

TOWN AND COUNTRY PLANNING ACT 1990
PLANNING AND COMPULSORY PURCHASE ACT 2004
LAND AT EPSOM GENERAL HOSPITAL, DORKING ROAD, EPSOM KT18 7EG
APPEALS BY SENIOR LIVING URBAN (EPSOM) LIMITED

APP/P3610/W/21/3272074 (“APPEAL A”)

APP/P3610/W/21/3276483 (“APPEAL B”)

Inquiry opened 17 August 2021

APPELLANT’S OPENING POINTS

Appearances

Rupert Warren QC, instructed by CMS Cameron McKenna Nabarro Olswang LLP, calling
Matthew Serginson BEng MRICS, Development Director, Guild Living
Andrew Earwicker BA(Hons) DipArch RIBA ARB, Practice Director, Life3A
Andrew Williams BA(Hons) DipLA DipUD CMLI, Director, Define
Tim Spencer BA(Hons) DipTP MRTPI, Associate Director, Nexus Planning

Opening Points

1. The Appellant is a wholly owned subsidiary of Legal and General Later Living Limited, and it seeks permission for two schemes at the Epsom Hospital site, aimed at re-developing a surplus part of the hospital estate for a higher-density, mixed use scheme, led by a state of the art C2 housing with care operation. The Appellant, as Mr Serginson explains in his evidence, aims to provide Extra Care housing, otherwise known as housing with care, with a focus on innovative ways to live independently with care needs, in the heart of towns and cities. It is represented by Guild Living as far as the planning process is concerned (as Mr Serginson details, Guild is a joint venture between Legal and General Later Living Limited and a group of specialists in this area of later living).
2. There are two alternative schemes for the appeal site – Scheme A and Scheme B – because the Council refused permission against the advice of its officers on two occasions; Scheme B was

advanced in the hope of overcoming the objections of Council members on design and residential amenity effects. Scheme A has been the subject of a *Wheatcroft* amendment during the course of the appeal, which brings the two schemes a little closer together. They have much in common, however.

3. First, they would provide housing with care of a very high order, divided into different types of units: Guild Living Residences for purchase (301 in Scheme A, 267 in Scheme B), designed with specialist adaptable features including dementia-specific elements, and Guild Care Residences and Guild Care Suites (38 in both schemes), which would be rented; these are for those residents who still seek to live with independence but may have greater care needs. The schemes also contain considerable communal facilities – café and restaurant, gym and wellness centre, and spaces through the residential floors for informal gathering, as well as substantial outdoor amenity, both at ground and as rooftop gardens.
4. Second, the scheme would be fully integrated, physically and functionally, with the local community. It would house a nursery as well as modern, key worker accommodation for the adjacent hospital, and the nursery will have 80% of its places assigned to workers from the hospital; the ground floor ancillary uses (restaurant and café, wellness and gym) would be open to the public. The layout of the schemes is also planned around publicly-accessible spaces which enable access from both north and south, connection to the Millennium Green, and much greater permeability through the site to and from the hospital.
5. This quantum and quality of specialist C2 provision is needed in Epsom and Ewell, and in the wider area. It would meet the needs of an ageing population, a need which the Government in the PPG describes as “critical”. It would also bring with it benefits to the local health service, due to the well-evidenced improvement in healthcare outcomes for those in specialist accommodation of this kind.
6. Third, the schemes would both represent housing in the broader sense: the C2 homes and the key worker housing are both much needed in a local authority area which falls well below the national requirement to maintain a 5 years’ supply of housing land, or to deliver housing as per the Housing Delivery Test. The scale of deficit is a material consideration, and here the facts are stark: less than a single year of housing land supply, and, measured at 2020, only 34% delivery. The numbers of residential units in either scheme in a very sustainable location, would be a major benefit, as would the knock-on effect on the local and wider housing market when homes (often large, former family homes) are returned to the market by those downsizing to specialist accommodation. The sizeable contribution to affordable housing in such circumstances would also be of significance.

7. Fourth, the schemes would create or sustain hundreds of jobs, both directly and through the linked providers or supply chains.
8. Fifth, the schemes would both bring about a much-needed regeneration of a surplus brownfield site, which currently makes a very poor contribution to the local area's character and appearance. It would do so through two very well-thought out schemes, aimed at optimising the benefit of a site such as this (in general – but even more pointedly so in a Green Belt authority near the fringes of London).
9. Here we come to the Council's two objections – the effect on character and appearance, and on residential amenity. The evidence will allow full exploration of the architectural quality of the schemes, but it is important to recognise that the site at present is a townscape detractor, a surplus, near-derelict part of a hospital site which is, in the main, comprised of larger-scale utilitarian structures which can be seen to varying degrees in the near and middle distance.
10. As the site visit will fully bear out, the appeal site occupies part of an institutional site of long standing; a site which has co-existed with the older and newer components of the more suburban hinterland to the town centre. It faces both the hospital and the 2 storey suburbia of Woodcote Green Road, and therefore any successful scheme needs to respond to, and mediate between, these rather different townscapes.
11. Hence why, as Mr Williams observes in his evidence, a degree of caution is needed when applying local and national policy on design, which speaks in terms of respecting local distinctiveness and local character – it would be at odds with the facts to claim a homogenous, or unified, character around the appeal site. Instead, the Life3A architectural team, working very closely with planning and design officers at the Council, sought to achieve both re-use and intensification, and a satisfying design solution which mediated between the varying character elements in the area.
12. It is notable that officers were not only supportive of the principle of development, but of building heights in excess of 10 storeys, as well as a layered approach which stepped up from Woodcote Green Road and the residential plots to the west, toward the centre of the site. That is good design sense, makes the best use of the site, and articulates the scheme in a way that knits it more into the different patterns of development in the area. But as in the past, the site is not the same as the residential hinterland and successful schemes on it are likely to have some contrasts of scale and height with those houses. Not to have such a juxtaposition would fail to

reflect the history of the site and fail to observe the injunction of current national policy to optimise the reuse of the land.

13. The Appellant has set out a detailed and reasoned case for both schemes, in the light of those points. In respect of Scheme A, it is accepted that there would be a limited number of relatively small adverse effects: some townscape and visual harm to a couple of nearby areas, due to the degree of contrast between the proposed scheme and the low-density low-rise suburban housing, some adverse impact, again low on the scale, to numbers 40 and 46 Woodcote Green Road due to increased built form in their outlook; and very low (within the category of ‘less than substantial’) harm to a set of heritage assets including the Chalk Lane Conservation Area. It is notable, however, that the last of these is not a reason for refusal.
14. Scheme B’s impacts would be less, because of the changes made to height in particular – 6 metres’ difference in the case of the taller elements (partly through removal of an entire floor of accommodation, partly through a re-engineering of levels and re-design of internal structure). There would be no townscape adverse impact, in Mr Williams’ view, stemming from Scheme B, which would be visible but in less noticeable a way. Some very limited heritage impacts would remain, as would some adverse effects on the residential amenity of 40 and 46 Woodcote Green Road.
15. These impacts would, in both schemes, be outweighed by the very considerable benefits that the developments would realise. That was the clear judgement of the planning officers who engaged over the course of 18 months with the (now) Appellant’s team; it appears to have been the judgement of the planning committee at least in relation to heritage assets since the Decision Notices do not refer to heritage harm or heritage protection policies when setting out the Reasons for Refusal – presumably, accepting that the limited heritage harm would be outweighed by the schemes’ public benefits in line with the Framework (NPPF).
16. As now advanced by Mr Kiely on behalf of the Council, the harms to character and appearance are overstated. Insufficient attention is given to design quality, improvements to townscape appearance and function, and the degree to which larger buildings on the hospital site (rather less well designed in the past) are a feature of the local area. In particular, the heights proposed would be assimilated into an area such as this: clearly visible, of course, but of high quality and contextual.
17. The second reason for refusal, concerned with an alleged hard western and southern edge to the schemes, does not really bear scrutiny. The schemes (including Scheme A, having been amended in this respect during the appeal process) would very much improve the pedestrian,

townscape and visual experience along Woodcote Green Road, and present a layered, well-mannered and high-quality set of buildings to views from Millennium Green. From 40 and 46 Woodcote Green Road, the schemes would build in additional landscaping to add to the considerable mature tree planting that those houses already have in their gardens (a function, no doubt of the juxtaposition that has always existed between uses and scales along that boundary).

18. It is right to say that the additional overall height and massing of the proposed schemes would adversely affect the outlook (mainly from the gardens) of those two houses. However, there would not be any loss of privacy, and the combination of set-off distances and intervening planting mean that the sense of enclosure or juxtaposition would be acceptable. There would be no material loss of amenity to other houses in that area to the west of the site (ie Digdens Rise and Hylands Road), which one presumes is why the Council did not allege that in the Reasons for Refusal.
19. Returning to the question of the overall planning balance, the Framework applies the tilted balance in this case because (a) there is no 5 year housing supply/HDT compliance, and (b) there is no disapplication of the tilted balance by reference to the footnote (heritage, of course, does not have that effect if any harm is outweighed by benefits, as here). The harms identified would not significantly and demonstrably outweigh the benefits of the scheme – indeed, the opposite is true. That is why the development plan assessment is also overall positive. A number of the policies (including the housing requirement and height/density principles) are out of date; the more generic tests relating to meeting needs of all kinds, and residual effects on character and appearance and residential amenity, are largely complied with. The set of relatively modest harms would be outweighed by compliance with the aims of the plan.
20. In short, both schemes represent positive change aimed at directly confronting identified needs in the Borough, through a concerted design and technical engagement with the site and its context. Subject to the evidence and conditions/s.106 obligations, the Appellant will in due course request that the appeals are both allowed.

RUPERT WARREN QC

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