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## Appeal Decision

Inquiry held on 3-6 and 10 July 2018

Site visit made on 10 July 2018

**by Michael Boniface MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 July 2018

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**Appeal Ref: APP/Z1510/W/17/3188192**

**Former Bramston Sports Centre, Bridge Street, Witham, CM8 1BT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Churchill Retirement Living against Braintree District Council.
  - The application Ref 17/01145/FUL, is dated 22 June 2017.
  - The development proposed is redevelopment to form 60 retirement living apartments, communal facilities, access, car parking and landscaping.
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### Decision

1. The appeal is dismissed and planning permission is refused.

### Preliminary Matters

2. I have removed the appellant's reference to 'lodge manager's accommodation' from the description of development set out above, as this did not form part of the proposal by the time of the Inquiry.
3. During the course of the appeal, the appellant submitted amended drawings in an effort to resolve some of the Council's concerns. The amendments included revisions to the levels of the car park, the introduction of an additional lift along with attendant internal rearrangement, alterations to the proposed balconies and the introduction of a new front entrance feature. The appellant undertook consultation with all interested parties and consultees, allowing opportunity for comments to be made. The proposed amendments are relatively minor alterations that do not alter the substance of the proposal and the Council confirmed at the Inquiry that it did not object to their submission. I am satisfied that no party is prejudiced by the amendments and the appeal proceeded on the basis of the amended scheme.

### Main Issues

4. No formal decision was made by the Council in this case but it has since confirmed that, had it been empowered to do so, it would have refused planning permission for the following reasons:
  - i) *The development will involve the provision of a large scale residential development on a site, substantial parts of which fall within Flood Zone 3a and Flood Zone 3b. In such locations, and in accordance with the Sequential Test, development within the "more vulnerable" category of flood risk is either inappropriate (Zone 3b) or only appropriate where it can meet the Exception Test (Zone 3a).*

*As the proposed development is one that could be accommodated on other sites at lower flood risk (within Witham's Town Boundary and elsewhere within development boundaries across the District) and as the development provides no wider sustainability benefits to the community that outweigh flood risk, the proposed development would be contrary to both national and local plan policy concerning flood risk as set out in Policy CS8 of the adopted Core Strategy, Policies LPP78 and LPP80 of the Publication Draft Local Plan, Section 10 (Meeting the Challenge of climate change, flooding and coastal change) of the National Planning Policy Framework (NPPF) and the Technical Guidance to the National Planning Policy Framework.*

- ii) *The Council considers that the application of restrictive policies involving land at risk of flooding indicate that development should be refused here, in accordance with footnote 9 of the National Planning Policy Framework (NPPF), as set out in the reason for refusal above.*

*Further, or alternatively, even if a tilted balance were to apply under paragraph 14 of the NPPF, whilst the Council acknowledge that it cannot currently demonstrate a 5 year supply of housing land, the Council considers that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole.*

*In this case, the Council recognises the benefits of allowing development but concludes that the adverse impacts, as set out below, significantly and demonstrably outweigh the benefits:*

- The poor quality of the residential environment that would be enjoyed by prospective residents, as a consequence of the limited aspect to many of the flats; the deficiency in the amount of useable and private amenity space; the limited parking provision and the poor relationship with existing and planned neighbouring uses, all of which are indicative of an over-development of the site, contrary to policies RLP 10, RLP19, RLP56, RLP90 of the adopted Local Plan, policies SP6, LPP45, LPP50, LPP51, LPP55 of the Publication Draft Local Plan and Section 7 (Requiring Good Design) of the NPPF.*
- The poor quality of the design of the proposed building due to the enormity of its footprint, the monotony and lack of architectural interest or identity to its elevational treatment and its unresponsiveness to the form, grain, scale and character of existing development, all to the detriment of the character of the local area, failing to preserve or enhance the character of the Witham Conservation Area, contrary to policies RLP 90, RLP95 of the adopted Local Plan, policy CS9 of the adopted Core Strategy, policies LPP50, LPP55, LPP56 of the Publication Draft Local Plan and Sections 7 (Requiring Good Design) and 12 (Conserving and Enhancing the Historic Environment) of the NPPF.*
- The inability, due to the scale of built development and associated hard surfacing, to make provision for any effective landscaping, resulting in a development which presents a harsh new built edge to this part of the town, detracting from the appearance and amenity value of the River Walk which abuts the site to the east, contrary to policies RLP86 of the adopted Local Plan and policy LPP53 of the Publication Draft Local Plan and Section 8 (Promoting Healthy Communities) of the NPPF.*
- The inability to secure sufficient flood risk mitigation without relying on land beyond the application site and/or outside the applicant's control, contrary to Policy CS8 of the adopted Core Strategy, Policies LPP78 and LPP80 of the Publication Draft Local Plan, Section 10 (Meeting the Challenge of climate change, flooding and coastal*

*change) of the NPPF and the Technical Guidance to the National Planning Policy Framework.*

- *The failure of the proposal to secure the required contribution towards affordable housing and public open space/enhancement, contrary to CS2, CS10 of the Braintree District Core Strategy and Policy RLP138 of the Braintree District Local Plan Review.*

*iii) Policy CS2 of the Braintree District Core Strategy states that affordable housing (or where appropriate, a financial contribution in lieu of such provision) shall be provided by the developer as part of major residential schemes. In addition, Policies CS10 of the Core Strategy and Policy RLP 138 of the Local Plan require proposals for new residential development to make provision for publicly accessible green space or improvements to existing accessible green space. The Council has adopted an Open Space Supplementary Planning Document which sets out the process and mechanisms for the delivery and improvement of open space in the District. In this case, the contributions sought would be £789,462 in lieu of affordable housing provision and £49,320 in relation open space provision/enhancement.*

*These contributions would need to be secured through a Section 106 Agreement. It has not been demonstrated that the scheme would become unviable were these contributions to be made and, accordingly, in the absence of a Section 106 Agreement to secure them, the proposed development would be contrary to the policies referred to above.*

5. Having regard to these putative reasons, the main issues in this appeal are the effect on the character and appearance of the area, including the Witham Town Centre Newland Street Conservation Area; whether the Sequential and Exception Tests are met in the context of flood risk; whether suitable living conditions would be created for future occupants of the development; and whether necessary planning obligations would be secured, having regard to financial viability.

## **Reasons**

6. There is no dispute between the parties that the site is, in principle, appropriate for residential development of the type proposed in the application, being a brownfield site within the town boundary.
7. It is common ground that the Council cannot currently demonstrate a deliverable five year housing land supply and so relevant policies for the supply of housing should not be considered up to date. However, the Council argues that specific policies in the National Planning Policy Framework (the Framework) indicate that development should be restricted. I consider these matters in turn, before dealing with the remaining main issues and other matters.

### *Character and appearance*

8. A small part of the site, where the proposed vehicular access to the development would be situated, falls within the Witham Town Centre Newland Street Conservation Area. The Council raises no concerns in respect of this part of the proposal and there is no suggestion that the development within the conservation area itself would fail to preserve or enhance the character or appearance of it. The remainder of the site is directly adjoining the conservation area and it is the contribution of the wider site to the significance of the conservation area as a part of its setting that remains in dispute.

9. Witham has evolved from a medieval settlement and has developed along the route of Newland Street, a long straight road of Roman origin. The medieval origins of the town remain evident in the traditional market place, some remaining timber framed buildings and the linear settlement pattern with long narrow plots. However, strong Victorian and Georgian influences are now apparent in the architecture of the town. Historically, the river corridor remained open and largely unbuilt upon, having been used for agriculture and traditional industry. The Conservation Area Appraisal and Management Plan (2007) (CAA) identifies that the river and its green margins provide open views and visual contrast with the closely built-up Newland Street.
10. A verdant riverside walk is now in situ and an undeveloped corridor remains apparent. Demolition of the former Bramston Leisure Centre and site clearance works have created a greater amount of openness in the vicinity, though the large hard standing that remains and tall site hoardings limit any heritage contribution in my view. The proposed development would undoubtedly have an effect on the openness of the site but gardens and a 'riparian meadow' are proposed in the part of the site closest to the river and these would be landscaped so as to maintain a verdant and undeveloped appearance, adding to the generosity of the river corridor despite the more constrained space for landscaping on the remainder of the site.
11. During the inquiry, Mr Broadhead suggested on behalf of the Council that the harm arising from development would be less than substantial, and at the lower end of the spectrum. For the reasons that I have set out, I consider that even this level of harm is an overstatement. The medieval origins of the town would remain apparent regardless of the development, particularly its layout along Newland Street with a green corridor along the river. So far as the open river corridor contributes to the setting of the conservation area, this aspect of significance would remain. In my view, increasing the amount of openness would not add to appreciation or understanding of the town's evolution.
12. Figure 27 within the CAA identifies good views within the conservation area, none of which would be affected by the appeal proposal. It also notes that the (now demolished) Bramston Sports Centre was fairly well landscaped and planted, set back within the site so that that the large 1970's building was not prominent in the historic streetscape. I see no reason why the same would not apply to the appeal proposal, particularly as some landscaping could be secured by condition.
13. Much emphasis is placed by the Council on the failure of the proposed building to reflect the characteristics of character zone 5, identified in the CAA. This area is said to include important trees and river views with small scale buildings in short, broken rows, built-up to the street edge. They are generally more domestic, of varied detailing and age with small plots. This reflects the medieval grain and design of the settlement along the main street.
14. The proposed development would not reflect these characteristics, being a large building within a large site some distance from the route of the historic road. Zone 5 is a small area, identified as incorporating traditional buildings with similar characteristics. The site stands apart from it, being more reflective of the large Academy site and leisure centre to the west, which now accommodate large contemporary buildings. The proposed building would not be seen as part of character zone 5 or the wider conservation area and to

- attempt to mimic elements of it in a large modern building would do it no credit. The proposed building would be sufficiently removed from the built form of the historic settlement that it could accommodate a building of differing scale, form and appearance.
15. The proposed building would not be visible from any of the identified 'good views' within the CAA and very limited visibility would be available from elsewhere in the conservation area, including from the road bridge. This is particularly so given the substantial intervening tree planting which would heavily filter views from the conservation area even in winter. The Council is in the process of selling the site in front of the appeal site for development and this would be likely to further reduce any spatial or visual relationship with the conservation area. I do not consider there to be any good reason why development on the site should reflect characteristics that are simply not characteristics of the appeal site, its size and situation, and where the building would be seen as an entirely separate entity.
  16. The Council suggest that the CAA did not identify any 'good views' or otherwise positive contribution from the site to the significance of the conservation area because the former sports centre was seen as a detractor. This position is not supported by the CAA, as I have already mentioned. This building has now been demolished but the CAA has not been updated and for the reasons I have set out I do not agree that the site, in its current form, adds to the significance of the conservation area.
  17. Criticism of the proposed building's detailed design was also made by the Council, noting that it would be a large three storey building of significant scale and mass. I have already determined that the scale of the building is reflective of the large buildings adjacent to the appeal site and that its setback position means that it would not be viewed as part of the conservation area. In this context, I do not share the Council's concerns that the building would be large or modern in appearance. It would be a modern building within a large site and would not be dissimilar in size to other flatted developments within or close to the conservation area, such as Moorfield Court.
  18. The building would incorporate a shallower roof pitch than more traditional buildings within the conservation area, would have a more horizontal emphasis and modern fenestration and materials. The building would be large but the various projecting elements and variations in roof height would serve to break up its scale and mass, whilst providing a degree of visual interest. I do not consider it necessary for the building to seek to replicate traditional features of the conservation area in this case, albeit that it is often appropriate for development to reflect local distinctiveness. In this case, the proposal is a modern building of a modern design and whilst there is nothing architecturally outstanding about the proposal, it would not be inappropriate to its context, nor would it compete with or detract from the positive characteristics of the conservation area.
  19. For all of these reasons, I do not consider that the proposed development would harm the significance of the conservation area. The proposed development is suitable in both design and heritage terms and so there are no restrictive policies within the Framework engaged in these respects. I find no conflict with policies RLP 86, RLP 90 or RLP 95 of the Braintree District Local Plan Review (2005) (LPR); or policy CS9 of the Core Strategy (2011) (CS)

which seek, amongst other things, to conserve heritage assets, require a high standard of design and the maintenance of river corridors. Furthermore, I find no conflict with policies LPP 50, LPP 53, LPP 55 or LPP 56 of the Publication Draft Local Plan (2017) (DLP), which have similar objectives.

*Flood risk*

20. The site is located with Flood Zones 1, 2, 3a and 3b (as defined within Planning Practice Guidance (PPG)), meaning that there is a high probability of flooding in some parts of the site and the site performs a function for the storage of water during times of flood. The PPG classifies the proposed type of residential use as 'more vulnerable' and so the proposal should be considered against the Sequential Test and, if necessary, Exception Test before being granted planning permission.
21. The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. The appellant undertook its own Sequential Test in support of the planning application and a further Sequential Test (June 2018) was submitted in support of the appeal. A number of potential alternative sites were identified but were discounted as not being reasonably available or appropriate for the proposed development.
22. The appellant undertook its assessment on the basis that it was seeking to accommodate a need for this type of accommodation within Witham. There is an evidenced need for specialist accommodation for the elderly in the Housing Market Area<sup>1</sup> and the need for such accommodation in Witham was not disputed by the Council. The assessment area was further refined to sites within 0.5 miles of the town centre having regard to the appellant's experience in the sector and the suggested benefits to prospective residents of being close to a town centre with its associated services and facilities. Reference was made to the benefits of this criterion within a research document before the Inquiry, which the appellant published alongside other organisations<sup>2</sup>.
23. I consider that the 0.5 mile radius assessment area is a reasonable one for the type of accommodation proposed. Occupants would need to be at least 60 years old (or 55 for partners) to live within the development and the appellant explained that the typical age of its residents in other schemes is 78. It is a fair assumption that many residents would be likely to have reduced mobility and that walking long distances would be likely to prevent or at least dissuade use of local amenities. The Transport Statement (June 2017) (TS) accompanying the application also suggests that residents are less likely to own vehicles. As such, easy access to public transport, services and facilities is essential and has a very real prospect of improving the quality of life of the likely residents and ensuring their ongoing independence and social cohesion.
24. The Council identified a number of potential alternative sites within 0.5 miles of the town centre during the Inquiry but subsequently accepted that they were not reasonably available or appropriate for the proposed development. It did not provide any evidence to dispute the appellant's reasons for discounting the sites it considered. Consequently, I consider that the Sequential Test is passed.

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<sup>1</sup> Strategic Housing Market Assessment, Update 2015

<sup>2</sup> Retirement Living Explained, A Guide for Planning & Design Professionals (April 2017)

25. The development would provide wider sustainability benefits to the community in providing specialist accommodation for the elderly in an area where there is a demonstrable need. Provision of such accommodation would also be likely to release other housing stock to the market which would assist in meeting the wider housing need in the area, noting that the Council cannot currently demonstrate a sufficient supply of housing land.
26. The application is accompanied by a Flood Risk Assessment (June 2017) and Drainage Strategy Report (June 2017) which demonstrate that, subject to appropriate mitigation, the development would be safe for its lifetime and would not increase flood risk elsewhere. In fact, the proposed scheme would improve flood storage capacity within the site, though the extent of such benefit to the wider area is unquantifiable. Both the Council and the Environment Agency accept this evidence and I have no reason to take a different view. In light of this, the wider sustainability benefits of the scheme clearly outweigh the flood risk in this case. As such, I conclude that the Exception Test is passed.
27. Flood risk within the site itself has been minimised as far as possible by locating the proposed building in the part of the site at lowest flood risk, with car parking and landscaping in the highest risk areas. The mitigation measures proposed, including raising the level of the building, mean that it would not be susceptible to flooding and an appropriate drainage strategy is identified. Finally, although in times of flood the access road would become flooded, it is accepted by the Council that an escape route would remain available through the adjacent Academy site should residents wish to leave the building during infrequent flooding events.
28. It has not been demonstrated that all of the land required for flood mitigation or storage would be within the ownership of the appellant, for example, it was suggested that the riparian meadow may remain within the ownership of the Council. However, it was expected that rights for the purposes of drainage and flood mitigation would be available to the appellant and the Council did not suggest otherwise. Subject to an appropriate condition being imposed preventing development in the absence of the required mitigation, I am satisfied that the scheme is achievable.
29. I conclude that the Sequential and Exception Tests are passed in this case and that the development would not be at undue risk of flooding, nor would it increase the risk of flooding elsewhere. The site is suitable for the proposed development and there are no restrictive policies of the Framework engaged that indicate development should be restricted with respect to flooding. I find no conflict with policies CS8 of the CS; or LPP 78 and LPP 80 of the DLP which require a sequential approach to site selection in areas at risk of flooding and generally seek to prevent flooding, amongst other things.

#### *Living conditions*

30. The Framework seeks a high standard of amenity for all existing and future occupants of land and buildings. The proposed development would involve 60 dwellings within a single building, all of which would be served by internal corridors with flats either side. This results in the majority of the flats being single aspect. Whilst it is desirable to have a greater variety of views and light sources, the appellant refers to the practical advantage in such an arrangement for the prospective occupiers, allowing movement between apartments and

communal facilities whilst remaining indoors. I am not persuaded that the arrangement proposed is the only option for facilitating such a benefit, though there would clearly be advantages during inclement weather for example.

31. Despite the proposed arrangement, and the Council's concern about internal room dimensions and layout, the submitted Daylight and Sunlight Study (June 2018) demonstrates that all of the proposed flats would receive adequate light in accordance with BRE Guidelines<sup>3</sup> and so a reasonable amount of natural light would be available.
32. The fact that views will only be available in one direction for many residents makes outlook particularly important. In this case, the building would fill a large proportion of the site with relatively narrow strips of land surrounding. Those flats facing north would be as close as 4.2m to the boundary of the site, beyond which is a tall palisade style fence surrounding the Academy grounds. The fence would stand at an elevated level compared to many of the proposed ground floor flats and its harsh industrial appearance would be an overbearing and imposing feature for future occupiers looking out of the window or using the proposed patios. This is notwithstanding the open field beyond the fence. Some potential for landscaping exists along the site boundary but the scope for meaningful landscaping would be very restricted given the proximity to the proposed flats and the proposed earth bund.
33. To the south, residents would have an outlook towards the proposed car park, where vehicles would be parked or manoeuvring in extremely close proximity to the proposed flats. The proposed car park would be visually intrusive in such close proximity to ground floor flats in particular. Again, this would be harmful to outlook from both windows and the proposed patios.
34. Beyond the car park would be an intermittent strip of landscaping marking the boundary with a further development site. I also have significant reservations about the proximity of the adjacent site, which is subject of a planning application for a supermarket. The evidence before me suggests that this would involve a large building built up to the boundary with the appeal site, with likely further implications for outlook, as well as noise and disturbance. However, at the time of the Inquiry this application remained undetermined and there is no certainty that the scheme will be granted planning permission; this would become a matter for the Council if the appeal succeeded.
35. Having identified that the proposed patios surrounding the building would have a poor outlook, I consider that this is likely to discourage their use and so I agree with the Council that the narrow strips to the north and south of the building should be discounted from the calculation of usable garden space. However, the larger areas of communal garden proposed would themselves exceed the quantitative requirements of the Essex Design Guide (2005), based on a requirement for 25sq.m per 2 bed flat.
36. Similar provision is encouraged for 1 bed flats but the guide notes that this will not always be necessary close to a town centre, where proximity to existing open spaces, services and facilities are also available. Given that the site is within easy walking distance of the town centre, as well as a pleasant riverside walk, such flexibility is appropriate in this case. In addition, many residents would have access to private balconies which would be usable in my view,

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<sup>3</sup> Building Research Establishment, Site Layout Planning for Daylight and Sunlight: a good practice guide (2011)



- despite being slightly smaller than the 5sq.m dimension sought by the Essex Design Guide (2005).
37. The largest area of communal open space would not be screened by above-eye-level walls or hedges as envisaged by the design guide, instead a 1.1m tall railing is proposed. Whilst not providing the same level of privacy as a wall or hedge, the railing would allow views beyond the site to the riparian meadow and river corridor. This seems to me to offer a benefit to prospective residents, particularly as the graded levels of the meadow would be such that it would not be frequently used by members of the public. More private garden areas would also be available within the site as an alternative.
  38. Car parking would be provided on site, though the number of spaces would not accord with the Council's Parking Standards (2009) of 1 per dwelling. Instead, 28 spaces are proposed and the TS demonstrates that this exceeds the level of provision found to be necessary at other similar schemes built by the appellant. The Council does not dispute the evidence contained in the TS, nor does it raise any objection on highway safety grounds. The Local Highway Authority (LHA) accepts that this level of provision is appropriate. The proposed bay size meets the minimum required size contained in the Parking Standards, which is said to be sufficient for parking and getting in or out of a vehicle. Again, no objection if raised by the LHA in this respect, notwithstanding that the minimum bay size used is said to be an exception to the larger preferred size. Having considered all of the above, I can see no reason for the proposed development to slavishly adhere to the Parking Standards. It has been demonstrated that the parking provision is adequate in terms of both quantity and usability.
  39. No cycle parking has been proposed and the Council considers the proposed mobility scooter store to be inadequate. The appellant accepts that further detail could be provided in these respects and a condition could readily be used to secure the provision.
  40. The proposed bin store is some distance from the furthest flats and is in excess of the guidance supporting the Building Regulations. This is a matter for the Building Regulations process. However, I see no reason why the store should not be usable and convenient, being located close to the communal facilities and the main entrance to the building so that future residents could drop refuse in passing.
  41. Overall, whilst I do not share all of the Council's concerns, I have identified significant harm that would unacceptably compromise the living conditions of future occupants, particularly with regard to outlook. Consequently, the proposed development would not meet the high standards of design and amenity required by the Framework. In addition, the proposal conflicts with policies RLP 56 and RLP 90 of the LPR, which require the provision of parking in accordance with adopted standards (though I have determined this is unnecessary) and a high standard of design.
  42. I attach limited weight to the policies of the DLP given its stage of preparation and the presence of unresolved objections. However, I have also found conflict with policies SP 6, LPP 45, LPP 50, LPP 55 of the DLP which have similar objectives to the adopted policies above. I have found no conflict with policies RLP 10 or RLP 19 of the LPR which relate to residential density and detailed criteria for sheltered housing.

43. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appeal is made for retirement apartments with an age restriction in place, future residents are persons who share a protected characteristic for the purposes of the PSED, that is age.
44. It does not follow from the PSED that the appeal should automatically succeed or fail. However, there is a shortage of specialist housing sites for older people in the housing market area and this may indicate inequality of housing opportunity for the proposed age group, though there is also a shortage of sites for general market housing. The equality implications add weight in favour of the development since the proposal seeks to specifically address the identified shortfall and has been designed to address the specific needs of the age group in question (60 years old or above, or 55 for partners).
45. I do not share the Council's concern that the failure to meet adopted standards of parking would disadvantage people sharing a protected characteristic, since the evidence in this case demonstrates a reduced need for this age group. The development would meet the needs of the intended occupants and so it follows that they would not be disadvantaged. Other aspects relevant to the living conditions of future occupants described as deficient by the Council are also matters of planning judgement that, with the exception of outlook, I have found to be acceptable. I have reached this conclusion on the merits of the case, which is not influenced by imposing any reduction in standards simply as a result of the age of intended occupants, and having had regard to the PSED.

#### *Planning obligations*

46. Policy CS10 of the CS and Policy RLP 138 of the LPR require proposals for new residential development to make provision for publicly accessible green space or improvements to existing accessible green space. The Council has also adopted an Open Space Supplementary Planning Document (2009) which sets out the methodology for calculating contributions and the process for the delivery and improvement of open space in the District. The open space contribution, having regard to the open space typologies relevant to the scheme, is calculated to be £49,320 which would be used towards improvements to the riverside walk. The appellant accepts that this contribution is necessary and otherwise accords with CIL Regulations 122 and 123. I have no reason to take a different view.
47. Policy CS2 of the CS states that affordable housing (or where appropriate, a financial contribution in lieu of such provision) shall be provided for residential schemes above a threshold of 15 dwellings or sites of 0.5ha. The parties agree that the specialist nature of the proposed housing is such that on-site provision would be impractical and that a financial contribution towards off-site provision would be more appropriate. In this case, the contribution sought is £789,462 and the appellant does not dispute the need for this amount. However, it is claimed that making any contribution towards affordable housing would make the development financially unviable, such that it would threaten delivery. This is in contrast to the Council's position that the full affordable housing contribution could viably be made.

48. Fundamental to these differing positions is the parties preferred methodology for calculating the Benchmark Land Value (BLV) of the site. The Council suggests that Existing Use Value Plus (EUV+) is the correct approach having regard to the PPG and emerging national policy and guidance, though the final version is yet to be published and cannot be relied upon at the present time. The appellant prefers the Alternative Use Value (AUV) approach in recognition that a willing land owner will not release a site for less than it might reasonably be able to obtain for other uses in the market.
49. At present, the PPG is not prescriptive and offers support to either approach under the right circumstances. The appeal is supported by a Valuation Report (March 2018) prepared by Chartered Surveyors and considers various alternative uses for the site, informed in part by reference to other schemes that are said to be comparable. The report includes valuations as high as £1,400,000, based upon a residential scheme (though this assumes no affordable housing contribution). Commercial and retail uses are also considered.
50. As a matter of principle, I accept that the AUV approach can be an appropriate method for identifying BLV. It is obvious that no landowner, willing of otherwise, will be likely to sell a site for less than is achievable. However, I have significant reservations that the alternative uses contemplated in this case meet the expectation of the PPG that they are realistic and comply with planning policy<sup>4</sup>.
51. The highest valuation assumes no affordable housing contribution despite there being a policy requirement for 30% (or financial equivalent) provision. There is no support in the CS for the appellant's interpretation that the site area threshold for the requirement relates to the developable area of the site. Once the affordable housing contribution is taken into account, the valuation reduces to £926,855. There is no evidence that the specific planning constraints affecting the site have been taken into account such as flooding, heritage and ground conditions (except an unjustified reference to flood mitigation), some of which were raised as potential issues by the Council during the Inquiry. They are issues that could have implications for obtaining planning permission and/or the costs associated with obtaining permission and constructing any subsequent development. Similar uncertainties relate to any potential office or retail use.
52. The report confirms that no formal planning enquiries were made of the Council in preparation of the report. There is no allocation for the site in the development plan albeit that the site is agreed to be suitable for development in principle. There is no planning permission in place, a matter noted in the Valuation Report, or even any informal pre-application advice from the Council in respect of the potential alternatives. It seems to me that there remains significant uncertainty as to whether the alternative uses could come forward and in what form. As such, I am not persuaded by the evidence before me that the AUV methodology is appropriate in this case.
53. I have had regard to the figure of £1,250,000 accepted by the Council for the appeal site in a conditional contract, having concluded that it represented best value for the site in accordance with its statutory obligation. However, this does not amount to the BLV of the site, it is simply the best bid that could

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<sup>4</sup> PPG Reference ID: 10-015-20140306

reasonably be obtained. There is no duty on the Council to verify that the purchaser has taken account of planning policy or that any hope value attached by the purchaser is well placed. The Council's Cabinet Report which contemplates disposal of the appeal site is informed by its own advice from Chartered Surveyors. Whilst this also indicates potential alternative uses I do not know the full details of this advice and I am similarly unpersuaded that it meets the requirements of the PPG.

54. Consequently, I prefer the Council's EUV+ approach which it was agreed between the parties, generates a BLV of around £100,000. Whilst I consider that the true BLV is likely to be higher than this, a higher alternative use value has simply not been demonstrated and cannot be relied upon. The viability appraisal at Appendix 12 of Damien Lynch's Proof demonstrates that the open space and affordable housing contribution could be supported if the EUV+ method is used to calculate BLV. This is regardless of the outcome of the numerous other points of dispute in respect of viability and so I need not consider these further.
55. I conclude that the development could support the necessary financial contributions sought by the Council without compromising the viability of the scheme or the likelihood of delivery. The submitted Unilateral Undertaking makes no provision for affordable housing and so the proposal is in conflict with Policy CS2 of the CS.

### **Planning Balance**

56. I have found no specific policies of the Framework that indicate development should be restricted. As the Council cannot currently demonstrate a deliverable five year supply of housing sites, its policies for the supply of housing should not be considered up to date and the Framework's tilted balance should be applied.
57. The appellant has identified a number of benefits that would arise from the development. These include the provision of specialist housing, specifically designed to meet the needs of older people, for which there is an identified need in the area. I have found support under the PSED in this respect. The provision of such housing would also be likely to free up other market housing that would assist in meeting other housing needs in the area. There would also be some wider benefits in increasing flood storage capacity within the site. I attach significant weight to these benefits.
58. Against this, I have found that the development would not provide acceptable living conditions for future residents, specifically with regards to outlook. This would be in conflict with policy RLP 90 of the LPR. In addition, the development would not make any contribution towards the provision of affordable housing, which is again needed in the area. This would be in conflict with Policy CS2.
59. Overall, I conclude that the adverse impacts of granting planning permission in this case would significantly and demonstrably outweigh the benefits. The proposal would be in conflict with important policies of the development plan and would not accord with it, taken as a whole. The material considerations in this case do not indicate a decision other than in accordance with the development plan.

**Conclusion**

60. In light of the above, and having considered all other matters, the appeal is dismissed.

*Michael Boniface*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Ashley Bowes, Counsel He called:	Instructed by Ian Hunt, Head of Governance
Charlotte Scales BSc (Hons)	Flood Risk Officer, Environment Agency
Richard Broadhead BA (Hons) MSc	Historic Buildings Consultant, ECC
Lee Smith-Evans BSc MA	Director, LSE Planning & Design Ltd
Andrew Golland BSc (Hons) PhD MRICS	Andrew Golland Associates
Natalie Banks BA (Hons) MSc	Senior Planner, BDC

### FOR THE APPELLANT:

Neil Cameron QC He called:	Instructed by Andrew Burgess, Planning Issues
Amy Hensler BEng (Hons) MSc C.WEM MCIWEM CEnv	Director of Flood Risk, Peter Brett Associates LLP
Gideon Lemberg BA (Hons) RIBA	Eastern Design Manager, Planning Issues Ltd
Paul White BA (Hons) MPhil MCIFA PIEMA	Head of Heritage, ECUS Ltd
Damien Lynch BSc (Hons)	Planning Issues Ltd
Andrew Burgess BA (Hons) MRTPI FRSA	Managing Director, Planning Issues Ltd & Group Land and Planning Director, Churchill Retirement Living

### INTERESTED PERSONS:

Paul Ryland, Local resident

## **DOCUMENTS SUBMITTED DURING THE INQUIRY**

- 1 Notification of Inquiry arrangements
- 2 Statement of Common Ground
- 3 Completed Unilateral Undertaking
- 4 Letters from Shoosmiths Solicitors regarding Planning Obligations dated 18 June 2018
- 5 Land Registry, Register of Title
- 6 Computer Generated Images of the proposal
- 7 Appellant's Opening Submissions
- 8 Council's Opening Submissions
- 9 Appeal decision (APP/Z1510/W/16/3156944)
- 10 Copies of consultation letter and documents relating to the amended plans
- 11 Viability Statement of Common Ground
- 12 Extract from adopted Parking Standards, P.24
- 13 List of housing allocations within the DLP and within 0.5 miles of the town centre
- 14 Extract from PPG dealing with viability
- 15 Copy of Viability Assessment (December 2017)
- 16 Plans showing allocated housing sites identified at ID13 above
- 17 Extract from DLP, P.178
- 18 Extract from PPG dealing with the sequential test
- 19 DLP delivery trajectory for sites identified at ID13 above
- 20 Agreed balcony measurements
- 21 Extract from SHMA, P.81
- 22 Brochure – 'Think Land...Think Churchill'
- 23 List of suggested conditions, amended by the appellant
- 24 Council's Closing Submissions (with associated Judgement)
- 25 Appellant's Closing Submissions (with associated Judgements)
- 26 Ecological Assessment (August 2017)
- 27 E-mail from Sarah Burder to Natalie Banks relating to public open space contribution dated 25 June 2018
- 28 List of agreed conditions (condition 20 remains in dispute)
- 29 Appeal site visit route agreed between the parties