

Epsom General Hospital, Dorking Road
Epsom KT18 7EG

Appeals A & B

Proof of Evidence

Mike Kiely 20 July 2021

Site Address

Epsom General Hospital, Dorking Road, Epsom KT18 7EG (the Appeal Site)

Description of Development

Appeal A

Description amended and agreed to take account of the Amended Plans:

Demolition of the existing hospital buildings, accommodation block and associated structures and redevelopment of the site to provide a new care community for older people arranged in two buildings, comprising 301 care residences, 10 care apartments and 28 care suites providing transitional care, together with ancillary communal and support services Use Class C2, 24 key worker units Use Class C3, children's nursery Use Class E, as well as associated back of house and service areas, car and cycle parking, altered vehicular and pedestrian access, landscaping, private amenity space and public open space.

(Proposed Development A)

Appeal B

Demolition of the existing hospital buildings, accommodation block and associated structures and redevelopment of the site to provide a new care community for older people arranged in two buildings, comprising 267 care residences, 10 care apartments and 28 care suites providing transitional care, together with ancillary communal and support services Use Class C2, 24 key worker units Use Class C3, children's nursery Use Class E, as well as associated back of house and service areas, car and cycle parking, altered vehicular and pedestrian access, landscaping, private amenity space and public open space.

(Proposed Development B)

Applicant

Senior Living Urban (Epsom) Limited (the Appellant)

References

Appeal A

Epsom & Ewell Borough Council (the Council): 19/01722/FUL

Planning Inspectorate (PINS): APP/P3610/W/21/3272074

Appeal B

Epsom & Ewell Borough Council (the Council): 21/00252/FUL

Planning Inspectorate (PINS): APP/P3610/W/21/3276483

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1 INTRODUCTION

- 1.1 My name is Michael Kiely. I am a chartered town planner with over 40-years' experience in local government, most of that in London and nearly 14 years at service head level and above. For the last 6 years I have worked as a planning consultant in the public sector.

Qualifications

- 1.2 I hold the Degrees of Bachelor of Town Planning (awarded by the Polytechnic, now University, of the South Bank) and Master of Business Administration (awarded by the Open University Business School). I am a Chartered Member of the Royal Town Planning Institute, formerly president of the Planning Officers Society and now chair of its Board. I sit on numerous national and London planning advisory boards and steering groups and I work closely with government and across the sector to shape planning in England.

Experience

- 1.3 My Local Authority CV is as follows:

Sep 1974 to Jan 1986	GREATER LONDON COUNCIL Technical & Professional Planning Officer
Jan 1986 to Jun 1987	MAIDSTONE BC Planning Officer Development Control
Jun 1987 to Aug 1989	BEXLEY LBC Senior Planning Officer Development Control
Aug 1989 to Mar 1990	HAVANT BC Deputy Team Leader Development Control
Mar 1990 to Sep 2001	MAIDSTONE BC Team Leader Development Control
Sep 2001 to Feb 2004	WALTHAM FOREST LBC Development Control Manager
Feb 2004 to Apr 2006	WALTHAM FOREST LBC Acting Head of Planning and Transportation
Apr 2006 to Apr 2009	TOWER HAMLETS LBC Head of Development Decisions
Apr 2009 to May 2015	CROYDON LBC Director of Planning and Strategic Transport

1.4 In 2015 I set up my consultancy, Mike Kiely planning + regeneration, to specialise in assisting local planning authorities. The main assignments I have delivered are set out below. Other commissions include:

- Thames Tideway Tunnel (Independent Panel Expert Member)
- Design Council BEE (Built Environment Expert)
- Planning Advisory Service (Specialist Planning Advisor)
- POS enterprises (Associate)

1.5 I act as expert witness for LPAs at public inquiries and NSIP hearings. I also assist Councils and recruitment agencies with senior planning appointments.

Jun 2015 to Feb 2019	Re (a Barnet LBC and Capita JV) Planning Advisor
Dec 2015 to Mar 2016	LEWISHAM LBC Planning Advisor
Apr 2016 to Oct 2016	BRENT LBC Planning Advisor
Oct 2016 to July 2019	BEXLEY LBC Planning Advisor
Mar 2017 to Sep 2019	HAVERING LBC Planning Advisor
Jun 2017 to Mar 2019	HAMMERSMITH & FULHAM LBC Planning Advisor
Feb 2019 to Oct 2019	WIRRAL MBC Planning Advisor
Apr 2019 to Feb 2020	LAMBETH LBC Planning Advisor
July 2019 to May 2020	KINGSTON LBC Planning Advisor
Apr 2021 to present	LAMBETH LBC Planning Advisor

Role

1.6 I am commissioned by the Council to give planning evidence to this Inquiry. I am familiar with the Appeal Site and the surrounding area, the relevant planning history and the planning policies in the National Planning Policy Framework (NPPF) and the Development Plan. The evidence which I have prepared and provide for this appeal is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

Scope of evidence

- 1.7 My proof of evidence considers whether the two proposals comply with National and Development Plan policy and identifies other material planning considerations relevant to the determination of these matters.
- 1.8 I focus on the overall policy context and the extent of harm caused by the Proposed Developments, particularly to the character of the area in the vicinity, including heritage assets. I weigh this harm against any public benefits to arrive at what I consider to be the appropriate planning balance in each case. This balance is arrived at through a full understanding of the extent of harm, the value of any public benefits, the relevant statutory provisions and the current national, strategic and local planning policy context.
- 1.9 The impact of the development on Heritage Assets is not specifically mentioned in the grounds of refusal for either Appeal, although it is implicit in ground 1. In the Committee reports for the determination of both applications, less than substantial harm was identified to heritage assets in the vicinity of the Appeal Site because of the Proposed Developments. To assist the inspector in discharging his statutory duties¹, evidence of this harm is included in this proof.
- 1.10 As part of my evidence, I will look at whether paragraph 11(d) of the NPPF is engaged in the context of the Council's five-year housing land supply and the Housing Delivery Test and, if the tilted balance is employed, to what extent it is relevant to the determination of these appeals.
- 1.11 The application the subject of Proposed Development A was reported to the Council's Planning Committee on 18 November 2020. A copy of that report², the update report³ and associated minute⁴ are available from the Council's website via the links in the footnote.

¹ Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

² [Planning Committee Report 18/11/20](#)

³ [Planning Committee Update Report 18/11/20](#)

⁴ [Planning Committee Minute 18/11/20](#)

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- 1.12 The application the subject of Proposed Development B was reported to the Council's Planning Committee on 22 April 2021. A copy of that report⁵, the update report⁶ and associated minute⁷ are also available from the Council's website via the links in the footnote.
- 1.13 The committee reports described the site, the surrounding area, the proposal, the planning history and the planning policies that are relevant to the Proposed Developments.
- 1.14 The Statement of Common Ground for both appeals has sections agreeing the description of the appeal site, the description of development, the description of the area, the planning history of the appeal site and the policy context.

⁵ [Planning Committee Report 22/04/21](#)

⁶ [Planning Committee Update Report 22/04/21](#)

⁷ [Planning Committee Minute 22/04/21](#)

2 PLANNING DECISIONS AND HISTORY

Appeal A

- 2.1 The recommendation to committee on 18 November 2020 was to grant planning permission subject to conditions and securing planning obligations as set out in the committee report and as amended in the update report.
- 2.2 The decision of the Committee was to refuse planning permission, against the officer recommendation for approval, for the following grounds:
1. The proposed development by reason of its height, mass, scale and design would adversely impact and harm the character and appearance of the area (including the built environment and landscape setting), failing to comply with Policy CS5 of the Core Strategy (2007), Policies DM9, DM10 and DM11 of the Development Management Policies Document (2015) and paragraphs 122 and 127 of the NPPF (2019).
 2. The siting of the development leaves insufficient landscaping opportunities to the frontage of Woodcote Green Road and along the south-western boundary with neighbouring residential property to mitigate the impact of the proposed development, presenting an over-developed and hard edge to the appearance to the development, which would cause harm to the character and appearance of the area. Causing harm to the character and appearance of the area fails to comply with Policy DM5 of the Development Management Policies Document (2015) and the NPPF (2019).
 3. The proposed development by reason of its height, massing and design would adversely impact on the neighbouring amenities of the occupiers at 40 and 46 Woodcote Green Road, by means of overbearing, loss of privacy and loss of outlook, failing to comply with Policy DM10 of the Development Management Policies Document (2015).
 4. In the absence of a completed legal obligation under Section 106 of the Town and Country Planning Act 1990 (as amended), to secure an affordable housing contribution, the applicant has failed to comply with Policy CS9 (Affordable Housing and meeting Housing Needs) of the Core Strategy (2007) and the NPPF (2019).
- 2.3 The Council issued the decision on 23 November 2020.

Amended plans

- 2.4 Since appealing the decision, the Appellant has submitted amended plans for Appeal A that have been accepted by the Inspector and will be considered at the Inquiry. These amendments broadly incorporate the changes made to the application that is the subject of Appeal B, but do not include the reductions made to the height of both buildings. The evidence in this proof will address the impact of the amended scheme only for Appeal A.

Appeal B

- 2.5 The recommendation to Committee on 23 February 2021 was to grant planning permission subject to conditions and securing planning obligations set out in the committee report and as amended in the update reports.
- 2.6 The decision of the Committee was to refuse planning permission, against the officer recommendation for approval, for the following grounds:
1. The proposed development by reason of its height, mass, scale and design would adversely impact and harm the character and appearance of the area (including the built environment and landscape setting), failing to comply with Policy CS5 of the Core Strategy (2007), Policies DM9, DM10 and DM11 of the Development Management Policies Document (2015) and paragraphs 122 and 127 of the NPPF (2019).
 2. The siting of the development leaves insufficient landscaping opportunities to the frontage of Woodcote Green Road and along the south-western boundary with neighbouring residential property to mitigate the impact of the proposed development, presenting an over-developed and hard edge to the appearance to the development, which would cause harm to the character and appearance of the area. Causing harm to the character and appearance of the area fails to comply with Policy DM5 of the Development Management Policies Document (2015) and the NPPF (2019).
 3. The proposed development by reason of its height, massing and design would adversely impact on the neighbouring amenities of the occupiers at 40 and 46 Woodcote Green Road, by means of overbearing, loss of privacy and loss of outlook, failing to comply with Policy DM10 of the Development Management Policies Document (2015).
 4. In the absence of a completed legal obligation under Section 106 of the Town and Country Planning Act 1990 (as amended), to secure an affordable housing

contribution, the applicant has failed to comply with Policy CS9 (Affordable Housing and meeting Housing Needs) of the Core Strategy (2007) and guidance contained under NPPF (2019).

- 2.7 The Council issued the decision on 6 May 2021.
- 2.8 The reasons for refusal are identical for both developments, save for the wording, but not the meaning, of the final phrase of reason 4.

Planning history

- 2.9 Whilst there are several previous planning decisions on the Appeal Site (as detailed in the Statement of Common Ground) none is relevant to the matters that are dealt with in this proof.

3 NATIONAL PLANNING POLICY

- 3.1 National planning policy is set out in the NPPF, with the latest version issued on 20 July 2021⁸.
- 3.2 Some of the changes between the original (2012) and the 2019, and then the 2021 versions of the framework relating to design are crucial to the determination of this appeal and will be explained below.
- 3.3 Those changes commenced their journey some 12 months before the 2019 document was issued and that policy journey continues. MHCLG consulted on revisions to those policies in January of this year and issued the new version of the NPPF at the time of finalising this proof. It contains an even greater emphasis on ensuring that the planning system delivers good design, or “beauty” to adopt its nomenclature.

NPPF 2019 Policy

- 3.4 Paragraph 124 of the 2021 NPPF states the development should “makes efficient use of land, taking into account ... the desirability of maintaining an area's prevailing character and setting ...”.
- 3.5 Paragraph 127 states that “Design policies should be developed with local communities, so they reflect local aspirations, and are grounded in an understanding and evaluation of each area's defining characteristics.”
- 3.6 Paragraph 130 sets out that planning decisions should ensure that developments (inter alia) add to the overall quality of the area, are visually attractive as a result of good architecture, layout and appropriate and effective landscaping and are sympathetic to local character and history, including the surrounding built environment and landscape setting.
- 3.7 Paragraph 134 sets out that development that is not well designed should be refused and that development should reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents

⁸ [NPPF 2021](#)

- 3.8 Paragraph 189 notes that heritage assets, including conservation areas, “are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.”
- 3.9 Paragraph 199 sets out the procedure for considering the impact of a proposed development on the significance of a designated heritage asset and requires “great weight” to be given to the conservation of an asset, even if the harm to the significance of the asset is less than substantial. In such cases paragraph 196 states that, “this harm should be weighed against the public benefits of the proposal”.

NPPF paragraph 11

- 3.10 The Council's position with respect to its 5-year housing land supply and the Housing Delivery Test are set out in the Statement of Common Ground (14 July 2021).
- 3.11 Although the Council is caught by the so-called titled balance in paragraph 11(d) of the NPPF because of its housing delivery record⁹, the detailed policies that were relied upon by the Council's Planning Committee in its decisions to refuse planning permission for both developments are in an adopted, post NPPF 2012 DPD¹⁰, are subject to the statutory s38(6)¹¹ requirement and are in line with the policies in the NPPF when read as a whole, especially those relating to good design. They are therefore not out-of-date and they do not, of themselves, interfere with the presumption in favour of sustainable development for the provision of housing. Rather they ensure that any housing, or other development, that is delivered is well designed, which is “fundamental to what the planning and development process should achieve”¹².
- 3.12 Additionally, because the Proposed Developments cause harm to heritage assets, paragraph 11(d)(i) is also relevant with respect to the policies in the NPPF relating to designated heritage assets.

⁹ NPPF 2021 paragraph 11(d) footnote 7

¹⁰ Development Management Policies DPD (2015)

¹¹ Planning and Compulsory Purchase Act 2004

¹² NPPF 2021 paragraph 126

3.13 Whilst significant weight must be given to the provision of housing in the planning balance for both appeals, significant weight must also be given to the delivery of good design. To do otherwise would be contrary to the clear advice around design in the NPPF (and from other recent government publications around design explained in the next section of this proof), would be contrary to up-to-date policies in the Development Plan and would not be s38(6) compliant.

Development of National Planning Design Policy

3.14 The purpose of the planning system is to deliver sustainable development¹³ and the creation of high-quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve¹⁴. The Proposed Developments falls short of a key aspect of sustainable development: good design. Good design is not restricted to the design of a building, but equally relates to the spaces between buildings and the relationship of a building to its neighbours and the wider area.

3.15 A significantly greater emphasis has emerged from MHCLG since the publication of the first NPPF in 2012 on the importance of achieving good-quality design and the fundamental need to create high-quality buildings and places through the planning and development process. This is evidenced by:

- On 25 April 2018 MHCLG held a conference (Achieving Well-Designed Places) in London attended by over 300 professionals to start a conversation with the sector on how they could improve design quality through the planning process. This was followed up by three regional seminars. This engagement was part of the work by MHCLG in drafting the revised NPPF (2018 version) and to give effect to its stronger emphasis on delivering good design.
- The 2019 version of the NPPF has a greater emphasis on achieving well-designed places and changes the overall policy position from "The Government attaches great importance to the design of the built environment"¹⁵ to "The creation of high-quality buildings and places is fundamental to what the planning and development process should achieve"¹⁶. The titles of the respective sections in the NPPFs have also changed from "Requiring Good Design" in 2012 to "Achieving Well-Designed Places" in 2019 signalling a more focused approach from

¹³ NPPF 2021 paragraph 7

¹⁴ NPPF 2021 paragraph 126

¹⁵ NPPF 2012 paragraph 56

¹⁶ NPPF 2019 paragraph 124

Government towards getting good design delivered rather than just aspiring it. This emphasis on the “creation of high quality, beautiful and sustainable buildings and places”¹⁷ continues in the 2021 iteration of the NPPF.

- Government subsequently set up the Building Better, Building Beautiful Commission “to tackle the challenge of poor-quality design and build of homes and places, across the country and help ensure as we build for the future, we do so with popular consent. The Commission will gather evidence from both the public and private sector to develop practical policy solutions to ensure the design and style of new developments, including new settlements and the country’s high streets, help to grow a sense of community and place, not undermine it.”¹⁸ It produced an interim report “Creating space for beauty” on 9 July 2019¹⁹ and a final report “Living with beauty” on 30 January 2020²⁰.
- On 1 October 2019 MHCLG published a National (England) Design Guide²¹ which sets out the characteristics of well-designed places and demonstrates what good design means in practice. It forms part of the government’s collection of Planning Practice Guidance and is intended to be read alongside the separate PPG on Design: process and tools²².
- On 30 January 2021 MHCLG launched a consultation on draft revisions to the National Planning Policy Framework and a draft new National Model Design Code²³. The text of the NPPF is mainly being revised to implement government policy changes in response to the Building Better Building Beautiful Commission “Living with Beauty” report. The Model Code provides detailed guidance on the production of design codes, guides and policies to promote successful design.
- The new 2021 version of the NPPF²⁴ was issued by the Rt Hon Robert Jenrick MP at the Building Beautiful Places Webinar held on 20 July 2021, which also launched the Office for Place (to be headed by Nicolas Boys Smith) and the new Model Design Code²⁵. The Secretary of State emphasised again at the event the

¹⁷ NPPF 2021 paragraph 126

¹⁸ Purpose/role of the Commission from its [Terms of Reference](#)

¹⁹ [Creating Space for Beauty: Interim Report 09/07/19](#)

²⁰ [Living with Beauty: Final Report 30/01/20](#)

²¹ [National Design Guide 01/10/19](#)

²² [PPG - Design: process and Tools](#)

²³ [Consultation on NPPF & National Model Design Code 30/01/21](#)

²⁴ [NPPF 20/07/21](#)

²⁵ [National Model Design Code 20/07/21](#)

government's determination to deliver high-quality, contextual design through the operation of the planning system²⁶.

- 3.16 All these changes represent a significant shift in government policy over the last three years with respect to the delivery of high-quality design through the planning system.
- 3.17 Against this consistent direction of change from Government on the importance of achieving high-quality design in the planning process over the last three years or more, even greater weight must now be given in the planning balance to design considerations.

²⁶ [Press Release 20/07/21](#)

4 DEVELOPMENT PLAN POLICY

- 4.1 The planning policies relevant to the consideration of the Proposed Developments were listed in section 7 of the respective reports to the Council's Planning Committee on 18 November 2020 and 22 April 2021. They are the same for both appeals. The text of the policies cited in the decision notices have been set out in Appendix A of the Statement of Common Ground for convenience. The Statements of Common Ground also identified the planning policy documents that are relevant to these appeals and set out their status where appropriate.
- 4.2 This section will look in detail at those policies and their relevance to the two appeals.

Relevant policies

- 4.3 Policy CS5 (Built Environment) of the Core Strategy requires all developments to be of a high quality including creating attractive, functional and safe public and private environments that reinforce local distinctiveness and complement the attractive characteristics of the Borough.
- 4.4 Policy CS9 (Providing for Housing) sets out, inter alia, the policies relating to the provision of affordable housing.
- 4.5 Policy DM5 (Trees and Landscaping) of the Development Management Policies DPD seeks to protect and enhance the borough's flora and landscapes by requiring landscape proposals in submissions for new development, which retain existing trees and other important landscape features where practicable and include the planting of new semi-mature trees and other planting
- 4.6 Policy DM 8 (Heritage Assets), although not cited in the reasons for refusal, is also relevant to this appeal for the reasons explained in paragraph 1.9 above. It requires that developments that have an effect upon Heritage Assets must establish the individual significance of the Asset and as part of the assessment process, the significance of the Asset will be taken into account when determining whether the impact of any proposed development is acceptable. It further states that the Council "will resist the loss of our Heritage Assets and every opportunity to conserve and enhance them should be taken by new development".

- 4.7 Policies DM9 (Townscape Character and Local Distinctiveness) and DM10 (Design Requirements for New Developments) of the same document encourage high quality development and state that planning permission will be granted for proposals which make a positive contribution to the borough's visual character and appearance.
- 4.8 Policy DM 9 states that the Council "will seek enhancement of the townscape through new development, particularly those areas with poorer environmental quality and where the character has been eroded or needs improving" and "make a positive contribution to the Borough's visual character and appearance". The policy sets out the considerations that will be used in assessing development: "compatibility with local character and the relationship to the existing townscape and wider landscape; the surrounding historic and natural environment; the setting of the proposal site and its connection to its surroundings; the inclusion of locally distinctive features and use of appropriate materials."
- 4.9 Policy DM 10 requires new development to contribute to the character and local distinctiveness of a street or area, respecting the prevailing development typology, including housing types and sizes, prevailing density of the surrounding area, the scale, layout, height, form (including roof forms), massing, plot width and building line.
- 4.10 Policy DM11 seeks to support making the most efficient use of housing sites but balances that support with the need to control how the density of development would contribute towards maintaining and enhancing the visual character and appearance of the wider townscape and lead to no net loss of biodiversity. The policy sets a 40 dwelling per hectare limit on densities with criteria setting out potential exceptions. On 8 May 2018 the Council's Licensing & Planning Policy Committee considered a report²⁷ which outlined the material considerations that should be taken into account when assessing planning applications involving changes in use, higher densities and taller building heights. The effect of this report and the resulting statement²⁸ is to have an optimisation approach to development of housing sites in terms of densities or heights. The Council has not however dropped the requirement for such development to maintain and enhance the visual character and appearance of the wider townscape. It is that part of the policy that is harmed by the Proposed Developments.

²⁷ [Licensing & Planning Policy Committee Report 08/05/18](#)

²⁸ [Making Efficient Use of Land – Optimising Housing Delivery 2018](#)

5 CHARACTER OF THE AREA

- 5.1 This section looks in detail at the character of the surrounding area. It starts to the north of the Appeal Site, at the junction of Dorking Road (A24) with White Horse Drive, and moves around the Appeal Site in a clockwise direction through the two conservation areas finishing at Woodcote Green opposite the Appeal Site. Where the Proposed Developments impact on the area, historic assets in particular, this will be highlighted.
- 5.2 The historic building assets in the vicinity of the appeal site are generally significant for the following reasons:
- The intrinsic nature of the quality of the building
 - The contribution the building makes to the townscape
 - The story the building tells of the historic development of Epsom
- 5.3 The significance of the historic area assets in the vicinity of the appeal site are set out in the Character Appraisal & Management Proposals for Woodcote Conservation Area²⁹ and Chalk Lane Conservation Area³⁰.
- 5.4 It is recommended that the Inspector, in carrying out his site inspection, follows this route: starting in the Appeal Site, travelling north through the Epsom Hospital site to Dorking Road; turning left first to appreciate the cluster of listed buildings around its junction with White Horse Drive, then doubling back and walking northeast along Dorking Road to its junction with Woodcote Road in the heart of the Woodcote Conservation Area; turning right and following Woodcote Road south to the heart of the Chalk Lane Conservation Area at the junction of Woodcote Road, Chalk Lane and Woodcote Green Road; and finally walking southwest back towards the Appeal Site along Woodcote Green Road.

²⁹ [Woodcote Conservation Area Character Appraisal August 2010](#)

³⁰ [Chalk Lane Conservation Area Character Appraisal August 2021](#)

- 5.5 When looking at the impact of the Proposed Developments on the area surrounding the Appeal Site, the Boiler House chimney and the white building/Wells Wing from within the hospital are visible features on the skyline above surrounding buildings and trees. According to the appellant's Design and Access Statement, the white building/Wells Wing has a height of 21.43 metres with its tall plant structure rising a further 7.78 metres (excluding telecoms aerials) taking the overall height to 29.21 metres. The Council has checked these measurements and found them to be accurate. The Boiler House chimney on the Appeal Site is stated as being in excess of 30 metres in the Design and Access Statement. It has been measured by the Council to be 39.84 metres in height (using the same Ordnance Datum as the white building/Wells Wing in order to assist with long-range comparisons).
- 5.6 The scheme for Appeal A would therefore be 3.69 metres above the tallest part of the white building/Wells Wing (excluding telecoms aerials), whereas the scheme for Appeal B would be 5.57 metres above the main roof height of the white building/Wells Wing and 2.21 metres below the tallest part of the building.

Junction of Dorking Road with White Horse Drive

- 5.7 The growth of development in this part of Dorking Road can be detected from the C17 and C18 development that remains and are listed. There are 8 listed buildings in this group³¹ and much of this grouping appears to have been developed from the early C18. Most significant of these, and perhaps one of the first, is Hylands House (1740), which is grade II* listed as is The Hylands (mid C18). These represent a growth in high status houses around the Appeal Site. Hylands House is the grandest of the houses, being the centrepiece of the Hylands Estate developed by Sir William Steward in around 1720. It is a red brick building of 3 storeys + mansard and has a façade of 7 bays. The original estate included The Hylands and all the development from No 69 (Grade II) to the junction with Whitmores Close to the west. The wall to the front of these properties is also listed as Grade II*.
- 5.8 On the North side of Dorking Road (at the back of Orchard Gardens) there remains a walled garden which is also listed. This is now completely built around by C20 housing. This too was most likely a part of the Hylands Estate.

³¹ The White House PH (GII), 67 & 69 Dorking Road (GII), The Hylands, Including Forecourt Walls, Piers, Clairvoyee and Gates (GII*), West Hylands (GII), Hylands House and Forecourt Rails to Hylands House (GII*), Wall Between No 79 and Corner of Whitmores Close (GII), Wall To Rear Of Gardens Of Nos 1 To 12 (Consec) And Returning As North Garden Wall To Nos 1 And 12 (GII) and Tamarisk Cottage (GII)

- 5.9 From directly opposite 67 to 73 Dorking Road and The White Horse PH, and especially when approaching from the North along White Horse Drive, the development will appear over the roofs of this important group of buildings on the south side of the Dorking Road. A visit to Google Street view on White Horse Drive clearly shows the Boiler House chimney looming above the roofs of the houses in Dorking Road³².
- 5.10 The Proposed Developments are therefore likely to appear over the roof of The Hylands at No 71, which is a mid C18 grade II* listed house, and over 67 & 69, which are pair of mid C19 weatherboard cottages that are typical and traditional for this region at that period. The existing hospital already appears over the roof of these buildings and the Proposed Developments will be both taller and extend over a broader scope of view.
- 5.11 The main hospital building and Boiler House chimney are also clearly visible in the gap between the White House PH and 67 & 69 Dorking Road³³. The Proposed Developments will add a significant an intrusive range of tall buildings to the horizon diluting the significance of these listed buildings.
- 5.12 White Horse Drive runs adjacent to the grade II listed C18 Tamarisk Cottage and close to the listed walled garden, which it may have connections to. The Drive is very likely to date to about the C18 and the view from it when looking South across Dorking Road would have remained almost unchanged since the mid C19. This is therefore a significant historic vista which the Proposed Developments will disrupt.
- 5.13 Late C19 maps refer only to the area as Hylands, without reference to the buildings as: Hylands House or The Hylands or West Hylands, indicating that this was still considered as associated with The Hylands Estate.
- 5.14 The harm caused to the significance of the heritage assets in this location from the intrusive nature of the Proposed Developments is considered less than substantial and due to the distances involved, at the lower end of that scale.

Woodcote Conservation Area

- 5.15 The Woodcote Conservation Area was extended to the south on Dorking Road. This extension is described in the Conservation Area Appraisal, stating that:

“This would encompass part of an attractive open area of land, trees and pond; the high red brick historic wall between the pond and

³² [Google Street View No 1](#)

³³ [Google Street View No 2](#)

Dorking Road; three listed buildings which make up the Clock House Medical Centre and associated buildings; and 1930s houses along the south side of the road."

- 5.16 It should be pointed out that the Appellant, in their Heritage Townscape and Visual Impact Assessment, have not included this extension to the Woodcote Conservation Area. Plate 19 on page 19 clearly shows the old conservation area boundary in green and the Statement of Significance for Woodcote at 5.3.2 on page 22 only recognises four listed buildings within its boundary rather than the seven that are now within it. There are four other amendments to the conservation area boundary (all deletions) that have also been missed, but these are not of any relevance to this appeal. A correct map of this conservation area is available from the Council's website³⁴.
- 5.17 The conservation area at its southwestern end, which is nearest the hospital, is made up of inter-war semi-detached houses on the south side of Dorking Road. These are all considered to make a positive contribution to the conservation area. The ones nearest the Appeal Site, near the entrance to the hospital, are probably a little later judging by the historical maps (Probably late 30s to early 50s). Further to northwest on the other side of the entrance to Elmslie Close are semi-detached houses which are all inter-war and to a more detailed Tudorbethan arts and crafts design. The most significant of these are Nos 7-25, but those with the best-preserved features (and those nearest the Appeal Site) are Nos 19-25. All of these houses have large front gardens. Although most have lost their gardens to hard standing, they have retained some form of boundary either in the form of low walls or hedges.
- 5.18 Nos 7-17 have alterations that have harmed their front elevations with the characteristic black and white half-timbered details removed and rendered over and painted or pebble dashed. Nos 19-25 though have retained these features that are typical of inter-war arts and crafts semi-detached houses in relatively good condition. These are all gable fronted with long cat-slide roofs to each side. These three pairs of houses are the most sensitive to harm on this frontage. Close to these houses in the conservation area the development is unlikely to be visible.

³⁴ [Woodcote Conservation Area Map](#)

- 5.19 However, the ground rises further to the north of this part of Dorking Road to an open green space adjacent to St Margaret Drive. Though this is outside the conservation area, it provides a significant view into it. From here the development will appear quite prominently and invasively over the roofs of these houses and their landscape as the Boiler House chimney and the roof plant and upper floors of the white building/Wells Wing within the hospital, although distant, are clearly visible on the skyline. Again, Google Street View at the top of St Margaret's Drive before it turns east shows this³⁵. The north side of Dorking Road provides a very open, green, natural vista setting to this suburban streetscape. The setting of these inter-war houses is a significant part of the character of this part of the conservation area. Therefore, views of the conservation area from the north will be harmed by the intrusiveness of the Proposed Development.
- 5.20 On the north side of Dorking Road, in the conservation area, are 3 listed buildings including The Clock House (which is a grade II large early C19 house with a separately listed gatehouse) and The Bell House (formally a stable block). These are all visible from locations in the conservation area, but not where their setting will be affected by the Proposed Developments. This complex of buildings has now been converted to residential with a further three blocks of late C20 houses built to a varying degree in a pastiche of the Clock House.
- 5.21 There are six listed buildings around the junction of Dorking Road with Woodcote Road in the heart of the conservation area, but none of these are affected by the Proposed Developments.
- 5.22 The harm caused to the significance of the conservation area and its listed buildings from the intrusive nature of the Proposed Developments is considered less than substantial and due to the distances involved, at the lower end of that scale.

³⁵ [Google Street View No 3](#)

Travelling between the conservation areas

- 5.23 From the Woodcote Conservation Area, the Proposed Developments are not likely to be visible again until you leave it on Woodcote Road proceeding south towards the Appeal Site. As you look to your right across the playing fields at Epsom Sports Club, the new 8/9-storey buildings on the Appeal Site will be clearly seen above and to the left of the other hospital buildings. This is easily judged by a Google Maps Street View visit where both the chimney and white building/Wells Wing can be clearly seen through the gap in the trees just after Woodcote Road junction with Ave Road³⁶.
- 5.24 This view remains as you enter the Chalk Lane Conservation Area some 90 metres further along Woodcote Road³⁷. Woodcote End House (Grade II* listed and a focal building within the conservation area) plus the Service Block to Woodcote End House and 9 & 11 Woodcote Road (all Grade II listed) are particularly affected by these intrusive additions to the views, particularly from the fronts of their curtilage.
- 5.25 The harm caused to the townscape from the intrusive nature of the Proposed Developments is considered reasonably significant in this location as it will add further height and mass to the buildings already on the skyline, significantly urbanising this vista and diluting the more rural nature of the playing fields.

Chalk Lane Conservation Area

- 5.26 A map of this conservation area is available from the Council's website³⁸.
- 5.27 As you get to the heart of the conservation area, where the three roads meet, the buildings on the west side of the junction (10 Woodcote Rd and Woodcote Villa – both Grade II listed and 4 to 8 Woodcote Green Road – identified as positive buildings in the conservation area) obscure this view for the public. The occupiers of those buildings will however experience the intrusive impact of the Proposed Developments from the rear of their properties.
- 5.28 As you proceed down Chalk Lane into this junction, similarly the buildings on the west side will largely obscure your view of the Proposed Developments.

³⁶ [Google Street View No 4](#)

³⁷ [Google Street View No 5](#)

³⁸ [Chalk Lane Conservation Area Map](#)

- 5.29 Chalk Lane Conservation Area developed around the junction of Woodcote Road, Chalk Lane and Woodcote Green Road. Chalk lane connects Woodcote Road and Woodcote Green Road to Woodcote Grove and the Chalk Lane Hotel, both of which are C17. Though the Chalk Lane Hotel is described in the listing as C18, recent work exposing the main body of the building suggests it is C17.
- 5.30 Woodcote Grove is a very substantial house with Chalk Lane its main access road and several early C18 buildings grew up along it and at the junction with Woodcote Road. Westgate House was first constructed from 1680.
- 5.31 Woodcote Green House is also C17 and together with several C18 properties, of very early and relatively high-status houses, make this an example of long established and unusually little changed area of streetscape and street plan that merits preservation.
- 5.32 Of special interest as a focal point in the Chalk Lane Conservation Area appraisal for its historic significance is this junction, describing it as:
- “Around the junction of Woodcote Road, Madans Walk, Chalk Lane and Woodcote Green Road:
- Woodcote House, a large stuccoed house which is particularly important in views northwards along Woodcote Green Road;
 - Woodcote Green House, now divided into two, which is important in views from Woodcote Road on approaching the junction with Chalk Lane;
 - Woodcote Villa with No 10 Woodcote Green Road, a low range of white painted weatherboarded cottages, which sit close to the road;
 - The Ladas Public House, an unlisted red brick mid-19th century two storey building, which sits in a dominant position between Madans Walk and Woodcote Road.”
- (There looks to be an error in this list and Woodcote House should read Westgate House.)*
- 5.33 This junction is surrounded by listed buildings. Westgate House is perhaps the most prominent in the junction, but not in the direct line of view, being on the Northeast side of the junction. More in the field of view is No 2 Woodcote Green Road, Woodcote Green House and to a lesser extent 10 Woodcote Road. There is also the locally listed 4 – 8 Woodcote Green Road, which are almost in direct line with the development.

- 5.34 As well as the historic significance of the houses here, it is the street plan and proportions of the junction, which has something of a village green character with all the buildings around it being either listed or of some heritage significance. 7 & 9 Woodcote Road, like Westgate Close, are also in the setting of the junction but not in line with views of the Proposed Developments and would only be viewed when looking in the opposite direction. But they all contribute to the character of this group of important historic assets as do the listed wall on Madans Walk and the unlisted C19 Ladas House.
- 5.35 This is a junction where, unusually, most of the buildings date from the C18 to early C19 and as such is particularly sensitive to development that has a significant impact on its setting.
- 5.36 The impact on the historic environment is very prominent and harmful from the east in Chalk Lane Conservation Area, where from Woodcote Green Road it will appear clearly in the context of a number of listed buildings and their curtilage as well as the conservation area. The architecture is also not in any way complementary to any buildings in the conservation area.
- 5.37 Standing in this junction looking southwest, a clear view of the frontage of the Appeal Site in Woodcote Green Road will be experienced³⁹. The 8/9-storey elements will be clearly visible and tower above the surrounding, largely two-storey, dwellings. The Proposed Developments will dominate this view and harm the existing quality of the conservation area and reduce its significance.
- 5.38 For these reasons it is the impact of the Proposed Developments on the junction and its collective historic character in the conservation area that is most important, rather than its impact on any individual listed building.
- 5.39 The harm caused to the significance of the conservation area and its listed buildings from the intrusive nature of the Proposed Developments is considered less than substantial and at the medium end of that scale.

³⁹ [Google Street View No 6](#)

Woodcote Green

- 5.40 The green space facing the Appeal Site to the southeast is Woodcote Green. On the other side of Woodcote Green is Woodcote House which is a grade II, 3-storey, 5-bay building with two wings, each with substantial pediments. This house has existed on the site from at least the early C19 and there is a drawing of it In Bourne Hall Museum from 1823. This shows that the house has undergone several changes since and probably several before that date. Earlier records show a house on the site in the C17 and as early as 1596, though it is not clear whether this is the same property.
- 5.41 Though the house appears to dominate the landscape of Woodcote Green, which it faces close onto, it does not appear to have been part of its grounds and the 1843 enclosure maps show Woodcote Green was unenclosed, open or common land, with the pond evidence of chalk or brick works.
- 5.42 The principal significance of the green today is as an open space, though relatively well wooded, that acts as a contrast to any development that faces it across Woodcote Green Road. Due to it not being enclosed it was not exploited as agricultural land in the C19 and unlike most of the surrounding areas it was not developed for housing in the C20. The Proposed Development will have an overbearing effect on this important area of public open space and significantly dilute its amenity.
- 5.43 On the North side of the Green across Woodcote Green Road, smaller scale developments began to appear at the beginning of the C19. These would have been small dwellings or small workshops, none of which survive today and have been replaced by the hospital and C20 houses.

- 5.44 On the Northwest side of Woodcote Green Road, on both sides of the Appeal Site, are mid-C20, semi-detached and detached houses appearing on the map of the mid 1950s but not on the mid 1930s map. Though most appear architecturally to be post-war, 3 of these (nos. 40 to 44) look to have an appearance that suggest they are a little earlier and may be late 1930's. These three are clearly built as part of the same development, each with tall stacks, long catslide roof to the right-hand side over the garage, with red tiled roofs and built around a gabled frontage with bow windows. However, each is given different external treatments using render, tiles, timber frame, weatherboard and brick (now painted) to lend them individual character. These three houses are of the most significance in the immediate neighbouring streetscape of Woodcote Green Road and they are the closest to the Appeal Site. The Proposed Developments will be clearly visible over their roofs when approaching from the southwest.
- 5.45 Further along Woodcote Green Road, to both the northeast and southwest but still clearly in the setting of the Appeal Site, are more mid C20 arts and crafts houses all of a very similar design. These are all semi-detached and, although not as subtly detailed as Nos 40 to 44, have some individuality of detail given to each pair of houses.
- 5.46 Hylands Road and Digdens Rise are also predominantly mid C20 semi-detached or detached houses. Digdens Rise does not appear in the early to mid-1930s, but by the mid-1950s is full developed mostly with semi-detached buildings that are clearly to the same design as those nearby on Woodcote Green Road. Hylands Road is earlier with most of the houses being pre-war. Nos 1, 3, 5 & 7 being relatively large Edwardian houses and the rest well-proportioned detached houses perhaps from the 1920's. The two buildings on Hylands Road that are of most historic and architectural significance and can therefore be considered as non-designated heritage assets are Nos 1 and 10 Hylands Road.
- 5.47 No 1 is on the south side of Hylands Road and is a very fine, but altered, arts and crafts country house design in something of the character of a Charles Voysey House of the time. However, this building is obscured by considerable tree growth when viewed from the southeast. Accordingly, no part of the Proposed Developments will appear from above its roofline on the street. It can only be considered in the wider setting of Woodcote Green Road.

- 5.48 No 10, which is part weatherboard and part render, dates from the late C19 when on the maps of the time it appears as part of a complex of agricultural or stable buildings. It has now been converted into 3 units. The Proposed Developments will appear above its roofline. The material character of this building is more historic and distinctive than any neighbouring building and should be considered of significance, and which will be harmed by the proposal.
- 5.49 The harm caused to the townscape in this location from the intrusive nature of the Proposed Developments is considered very significant in several places.

Conclusions on character and heritage impacts

- 5.50 The area has a wealth of historic assets, most of which are very well preserved, contribute positively to the townscape and continue to tell the story of the growth of this part of Epsom. Subsequent C20 growth has predominantly been of a high inter-war or immediate post-war standard, generally adopting the arts and crafts style of the time that was used for homes aimed at the aspiring middle classes. The resultant housing stock is attractive, well-maintained and gives the area a very high-quality suburban character.
- 5.51 As has been demonstrated, the Proposed Developments will significantly impact on long views throughout the area and will have more severe impacts on some of the buildings and areas closest to the Appeal Site. Whilst the harm to heritage buildings and areas is generally at the lower end of less than substantial harm, that harm increases the closer you get to the Appeal site. Harm to Townscape, especially close to the Appeal Site is quite severe. This will be analysed in greater detail in the next section.

6 PLANNING APPRAISAL

- 6.1 As set out in the Statement of Common Ground, the Council does not object to the principle of the development of this redundant, brownfield site for the purposes set out in the descriptions of the Proposed Developments. The Council's objections relate to the design and scale of the Proposed Developments and their consequential impacts on the surrounding area.
- 6.2 My evidence has referred to the Development Plan and other material considerations (such as national planning policy) relevant to the assessment the Proposed Developments. The evidence has set out the up-to-date position for the consideration of design matters in the planning decision making process as set out in the NPPF, PPG and the Development Plan. I have also identified the components of the surrounding area that give it a special character and why the development harms that character.
- 6.3 There are three areas where the Council finds the design of the Proposed Developments unacceptable. These are expressed in the first three grounds of refusal which were identically worded for both decisions.

Design: impact on the area

- 6.4 The first reason for refusal was:

The proposed development by reason of its height, mass, scale and design would adversely impact and harm the character and appearance of the area (including the built environment and landscape setting), failing to comply with Policy CS5 of the Core Strategy (2007), Policies DM9, DM10 and DM11 of the Development Management Policies Document (2015) and paragraphs 122 and 127 of the NPPF (2019).

Policy considerations

- 6.5 Policy CS5 (Core Strategy 2007) seeks to deliver high quality and inclusive design through:
- creating attractive, functional and safe public and private environments;
 - reinforcing local distinctiveness and complement the attractive characteristics of the Borough; and
 - making efficient use of land and have regard to the need to develop land in a comprehensive way.

- 6.6 Policy DM9 (DM Policies 2015) sets out that planning permission will be granted for proposals that make a positive contribution to the Borough's visual character and appearance. In assessing this, the following is considered:
- compatibility with local character and the relationship to the existing townscape and wider landscape;
 - the surrounding historic and natural environment;
 - the setting of the proposal Appeal Site and its connection to its surroundings; and
 - the inclusion of locally distinctive features and use of appropriate materials.
- 6.7 Policy DM10 (DM Policies 2015) requires development proposals to incorporate principles of good design. The most essential elements identified as contributing to the character and local distinctiveness of a street or area which should be respected, maintained or enhanced include, but are not limited, to the following:
- prevailing development typology, including housing types and sizes;
 - prevailing density of the surrounding area;
 - scale, layout, height, form (including roof forms), massing;
 - plot width and format which includes spaces between buildings;
 - building line; and
 - typical details and key features such as roof forms, window format, building materials and design detailing of elevations, existence of grass verges etc.
- 6.8 Policy DM11 (DM Policies 2015) supports proposals for new housing that makes the most efficient use of land, but those proposals must maintain and enhance the visual character and appearance of the wider townscape.

Existing built form

- 6.9 The existing buildings on the Appeal Site are in the course of being demolished. They ranged in height from single to four storeys. The built form of those buildings were originally frontage blocks of three storey (Woodcote Lodge, a later C20 building, estimated at around 10 metres in height)) and four-storey (Rowan House, an earlier C20 building, estimated at around 16 metres in height) with some original, but mainly later, rear projections and extensions along with stand-alone additions, generally at a lower scale. These later buildings were not always sympathetic architecturally, such as the Elective Orthopaedic Centre, no doubt erected when NHS development was treated as Crown Development and not subject to local planning controls but the consultation procedures in Department of the Environment circular 7/77. Most of the buildings to the rear were single storey. The rest of the curtilage was mainly given over to access and car parking.
- 6.10 The hospital buildings on the Appeal Site were an institutional use and, as is generally the case with such typologies, were not at a domestic scale due to self-evident functional requirements. Nevertheless, the architecture and materials complement the dominant suburban vernacular that is characteristic of the area, particularly along Woodcote Green Road.

Building heights

- 6.11 The proposals comprise two very large buildings that will dominate the site by reason of their height, scale, design and wider impact. The proposed buildings at 8 or 9 storeys would be significantly taller than the hospital buildings they will replace and generally taller than the rest of the remaining hospital buildings on the Epsom General Hospital site. At these heights they will be completely out of scale with the surrounding residential properties in Woodcote Green Road and nearby roads.
- 6.12 The new buildings will range in height from 3 to 9 storeys for Appeal A and from 3 to 8 storeys for Appeal B. The overall heights of these buildings are 32.9 metres for Appeal A and 27 metres for Appeal B. This compares to average heights of around 8-9 metres for most of the surrounding residential properties. For Appeal B, the one storey reduction, plus other floor to ceiling height changes have produced a 5.9 metre reduction in height from the originally 9-storey buildings of 32.9 metres to 27 metres, compared to the heights of those buildings in Appeal A.

- 6.13 Section 5 above sets out an analysis of the impacts of the Proposed Developments on the surrounding area and has detailed the positions around the Appeal Site, including within and from the settings of listed buildings and conservation areas, from which the Proposed Developments will be seen as intrusive. The conclusions are that the Proposed Developments will significantly impact on long views throughout the area and will have more severe impacts on some of the buildings and areas closest to the Appeal Site. The harm to heritage buildings and areas is generally at the lower end of less than substantial harm, that harm increases the closer you get to the Appeal site. Harm to Townscape, especially close to the Appeal Site is quite severe.

Building scale

- 6.14 The Proposed Developments are no longer an institutional use but a largely residential development. The opportunity is therefore presented but has not been taken to adopt a more domestic scale in the architecture of the new development. Such an approach would have respected the character of the area to which it will primarily relate. Instead, the architect has chosen to design two large slab blocks with the following floorspace:

Appeal A (GIA)		
Western Building	Eastern Building	Total
24,188m ²	14,405m ²	38,593m ²

Appeal B (GIA)		
Western Building	Eastern Building	Total
22,129m ²	13,202m ²	35,331m ²

- 6.15 These replace buildings on the site totalling 7,236m² (GIA), representing floor area increases of 433% for Appeal A and 388% for Appeal B.
- 6.16 The ground floor GIA for the buildings (in both schemes) are 3,943m² for the western building and 2,005m² for the eastern building. The actual footprints (GEA) are 4,327m² and 2,394m² respectively. The two buildings have a combined footprint of some 6,721 m² and would occupy around 45% of the 1.5-hectare site area.
- 6.17 The result is that the buildings will appear to dominate the site and appear cramped and overdeveloped. The areas that remain are largely dedicated to access and car parking with landscaping/open space areas being the bits left over due to the awkward shape of the western part of the site.

Building design

- 6.18 The adverse impacts caused by the buildings' height and scale are compounded by the elevational detailing and choice of materials. These are considered to be in contrast with the dominant vernacular and will result in buildings that have a town centre flatted block or commercial office character more suited to a high-density urban area than a low-density suburb.
- 6.19 Whilst the use of brick has been chosen with a nod to its use locally, the way it is deployed as mainly cladding to a generally two-story tall, bay-repeating, externally described frame, dilutes its ability to be complementary to the local vernacular. Whatever its colour, texture or form (machine cut or handmade) the brick used will appear as a structural framing element rather than a dominant façade material. There are some infill panels in brick, but these are diluted by the profiled PPC aluminium cladding used on most of the façade. The resulting and dominant effect of this element of the building is the way brick has been deployed in the elevations and the framing appearance that is created. The final choice of brick will have a marginal impact on the overall impression of the building as an externally expressed structural frame with infill panels for external walling and fenestration.
- 6.20 The other principal material is the profiled PPC aluminium (originally dark grey and now a bronze colour) used in cladding, inset and spandrel panels, the metal framed fenestration and the metal fin balconies and balustrades. This adds to the alien character of the elevations as such materials are not part of the local vernacular and do not complement it either, whatever their colour. The appearance of the aluminium is likely to be in contrast with the finish of the brick and the softening effect of the proposed planting.
- 6.21 Both developments adopt the same external design approach and are broadly similar, apart from the height differences.

6.22 The existing/former buildings on the Appeal Site were not at this height, scale and appearance. In my opinion there is no obvious urban design or townscape justification that would support the approach that has been chosen for the built form that has been adopted. The Appeal Site has a clear relationship with Woodcote Green Road and the immediate area around it. It will not be read as forming part of the hospital site due to its separation, different access and functional differences. Good design would expect a contextual approach to have been adopted to design a development (as required by the NPPF⁴⁰) which is “sympathetic to local character and history, including the surrounding built environment and landscape setting”. There is scant evidence that this approach has been adopted, rather a unit number maximisation approach is evident from the resultant two monoblocs that have been presented.

Building impacts

- 6.23 These are two enormous buildings by any measure, coupled with the excessive heights, they create a built form that will appear alien within the street scene and severely harm the townscape of what is otherwise a very pleasant suburban road of above average quality.
- 6.24 These impacts are not confined to the immediate vicinity. As explained in the previous section, the proposed buildings will appear more dominant than the existing, modern, hospital buildings in the wider landscape due to their height and large scale. As a consequence, they will be visible from a number of locations in the surrounding area. Several of these locations are within conservation areas or their settings or are within the curtilages or settings of listed buildings, groups of listed buildings and other local heritage assets. The harm created by these impacts must be considered in the planning balance, but where that harm is caused to heritage assets it is subject to statutory duties⁴¹ and the decision maker is required to seek to protect those assets and great weight must be given to their protection in the planning balance, even where that harm is less than substantial⁴².

⁴⁰ Throughout part 12 but particularly para 130 of the NPPF 2021

⁴¹ S66 and s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

⁴² NPPF 2021 paragraph 199

Conclusions on impact on the area

- 6.25 These buildings are excessively scaled, especially in the context of the local vernacular of mainly inter or post-war, suburban, semi-detached, two-storey housing. The proposed buildings will clearly be dominant, alien features in the area if allowed and built. The policies in the Development Plan and the NPPF demand better. This is not good contextual design and "should be refused [as it is] development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions"⁴³.
- 6.26 Concerns were raised from neighbours as a result of publicity and notification of the Proposed Developments regarding the heights, design and massing of the proposal, the design and materials proposed and that it is out of character with the area.

Design: overdevelopment

- 6.27 The second reason for refusal was:

The siting of the development leaves insufficient landscaping opportunities to the frontage of Woodcote Green Road and along the south-western boundary with neighbouring residential property to mitigate the impact of the proposed development, presenting an over-developed and hard edge to the appearance to the development, which would cause harm to the character and appearance of the area. Causing harm to the character and appearance of the area fails to comply with Policy DM5 of the Development Management Policies Document (2015) and the NPPF (2019).

Policy considerations

- 6.28 Policy DM5 (DM Policies 2015) seeks to protect and enhance the borough's flora and landscapes by:
- Planting and encouraging others to plant trees and shrubs to create woodland, thickets and hedgerows;
 - continuing to maintain trees in streets and public open spaces and selectively removing, where absolutely necessary, and replacing and replanting trees;

⁴³ NPPF 2021 paragraph 134

- requiring landscape proposals in submissions for new development, which retain existing trees and other important landscape features where practicable and include the planting of new semi-mature trees and other planting.

Western building

- 6.29 The western block comprises a very large rectangular form of some 77 x 41 metres positioned in the northwest corner of the site with a canted wing projecting south off its southeastern corner. This is 18 metres wide and 70 metres in length on its west elevation and 60 metres in length on its east elevation.
- 6.30 The large rectangular part of the building comes to within 6 metres of the site boundaries to the west at several points. This leaves a relatively small, awkwardly shaped amenity area totalling some 1,760m² for all 400 or so occupiers of the development. This area is sandwiched between the four-storey elements of this building and the treed boundaries of the residential properties to the west. The two main spaces are not generous, being practically little bigger than most of the rear gardens of neighbouring properties. Given the scale of the building and its population that they are serving both visually and functionally, they appear as mean, left-over spaces.
- 6.31 The area to the front of this building is used for vehicular access, drop-off and car parking and is largely hard landscaped. It will do little to soften the impact of the building, serving mainly to reinforce its negative impacts. The main elevation of this part of the development contains a double-storey, multi-stacking car park with a 59-metre-long elevation. It will be dominated by PPC aluminium standing-seam effect cladding. Its appearance will be nearer industrial in character than leafy suburbia and it will appear as a particularly alien feature of the development.
- 6.32 The amended plans set the frontage of this building back by around 10 metres for Appeal A, which now matches the proposals for Appeal B. Rather than take the opportunity to landscape this area to soften the impact of the building and respond to the generally landscaped frontages of nearby residential properties, the appellant has instead removed the nursery (relocating it to the eastern building and reducing its size from 213m² to 157m²) and its landscaped play area, and replaced it with a retail unit and filled the frontage with six car parking spaces and their requisite manoeuvring area. Whilst the building is now set back to the general Woodcote Green Road building line, the development continues to fail to respond to the character of the area and maintains its high-density urban vernacular approach of cramming as much on the site as possible.

6.33 The resulting impression of the western building is of an excessively high, extremely bulky and extensive building that has been positioned as close as possible to the western boundary. Its repetitive elevational treatment, coupled with little in the way of meaningful articulation, creates an impression that this building doesn't belong in this location and is ignoring its neighbours. If you picked the building up and spun it through 180°, it would nearly fit into the curtilages of nos 40 to 54 Woodcote Green Road and 2 to 20 Digidens Rise. As a contextual comparison, such a level of development on the Appeal Site in this area is an overdevelopment and presents an unneighbourly relationship from the perspectives of height, bulk, proximity to boundaries and landscaping.

Eastern building

6.34 The eastern building is an open U-shape with an 18 metres depth and an external elevation length of 153 metres and an internal elevation length of 95 metres. It is positioned within 4 metres of its north and northeastern boundaries. These elevations will be at the full height (9 storeys for Appeal A and 8 storeys for Appeal B). That is a tight relationship by any measure and beyond those boundaries is the access route into the hospital site, with several hospital buildings on the other side of the access road. As you enter the site from Woodcote Green Road, the first building is two storeys just before the first turn in the access road, at the second turn is a single storey building and after that turn, in front, is the main white building/Wells Wing of the hospital. At that point, on the Appeal Site, you will be adjacent to the eastern elevation of the western building, which at this point is also full height (9 storeys for Appeal A and 8 storeys for Appeal B) and some 8 metres from the boundary of the site.

6.35 The amended plans for Appeal A (and the original plans for Appeal B) show the building positioned between 7 and 12 metres from its southeastern boundary with Woodcote Green Road. In the original scheme this relationship was between 4 and 9 metres. Whilst this modest 3 metre setback is welcome, and generally picks up the building line further along Woodcote Green Road to the east, the building on this frontage will be 4 storeys, some 15 metres, in height.

6.36 The area within the site that this building encloses is dominated by vehicular access roads. The only landscaping is a grassed roundabout and small peninsulas of land off the building's facades, that mainly serves as pedestrian access routes.

- 6.37 The resulting impression of this building is one that is crammed into the space available, located as close as possible to the boundaries of the Appeal Site, with little regard to the relationship that is created between the development, its neighbours and the street scene.

Landscaping

- 6.38 Most of the Appeal Site that is not occupied by the two buildings is allocated to functional access and car parking purposes, significantly diluting any landscaping role. The scale of landscaping does not complement the scale of the development, nor does it serve as an adequate amenity provision for a use that is characterised by residents who will be forced by their lack of mobility to spend most of their time within the development and its curtilage.
- 6.39 Loss of existing trees should be avoided wherever possible and replacement trees must be appropriate to their context and wherever possible be native species that are adaptable to climate change⁴⁴. There is a loss of trees on site that are of good quality, and this is a function of the scale of the proposed buildings and the extent of the site that they take up. The loss of mature trees is contrary to Development Plan policy and represents a loss of a valuable amenity and ecological asset that will take many decades to replace.
- 6.40 A large-scale development such as this requires suitably scaled planting to enable its impact to be appropriately mitigated, particularly so in an area that is characterised by a generous level of mature planting. Given the size of the two buildings, there is a need for forest-scale trees rather than domestic-scale planting and the ability to do this is severely restricted because of the overdevelopment of the site.

⁴⁴ Policy DM5 of the Development Management Policies Document September 2015

Conclusions on overdevelopment

- 6.41 The extremely large footprints of these two buildings, their positioning very close to most boundaries, the paucity of amenity space and landscaped areas, the dominance of car parking and manoeuvring areas and the avoidable loss of mature trees are all clear indicators that the two schemes represent an overdevelopment of this Appeal Site in the context of the low density, suburban area within which they are located. The developments do not “incorporate principles of good design”, “contribute to the character and local distinctiveness of a street or area”, have regard to the “prevailing development typology, including housing types and sizes”, respect the “prevailing density of the surrounding area” and the “scale, layout, height, form (including roof forms), massing”, “format which includes spaces between building”, “building line”, and “typical details and key features”⁴⁵. It is therefore an overdevelopment of the site and contrary to the Development Plan.
- 6.42 Concerns were raised from neighbours as a result of publicity and notification of the Proposed Developments regarding the density of the development.

Design: impact on neighbouring properties

- 6.43 The third reason for refusal was:

The proposed development by reason of its height, massing and design would adversely impact on the neighbouring amenities of the occupiers at 40 and 46 Woodcote Green Road, by means of overbearing, loss of privacy and loss of outlook, failing to comply with Policy DM10 of the Development Management Policies Document (2015).

Policy considerations

- 6.44 Policy DM10 (DM Policies 2015) requires development proposals to incorporate principles of good design. The most essential elements identified as contributing to the character and local distinctiveness of a street or area which should be respected, maintained or enhanced include, but are not limited to, the following:
- prevailing development typology, including housing types and sizes;
 - prevailing density of the surrounding area;
 - scale, layout, height, form (including roof forms), massing;

⁴⁵ Policy DM10 of the Development Management Policies Document September 2015

- plot width and format which includes spaces between buildings;
- building line; and
- typical details and key features such as roof forms, window format, building materials and design detailing of elevations, existence of grass verges etc.

Overbearing and loss of outlook

Western building

- 6.45 The western building is the largest building in terms of ground cover proposed for the Appeal Site and provides the strongest contrast in scale compared to the properties in the surrounding area.
- 6.46 The length of the western building presents an elevational façade with a total length of 165 metres and a wall of development with a visual length of nearly 130 metres to the southwest from the properties in Woodcote Green Road and Digdens Road.
- 6.47 This building rises to 9 storeys (32.9 metres) in height over most of that length for Appeal A and 8 storeys (27 metres) over the same length for Appeal B. Many of the properties to the west of the Appeal Site will experience the overbearing nature of this very long and high building. It will represent a dominant feature in their views to the east and one that is out of scale with anything else in the vicinity.
- 6.48 The western portion of the main part of the building is 4 storeys (13.2 metres) in height for both schemes next to the boundary with properties in Digdens Rise. The entrance element of the block drops to 2 storeys (8.1 metres) in height, but the rest of the block (its northern and eastern edges) rises to 8/9 storeys (27/32.9 metres) in height save for the end half of the southern projection that drops to 5 storeys (19.5 metres) in height.
- 6.49 The properties to the west which are relatively close to this building are:

Property	Distance to lower (4 or 5 storey) part of building *	Distance to higher (8/9 storey) part of building *
40 Woodcote Green Road	11 metres	17 metres
46 Woodcote Green Road	7 metres	22 metres
14 to 16 Digdens Rise	19 metres	48 metres
18 to 20 Digdens Rise	20 metres	40 metres
22 to 24 Digdens Rise	6 metres	23 metres
26 to 28 Digdens Rise	9 metres	26 metres
* Distances measured closest point of boundary to closest part of appeal building		

6.50 Although there is tree planting on the boundaries of these properties with the Appeal Site, this is far from continuous and most of it is deciduous. Tree heights vary, with the taller trees generally around 12 metres in height. Whilst this will dilute the impact of the development to some degree, the proposed building, especially the taller element, will tower above the height of the trees and in winter its screening utility will be significantly reduced.

6.51 To illustrate this, I have produced two sketches that are drawn to scale, showing the relationship of 46 Woodcote Green Road to the 8/9-storey element within the Appeal Site and the pair at nos 22 & 24 Digdens Road to the 4-storey element within the Appeal Site.

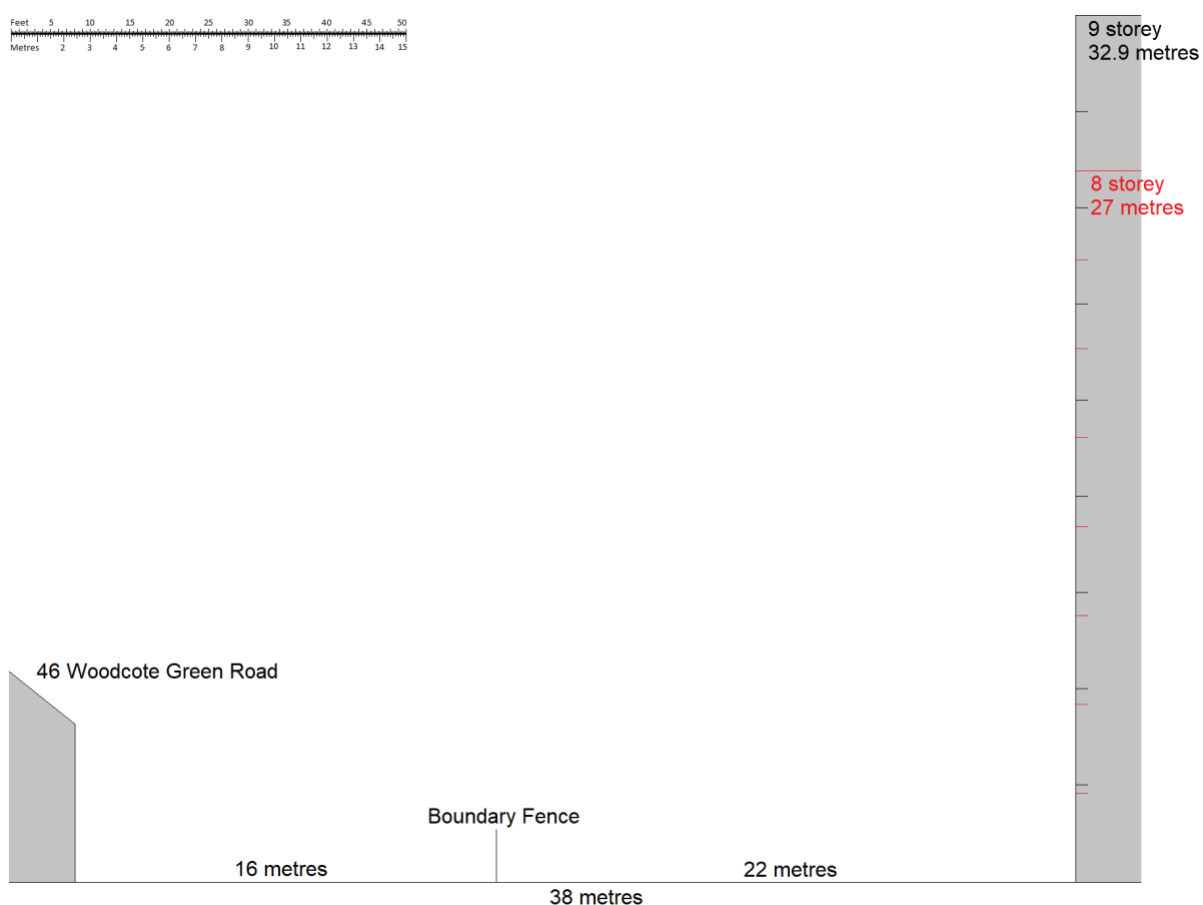


Figure 1: Relationship between 46 Woodcote Green Road and the Western Building

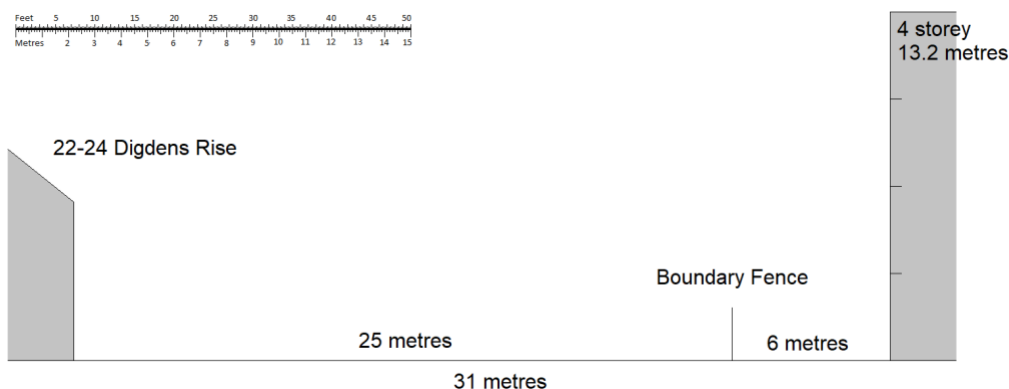


Figure 2: Relationship between 22-24 Digdens Rise and the Western Building

6.52 The outlook from the properties to the west, and particularly those closest to the Appeal Site, will dramatically change. In the existing situation, the buildings to the east are at a scale, height and distance where they do not dominate the view and the existing level of landscaping dilutes any impact to an acceptable degree. The existing buildings on the Appeal Site are also generally below the tree line. The proposed buildings will be at a significantly greater scale and height and will continuously dominate those views with no relief from gaps and no effective relief from landscaping.

6.53 Accordingly, these properties in particular will experience a significant overbearing effect and loss of outlook from the Proposed Development.

Eastern building

6.54 The impact from the properties to the east in Woodcote Green Road is less severe due to the intervening car park that means there is at least a 50-metre separation distance. Nevertheless, they will be presented with a mainly 8/9 storey elevation (27/32.9 metres in height) which has an elevational façade with a total length of 153 metres and wall of development with a visual length of over 70 metres when viewed from the east. The existing buildings on the Appeal Site to the west are at a scale and height (generally 3 storey) where they do not dominate the view and the existing level of landscaping, plus the separation distance dilutes any impact to an acceptable degree. Whilst not close enough to be considered overbearing, the Proposed Developments do represent a loss of outlook due to a reasonable expectation that development in their view would not be so dominant and out of scale with the area.

Loss of privacy

- 6.55 Conventional window to window separation distances are designed for the common relationship of one residential property facing another and generally such properties are of a similar scale and typology. In this case the relationship is between two-storey residential properties in detached or semi-detached form with a 165 metres long mass of development that varies in height from four to eight or nine storeys and contains a myriad of windows, balconies and a large roof garden. The conventional analysis does not provide the understanding needed of the feeling of overlooking and loss of privacy that will be experienced by those residents if either of these developments go ahead.
- 6.56 Also relevant will be the overlooking that will be experienced in rear gardens. This is particularly important in the area immediately to the rear of a property that might be called the patio area, which is usually considered the most private. In conventional back-to-back relationships, this area is at the most distance from the neighbours to the rear and the view from neighbouring properties to either side is so oblique that the area is considered very private and therefore often becomes the focus of activity in the garden.
- 6.57 For all these reasons, the relationship of the individual properties to the west with the Proposed Developments needs to be considered very carefully.

40 Woodcote Green Road

- 6.58 This two-storey detached property is to the west of the Appeal Site and the relationship between that property and the Appeal Site was probably the most impacted in the original design. In the original plan for Appeal A the whole of the rear garden was overlooked by windows that were between 10 and 24 metres distance over 5 floors. The amended plans for Appeal A and the plans for Appeal B seek to address this by deploying a sawtooth design to the elevation which places windows in the northwest facing plane so that they do not face the rear garden of no 40. Whilst this architectural approach addresses the overlooking issue, it does add to the alien nature of the architecture.

- 6.59 Where this elevational approach ceases and conventional façade fenestration returns, the building also increases in height from 5 to 8/9 storeys. The rear of No 40's garden will be overlooked by this wall of fenestration at a distance of some 20 metres. The Council's recommended separation distance is 24 metres between windows of habitable rooms for 2-storey developments (contained on page 6 of the Single Plot and other types of residential infill SPD September 2003⁴⁶). The fact that this overlooking is from an 8 or 9-storey building materially increases the feeling of being overlooked. The SPD states at paragraph 4.1, "Where one of the properties is more than two storeys in height, a correspondingly greater separation distance will be sought", but does not provide details of how this should be calculated.
- 6.60 The SPD does not prescribe a window to rear garden separation distance. In these cases that relationship is not the conventional 2-storey to 2-storey development relationship but in this case an 8/9-storey one. The feeling of those residents losing their previous conditions of privacy will be real and significant.
- 6.61 This property will also be overlooked by the roof garden on top of the scheme's 2-storey car park, described as the sensory garden. This is on top of a roof 8.1 metres in height with a one-metre parapet wall. It is some 31 metres away from the rear garden of no 40. Overlooking from an external area, such as a roof garden or balcony, is perceived very differently to that from a window. In the case of windows, the observer's focus is normally within the room and the opportunities for overlooking are occasional, ie when looking out of the window. In contrast, someone on a roof terrace or balcony is not in a room and their focus is much more on the "view". Accordingly, the perception of being overlooked and the resultant loss of amenity is that much greater. The feeling of being overlooked is therefore ameliorated to a much lesser degree by distance. The roof garden represents a material loss of amenity to this property and measures to prevent or ameliorate overlooking (such as the Appellant's proposal to set the parapet hedge back to restrict access to the edge) will have at best a marginal effect on addressing this relationship.

⁴⁶ [Single Plot and other types of Residential Infill Development SPG September 2003](#)

46 Woodcote Green Road

- 6.62 This is a backland property located in the space formed by the projection of the site to west. The relationship between that property and the Appeal Site is between 39 and 48 metres façade to façade and between 22 and 36 metres from Appeal Site windows to no 46's boundary. The appeal building at this point is 8/9-storeys in height. Excluding ground floor fenestration, this property would be overlooked by 161 windows serving habitable rooms in the Appeal A scheme and 138 such windows in the Appeal B scheme.
- 6.63 This part of the elevation of the appeal building also contains a bay of recessed balconies serving all floors which would be around 39 metres from no 46's boundary. This property is also overlooked by the sensory garden with the minimum point being only a 6.5 metre separation distance.
- 6.64 These relationships represent a significant loss of amenity to no 46.

14 to 28 Digidens Rise

- 6.65 The rear facades of these four semi-detached pairs in Digidens Rise are generally between 30 and 40 metres from the Appeal Site, but as can be seen from the above table, their rear gardens are much closer. They are all facing the 4-storey element of the western building which has a total of 84 windows serving habitable rooms (excluding the ground floor) looking to the west in the Appeal A scheme and 72 such windows in the Appeal B scheme. They will experience a four-storey wall of fenestration some 41.6 metres long and 13.2 metres high looking into their rear windows and gardens.
- 6.66 As noted earlier, boundary tree planting is sporadic and mainly deciduous, so for these properties they will experience the impact of the Proposed Developments to varying degrees and differently at different times of the year. Nevertheless, that impact will be significant and represents a material loss of amenity to those properties.

7 Hylands Road

- 6.67 This is a two-storey C20 detached house located in a set-back position at the end of this cul-de-sac. The relationship between that property and the Appeal Site is just over 30 metres façade to façade and between 17 and 24 metres from the Appeal Site windows to no 7's boundary. The appeal building at this point is 4-storeys in height, with the 9-storey element adjoining the 4-storey part. Excluding ground floor fenestration, the garden of this property would be overlooked by 12 windows serving habitable rooms in both schemes. These relationships represent a significant loss of amenity to the property's garden.

Conclusions on impact on neighbouring properties

- 6.68 The relationship between the Proposed Developments in this part of the Appeal Site and its neighbouring properties is one that shows little regard for the amenities of those properties. It is clear from the detailed analysis above of those relationships that these properties in particular will experience severe impacts and their amenities will be significantly damaged. This is unacceptable, contrary to the Development Plan and national policy⁴⁷ and should be refused as a result.
- 6.69 Concerns were raised from neighbours as a result of publicity and notification of the Proposed Developments that the proposed buildings will adversely impact neighbouring amenity enjoyed at properties surrounding the Appeal Site, particularly overbearing, loss of privacy and loss of light.

Affordable housing

- 6.70 The fourth reason for refusal was:

In the absence of a completed legal obligation under Section 106 of the Town and Country Planning Act 1990 (as amended), to secure an affordable housing contribution, the applicant has failed to comply with Policy CS9 (Affordable Housing and meeting Housing Needs) of the Core Strategy (2007) and [guidance contained under] the NPPF (2019).

⁴⁷ NPPF 2021 paragraph 134

Policy considerations

- 6.71 Policy CS9 Providing for Housing (Core Strategy 2007) sets out, inter alia, the policies relating to the provision of affordable housing and states:

The Council has a target that overall, 35% of new dwellings should be affordable. This equates to the provision of 950 new affordable homes over the period 2007 to 2022.

New housing developments should include a mix of dwelling types, sizes and tenures which help meet identified local housing needs and contribute to the development of mixed and sustainable communities.

Taking into account the viability of the development proposed and other planning objectives, the Council will negotiate to achieve the provision of affordable housing as set out below:

Residential developments of between five and fourteen dwellings gross (or on sites between 0.15ha and 0.49ha - irrespective of the number of dwellings proposed) should include at least 20% of dwellings as affordable.

Residential development of 15 or more dwellings gross (or on sites of 0.5ha or above) should include at least 40% of dwellings as affordable.

The Council will seek to ensure that the affordable housing remains affordable to successive as well as initial occupiers through the use of planning conditions or a planning obligation.

Advice on the detailed operation of this policy, the definition and nature of the local housing needs to be met, the tariff system to be used, and the mechanisms for delivery of the affordable housing, will be set out in the Developer Contributions SPD.

- 6.72 National planning policy is clear that, "Strategic policies should set out an overall strategy for the pattern, scale and design quality of places, and make sufficient provision for ... housing (including affordable housing) ..." ⁴⁸. Furthermore, "Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required ..." ⁴⁹.

⁴⁸ NPPF 2021 paragraph 20

⁴⁹ NPPF 2021 paragraph 34

- 6.73 The expectation in government policy is that developments should meet planning policies relating to affordable housing that are set out in development plans. Where a development cannot, "It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force.⁵⁰"
- 6.74 Viability assessments are expected to follow the recommended approach in national Planning Practice Guidance (PPG)⁵¹ which was first published in March 2014 and updated in 2019 following the Parkhurst Road High Court decision ⁵².
- 6.75 Mr Justice Holgate urged the RICS to revise its guidance on viability⁵³ as a result of the problems it had caused in this case with respect to calculating the Benchmark Land Value. Government also responded and carried out major revisions to the PPG. The revised RICS guidance (Assessing viability in planning under the National Planning Policy Framework 2019 for England)⁵⁴ was published in March 2021.
- 6.76 These revisions have changed the way that Viability Assessments are approached in planning decision making, with a much greater emphasis given to the delivery of planning policy and public benefits such as affordable housing. This is to break the previous circularity where inputs such as the price paid for land were used to drive down contributions and the expectation that driving down contributions was possible drove up the price of land.
- 6.77 The national policy expectation therefore is that the need for affordable housing should be set out in local plans that are viability tested and developments should deliver that level of affordable housing unless they can demonstrate through a Viability Assessment that follow the advice contained in the PPG that it is not possible. As the forward to the RICS guidance notes, "The government's intention in changing national planning policy and practice in this area is to more firmly integrate the delivery of planning policy into the operation of the market".

⁵⁰ NPPF 2021 paragraph 58

⁵¹ [PPG: Viability](#)

⁵² Parkhurst Road Ltd v Secretary of State for Communities And Local Government & Anor [2018] EWHC 991 (Admin) (27 April 2018)

⁵³ RICS Professional Guidance: Financial Viability in Planning August 2012

⁵⁴ [RICS Assessing Viability in Planning under the NPPF 2019 for England March 2021](#)

Affordable housing considerations: Appeal A

- 6.78 The original development for Appeal A was subject to a viability assessment which was independently assessed. An affordable housing offer of either 21 units of C2 extra-care accommodation on site or a payment-in-lieu of £3.5 million to fund off-site provision, was agreed between the Appellant and the Council as all that could reasonably be offered. That offer was supported by Council officers in the report to Planning Committee on 18 November 2020 and, following the appeal, was agreed in the Statement of Common Ground dated 11 June 2021.
- 6.79 The Appellant now intends to undertake a revised Viability Assessment to take account of updated costs and to take account of the reduction in the size of the Appeal Scheme following the amendments to the scheme.
- 6.80 With respect to the need to update the Viability Assessment, the Council's position is that the Appellant's affordable housing offer is a relatively recent one and there is no good planning reason to revisit it. In any event, where a revision to a Viability Assessment is justified, it should be an update to all inputs, not just costs. The methodology should follow that set out in the PPG.
- 6.81 The Council accepts the need to revisit the inputs within the existing Viability Assessment and to adjust them in line with the reduced size of the revised development for Appeal A. That would be a relatively simple exercise, but to date no such material has been forthcoming from the Appellant. It is clear from the NPPF that it is their responsibility to do so.
- 6.82 The Council does not accept the position that the appellant is putting forward with respect to this s106 matter. Until the Council sees what the appellant's actual position is, hopefully when we have sight of their proof, we cannot take this matter further at this stage.

Affordable housing considerations: Appeal B

- 6.83 With respect to Appeal B, an affordable housing offer of a payment-in-lieu of £1.5 million was made by the Appellant "on a without prejudice basis" in advance of the committee meeting on 22 April 2021. I am not sure what was meant by "on a without prejudice basis" as that is not how the NPPF and the PPG prescribes how these matters should be dealt with in planning decision making. The only reasonable conclusion I can draw is that at the time Appeal B was considered by the Council's Planning Committee, the Appellant was able to make an affordable housing contribution of at least £1.5 million and that must have been a viable offer. We are now, at the time of writing this proof, some three months after that date, therefore, as a matter of fact, the development can still afford to contribute at least £1.5 million to fund the much-needed provision of affordable housing as required by the Development Plan.
- 6.84 The Appellant has stated that they intend to undertake a revised viability assessment to take account of updated costs. For the reasons set out above for Appeal A, this is not a reasonable position for the Appellant to adopt as there can be no planning justification for it. Again, until the Council sees what the appellant's actual position is, we cannot progress this matter for Appeal B either.

Conclusions on affordable housing

- 6.85 The Council accepts that the affordable housing contribution for Appeal A needs to be adjusted pro-rata from the position agreed in the Statement of Common Ground dated 11 June 2021 for the unamended scheme to take account of the reduction in the size of the scheme in the amended version of Appeal A.
- 6.86 The Council does not agree that a revised viability assessment is justified or necessary to take account of updated costs and to deal with the reduction in the size of Appeal A Scheme given that there were agreed positions with respect to viability for both appeals as recently as 11 June 2021 for Appeal A and 22 April 2021 for Appeal B.

Heritage issues

- 6.87 It was identified in the committee report that the development would lead to less than substantial harm to the significance of designated heritage assets, but in the planning balance the public benefits of the development were considered to outweigh that harm. Given the decision of the Council to refuse planning permission, any harm to the significance of Heritage Assets, which must be given great weight in the planning balance⁵⁵, has to be considered afresh by the decision maker in determining whether to allow the appeal.

Policy considerations

- 6.88 Policy DM8 Heritage Assets (DM Policies 2015) states:

Development proposals that involve, or have an effect upon Heritage Assets must establish the individual significance of the Asset as part of the application or consent process. As part of the assessment process the significance of the Asset will be taken into account (namely whether it is a designated Heritage Asset or a non- designated Heritage Asset) when determining whether the impact of any proposed development is acceptable.*

Within Areas of High Archaeological Potential, as identified on the Proposals Map, or outside of these areas on any major development site of 0.4ha or greater, applicants are required to undertake prior assessment of the possible archaeological significance of the site and the implications of their proposals, and may be required to submit, as a minimum, a desk-based assessment to accompany any application. Where desk-based assessment suggests the likelihood of archaeological remains, the Planning Authority will require the results of an archaeological evaluation in order to inform the determination of the application.

We will from time to time review our Heritage Assets included on the Local Lists, with regard to the Historic Environment Record, in consultation with Surrey County Council.

⁵⁵ NPPF 2021 paragraph 199

** Designated Heritage Assets comprise the following: Scheduled Ancient Monuments; Listed Buildings; Registered Parks and Gardens and Conservation Areas. Non- designated Heritage Assets identified by the Council are those buildings and structures identified as being of local importance and veteran trees.*

Heritage considerations

- 6.89 I have identified, in section 5 Character of the Area, the buildings and areas that are harmed by the Proposed Developments and the extent of that harm to the significance of those Heritage Assets as a result of the intrusiveness of the Proposed Developments on the skyline and some gaps which dilutes the enjoyment of those assets. The level of harm in all cases has been identified as less than substantial, and is generally at the lower end of that scale but increases for positions closer to the Appeal Site.
- 6.90 That harm, as a matter of law, in line with the decisionmaker's statutory duties under s66 for listed buildings and s72 for conservation areas⁵⁶, must be fed into the planning balance alongside the public benefits, the Development Plan and any other material planning considerations and given appropriate weight.
- 6.91 Concerns were raised from neighbours as a result of publicity and notification of the Proposed Developments that the proposed buildings will adversely impact on local heritage assets.

Planning conditions

- 6.92 Without prejudice to the Council's case in this appeal, the conditions set out in the two reports to planning committee (and associated update reports) have been reconsidered and two new sets of conditions produced that are designed to control the development and mitigate its impact in the event that the appeal is allowed.

⁵⁶ Planning (Listed Buildings and Conservation Areas) Act 1990

6.93 The conditions were reviewed in the context of the statutory tests⁵⁷, the NPPF⁵⁸ and the guidance in the PPG⁵⁹, as well as recent legislative and policy changes. The Council have agreed a set of conditions for each appeal with the appellant in advance of the Inquiry and this is set out in the Statement of Common Ground and two separate Word documents (one for each Appeal) as requested by the Inspector.

Disputed condition

- 6.94 There is only one condition where there was a failure to fully agree the wording. This is condition 3 (in both appeal sets) which relates to the control of the construction phase. The new condition, as drafted by the Council, is an amalgam of conditions 21, 22, 23, 24, 25 & 26 from the committee report for Appeal A. The same conditions were included in the committee report for Appeal B, apart from 24 which relates to demolition, which I will explain below.
- 6.95 The dispute is simply related to the Council's listing of some key requirements contained in the Construction Environmental Management Plan, the Demolition Method Statement, the Environmental Noise Survey and the Acoustic Design Statement so that they are clear and highlighted. These relate to site hoardings, hours of work and burning and reflect original condition numbers 22, 21 and 25 respectively.
- 6.96 The Appellant does not want them listed as the specifics are contained in the respective documents and listing them is unnecessary. Otherwise, the rest of the condition is agreed.
- 6.97 The three items reflects the originally drafted conditions, which I understand the Appellant did not originally object to, and in the case of original condition 22 agreed to as a pre-commencement condition. These are also the main requirements from these documents from a local residents' amenity protection perspective and to communicate the key controls that they can expect in the condition is important from an enforcement perspective: local residents would know what to look out for from a reading of the decision notice. The appellant's approach expects them to wade through voluminous documents to discover these key controls.

⁵⁷ s100ZA(2) of the Town and Country Planning Act 1990

⁵⁸ NPPF 2021 paragraphs 56 & 57

⁵⁹ [PPG: Use of Planning Conditions](#)

6.98 The only change to this condition in the context of Appeal B is that demolition work has been separately authorised (through the prior notification PDR route) and has commenced. It is therefore no longer necessary to cover this in this condition for both Appeals and this amendment has been made and agreed between the principal parties in the Statement of Common Ground and the two sets of conditions.

Section 106 obligations

6.99 The recommendations to planning committee for both applications contained the heads of terms of planning obligations considered necessary by the Council to mitigate the impact of, or otherwise control, the Proposed Developments.

6.100 These heads of terms have been agreed in the Statement of Common Ground. The only area where there are matters of substance that remain to be finalised is the obligation associated with the affordable housing contribution, which has been addressed above.

6.101 Otherwise, good progress is being made on negotiating and completing the two agreements prior to the inquiry. Any failure to agree obligations that are acceptable to the Council will be presented to the Inquiry.

Planning balance

6.102 As stated earlier, there is no objection in principle to the development of this site for residential purposes. The tilted balance introduced by paragraph 11(d) of the NPPF, which triggered generally in the Borough because of housing delivery, does not bite on the matters to be considered in this appeal because they relate solely to the quality of the development, including its impact on heritage assets, and they do not, of themselves, interfere with the presumption in favour of sustainable development for the provision of housing.

6.103 These policies are up-to-date and are in accordance with national policies in the NPPF. The statutory requirement of s38(6) of the 2004 Act to make decisions in line with the Development Plan prevails. As has been established in recent court decisions, the NPPF cannot nullify the statutory requirement to follow the Development Plan where it is relevant to the decision. The balance in this case is “untilted” between the harm caused by the development and its public benefits with the Development Plan being the determining factor unless any other material planning considerations that are raised clearly indicate otherwise.

The benefits of the developments

- 6.104 The main public benefit of the Proposed Developments is the provision of housings. The detail of that provision is as follows:

Housing type		Appeal A	Appeal B
1	Replacement key worker units	24	24
2	Care residences	301	267
3	Care apartments	10	10
4	Care suites	28	28
5	Total care units (2+3+4)	339	305
6	Identified extra-care need (see paragraph 6.85)	248	248
7	Provision above identified need (5-6)	91	57
8	Housing need contribution (see paragraph 6.86)	325	292
9	Housing need contribution of 248 units *	237	237
10	Additional housing need contribution (8-9)	88	55
* Estimated (as no of habitable rooms not known) on a pro-rata basis			

- 6.105 The key worker units, whilst welcome, are a replacement of what would be lost by the Proposed Developments and therefore carry low weight in the balance.
- 6.106 Surrey County Council Adult Social Care recognises that the provision of further extra-care accommodation is needed. They have identified a minimum need of 248 units within the Borough up to 2035 (in accordance with the SHMA Update)⁶⁰. The proposal exceeds this identified need with Appeal A providing 339 units and Appeal B providing 305 units. That level of provision is 91 and 57 units respectively above the identified need figure. The provision of such housing above the need figure is not of itself a planning objection. However, it must be the case that the weight given to an over provision cannot be the same as a provision that meets need, especially as it represents a missed opportunity to provide other housing typologies in a more mixed development that meets the Council's needs.

⁶⁰ [EEBC SHMA Update September 2019](#)

- 6.107 There is a nationally prescribed formula⁶¹ for converting communal accommodation, such as extra-care units, into the equivalent number of net homes delivered. For Appeal A this is 325 units and for Appeal B it is 292 units. Given the argument in the previous paragraph that the overprovision of this accommodation type should be given less weight in the planning balance, the housing need contribution figure for the provision of the identified extra-care need of 248 units would be around 237 residential units, based on the mix of units in the appeal schemes. This equates to a provision above need of 88 units for Appeal A and 55 units for Appeal B.
- 6.108 The provision of the range of residential units in the two developments would represent a net gain of dwellings which given the general need for additional housing and the specific local need represents a clear benefit of the scheme against which any harm must be weighed. The make-up of that provision and the weight that should be given to its components have been set out.

Summary of harm

- 6.109 The harm from the Proposed Developments identified in this statement can be summarised as:
- the design, overall, would not be exemplary and this is afforded significant weight;
 - rather than optimising the use of the land resource, the scheme has sought to maximise it and this has resulted in a quality of development that at several levels would not be satisfactory and this is similarly afforded significant weight;
 - the unacceptable harm caused to some existing residents should also be afforded significant weight; and
 - the poor quality of the design and its adverse impact on the area has also caused specific harm to the significance of a large range of heritage assets over a wide area. That harm is categorised as less than substantial and must be afforded great weight.
- 6.110 It is submitted that the cumulative impact of the harm is considerable, particularly when government's new emphasis on "achieving well-designed places"⁶² is given proper consideration and when the s66 and s72 duties⁶³ are given proper weight.

⁶¹ Assessed using the "[Housing Delivery Test Measurement Rule Book](#)" on the basis of calculating the 'net homes delivered' for communal accommodation, including Care Homes

⁶² The new title of Chapter 12 in the 2019 NPPF which is the same in the 2021 NPPF

⁶³ Planning (Listed Buildings and Conservation Areas) Act 1990

Planning balance

- 6.111 The balance in this case is between a development that is poorly designed, thereby producing an unacceptable form of development which harms the character of the area, significantly impacts on specific properties nearby and causes less than substantial harm to a wide range of heritage assets, against the provision of additional housing. That provision is the equivalent of 237 residential units that meets the identified housing need of the borough, plus units above that figure (88 for Appeal A and 55 for Appeal B) that do not address local need.
- 6.112 it is submitted that significant weight should be given to the harm caused by the poor design of the Proposed Developments, great weight⁶⁴ must be given to the less than substantial harm caused to the significance of heritage assets. The Proposed Developments are clearly contrary to the Development Plan and policies with respect to design in the NPPF.
- 6.113 The cumulative harm provides a clear reason for refusing permission that would significantly and demonstrably outweigh the benefit of the additional residential units when assessed against the policies in the Development Plan and the NPPF when taken as a whole.

Conclusions on planning balance

- 6.114 Accordingly, it is submitted that in this case the planning balance clearly tips against the scheme in favour of good design and preserving the character and appearance of the area, including to the significance of a wide range of heritage assets. The Inspector is urged to dismiss the appeal for the reasons set out in this proof and to uphold the decisions of the Council to refuse planning permission for both developments.

⁶⁴ NPPF 2021 paragraph 199

7 CONCLUSIONS

- 7.1 The Council does not object to the principle of the development of this redundant, brownfield site for the purposes set out in the descriptions of the Proposed Developments.
- 7.2 The Council has demonstrated that the Proposed Developments do not represent good contextual design as required by the Development Plan and the NPPF. This is evidenced by the adverse impact it would have on the wider area, including to the significance of heritage assets, the overdeveloped nature of the development and the specific adverse impacts it would cause to local residents.
- 7.3 Whilst the scheme provides public benefits in the form of additional housing, this is not outweighed by the significant and great harm that is caused and the clear conflicts with established and up-to-date Development Plan Policy and the provisions of the NPPF when taken as a whole. The cumulative harm provides a clear reason for refusing permission that would significantly and demonstrably outweigh the benefit of the additional residential units when assessed against the policies in the Development Plan and the NPPF when taken as a whole
- 7.4 The Inspector is urged to refuse planning permission for both appeals.