Framework in this regard.

93. The issue as promoted by the Council in its simplest form is whether the established need for Housing with Care in the Borough outweighs the need for other local housing needs in an environment of a scarcity of suitable land for such development. I agree with the appellant company that the reference in paragraph 122 of the Framework is more about not under using land in a development sense. In paragraph 123 c) the meaning of efficient use of land is more closely connected to a consideration of spatial/density related matters referred to in the following sentence to paragraph 123 in respect of living standards. It does not create a policy environment to place an overall housing need into an internal hierarchy of one type of housing need balanced against another. However, in any event I have considered the matter below.
94. The appeal site is designated as part of the Town Centre. It could therefore accommodate a range of town centre multi-uses, including residential<sup>70</sup>.
95. It is an agreed point that the Council does not have a 5 Year Housing Land Supply being only able to demonstrate 3.96 years<sup>71</sup>. The appeal proposal would contribute 209 units to local housing need and this implies that the identified need for Housing for older people in the Borough, including Housing with Care, is an integral part of the Council's identified housing need.
96. That need will be reassessed as part of the new local plan process and no doubt some of the Council's work relevant to this appeal may be included in the evidence. Further, the duty to co-operate may also include discussions about cross-boundary migration of older people to access Housing with Care.
97. However, for the purposes of this appeal the need for Housing with Care, whether already expressed or to be included, is an integral part of the housing need of the Borough and the site would contribute to the supply of housing within the next 5 years.
98. I understand that across the Borough there are significant land use constraints, 60% being Green Belt or subject to other substantial planning or environmental constraints<sup>72</sup>. Of the remaining 40%, in a relatively dense urban area, much is already developed in providing infrastructure. Nonetheless, my attention was drawn to a number of sites close to the Town Centre which had potential for re-development for mixed uses, including housing. That said such ad hoc identification is only a short-term response. It is via the new local plan that allocated sites, including brownfield land needs to be identified and assessed.
99. The Council has a pressing need for smaller units of market housing<sup>73</sup> and, on the back of this would likely come affordable homes, again with significant unmet need in the Borough. The proposed development of C2 homes would not generate any affordable houses.

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<sup>70</sup> CS policies CS3 & CS18 apply.

<sup>71</sup> SofCG para 9.4.

<sup>72</sup> Such as SPA, SSSI and areas susceptible to flooding.

<sup>73</sup> 1-2 bedroom units representing 70% of need. 1-3 bedroom homes represent 90% of need.

100. CS policy CS17 – Local character, density and design, sets out under the heading Local Character that new development will be required to deliver high quality and inclusive sustainable design, which maximises the efficient use of urban land. This is a design-based policy where the efficient use of land is placed in the context of character, design and density.
101. CS policy CS3, a policy specific to Walton-on-Thames, indicates that within the town centre, new development will be promoted in a way that delivers high quality, well designed public spaces and buildings, makes efficient use of land and adds to the centre’s attractiveness and competitiveness. Again, the efficient use of land is closely aligned with design and public spaces and buildings.
102. DMP policy DM10 does require development to promote house types and sizes that make the most efficient use of land and meet the most up to date measure of local housing need<sup>74</sup>. Having concluded that there is an established need for Housing with Care and that this forms part of the overall local housing need this policy would not be offended by the proposal.
103. None of these policy references give policy support to the Council’s position. The term efficient use of land, in my judgement, in the main, is used in a different context relating to design and density.
104. Development Management Advice Note 1: Understanding Housing Need<sup>75</sup> sets out that in line with paragraph 123 of the Framework, schemes that do not make efficient use of land will be refused. I have already set out that these are just advice notes and so are of limited weight. Further I have commented on the context of paragraph 123 and its applicability in respect of balancing one housing use against another and I do not intend to repeat myself.
105. However, refusing development which is compliant with both development plan policy and national policy just because it is not what has been identified as housing of the type of most pressing need, would basically mean that no development on such land would be able to proceed until the pressing need for new small 1-3 bedroom housing is satisfied. This cannot be right. There is an established need for Housing with Care and a duty upon the decision-maker to advance equality opportunities between the elderly and younger members of society<sup>76</sup>. It would create a hierarchy of development not reflected through adopted development plan policy, essentially stifling development in the Borough. The new local plan will be able to allocate development land as required and prioritise development through properly constructed and examined policy.

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<sup>74</sup> There could be a tension between CS policy CS19 which seeks to secure a range of housing types and sizes on developments and resist an over concentration of any one type of dwelling if this is considered to have potential to adversely affect community cohesion, and CS policy CS20 which offers support for specialist accommodation for older people in suitable locations. However, the appeal proposal includes units of a range of sizes which respond to one sector in housing need, a response in respect of accommodation types which would not be uncommon or unexpected in a development of this type. A response to community cohesion has been designed into the proposal through public access to ground floor services and the creation of the central green pathway and space which would attract the community and create linkages with future residents. Therefore, I am content that the policy relationship between these policies is relaxed and not at odds in this case.

<sup>75</sup> CD4.9.

<sup>76</sup> Public Sector Equality Duty – created under the Equality Act 2010.

*Impact on the Town Centre – vitality and viability*

106. Whether the appeal proposal would contribute to the vitality and viability of the Town Centre is a key issue. It has already been established that this is a designated town centre site, but one which is not identified as being primary or secondary frontage as set out in CS policy CS18 or on the proposals map.
107. As already described above the proposed development frontage onto New Zealand Avenue mirrors the development of the Heart and this would include the nature of the ground floor uses, in particular restaurant food offers which are concentrated in this area. The issue for the Council is whether the proposed restaurant, which the appellant company promote as being open to the public as well as to residents, would, in the practicality of use, be so available. This also applies to the proposed gym and wellness suite.
108. Much play was made at the Inquiry of how future residents may take priority over public walk-ins in respect of bookings for restaurant tables. Schedule 9 of the S106 agreement is clear that there would be no preferential treatment in accessing the restaurant/café or the flexible/multi use space for future residents over members of the public. The agreement also requires the setting up of a booking system to which both residents and the public would have equal access<sup>77</sup>.
109. The Council also suggested that the restaurant, along with other ground floor facilities, being located within an extra care setting, would be decorated and equipped to appeal more to those of the age of future residents which may not be appealing to the wider public. This seems an absurd suggestion. People over 65 years of age are also members of the public and no doubt enjoy frequenting local restaurants which will have a range of décor from smart, chic to themed and minimalist. It would be a wrong assumption that their style and decorative tastes widely differ in fashion from those of a younger age.
110. I visited the Audley Villages development at Nightingale Place, Clapham to observe a similar type of publicly accessible café/restaurant, gym and wellness centre offer. The café/bar/restaurant appeared as a well laid out and styled space more akin to a quality hotel. It was accessed through the main reception which was similarly styled and there were doors out onto an outside seating area. These would be similar arrangements to those proposed in this case. I saw no physical barriers in respect of putting off members of the public to using the facility and I would anticipate that would be the case for the restaurant/café now proposed.
111. I am also conscious that the restaurant/café would be located close to the thoroughway from the Town Centre to the proposed central plaza and the Park beyond. The proposal offers a convenient stop-off for coffee or a lunch for those walking through.
112. The proposed gym and wellness centre would be on the small size and certainly not akin to one of the national chain's facilities. However, the S106 agreement requires the setting up of a membership scheme, which would include members of the public. Gyms appeal to users in different ways depending on the type of training required and aspirations for outcomes. I have no doubt this smaller gym, along with the pool, wellness centre and yoga and pilates

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<sup>77</sup> Schedule 9 - Management Plan of the S106 agreement is compatible with the tests for planning obligations set out at Regulation 122 of CIL.

- classes would be attractive to those looking for a quieter, less intense training experience.
113. In conclusion, I am satisfied that the proposed ground floor uses would be equally available to future residents as well as to members of the public and there is a mechanism in place to secure this relationship<sup>78</sup>.
114. With the above conclusion in mind the contribution of the proposed development to the vitality and viability of the Town Centre can be considered.
115. The impression given at the Inquiry by the Council was of a town centre in a state of vulnerability having recently lost some prime retailers. I made my site visit purposefully a few weeks after non-essential retail was allowed to open again after the lockdown which commenced in late December 2020. What I observed on a wet Wednesday morning was a town centre of some vibrancy with a considerable number of shops, food outlets and services such as hairdressers open for business and welcoming customers. Sainsburys was busy and there was noticeable footfall around the Heart as well as along New Zealand Avenue, the High Street and Church Street where many independent shops, eateries and services are located.
116. The proposed establishment of the restaurant/café on the Park side of New Zealand Avenue would extend the vitality of the Town Centre across the road drawing those enjoying the retail offer of the Heart into the communal spaces of the proposed development, through to the woodland and Park beyond, whilst offering another possibility to spend time at leisure, either inside the restaurant or in its tree shaded outside frontage space. This arrangement would add a different dimension of pavement café culture to this side of New Zealand Avenue to positively enhance its vibrancy and character.
117. In addition to the ground floor business contribution, the future residents of the apartments<sup>79</sup> could bring their spending power to the Town Centre. With Sainsburys only a very short walk across New Zealand Avenue from the main reception of the apartments, and other shops and services in the Heart, the High Street and the immediate surroundings, similarly a short stretch of the High Street, residents would almost certainly shop local and use convenient local services such as personal grooming, dentistry and the varied independent retailers and service providers within the locality. That is surely one of the advantages for future residents of the site's location, much as the residents of the Heart's C3 apartments benefit.
118. It was suggested that as the development would include hair and beauty services and the restaurant offer, residents would be more likely to stay within the confines of the development. Again, I consider this to be a misjudging of the likely benefits of the development location so close to the Town Centre where a greater mix of services, retail and leisure facilities would be on the doorstep ready to be enjoyed by future residents. That must be an obvious locational benefit.
119. The scheme would also generate some 59 FTE jobs, including within the restaurant, gym and well-being suite. These workers may also use the Town Centre to shop or dine.

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<sup>78</sup> Schedule 9 of the S106 agreement which is compatible with the tests for planning obligations set out at Regulation 122 of the CIL.

<sup>79</sup> Over 350.



120. DMP policy DM3 sets out that diversity of uses in town centres will be encouraged and will resist large, single use buildings unless mixed use development has first been explored and discounted for viability and feasibility reasons. As already discussed above the appeal proposal includes a mix of uses at ground floor addressing the Town Centre frontage.
121. I am satisfied that the appeal proposal in the context of the terms of the S106 agreement in relation to the Management Plan would represent a building in mixed use which would positively contribute to the vitality and viability of the Town Centre offering the introduction of a diversity of uses, particularly at ground floor level, which would compliment and consolidate on the current leisure offer within the Town Centre, as well as provide a future resident population conveniently located to contribute to the viability of the Town Centre through their spending power. In this way the terms of CS policies CS3, CS18 and DMP policy DM3 would not be compromised.

### **Conditions and obligations**

#### *Conditions<sup>80</sup>*

122. A range of conditions was discussed and agreed (without prejudice) at the Inquiry. I have made minor amendments in the interest of precision.
123. Only conditions which are formally required to be discharged prior to works commencing on site have been promoted as pre-commencement conditions. These have been agreed by the appellant company<sup>81</sup>. These are imposed as they involve details to be approved for the arrangements of the work on site.
124. With the agreement of the appellant company the time limit for the implementation of this full permission has been reduced to two years. This is as a result of the development being promoted as making a significant contribution to the 5 year housing land supply. The early delivery of the development was an element taken into account in favour of the proposal.
125. A condition specifying the relevant drawings would be important as this provides certainty and clarity.
126. There are a number of highway related conditions. A Highway Condition Survey is considered necessary as the development construction works could have implications for the highway condition over the course of building works and a survey would set a baseline for condition assessment. A Post Construction Highway Survey would ensure that the development would not adversely impact on the condition of local highways. The Construction Environmental Management Plan would also seek to secure the free flow of traffic and highway safety. Improvements to pedestrian crossings in the immediate vicinity would safeguard highway safety particularly for future residents of the development. Timely provision of the access points onto Ashley Park Avenue would further safeguard highway safety along with the provision of parking and turning facilities.
127. A condition confirming the provision and retention of the pedestrian link through the development is also necessary to secure the community benefit

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<sup>80</sup> Inq Doc 43.

<sup>81</sup> Inq Doc 24.

- that was promoted in this regard, as well as the linkage between the wider community and future residents of the development.
128. To promote sustainable modes of transport and practices, conditions relating to cycle parking, travel plan, provision of fast charging electric sockets have been imposed.
  129. Taking into account the appeal sites previous use it is necessary to ensure that the land is uncontaminated so the development can safely proceed with no adverse effects from pollution on the environment, harm to human health or general amenity.
  130. To secure the satisfactory drainage of the site in the context of the general surroundings and any flood risk, details of surface water drainage are required to be submitted and agreed.
  131. Conditions in respect of the retention, maintenance and protection of existing trees along with the landscaping (both hard and soft landscaping) of the appeal site, external material samples to be agreed, detailed architectural drawings are imposed to secure the satisfactory external appearance of the buildings and protect and enhance the character and appearance of the locality.
  132. To secure the living conditions of existing and future residents, conditions are imposed relating to a limitation of noise from proposed fixed plant, low noise levels between commercial premises and dwellings, Construction Environmental Management Plan implementation, details of balcony privacy screens, restricted access to building 2, sixth floor terrace area and the restriction of delivery of goods and waste collections.
  133. To secure acceptable environmental conditions in the area conditions are imposed dealing with air quality, external noise, biodiversity (impact upon protected species), requirement for a Landscape and Ecological Management Plan and external lighting scheme.
  134. The appellant company suggested that an appropriately worded condition should be imposed to secure public access to the communal area facilities within the development (wellness suite, flexible fitness/event multi-use space and the café/restaurant – all at ground floor level). I do not agree. As at Nightingale Place these elements of the scheme could, at some point, be run by a third party. Further the setting up of a membership scheme for the wellness suite and booking to access the multi-use space and café/restaurant, in addition to the securing of a common pricing structure and avoidance of preferential treatment for future residents over other members of the public are all elements which go beyond that which can be reasonably be secured by condition. Whilst the appellant company might argue that Guild Living may have overall control, the securing of public access has been fundamental to my decision both in respect of the impact on the Town Centre as well as in considering the nature of the overall combination of uses of the proposed development. Therefore, these matters are best dealt with through the terms of the S106 agreement (see Schedule 9 Inq Doc 44).

*Obligations*<sup>82</sup>

135. I have already referred to planning obligations in respect of sustainable transport provisions, including Travel Plan, Car Club provision and parking space and the Village Transport Service, being necessary and justified. The restriction of the residences within the scheme not to be used for Class C3 use, whilst acknowledging that spouses or partners of qualifying persons may continue to live in their homes even after the qualifying person may have moved on to a more intense care facility or may have passed, has also been referred to.
136. The planning agreement also contains obligations in respect of waste and recycling facilities. The intention is for this to be managed privately and it is important for details of the waste collection contract to be known to secure an adequate disposal and collection service.
137. The security management plan is necessary as the immediate locality of the appeal site falls within an area which has suffered from anti-social behaviour with a Public Spaces Protection Order being in place. The permeability of the proposed development, whilst being a community benefit of the scheme, was identified by Surrey Police as having potential to add to the poor behaviour already experienced. The Council and the appellant company have agreed that the security management plan should include the use of a security company for the lifetime of the development. The provision of this element does need to be secured by means of the terms of the legal agreement.
138. Overall, I find that all of the identified provisions are considered to be necessary, in order to make the development acceptable taking into account the terms of the Statement of justification for obligations. The statutory tests in Regulation 122 of the Community Infrastructure Levy Regulations are met, and that the provisions of the planning agreement are material considerations in this appeal.

**Overall conclusion**

139. Due to a lack of a 5 Year Housing Land Supply it was an agreed matter that the tilted balance in favour of sustainable development should apply unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole<sup>83</sup>.
140. Having assessed the proposal against the policies of the Development Plan, and the Framework as a whole, no policy harms have been identified.
141. There are a number of identified benefits which the appellant company detail in Mr Spence's proof para 5.6-5.7. These are generally uncontested, and I acknowledge the social, economic and environmental benefits, and would highlight that the appeal proposal does make a significant contribution to the supply of housing and specialist accommodation both locally and nationally<sup>84</sup>.
142. In the absence of harm there are no adverse impacts of granting planning permission and so there is no balance to be drawn, harm v benefits.

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<sup>82</sup> Inq Doc 44 & CD8.20.

<sup>83</sup> Framework paragraph 11.

<sup>84</sup> Framework para 59 – in the particular circumstances of a lack of a 5YHLS.

Therefore, this appeal should be allowed and planning permission granted for the proposal<sup>85</sup>.

*Frances Mahoney*

Inspector

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<sup>85</sup> In reaching this decision I have taken into account the terms of the various appeal decisions brought to my attention in so far as they are relevant based on the limited submitted evidence in each case.

### **Schedule of conditions**

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

2. The development hereby permitted shall be carried out in strict accordance with the following list of approved plans and documents:

- 19023-MPI-XX-XX-DR-A-01\_001 Rev P1 LOCATION PLAN - EXISTING
- 19023-MPI-XX-XX-DR-A-01\_002 Rev P1 LOCATION PLAN - PROPOSED
- 19023-MPI-XX-XX-DR-A-01\_004 Rev P1 SITE BLOCK PLAN - PROPOSED
- 19023-MPI-XX-00-DR-A-20\_001 Rev P1 PROPOSED ROOF LEVEL MASTER PLAN
- 19023-MPI-XX-B1-DR-A-20\_002 Rev P1 LEVEL B1 MASTER PLAN
- 19023-MPI-XX-00-DR-A-20\_003 Rev P1 LEVEL 00 MASTER PLAN
- 19023-MPI-XX-01-DR-A-20\_004 Rev P1 LEVEL 01 MASTER PLAN
- 19023-MPI-XX-02-DR-A-20\_005 Rev P1 LEVEL 02 MASTER PLAN
- 19023-MPI-XX-03-DR-A-20\_006 Rev P1 LEVEL 03 MASTER PLAN
- 19023-MPI-XX-04-DR-A-20\_007 Rev P1 LEVEL 04 MASTER PLAN
- 19023-MPI-XX-05-DR-A-20\_008 Rev P1 LEVEL 05 MASTER PLAN
- 19023-MPI-XX-06-DR-A-20\_009 Rev P1 LEVEL 06 MASTER PLAN
- 19023-MPI-XX-07-DR-A-20\_010 Rev P1 LEVEL 07 MASTER PLAN
- 19023-MPI-ZZ-B1-DR-A-20\_100 Rev P1 BASEMENT - LEVEL B1
- 19023-MPI-ZZ-00-DR-A-20\_101 Rev P1 GA PLAN - LEVEL 00
- 19023-MPI-ZZ-01-DR-A-20\_102 Rev P1 GA PLAN - LEVEL 01
- 19023-MPI-ZZ-02-DR-A-20\_103 Rev P1 GA PLAN - LEVEL 02
- 19023-MPI-ZZ-03-DR-A-20\_104 Rev P1 GA PLAN - LEVEL 03
- 19023-MPI-ZZ-04-DR-A-20\_105 Rev P1 GA PLAN - LEVEL 04
- 19023-MPI-ZZ-05-DR-A-20\_106 Rev P1 GA PLAN - LEVEL 05
- 19023-MPI-ZZ-06-DR-A-20\_107 Rev P1 GA PLAN - LEVEL 06
- 19023-MPI-ZZ-07-DR-A-20\_108 Rev P1 GA PLAN - LEVEL 07
- 19023-MPI-ZZ-08-DR-A-20\_109 Rev P1 GA PLAN - ROOF LEVEL
- 19023-MPI-XX-ZZ-DR-A-20\_200 Rev P1 SECTION AA, BB
- 19023-MPI-XX-ZZ-DR-A-20\_201 Rev P1 SITE - SECTIONS
- 19023-MPI-XX-ZZ-DR-A-20\_202 Rev P1 PROPOSED ELEVATIONS 01 AND 02

- 19023-MPI-XX-ZZ-DR-A-20\_203 Rev P1 PROPOSED ELEVATIONS 03, 04 AND 05
- 19023-MPI-XX-ZZ-DR-A-20\_204 Rev P1 PROPOSED ELEVATIONS 06 AND 07
- 19023-MPI-XX-ZZ-DR-A-20\_205 Rev P1 SITE - ELEVATIONS
- 19023-MPI-XX-ZZ-DR-A-20\_206 Rev P1 PROPOSED ELEVATIONS 01 AND 02 - TREES REMOVED FOR CLARITY
- 19023-MPI-XX-ZZ-DR-A-20\_207 Rev P1 PROPOSED ELEVATIONS 03, 04 AND 05 - TREES REMOVED FOR CLARITY
- 19023-MPI-XX-ZZ-DR-A-20\_208 Rev P1 PROPOSED ELEVATIONS 06 AND 07 - TREES REMOVED FOR CLARITY
- 19023-MPI-XX-ZZ-DR-A-20\_209 Rev P1 SITE - ELEVATIONS – TREES REMOVED FOR CLARITY
- 19023-MPI-XX-ZZ-DR-A-20\_290 Rev P1 SUBSTATION - 19023-MPI-XX-ZZ-DR-A-21\_300 Rev P1 TYPICAL BAY STUDY – BAY 1- BUILDING 1 & 2
- 19023-MPI-XX-ZZ-DR-A-21\_301 Rev P1 TYPICAL BAY STUDY – BAY 2 - PEDESTRIAN GATEWAY BUILDING 1
- 19023-MPI-XX-ZZ-DR-A-21\_302 Rev P1 TYPICAL BAY STUDY – BAY 3 - BUILDING 3 & 4
- 19023-MPI-XX-XX-DR-A-30\_100 Rev P1 TYPICAL UNIT LAYOUTS – 2 BED M4(2) & M4(3)
- 19023-MPI-XX-XX-DR-A-30\_101 Rev P1 TYPICAL UNIT LAYOUTS - AGED CARE SUITES
- 602\_S\_00\_100\_P02 General Arrangement Landscape Sections A-A
- 602\_S\_00\_101\_P02 General Arrangement Landscape Sections B-B TPP 1 Rev 1 Tree Protection Plan for Demolition
- 602\_P\_00\_100\_P05 Landscape General Arrangement Plan; and - Arboricultural Report and Tree Condition Survey ref. 032020-8110 Rev 2 (March 2020 Revised September 2020).

3. No development shall commence until a Highway Condition Survey has been submitted to and approved in writing by the Local Planning Authority detailing highway condition before construction commences.

4. To ensure the potential for contamination has been investigated and the necessary action taken to make the development site suitable for its proposed use, the following steps must be completed to the satisfaction of the Local Planning Authority. No construction shall be commenced until step (a) has been completed by a competent person. Furthermore, there shall be no occupation of any part of the site by any end user prior to meeting the terms of this condition in full.

a) Site Investigation, Method Statement and Remediation

i) A written site-specific investigation plan using the information obtained from the preliminary investigation (Contaminated Land Assessment, Plowman



Craven, April 2020, ref CB/CS/P20-1989/01 Rev A), providing details of the investigation for soil, gas and controlled waters where appropriate, shall be submitted to, and approved in writing by, the Local Planning Authority.

ii) The site investigation shall be undertaken in accordance with the scheme agreed by the Local Planning Authority. The results of the site investigation, a refined conceptual model and a risk assessment of any contamination found shall be submitted to and approved in writing by the Local Planning Authority.

iii) A written Method Statement with verification plan, detailing any remediation requirements and how successful implementation of these requirements will be verified shall be submitted to and approved in writing by the Local Planning Authority.

b) Development in accordance with the Method Statement The development of the site shall be carried out in accordance with the approved Method Statement, and any addenda submitted by the developer, and agreed in writing by the Local Planning Authority. Any post remediation monitoring identified in the Method Statement shall be installed by the developer within the timescales identified in the Method Statement and maintained and operated for as long as identified by the Method Statement.

c) Unsuspected Contamination - If, during development, contamination not previously identified, is found to be present at the site then no further development shall be carried out until the developer has submitted a written addendum to the Method Statement detailing how the unsuspected contamination shall be dealt with and the addendum has been approved in writing by the Local Planning Authority. The identified measures shall be implemented as agreed.

d) Piling - Development approved by this permission shall not commence unless a Foundation Works Risk Assessment for piling foundations (if piling is to be used on site) has been submitted to and agreed in writing by the Local Planning Authority. The piling shall be undertaken only in accordance with the method outlined in the approved Foundation Works Risk Assessment.

e) Imported material - Clean, uncontaminated rock, soil, brick rubble, crushed concrete or ceramic only shall be permitted as infill material. The developer shall not import any material until a sampling program, including appropriate import criteria for the proposed end use and frequency of sampling, has been submitted to and approved in writing by the Local Planning Authority. The Developer shall carry out the approved sampling program to check that all imported material conforms to the agreed criteria. Where the permitted end use is residential, the sampling program shall also include samples taken from the imported material after final placement. Written confirmation of the suitability of all imported materials shall be provided to the Local Planning Authority as part of step (f). This shall include both the results of the sampling program and also details of the origin, transport, final deposition and any temporary stockpiling of the imported materials.

f) Completion of Remediation and Verification Report - Note: Verification by an independent, competent person must be carried out prior to occupation of any part of the site by any end user. Remediation detailed in the Method Statement shall be completed prior to occupation of any part of the site by any end user. Prior to occupation of any part of the site by any end user a written Verification

Report shall be submitted to and agreed in writing by the Local Planning Authority providing verification that the required works regarding decontamination and installation of post remediation monitoring, have been carried out in accordance with the agreed Method Statement and any addenda thereto. The verification shall be carried out and reported by an independent, competent person, stating that remediation was carried out in accordance with the approved remediation scheme and that the site is suitable for the permitted end use.

5. The development hereby permitted shall not commence (except for the demolition) until details of the design of a surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The design must satisfy the SuDS Hierarchy and be compliant with the national Non- Statutory Technical Standards for SuDS, NPPF and Ministerial Statement on SuDS. The required drainage details shall include:

- a) Evidence that the proposed final solution will effectively manage the 1 in 30 & 1 in 100 (+40% allowance for climate change) storm events, during all stages of the development. Associated discharge rates and storage volumes shall be provided using a maximum staged discharge rate of 4.9 I/s 1 in 1 year, 10 I/s 1 in 30 year and 11.6 I/s for 1 in 100 year +40%.
- b) Detailed drainage design drawings and calculations to include: a finalised drainage layout detailing the location of drainage elements, pipe diameters, levels, and long and cross sections of each element including details of any flow restrictions and maintenance/risk reducing features (silt traps, inspection chambers etc.).
- c) A plan showing exceedance flows (i.e. during rainfall greater than design events or during blockage) and how property on and off site will be protected.
- d) Details of drainage management responsibilities and maintenance regimes for the drainage system [a compliance with which is subject to Condition 28].
- e) Details of how the drainage system will be protected during construction and how runoff (including any pollutants) from the development site will be managed before the drainage system is operational. The surface water drainage scheme shall be fully installed prior to the first occupation of the site in accordance with the approved details.

6. No development (excluding demolition) shall take place and no equipment, machinery or materials shall be brought onto the site for the purposes of the development until a pre-commencement meeting has been held on site and attended by a suitable qualified arboriculturist, representative from the Local Planning Authority and the site manager/foreman. The site visit is required to ensure operatives are aware of the agreed working procedures and the precise position of the approved tree protection measures or/and that all tree protection measures have been installed in accordance with all documentation submitted to and approved in writing by the Local Planning Authority to comply with the Additional Arboricultural Information condition (7).

7. No development (excluding demolition) shall take place until all supporting arboricultural information has been submitted to and approved in writing by the Local Planning Authority. Arboricultural information is to be in accordance with the Arboricultural Report and Tree Condition Survey (Revised September 2020)

and are to be implemented and secured over the course of construction. This shall include further details of the:

- a) measures taken to protect existing trees and hedges during construction, including offsite trees where root protection zones encroach within the site area, delivery / storage of materials and machinery, including final specifications for all protection barriers to be used;
- b) location and installation of services/utilities/drainage/soakaways, including services to automated gates.
- c) details of construction and installations including methodologies within a root protection area or that may impact on retained trees, including off-site trees where root protection areas encroach within the site area.
- d) full specification for the construction of any roads, parking areas, driveways, hard surfacing, including details of no dig specification and extent of the areas to be constructed using no dig surfacing.
- e) detailed levels and cross sections to show that the raised levels of surfacing, where the installation of no dig surfacing within root protection areas is proposed (including off-site trees where root protection areas encroach within the site area), demonstrating that they can be accommodated.
- f) all arboricultural site monitoring and supervision required for the duration of the development.
- g) methods to improve the rooting environment for retained and proposed trees and landscaping. The development thereafter shall be implemented in strict accordance with the approved details.

8. No development (excluding demolition) shall take place until full details of all proposed tree planting have been submitted to and approved in writing by the Local Planning Authority. Details are to include species, sizes, locations, planting pit design, supports, and guards or other protective measures to be used. Details shall also include planting times and maintenance schedules for aftercare to ensure good establishment. Taking into consideration the size of the site and anticipated area for new planting, the Local Planning Authority expects a minimum of 66 new trees (with 20 of those trees to be planted at semi mature sizes - 25cm+ girth) to be planted to maintain future arboricultural amenity. All tree planting shall be carried out in accordance with BS 8545:2014 and the details approved prior to the occupation of any part of the development in accordance to the timetable agreed with the Local Planning Authority. If within a period of 5 years from the date of the planting of any tree, that tree, or any planted in replacement for it, is removed, uprooted or destroyed or dies, another tree of same size and species shall be planted at the same place, in the next available planting season or sooner. The development shall be completed in accordance with the approved details.

9. a) Development (excluding demolition) shall not commence until a scheme setting out the details of development to comply with the requirements of paragraph (b) of this condition have been submitted to and approved in writing by the Local Planning Authority.

b) The rating level of the noise emitted from fixed plant on the site shall be 5dB below the existing background level at any time. The noise levels shall be

determined at the façade of any noise sensitive property. The measurements and assessments shall be made according to BS 4142:2019.

c) The development shall not be occupied until the scheme approved pursuant to paragraph (a) of this condition has been implemented in its entirety. Thereafter the scheme shall be retained and maintained as agreed in perpetuity.

10. Construction works shall be carried out in accordance with the submitted Construction Environmental Management Plan (CEMP) dated February 2021 (revision 6) prepared by Wates Construction. All proposed mitigation measures must be implemented in full during the construction phases. The delivery of materials shall only occur during site working hours set out in section 5.0 of the Construction Environmental Management Plan (CEMP) dated February 2021 (revision 6): Monday to Friday: 0800 to 1800 hours Saturday: 0800 to 1300 hours Sunday and Bank Holidays: Site closed.

11. The development must be carried out in accordance with the submitted Air Quality Assessment, including any proposed mitigation measures, prepared by Hydrock Consultants Limited Project No. C-12025-C Document Ref: GLW-HYD-XX-XX-Y-RP-0003-P02 dated 31 March 2020. The approved scheme shall be maintained thereafter.

12. The development must be carried out in accordance with the submitted Environmental Noise Survey and Acoustic Design Statement prepared by Hann Tucker Associates document reference 26963/ADS1/Rev 4 dated 30 March 2020. The recommended mitigation measures within the report must be implemented in full and retained thereafter to ensure that the building design complies with the requirements of BS 8233:2014. A verification report to confirm that recommended mitigation measures within the report have been carried out in accordance with the Environmental Noise Survey and Acoustic Design Statement prepared by Hann Tucker Associates document reference 26963/ADS1/Rev 4 dated 30 March 2020 shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the development.

13. The development shall be carried out in accordance with the recommended mitigation and enhancement measures as proposed in 'Ecological Enhancements and Mitigation' section of the Ecological Assessment by Tyler Grange ref. 12686\_R02e\_CC\_HM dated 06/07/2020. The recommended mitigation and enhancement measures shall be shown on the landscaping scheme to be submitted to and approved in writing by the Local Planning Authority under condition 17. The mitigation and enhancement measures shall be implemented during the first planting season following the first occupation of the development following which, within 3 months of first occupation, a written statement confirming compliance shall be submitted to and agreed in writing by the Local Planning Authority.

14. No development above the ground level shall commence until an external lighting scheme, with incorporated zone plan and proposed mitigation measures, has been submitted to and approved in writing by the Local Planning Authority. The external lighting scheme is to provide details of the extent of light spill and details of the wavelength of lighting. The external lighting plan shall be based on the Lighting Strategy prepared by Gia Equation Lighting

Design Ltd ref: 3086 Rev. P3 dated 30 March 2020. The approved scheme shall be implemented before first occupation and maintained thereafter.

15. No development above the ground level shall take place until samples of the materials to be used on the external faces and roof of the building have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

16. No development shall take place above ground floor slab level until detailed drawings at a scale of 1:10 and sections at 1:5 of the following parts of the development:

- i) Windows and window surrounds,
- ii) External Doors and door surrounds, and
- iii) Railings/ Balconies, Overhangs and Awnings

have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained thereafter in accordance with the approved details.

17. No development above the ground level shall take place until full details of both hard and soft landscaping works have been submitted to and approved in writing by the Local Planning Authority. This scheme shall include indications of all hard surfaces, walls, fences, access features, the existing trees and hedges to be retained, together with the new planting to be carried out [also note the requirement of Condition 13]. The submitted details are to include the biodiversity mitigation and enhancement measures as proposed in 'Ecological Enhancements and Mitigation' section of the Ecological Assessment by Tyler Grange ref. 12686\_R02e\_CC\_HM dated 06/07/2020. Additionally, the submitted information shall include details of the replacement Kowhai tree, as set out in the Arboricultural Report by Ruskins Tree Consultancy (RG Consultancy Ltd) dated March 2020 and revised in September 2020. The approved landscaping scheme shall be implemented during the first planting season following the first occupation of the development. Any trees or plants, which within a period of five years of the commencement of any works in pursuance of the development die, are removed, or become seriously damaged or diseased, shall be replaced as soon as practicable with others of similar size and species, following consultation with the Local Planning Authority in writing, unless the Local Planning Authority gives written consent to any variation.

18. No development above the ground level shall take place until a detailed Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. The LEMP should include details of the proposed impact and mitigation for the species and habitats, details of enhancement measures and adequate details of the following: - Description and evaluation of features to be managed and created including measures to compensate for proposed loss of tree and hedge removal; - Numbers and locations of bat and bird boxes, including provision integral to the design of the new buildings; - Details of the implementation timetable and monitoring of the LEMP; and - Aims and objectives of a long-term management; The approved details shall be implemented in full to the satisfaction of the Local Planning Authority in accordance with the LEMP.



19. An assessment of the pedestrian crossings associated with the site together with the suggested detailed works to improve the facilities for users of the development (as per section 5.8 of the Transport Statement) shall be submitted to and approved in writing by the Local Planning Authority. The development hereby approved shall not be first occupied or first opened for trading until all approved works to the facilities have been provided. These shall be retained and maintained to the satisfaction of the Local Planning Authority for the lifetime of the development.

20. No part of the development shall be first occupied unless and until the proposed vehicular and modified accesses to Ashley Park Avenue have been constructed and provided with visibility zones in accordance with the approved plans and thereafter the visibility zones shall be kept permanently clear of any obstruction over 1.05m high.

21. The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for vehicles to be parked and for the loading and unloading of vehicles and for vehicles to turn so that they may enter and leave the site in forward gear (plans no. 19023-MPI-XX-XX-DR-A-01\_004 Rev P1 SITE BLOCK PLAN – PROPOSED and 19023-MPI-ZZ-B1-DR-A20\_100 Rev P1 BASEMENT - LEVEL B1). Thereafter the parking / loading and unloading / turning areas and any mechanical equipment including the car lift and the stacking parking system necessary to ensure the functioning of the basement parking facilities shall be retained and maintained in full working order and for their designated purposes.

22. Details of the proposed basement secure and lit cycle parking shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the first occupation of the development and thereafter retained and maintained for its designated purpose.

23. Prior to first occupation of the development, a Post Construction Survey shall be carried out, submitted to and approved in writing by the Local Planning Authority. The survey shall identify any damages to the highway associated with the construction of the development and how the repair works would be carried out. The works shall be implemented in accordance with the approved details in agreement with the SCC Highways Authority prior to first occupation of the development.

24. The approved 'Travel Plan' dated April 2020, Ref: 3019012/D/7B shall be implemented prior to the occupation of the development and for each and every subsequent occupation of the development. The Travel Plan shall be thereafter maintained and developed to the satisfaction of the Local Planning Authority.

25. Prior to the first use of the development, a detailed scheme shall be submitted to, and approved in writing by, the Local Planning Authority setting out how the construction of the separating floors/ceilings between and the residential and commercial premises shall exceed an airborne sound insulation value of 53 dB DnT,w+Ctr (i.e. 10 dB above the standard required by the Building Regulations Document E). The scheme approved by the Local Planning Authority shall be fully implemented in accordance with the approved details, before the use hereby permitted, commences. The works and scheme shall



thereafter be retained in accordance with the approved details. A suitably qualified person, on behalf of the developer, shall carry out post-completion testing to ensure that the above sound insulation value has been achieved, before the use commences. The approved scheme shall include an agreed timetable for the results of the assessment to be submitted in writing to the Local Planning Authority for a written approval.

26. The completion schedule/report of all arboricultural site supervision and monitoring submitted and approved in compliance with the Additional Arboricultural Information condition, shall be submitted to and approved in writing by the Local Planning Authority within 20 working days of the completion of the development hereby approved. This shall include evidence of compliance through supervision and monitoring of the agreed activities by a suitably qualified arboriculturist.

27. Balconies/terraces serving the following apartments hereby approved – at the first floor B2-112 and B1-101, at the second floor B2-213, B1-201, A1-203 and B1-206, at the third floor B2-313, B1-301, B1-306 and A2- 303, at the fourth floor B2-413, B1-401, B1-406 and A1-403, at the fifth floor B2-513, B1-501, B1-506 and A1-503, at the sixth floor B2-608, B2- 609, B2-612, B1-601, B1-606 and A1-602, and seventh floor B2-705, B2- 706, B2-707, B1-701, B1-702, B1-703, B1-704 (multiple), A1-701, A1- 702, shall be provided with a balcony privacy screen. No development above the ground level shall take place until the details of the balcony privacy screens, including the level of glazing obscenity proposed, have been submitted to and approved in writing by the Local Planning Authority. The screens shall be implemented prior to the first occupation of the development and permanently maintained in strict accordance with the approved details.

28. Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved in writing by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of the developer's or operator's management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls). The approved surface water drainage scheme as per Condition 5 shall be retained and maintained in perpetuity.

29. The development hereby approved shall not be occupied unless and until 20% of the proposed parking spaces (23 in total) are provided with a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply), 12 of these to be located in the above ground parking areas and 11 of the spaces within the basement parking area. All other parking spaces shall be provided with the infrastructure to allow for a charging point to be added at a later date in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to the first occupation of the development and thereafter retained and maintained to the satisfaction of the Local Planning Authority.

30. There should be no access to the southern terrace of Building 2 at the sixth floor (between apartments B2-608 and B2-609) unless for the maintenance

purposes. Reason: To preserve the privacy of neighbouring residents in accordance with Policy DM2 of the Elmbridge Development Management Plan 2015.

31. During the operational phase of the development, deliveries of goods to and waste collections from the premises shall only be carried out between the following hours: Monday to Saturday 07.00hrs to 21.00hrs, Sundays and Bank Holidays 09.00hrs to 15.00hrs. Reason: To avoid adverse impacts on health and quality of life from noise in accordance with paragraph 180 of the NPPF, Policy DM5 of the Elmbridge Development Management Plan 2015 and the Noise Policy Statement for England.

32. Pedestrian access is to be permitted to the through route linking New Zealand Avenue to the north and Ashley Park to the south, save for one day a year when this route will be closed to prevent a public right of way being established on the site and save in the event of an emergency or for maintenance works.

**APPEARANCES**

FOR THE COUNCIL

Charles Banner QC

He called

Justin Gardner

Justin Gardner Consulting

Blathnaid Duffy

Director Lambert Smith Hampton

Aneta Mantio

Special Projects Officer, Planning Team, EBC

FOR THE APPELLANT COMPANY

Rupert Warren QC

He called

Matthew Serginson

Development Director, Guild Living

Jessamy Venables

Associate Carterwood

Neil Mc Cullough

Associate Director, Oxford Economics

Tim Spencer

Associate Director, Nexus Planning

INTERESTED PARTIES:

Cllr Christine Richardson

Elmbridge Borough Councillor – Walton Central

Cllr Chris Sadler

Elmbridge Borough Councillor - Walton Central

Sue Cooper

Walton & Hershaw branch of the Labour Party

Tracey Blandford

Walton on Thames Trading Alliance

**Documents submitted during the Inquiry**

1	Appellant Opening Statement
2	LPA Opening Statement
3	Whiteley Homes Trust – Whiteley House care home strikes platinum for quality care
4	Whiteley House Unilateral Undertaking (application ref. 2016/3472)
5	Future Market Split - SHOP@ Dashboard - SHOP@ - SHOP - Strategy - Extra Care - Topics - Resources - Housing LIN
6	Email correspondence between Mr Gardner and Housing LIN
7	Agenda for Interested Party Session (11 March)
8	Appellant's response to Third Party comments
9	CD1.1 Site Block Plan – Proposed – with annotated dimensions
10	Appeal decision 3237026 – Oak Farm Solihull
11	Third Party Submission - C2 & C3 use schemes in proximity of the site
12	Older Peoples Housing Needs Assessment Timeline – Mr Gardner and Ms Venables
13	Appellant's Communal Spaces Comparison (Guild Living / Edward Place)
14	Whiteley Village – Email from Ms Venables 10th March
15	Link to The Options Consultation
16	Guild Living – Note on Monthly Management
17	Guild Living - Schemes comparison (Walton, Bath, Epsom, Uxbridge)
18	Ground floor plan - Bath
19	Ground floor plan - Epsom
20	Ground floor plan – Uxbridge
21	Ground floor plan - Walton
22	Appendix SOCG_8 Draft Planning Conditions (update 18 March)
23	Draft S106 Agreement – 18 March (changes tracked)
24	Appellant's email confirming agreement to pre-commencement conditions
25	Guild Living – Uxbridge application - Planning Statement
26	Vacancy Rates at Edward Place
27	Development Management Advice Notes – Status
28	Development Management Advice Notes – Status – email confirmation of meetings and decisions
29	Decisions 12th-Oct-2018 09.15 Individual Cabinet Member Decision Making - Planning
30	Decisions 23rd-Jan-2019 09.00 Individual Cabinet Member Decision Making - Planning
31	Printed minutes 12th-Oct-2018 09.15 Individual Cabinet Member Decision Making - Planning
32	Printed minutes 23rd-Jan-2019 09.00 Individual Cabinet Member Decision Making - Planning
33	Comparison of publicly accessible facilities between Guild Scheme & Audley Nightingale
34	CLlr Mrs Richardson – Extra Care Homes
35	CLlr Mrs Richardson – Note on Pollution

36	Cllr Mrs Richardson – WHO – Health risks of air pollution in Europe – HRAPIE project
37	Change of development description (at application stage) – please note Invalid Letter (in CD9.35 – Appendix D) and Letter from CMS dated 10 June 2020 (in CD2.2.7)
38	Change of development description (at application stage) - Email correspondence dated 4 May – 18 June 2020
39	LPA’s Closing Statement
40	Appellant’s Closing Statement
41	Horsham District Council v Secretary of State for Communities and Local Government and another [2015] EWHC 109 (Admin)
42	Site Visit route – map
43	Agreed list of suggested conditions
44	Agreed S106 legal agreement
45	Land Registry Document – Official Copy (Title Plan)
46	Land Registry Document – Official Copy (Register)