
Appeal Decision

Inquiry held on 24-27 November 2015 and 1 December 2015

Site visit made on 25 November 2015

by Ava Wood DipARCH MRTPI

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

Decision date: 19 January 2016

Appeal Ref: APP/B1930/W/15/3004758

James Marshall House, Harpenden, Hertfordshire AL5 2JB

- 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 Pegasus Life against the decision of St Albans City & District Council.
 - The application Ref:5/14/2917, dated 14 October 2014, was refused by notice dated 16 December 2014.
 - The development proposed is demolition of existing buildings and the erection of later living accommodation with communal facilities including a publicly accessible restaurant/café, a replacement day centre, and associated landscaping (including alterations to boundary treatment) and vehicle/pedestrian access arrangements.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing buildings and the erection of later living accommodation with communal facilities including a publicly accessible restaurant/café, a replacement day centre, and associated landscaping (including alterations to boundary treatment) and vehicle/pedestrian access arrangements at James Marshall House, Harpenden, Hertfordshire, in accordance with the terms of the application Ref: 5/14/2917, dated 14 October 2014, subject to the 18 conditions listed in the Schedule of Conditions attached to this decision.

Preliminary Matters

2. The statement of common ground between the appellants and the Council confirms that the completed s106 obligation overcomes reasons for refusal 1 and 5. The financial contributions towards leisure and open space provision, and affordable housing forthcoming through the s106 would mitigate the infrastructure impacts of the proposed development. I deal with the matter of the s106 in due course.

Main Issues

3. The remaining grounds of dispute between the main parties, forming the subject of reasons for refusal 2, 3 and 4, are reflected in the main issues I identify below. These are:
 - The landscape, townscape and visual impacts of the proposed development and its effect on the character and appearance of the Harpenden Conservation Area.

- Whether the amount and arrangement of parking provided on site would be adequate to serve the development without severely impacting on local highway conditions.
- Whether the proposal would lead to unacceptable living conditions for future residents or existing occupants of Bennets Lodge, by way of overlooking and loss of privacy.
- Whether any harm arising from the above can be significantly and demonstrably outweighed by its benefits.

Reasons

First Main Issue

Policy Framework

4. LP Policy 69 is a general policy addressing design and layout, aiming for 'adequately high standard' of design and expecting developments to take account of context; context being the most relevant element of the policy for the purposes of this appeal. Also relevant to this case is the policy requirement, under LP Policy 70, for the design of new housing development to have regard to its setting and the character of its surroundings. Of particular note is criterion (i) which expects mass and siting of buildings to create safe, attractive spaces of human scale. LP Policy 74 relates to the retention of existing landscaping and trees, as well as new provision. While the main parties remain at issue over the consistency of some elements of Policy 70 with the NPPF, the aspects of it which aspire to achieve high design standards, along with Policies 69 and 74, are broadly in line with the NPPF principles and are accorded substantial weight.
5. LP Policy 85 reflects the statutory duty under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LB Act) to have special regard to the desirability of preserving or enhancing the conservation area's character or appearance. The policy also provides detailed guidance for developments to follow in conservation areas. Although it does not allow for the balancing of public benefits against harm (along the lines of paragraphs 133 and 134 of the NPPF), the consistency with s72(1) is sufficient for the policy to carry substantial weight, in my view.

Landscape, townscape, visual impacts and Harpenden Conservation Area

6. The main parties carried out detailed townscape and visual impact assessments that were forensic and thorough in their approach. The Council questioned parts of the methodology used in the Townscape Visual Impact Assessment (TVIA) submitted with the application, and did not agree with its findings in critical areas. The analysis undertaken by both sides, however, provides me with a sound basis for considering the landscape, townscape and visual impacts of the proposal. In coming to conclusions on the key elements of the conservation area, I am able to assess the effect that the development would have on its character, appearance and significance.
7. Turning first to landscape character, Rothamsted Park is a notable feature of Landscape Character Area 99 (LCA 99¹) covering a swathe of land to the south

¹ Rothamsted Plateau and Kinsbourne Green

and south west of the appeal site. The parkland, also designated as Metropolitan Green Belt, is a distinctive element of LCA 99 but urban fringe development and associated recreational activities are noted as key characteristics. The sports centre, swimming pool building, skate park and tennis courts within or on the edge of the park are part of the recreational activities identified; they feature in key views from within Rothamsted Park. Harpenden Common to the east of the site lies within LCA100² and forms part of a generally flat valley floor through the town centre.

8. The TVIA appraised 16 Townscape Character Areas (TCAs) of which the Town Centre western margins (TCA1- south) and Harpenden Common town centre (TCA7) are regarded in the Council's evidence as 'high sensitivity receptors', likely to experience moderate/major adverse significance of effects. The Rothamsted Park TCAs (TCA 2 and 3), accorded high-medium sensitivity, are also considered to experience moderate/major adverse impacts as a result of the development.
9. The Conservation Area Character Statement (CACS) identifies a number of Identity Areas. The areas around the Common (Identity Area K) and development along the western edges of the Common (Identity Area L) overlap with TCAs 1 and 7 and LCA 100. The proposed development would be most visible and likely to impose upon these areas, in addition to TCAs 2 and 3 (Rothamsted Park) and LCA 99. My considerations therefore focus on these specific receptors before looking at impacts on the wider area.

Harpenden Common (TCA1, TCA7, Identity Area L2, Identity Area K and LCA 100)

10. The CACS divides the Harpenden Common Identity Area into two distinct groups: L1 – the east side and L2 to the west where the appeal site lies. The Heritage Statement submitted with the application recognises that the heritage significance of the conservation area is primarily derived from the architectural quality and historic interest of the built environment. This is particularly apparent on the western side of the Common (along Leyton Road) which is marked by the ribbon development and high concentration of listed buildings reflecting the historic settlement pattern of the town. Although there is considerable variety in the style, detailing and ages of buildings along the road frontages, there is also consistency in density of development, the domestic scale of buildings as well as use of traditional materials and forms.
11. Stepping back from the road frontage, there is more of a mixed and 'backland' feel to the pattern of development extending westwards. The recent residential development (Bennets Lodge) immediately to the north of the appeal site and James Marshall House on the appeal site are just two examples of modern structures featuring in the conservation area but doing little to add to its interest or character.
12. The appeal site lies at a transition point where the parkland landscape character meets the developed western side of Harpenden. This is a prominent location marking the edge of the conservation area, the appearance of which is marred by the unused, neglected buildings on site and the unkempt appearance of the grounds around it.

² Harpenden Common

13. The proposed development would introduce three buildings (Buildings A, B and C) arranged around a landscaped courtyard. The buildings would be linked by a colonnade. A consistent style of architecture across the three blocks would create a coherent whole. The Council confirmed that the design, comprising steeply pitched roofs, strong details and well-considered, articulated elevations, has the potential to create a piece of architecture of exemplar quality. I am similarly well-disposed towards the design of the individual blocks. The contemporary style using traditional forms and materials would introduce freshness and interest to this part of the conservation area currently dominated by the dilapidated three and four storey James Marshall House, or represented by buildings of unspectacular merit, such as Bennets Lodge.
14. The site would be laid out to include a pedestrian route linking the entrance from Leyton Road to the park. This new route, alongside new facilities on offer to the public, would improve the site's permeability and introduce a new connection between the park and the town centre. Furthermore, the skilful arrangement of the blocks and landscaped spaces between them gives considerable scope for achieving a self-contained development with its own identity and sense of place.
15. The landscaped courtyard and retained mature trees on the site's western boundary would become part of the transition from a landscape which contains buildings to a sequence of buildings containing landscape, and regarded in the CACS as "*one of the most satisfying aspects of the conservation area.*" I share the Council's scepticism with regard to the effectiveness of the narrow strip of land to the west of Building A as a 'woodland garden'. However, the Hornbeam and Common Oaks to be retained in position would provide some screening and enough relief to create a pleasant setting to the development.
16. The three proposed blocks would vary in height, reflecting the topography of the site. The tallest would be Building A extending to five storeys plus basement, which would be located on the highest part of the site. Buildings B and C would step down to four and three storeys respectively. The development would represent an increase in footprint by some 28% over what is presently on site. That scale of increase inevitably leads to concerns about over-development of the land, added to which buildings would be positioned close to site boundaries. The height, mass and volume of the three blocks, individually and combined, as well as the relationship between them, would represent a marked departure from the scale, configuration and arrangement of historic buildings in the site's vicinity. Building A would also stand higher than the modern sports centre to the south of the site as well as the 2½ storeys neighbouring property at Bennets Lodge. Buildings A and B would extend some 7m and 2m at their highest points above James Marshall House, which gives some measure of the scale of new buildings that would be introduced to the area.
17. Vertical development in depth of the sort of heights proposed is not a feature of the western side of the Common, nor characteristic of TCA1 or Identity Area L2. The new buildings would be positioned in an area where modern backland structures already exist; Bennets Lodge and the sports centre in particular. However, even in that context, and having regard to the recessive effects of distance, the development would appear imposing by virtue of the amount of development on site but more so due to the height of Building A. The quality of the architecture and design would, however, provide visual interest and appeal.

Those attributes would compensate to an extent for the variance with the area's historic character and appearance.

18. Trees behind the historic frontage buildings on Leyton Road have also been recognised as part of the area's significance. Indeed a number are located within the appeal site boundaries. Of these, 12 are proposed for removal. The loss of trees, added to the increase in built development (including hard surfacing), would alter the character of the site as well as views of it in the townscape/conservation area setting. Nevertheless, the trees of substance and quality are to be retained. They would continue to contribute to the streetscene, albeit within an intensively built up environment. Buildings would be the more dominant element and views of the tree canopies would be greatly reduced from the Common and from east of the site. The effect on landscape character would indeed be moderate/major adverse but the urban environment in which the trees and vegetation would be seen would be reflective of a town centre location and in line with the "*sequence of buildings containing landscape*" characteristic described in the CACS.

Rothamsted Park (TCA 2 and 3 and LCA99)

19. The TVIA recognises that TCA3 (Rothamsted Park – Parkland) comprises a relatively coherent parkland setting of grassland interspersed with clumps, lines and avenues of trees. The TVIA's emphasis on the influence of leisure-related structures on TCA2 is over-stated, in my view. They are generally low scale, unobtrusive and not out of place either in terms of the urban edge parkland character of TCA3 and LCA99, or for their impact on views looking towards Harpenden from within the park. Despite the presence of the sports centre (which is situated within the conservation area), the urban edge of Harpenden adjacent to the eastern side of the park is well contained by vegetation. That applies as much to the present buildings on site as it does to the wider townscape.
20. In their current state the existing buildings and site make very little positive contribution to the townscape qualities of the eastern corner of the park; nor do they provide an attractive approach to the conservation area. In contrast, the café at the south western corner of Building A and the new pedestrian link would enliven what is at present a dead frontage addressing the park. The cypress trees and vegetation would moderate the extent to which the development's active southern frontage would be seen. But the opening up of the southern side and south western corner of the site at ground floor level would represent a signpost at a point where key townscape elements (a well-used footpath at Hays Lane, the town's urban edge and start of the open section of the conservation area's setting) converge. The fact that the CACS may not have expressly identified a need for signposting in this location, does not mean that introducing such a feature would be to the conservation area's detriment.
21. By virtue of its distinctive design, proximity to the southern, western and northern site boundaries and the sheer scale of Building A, however, the development would markedly alter the landscape character of the edge of Rothamsted Park. Existing trees would mask the intensity of built development on site to some extent. Nevertheless, the proposal would represent a highly prominent feature in long and short distance views from within the park. The

interface between the town, the park and the conservation area would be dominated by the presence of the new buildings on the skyline.

22. The quality of the architecture alongside the welcome introduction of active frontages and replacement of derelict buildings would go some way to offsetting the intrusive effects of the development on Rothamsted Park's landscape and visual qualities. However, residual harm would occur for the reasons explained, with an adverse effect on the setting of the conservation area in the process.

Other townscape and visual effects

23. Because of its position, views of the site and therefore the development are likely to be restricted to glimpses between and behind existing buildings when viewed from points to the east and north of the Common. The townscape would be little affected at such distances, and due to the site's backland position.
24. The new development would form a prominent backdrop to the trees on the site's western boundary. Buildings A and B would be clearly seen (especially during the winter months) from Hays Lane and the public car park to the rear. Although higher than the buildings to be replaced and extending above Bennets Lodge, the design merits of the scheme would render it acceptable in the urban environment of mixed quality that prevails to the west of the site.

Overall conclusions on the first issue

25. The Council's assessments find moderate to moderate/major adverse significance of effects on key landscape and townscape receptors. The visual impacts and the conservation area would also be affected in ways that leads to conclusions of harm. I am inclined to agree that the intensity of development proposal, compounded by the heights of Buildings A and B, would be at odds with the historic elements of the conservation area. In views from Rothamsted Park and other points to the north of the site, the development would also appear dominant in the skyline by virtue of the scale, massing and volume of buildings proposed.
26. In effect, harm would be caused to the conservation area's character largely for reasons of the addition of vertical layering on the western side of the Common. Its appearance and townscape quality would be affected by the visual prominence of buildings departing from the scale and pattern of development on the Leyton Road frontage. The setting would be harmed by Building A's dominant presence when viewed from Rothamsted Park. The scheme's impact, however, would be moderated by the high quality of the design, as well as the sense of identity and place it would bring to the area. For these reasons, the harm to the significance of the conservation area could be described as 'less than substantial'. The matter is nevertheless accorded considerable importance and weight in the planning balance undertaken as part of the fourth main issue.
27. The development would achieve the high standards of design and layout sought by LP Policies 69 and 70, albeit it in a way that might not be regarded as compatible with the massing of existing buildings. For reasons explained above, it would not meet the LP Policy 85 test of preserving or enhancing the conservation area's character or appearance.

Second Main Issue

Policy Framework

28. LP Policy 39 refers to parking standards for different land uses covered by Policies 40 and 43-49. The LP recognises that serious problems may arise if parking provision is too low. Where a particular use is not covered in the policy, applicants must demonstrate that sufficient parking is proposed for the long term needs of the development. Policy 40 sets out residential development parking standards, while Policy 43 addresses parking requirements for a range of housing categories including independent dwellings for elderly people, sheltered housing with resident warden and residential homes with care staff.
29. In 2002 the Council adopted Revised Parking Policies and Standards (RPPS). The new standards were introduced to take account of, amongst other things, Government's advice at the time in PPG13 and local circumstances in St Albans District. The Harpenden Town Centre and the appeal site fall within an area identified as Zone 2 where the Council may accept schemes below standards, but still seek sufficient spaces to meet likely parking demand. The appellants question the weight to be attached to the LP parking standards in the light of the introduction of the RPPS, which itself was not subject to the development plan process.
30. My own view is that at the time of adoption of the LP there was no category for the type of later living model proposed by the appellant; a fact recognised in the officer's report to committee. The later living type accommodation featured in the appeal scheme has particular characteristics that render it distinct from any of the categories identified in the LP and the RPPS.
31. For the purposes of this appeal, therefore, the parking requirements for the development must be judged on the basis of what is actually proposed, the site's location and the potential or otherwise for it to lead to severe highway related impacts. In other words, ensure that it would accord with the policy objective of securing appropriate parking provision.

Reasons

32. The proposed scheme is designed to accommodate 40 parking spaces on site (including five spaces for disabled motorists) for use by future residents, staff and visitors. An additional 9 spaces plus a minibus space for the day centre use are to be retained on the land currently used for parking in connection with the existing centre. There is no dispute that inadequate formal car parking provision would lead to problems of poor operation of the site, nuisance to neighbours, congestion and even conflict on the approach road.
33. The Council claims that in the absence of any restrictions (save for occupation of residential units by at least one persons aged 60 or over) the development should be treated as an open Class C3 scheme, to be occupied by residents likely to fall within a high socio-economic group in an area of high car ownership. In the light of this, and should the Policy 40 parking standards be applied, the proposal would fall short by nearly 30 spaces.
34. The purpose of the later living accommodation is to provide retirement accommodation that would enable independent living in an age-restricted and managed development. Residents' annual service charge would cover care at a level tailored to suit individual residents and provided by a registered

- domiciliary care partner operating from premises on the site. There is to be no overnight on-site staff support. The appellant company's experience suggests that residents tend to stay at the site for the remainder of their lives; very few need to move again and support is provided in their own homes.
35. The proposal includes community facilities for wider uses (café and day centre) and also its own communal elements (residents' lounges, on-site care and treatment facilities, for instance). These facilities would be provided to support residents of the later living units and managed in its entirety by a not-for-profit management company owned jointly by the residents and the developer. The Design and Access Statement describes the extent to which the design was influenced by the brief to provide accommodation suitable for the later living model promoted by Pegasus Life.
36. The scheme is designed expressly to provide specialised later living accommodation. Need for care is not a condition of initial occupancy nor are residents obliged to use the care on site, even if they pay into a service charge that helps to fund the care. Nevertheless, the likelihood is that they would take advantage of the services on site. Interdependency of the residential units with facilities on site, the age restriction and active management/service arrangements (secured by conditions and/or the s106) all point to the likelihood that the residential accommodation would be occupied by people of retirement age, willing to buy into the concept of community ethos and care, as and when needed. The offer of an affordable housing contribution in the s106 does not mean that the proposal would inevitably fall into the Class C3 category, or that parking provision to meet unrestricted C3 requirements would be necessary.
37. The Council questions the basis for claims of reduced car ownership of the age and socio-economic group likely to occupy the unit, given ownership levels in the area generally. The appellant relies on evidence produced for an appeal case in Seaford which shows a trend in Pegasus Life developments for numbers of car parking spaces to exceed demand. However, without the full contextual information or knowledge of how the surveys were carried out, it is difficult to be confident that the data can be robustly applied to the appeal scheme.
38. On the other hand, the appellants are able to draw from considerable experience of later living developments across a range of locations and socio-economic profiles. They confirm that a few years after the last of the apartments has been occupied some of the parking spaces remain unused, and others accommodate cars that are rarely used. Furthermore, as residents age, car use and often ownership also decline. Apart from high car ownership levels in the St Albans district there is nothing to suggest that future residents at the appeal development would respond differently.
39. Added to which, there are considerable opportunities in this particular location for reducing car-based travel, which is likely to influence car ownership rates amongst residents and encourage others visiting or working at the site to travel by other means. The site lies within the Harpenden Town Centre; some 300m to the north west is a public car park; the sports centre, indoor swimming pool and tennis facilities are nearby. The development proposes secure on-site storage for mobility scooters and bicycles. The provisions of a travel plan would provide information on opportunities for travelling by non-car modes and encourage residents and staff to reduce car usage.

40. The on-site parking strategy (to be secured by condition) is an additional measure proposed to ensure effective management of parking on site. The strategy would allow future residents to buy the right to a car parking space (no more than one space per unit), subject to proof of ownership of a car. The right to a space would be reviewed periodically. Residents buying into the scheme would be aware of these restrictions and also aware of the number of parking spaces available to them and their visitors when purchasing one of the units. It would not be in the commercial interest of either the developers or the management company to operate a scheme that would not provide adequately for the site's users. The management company and site owners are likely to implement and self-enforce arrangements to ensure that parking on site and at the day centre car park is managed properly to the benefit of those living, working and visiting the premises. Given the tangible effects that could result from unsatisfactory operation of the parking strategy, the Council should have little difficulty in enforcing the strategy.
41. On balance, I consider that the site's sustainable location, combined with implementation of an effective travel plan and likely ownership rates at this type of development provide sufficient justification for opting for a less than 1:1 parking provision. With measures in place to control on-site parking arrangements, the overspill feared (as a result of demand exceeding number of on-site spaces) is unlikely to occur or lead to severe highways related impacts. The proposal therefore meets the overriding policy objective of securing appropriate parking provision to prevent the adverse effects of poor on-site operations, highway congestion and unsafe conditions.

Third Main Issue

Policy Framework

42. Policy 70 identifies a distance of 27m between facing windows to be achieved in order to gain tolerable levels of visual privacy between habitable rooms. The parties accepted that a policy that sets out separation distances but allows for flexibility in its implementation is consistent with the NPPF. The terminology in the policy indeed allows for flexibility, and a judgement has to be made on the applicability of the policy to specific cases. I have therefore accorded weight to the policy in my consideration of this issue, and in particular to the overarching objective of seeking high standard of design and layout for new residential developments.

Reasons

43. The Council's objections arise from the relationship between:
- windows to habitable rooms on the western part of the northern elevation of Building B and two first floor and a dormer window on the eastern part of the south elevation of Bennets Lodge; and
 - windows to habitable rooms on the northern elevation of Building A to those on the western part of the south elevation of Bennets Lodge.
44. With regard to the latter, at a distance of some 19-20m between the neighbouring windows and those on Building A, the 27m target in Policy 70 would be breached. Similarly, the 18-20m distances between windows on the eastern part of Bennets Lodge and Building B would not comply. The fact that there would have been lesser separation between Bennets Lodge and windows

of a scheme consented on the appeal site (in 2011) is immaterial. The consented scheme is not regarded as a fall-back position and in any event at the time of its determination Bennets Lodge had not been constructed. Similarly, I do not consider there is much to be gained by reference to the appeal case drawn to my attention by the Council; that decision was issued in 2007 and there are clear differences in site circumstances.

45. The Council claims that the height and dominance of the appeal scheme would create conditions that justify separation distances of over 27m between the existing building and that proposed. My view is that, even with windows extending over a number of floors on the northern elevation of Building A, because of the secondary nature of the windows on Bennets Lodge, the level of privacy currently enjoyed by the existing occupants would not be so compromised as to warrant refusal of the scheme. The filtering effects of the mature Maple tree close to the northern boundary of the appeal site would also help to moderate the impact of Building A when viewed from Bennets Lodge. The effectiveness of the tree would reduce during the winter months but it would provide some screening.
46. Turning to Building B, this too would be higher than Bennets Lodge, with the potential for five tall windows with Juliette balconies located at distances of 18-20m and below the Policy 70 requirement, albeit the windows would be offset. I agree with the Council that the boundary vegetation and trees would do little to provide mutual screening, largely because their long term survival would be threatened by their closeness to Building B. I do not regard the use of obscured glazing as a satisfactory solution to overcome the problem, as it could undermine the integrity of the design.
47. Separation distances of 18-20m, however, are neither uncommon in urban situations nor in this case likely to lead to such intolerable levels of privacy or outlook as to render the homes concerned unliveable. Besides which, in the context of the proportion of existing and proposed homes at the appeal site and at Bennets Lodge that would enjoy or continue to enjoy good quality living conditions, the failure to achieve the Policy 70 threshold of 27m at a limited number of windows does not in its own warrant refusal of the appeal scheme. The policy in any case allows for flexibility to increase or reduce that distance as circumstances dictate, provided that high standards of design and layout are achieved. In my judgement, and having regard to a number of factors, the residential environment on the appeal site and Bennets Lodge would, in the round, achieve that Policy 70 objective.

Fourth Main Issue

48. The proposal would accord with the policy aims of LP Policies 39 (parking), 69 (general design) and 70 (housing design), but fails to meet the basic requirements of Policy 85 (conservation areas). The breach is sufficient to render the proposal out of compliance with a key element of the development plan reflecting the statutory duty under s72(1) of the LB Act. The less than substantial harm caused to the Harpenden Conservation Area triggers paragraph 134 of the NPPF. In other words, the harm identified must be weighed against the public benefits of the proposal, including securing its optimum viable use.
49. The Council accepts that a five-year supply of deliverable housing land cannot be demonstrated. The supply of 38 new homes in the circumstances of a

recognised district-wide shortfall amounts to a benefit to be weighed into the balance. The s106 offers contributions towards off-site affordable homes, which are also in short supply in the district. The weight to be attached to the supply of new homes is significant. Little additional weight can be attributed to the provision of specialised accommodation for later living, as it would be included in the district's need analyses and would take account of the NPPF call for delivering a wide choice of homes to meet the needs of different groups. Nevertheless, delivery of new homes, plus contribution towards affordable homes, comprises significant social and public benefits.

50. Other social benefits relate to the provision of security, care and support for elderly people which would address issues of isolation, access to care and costs to the health service. The café would provide an additional destination in the town centre, and the replacement day centre would revive a facility that once operated from the site. There is also the possibility that residents occupying the new units would release family homes and add to the area's choice.
51. Construction of the new development would deliver an estimated 90 jobs and 10 FTE direct jobs are expected to be created from the service and facilities on offer once the scheme is completed. The local economy would benefit from residents' expenditure, although some may already be local residents looking to 'downsize'.
52. Environmentally, the proposal would regenerate an area of previously developed, unkempt and vandalised land that has lain unused for 14 years. The redundant buildings of James Marshall House are clearly visible in prominent public views from the conservation area as well as Rothamsted Park. That they are contained by vegetation does not alter the unwelcome nature of redundant land and buildings in this key area of the town centre. The proposed scheme would bring real enhancements, through improved visual and physical connectivity between the site and the park, and by the introduction of a development capable of being branded as high quality in terms of design and architecture.
53. The appellants have not provided a financial appraisal to establish whether the proposal amounts to an optimum viable use for the site. In the absence of such evidence there can be few grounds for claiming that the apparent benefits can only be provided by the appeal development. Conversely, it is not possible to say what harm or otherwise would result from a scheme with less accommodation on site, or if buildings of a lower height were proposed.
54. There is no fall-back or alternative scheme. The appeal proposal provides a genuine opportunity for redevelopment of a town centre site where no other scheme has been forthcoming or implemented for 14 years. This factor amounts to a significant public gain, which alongside the high level of architecture, the scheme's design qualities, and the scale of other public benefits described, would demonstrably and significantly outweigh the less than substantial harm caused to the significance of the conservation area. The breach with Policy 85 of the LP is justified on the same basis, but in all other respects the appeal scheme falls broadly in line with the development plan and with policies in the NPPF taken as a whole. On balance, the development can be considered to be sustainable and should be allowed.

Planning Obligation and Conditions

Planning Obligation

55. A completed deed of agreement accompanies this appeal. It offers a sum of £495,000 to be used towards the provision of new affordable homes (off-site) in the District. The Council accepts that the development would be unable to accommodate the 35% proportion of affordable homes required by LP Policy 7A and is satisfied with the findings of the viability assessments. I have no reason to dispute the amount offered and accept that the provision accords with the NPPF call for meeting identified needs; it complies with the Regulation 122 tests of the Community Infrastructure Levy Regulations (CIL Reg 122).
56. Equally, the Council has identified the need for off-site leisure contributions (sports halls, swimming pools and open spaces) and justified the amount sought for a development of this scale, by reference to its evidence in the Sports and Recreation Facilities Strategy. The contributions are intended to assist with financing the redevelopment and improvement of the sports hall and swimming pool close to the site, as well as improve facilities within Rothamsted Park. The contributions are necessary to address the pressure brought to bear on these local facilities as a result of the proposed development. The Council informed the inquiry that none of the projects identified has been subject to contributions from other developments. I am satisfied that the contributions offered in the s106 would not breach the pooling limits introduced by CIL Reg 123.
57. Provision of fire hydrants would meet the requirements of CIL Reg 122, as they are necessary to ensure that suitable facilities are in place to serve the development. The availability and numbers of hydrants would comply with the NPPF aim to create safe communities.
58. The Council agrees that library contributions are not necessary. For that reason, I am satisfied that that element of the s106 does not meet the CIL Reg 122 and should not be included as part of the contributions to be made by the developer. Non-payment of the library contribution has not been taken into account in this decision.

Conditions

59. A set of conditions were drawn up and modified during the course of the inquiry. The numbers referred to in the commentary below correspond with numbering used in the Schedule of Conditions accompanying this decision.
60. Condition 1 limits the start date for development, as required by s91 of the Town and Country Planning Act 1990. Condition 2 is needed to ensure (for the avoidance of doubt and in the interests of proper planning) that the development is carried out in accordance with the approved plans.
61. Condition 3 is necessary, as the agreed access arrangements were altered in accordance with the plan prepared by the appellant's transport consultants. However, I have modified the wording to exclude parking arrangements, as that element of the scheme is covered by a separate condition. The additional Condition 4 I have imposed follows that suggested by the appellant (ID19). It would provide the Council with control over the laying out and management of the parking, which should accord with a Car Parking Strategy to be approved.

- Imposing such a condition obviates the need for suggested Conditions 19 and 20.
62. A separate Condition 5 for provision of cycle spaces is also included, in the interest of encouraging alternative forms of travel to and from the site. Travel Plan Condition 6 is included as part of the drive to encourage sustainable travel. At the inquiry the parties confirmed that the wording of the condition imposed would be acceptable to them.
63. To ensure that the development operates in the terms intended (as later living accommodation), Condition 7 is necessary to restrict the occupants' age to 60 and over. The appellant explained that additional wording relating to domiciliary care would clarify the nature of the use but to my mind it offers nothing above what is already proposed within the scheme, particularly as the need for care is not a condition of occupancy of the units. I agree, however, that Condition 8 is necessary, as it would preclude overnight use of the guest and staff accommodation which would otherwise add to a need for additional parking space/s.
64. In the interest of the character and appearance of the area, and to ensure that the development is executed to the high design, landscaping and biodiversity standards intended, Conditions 9 (external walls and roof materials), 10 (rainwater disposal details), 11 (hard and soft landscaping), 12 (planting plans and implementation), 13 (protection of trees), 14 (landscape and biodiversity management) and 18 (demolition) have been imposed. As the site lies within an Area of Archaeological Significance, Condition 15 is necessary. Given my conclusion on the residential amenity issue, a condition requiring windows to be obscure glazed is unnecessary and has not been imposed.
65. A construction method statement (Condition 16) and restrictions on working hours (Condition 17) are necessary to ensure good working practices and to protect residents' living conditions.
66. Condition 18 is necessary to ensure that the existing buildings on site are not demolished without a contract in place for their replacement, for visual reasons. The wording of the condition varies from that suggested by the appellant but is precise and would not hamper the developer's construction management strategy.

Other Matters and Conclusion

67. The Council confirmed that, because of distances and restricted intervisibility, the proposed development would have limited impact on the settings of listed buildings on Leyton Road. Their settings would be preserved.
68. The scheme includes a replacement day care centre. The s106 allows for the Harpenden Day Care Association (HDCA) to take up tenancy. The HDCA does not object to the replacement provision. However, the facilities are not to the satisfaction of the Harpenden Saturday Carers. The group meets only 12 times a year, their request for additional and more secluded facilities are not practicable and some compromise is inevitable in a development seeking to accommodate a variety of needs.
69. Neither the unknown ownership of part of the approach road to the site nor its implementation as a shared surface has drawn objections from the highways

authority. Having resolved that the parking provision would be appropriate for this type of development, I see no reasons to come to a different view.

70. Having considered these and all other matters raised, I find nothing of sufficient materiality to alter the balance of my considerations or my decision to allow the appeal, subject to the conditions set out in the attached Schedule of Conditions.

Ava Wood
INSPECTOR

APPEARANCES**FOR THE LOCAL PLANNING AUTHORITY:**

Mr Matthew Reed of counsel	Instructed by Head of Legal Services
He called	
Mr Steven Woods	Director, Woods Ferrer Limited
BSC(Hons) MA CILT	
MIHT MRTPI	
Miss Nicola Brown	Director, David Huskisson Associates
BA(Hons) Bland Arch	
Cert UD CMLI	
Mr Philip Smith	Director, Aitchison Raffety
BA(Hons) DipTP MRTPI	

FOR THE APPELLANT:

Miss Morag Ellis QC	Instructed by Barton Willmore LLP
She called	
Mr Ben Muirhead BEng	Principal Engineer, Odyssey Markides
CIHT	
Professor Robert	Professor Robert Tavernor Consultancy Limited
Tavernor BA DipArch	
PhD RIBA	
Mr Matthew Chard	Partner, Landscape Planning and Design Group,
BA(Hons) Dip(Hons)	Barton Willmore LLP
MAUD CMLI	
Mr Justin Kenworthy	Director, Barton Willmore LLP
MATP MAUD MRTPI AoU	

DOCUMENTS SUBMITTED AT THE INQUIRY

ID NO	Date	Title	Submitted by
1	24/11	Statement of Common Ground with Hertfordshire Council Council	PL
2	24/11	Mr Muirhead rebuttal statement	PL
3	24/11	Opening statement on behalf of appellants	PL
4	24/11	Opening statement on behalf of SADC	SADC
5	24/11	Decision letter ref: APP/B1930/A/06/2032389 and accompanying layout plan	SADC
6	24/11	Elevational drawings of Buildings A, B and C with agreed AODs	PL/SADC
7	25/11	GLVIA extracts	PL/SADC
8	25/11	History of Harpenden Fire Brigade	PL
9	25/11	Photograph from site looking towards Bennets Lodge	PL
10	25/11	Plan overlay with tree survey	PL
11	26/11	Council's statement addressing CIL Regs	SADC

		requirements	
12	27/11	Elevation/section drawings of existing site and approved scheme overlay	PL
13	27/11	Agreed note on site areas	PL/SADC
14 a & b	1/12	Appellant's position and note re: Lea Springs	PL & SADC
15	1/12	List of suggested conditions (discussed at inquiry)	PL/SADC
16	1/12	Completed s106 (3 counterparts)	PL
17	1/12	Plans showing land registry and application site boundaries	PL
18	1/12	Plans with proposed scheme overlaid on existing buildings on site and consented scheme	PL
19	1/12	Suggested car parking condition	PL/SADC
20	1/12	Agreed cycle parking condition	PL/SADC
21	1/12	Note from Mr Muirhead	PL
22	1/12	Mr Reed's closing submissions on behalf of SADC	SADC
23		Miss Ellis' closing submissions on behalf of the appellants	PL

SCHEDULE OF CONDITIONS

Timing and Implementation

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried in accordance with the following approved plans:

Reference	Title	Rev
600 PL-GA	Site Plan as Proposed	C
601 PL-GA	Lower Ground Floor Plan	E
602 PL-GA	Upper Ground Floor Plan	E
603 PL-GA	First Floor Plan	E
604 PL-GA	Second Floor Plan	E
605 PL-GA	Third Floor Plan	E
606 PL-GA	Fourth Floor Plan	E
607 PL-GA	Roof Plan	E
700 PL-GA	Section AA as Proposed	C
701 PL-GA	Section BB as Proposed	C
702 PL-GA	Section CC as Proposed	C
703 PL-GA	Section DD as Proposed	C
704 PL-GA	Section EE as Proposed	B
705 PL-GA	Section FF as Proposed	C
706 PL-GA	Section GG as Proposed	C
707 PL-GA	Section HH as Proposed	C
708 PL-GA	Section II as Proposed	C
800 PL-GA	Site Elevation J-J	C
801 PL-GA	Site Elevation K-K	C
802 PL-GA	Site Elevation L-L	C
803 PL-GA	Site Elevation M-M	C
GA-616	Block A Elevations	B
GA-617	Block B Elevations	B
GA-618	Block C Elevations	B
LL479-100-002	Lower Ground Level Plan (Camlins Landscaping)	-
LL479-100-003	Upper Ground Level Plan (Camlins Landscaping)	-

Access, Parking and Travel Plan

- 3) Notwithstanding the details shown on plans listed in Condition 2, access to the development hereby approved shall be carried out in accordance with plan no: 14 229 001 Rev D, Proposed Site Access (Odyssey Markides Plan).
- 4) Notwithstanding the details shown on plans listed in Condition 2, the development hereby permitted shall not be occupied until a scheme for the laying out and management of the residential, staff and visitor parking (a total of 40 spaces) and the day care centre parking (a total of 9 spaces and a minibus space), including designated spaces for disabled people, has been implemented in accordance with a Car Parking Strategy submitted to and approved in writing by the local planning authority. The Strategy shall include provision for the on-going management of parking on the site by the site management company; allocation of no more than one space per apartment and measures to preclude parking outside of

the marked spaces. Thereafter, the development shall be laid out, maintained and managed in accordance with the details of the approved Strategy.

- 5) Notwithstanding the cycle parking provision shown on the approved drawings, a scheme to provide 21 cycle parking spaces shall be submitted to and approved in writing by the local planning authority. The cycle spaces approved shall be provided before the development is occupied, and maintained thereafter.
- 6) The development hereby approved shall not be occupied until a Travel Plan based on the Framework Travel Plan has been submitted to and approved in writing by the local planning authority. The Travel Plan shall include the objectives, targets, mechanisms and measures to achieve the targets, implementation timescales, provision for monitoring, and arrangements for a Travel Plan co-ordinator. The measures contained within the approved plan and any approved modifications shall be carried out in full.

Occupancy / Age Limit

- 7) The residential accommodation within the development hereby approved shall be used only as specialist accommodation for older people with the principal and primary occupation limited to at least one person aged 60 years of age or older, and any spouse, common or civil law partner or other companion of that person residing within the accommodation at the time of that person's death (or ceasing to reside at the accommodation due to infirmity).
- 8) The guest and staff accommodation contained within Building C (as identified on drawing no: 601 PL-GA Rev E) shall not be used as later living accommodation for the residents of the development or permanent residential accommodation for the staff/nurses working within the development.

Design, Landscaping and Biodiversity

- 9) Prior to the commencement of the development (excluding demolition works) hereby approved, samples of the external wall and roof materials to be used in the construction of the buildings of the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the samples so approved.
- 10) Prior to the commencement of the development (excluding demolition works) a scheme for the disposal of rainwater from the buildings hereby approved shall be submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with the approved details.
- 11) No development (excluding demolition and ground works) shall take place until details of both hard and soft landscaping have been submitted to and approved in writing by the local planning authority and these works shall be carried out in accordance with the approved details. The details shall include (a) means of enclosure; (b) hard surfacing materials including access and parking areas; (c) pedestrian and circulation areas; (d) minor artefacts and structures (e.g. refuse storage, signs, external

lighting etc); (e) proposed functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc); (f) existing trees and other vegetation to be retained; (g) all soft landscaping. Development shall be carried out in accordance with the approved details.

- 12) Soft landscaping details required to be submitted pursuant to Condition 11 shall include: planting plans; written specifications (including cultivation and other operations associated with the establishment of all planting); schedule of plants, noting species, plant sizes and proposed numbers/densities where appropriate. An implementation programme shall be submitted to and approved in writing prior to the commencement of any construction works on the site and the development implemented in accordance with the approved details.
- 13) This permission does not extend to the destruction, felling, lopping or topping of the existing trees which are inside or outside of the site and which are shown on the approved plans as being retained. These trees shall be protected during the demolition and construction phases of the development in accordance with a method statement to cover the protection of trees based on guidelines set out in BS5837, or any replacement thereof, and any supplementary protection identified as being necessary by the local planning authority. No works, including works of demolition, shall take place on the site until the method statement (including supervision schedule) has been submitted to and approved in writing by the local planning authority. The method statement shall include drawings giving details of the methods of excavation and types of foundation proposed for the buildings and indicating how the roots of trees to be retained shall be protected. Development shall be carried out in accordance with the approved details.
- 14) No development (excluding demolition and ground works) shall take place until a landscape and biodiversity management plan has been submitted to and approved in writing by the local planning authority; the site shall thereafter be managed in accordance with the approved plan. The details shall include the management and maintenance strategy to support the landscape details approved by Conditions 11 and 12, and bird and bat box/nesting provisions.

Archaeology

- 15) No development (excluding above ground demolition works) shall take place until the developer, or their successors in title, have secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the developer and approved in writing by the local planning authority. The scheme shall be implemented as approved.

Construction Method Statement and Timing

- 16) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning

authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors;
 - ii. loading and unloading of plant and materials;
 - iii. storage of plant and materials used in constructing the development;
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v. wheel washing facilities;
 - vi. measures to control the emission of dust and dirt during construction, and
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 17) No demolition or construction works relating to this permission shall be carried out on any Sunday or Bank Holiday nor before 07.30 hours or after 18.00 hours Monday to Friday nor on any Saturday before 08.00 hours or after 13.00 hours.

Demolition

- 18) Works of demolition shall not be carried out until a contract that allows for the carrying out of works of redevelopment has been made and planning permission has been granted for the redevelopment for which the contract provides.

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