

Proposed Standard Mortgagee Exclusion Clause

The [affordable housing provisions] in this Agreement ***[DN: cross-referencing the specific provisions would be preferable]*** shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**)) of the whole or any part of the [affordable dwellings] or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the [affordable dwellings] and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the [affordable dwellings] to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the [affordable dwellings] free from the [affordable housing provisions] in this Agreement which provisions shall determine absolutely



Appeal Decision

Site visit made on 19 June 2018

by H Baugh-Jones BA(Hons) DipLA MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2018

Appeal Ref: APP/U4610/W/18/3196439

Harry Stanley House, Armfield Street, Coventry CV6 7LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Whitefriars Housing against the decision of Coventry City Council.
 - The application Ref FUL/2017/1978, dated 28 July 2017, was refused by notice dated 3 November 2017.
 - The development proposed is demolition of Harry Stanley House and construction of 15 new affordable homes, comprising of 10x 2B4P houses and 5x 3B5P houses, drainage, car parking, external works and associated other works.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of Harry Stanley House and construction of 15 new affordable homes, comprising of 10x 2B4P houses and 5x 3B5P houses, drainage, car parking, external works and associated other works at Harry Stanley House, Armfield Street, Coventry CV6 7LS in accordance with the terms of the application, Ref FUL/2017/1978, dated 28 July 2017, subject to the conditions set out in the Schedule to this decision.

Procedural matter

2. The Council adopted the Coventry Local Plan (CLP) on 6 December 2017, which post-dates the determination of the application. The Council has confirmed that policy OS10 of The Coventry Development Plan (2001) has been replaced by CLP policy IM1. I have determined the appeal on this basis.

Main Issue

3. The effects of the proposal on the provision of healthcare.

Reasons

4. Policy IM1 sets out that development will be expected to provide or contribute towards provision of measures to directly mitigate its impact and make it acceptable in planning terms; and physical, social and green infrastructure to support the needs associated with the development. The provision of appropriate healthcare is covered within the ambit of the policy.
5. University Hospitals Coventry and Warwickshire NHS Trust (the Trust) argued through the planning application consultation process that the proposal would lead to increased demand for its services.

6. Before it closed in summer 2017, Harry Stanley House was a residential development for older people. The proposal would be replace it with affordable homes that would assist in meeting latent demand for around 1,949 affordable homes in the City. The development's intended occupants would comprise those on waiting lists in the City and who are therefore already resident there. I have no substantive evidence to suggest they are not already accounted for in terms of the use of NHS services. Neither is there any compelling evidence to suggest that there would be an unanticipated increase in the City's population as a result of the proposed development.
7. The Trust's evidence¹ clearly sets out a number of services in relation to which a financial contribution from the development is sought. These are attendances, admissions, appointments and diagnostic imaging. It does not therefore appear to me that the financial contribution would be related to the provision of physical or social 'infrastructure' as couched in the supporting text to policy IM1.
8. There is no clear evidence on whether the Council is seeking a contribution to generic health infrastructure. However, if this is the case, the available evidence indicates that NHS contributions have already been secured from five other developments that have been granted permission. As a result of this, the contribution would fall foul of the pooling restrictions in Regulation 123 of the Community Infrastructure Levy Regulations (CIL Regulations).
9. For the above reasons, the financial contribution sought for healthcare would not meet the tests in paragraph 204 of the National Planning Policy Framework (the Framework) or CIL Regulation 123. Furthermore, it would not accord with CLP policy IM1.

Planning Obligations

10. The proposed development would be solely for affordable housing. This would be secured by a Section 106 Agreement by way of a Unilateral Undertaking (UU).
11. However, the proposed number of dwellings falls below the threshold of 25 set out in CLP policy H6. Consequently, there is no development plan policy requirement for the provision of on-site affordable housing or a financial contribution towards its provision elsewhere in Coventry. The planning obligation is not therefore necessary to make the development acceptable in planning terms and thus, it does not meet the tests in paragraph 204 of the Framework.
12. For these reasons, the UU does not form a reason for the grant of planning permission in this appeal and I do not consider it further.

Conditions

13. I have considered the Council's suggested conditions. Where necessary, I have amended some of the suggested wordings for clarity and to ensure compliance with Framework paragraph 206 and Planning Practice Guidance.
14. I have imposed a condition specifying the relevant drawings as this provides certainty. A materials pre-commencement condition is necessary in order to

¹ Appendix 3 of the Trust's planning application consultation response

ensure the appearance of the development is satisfactory. A condition relating to a Construction Method Statement is necessary in the interests of highway safety and local amenity. A condition relating to hard and soft landscaping is necessary to ensure the appearance of the development is satisfactory. However, it is not appropriate for the development to be occupied before completion of hard landscape works as the provision of boundary treatments and footpaths are integral to a satisfactory and safe living environment. Thus these works need to be completed prior to occupation of the development and I have worded the condition accordingly. For clarity, I have imposed a suite of landscape conditions rather than the single one suggested. Whilst it might be desirable, it is not necessary to require landscaping to be carried out in accordance with British Standards.

15. Cycle storage details are adequately set out on the approved Site Layout drawing and I do not consider further details are required. I have worded the condition relating to cycle storage accordingly. The Council has suggested a combined access and parking condition. However, the requirement for parking provision can be adequately secured by reference to the Site Layout plan. Although the access road is also shown on that plan, I have imposed a condition requiring the approval of construction details in the interests of highway safety. In the interests of amenity, I have imposed a condition relating to the protection of retained trees but in a more precise form than suggested by the Council.
16. I have considered the suggested drainage condition, which in many respects is imprecise and thus unenforceable. In particular, and having regard to the site's previous residential use, there is no evidence from consultees that the existing sewers would be unable to cope with the surface water and sewage from the development. I have therefore imposed a more focussed and precise drainage condition in the interests of providing adequate means of drainage to protect the water environment. The imposed condition reflects the requirements set out in the application consultation responses.
17. The Council has suggested a condition relating to boilers or Combined Heat and Power Systems in accordance with CLP policy EM6. However, notwithstanding that it is CLP policy EM7 that relates to air quality, there is nothing in the policy that specifically requires heating installations to conform to a particular standard. I have not been made aware of any requirement for the appellant to have provided an air quality assessment and indeed I do not have one before me. However, having had regard to the comments of the Council's Environmental Health Officer, I have imposed a condition relating to the provision of heating systems in light of the climate change objectives of the Framework. For the same reasons, I have imposed a condition requiring the provision of charging points for electric vehicles. However, the Site Layout plan clearly identifies allocated parking for each dwelling so I do not consider it necessary to provide more than one charging point for each dwelling and which could also adequately serve visitors.
18. Given the residential nature of the existing development, I am not convinced that the somewhat onerous suite of conditions suggested by the Council in relation to contamination is necessary or reasonable. It is also imprecise as it refers to a number of receptors that have no relationship to the appeal proposal or its local environment. In the interests of safeguarding human health and the environment, I have imposed a less onerous version of the

condition which will ensure contamination is identified and adequately dealt with.

19. The appellant's Preliminary Ecological Appraisal (dated May 2017) identified low to negligible potential for bat roosts either in the trees on the site or in the existing building itself. However, a considerable period of time has passed since the closure of Harry Stanley House and in that time circumstances may have changed. Given the protected status of bats, I consider it appropriate to adopt a precautionary approach and have imposed a condition accordingly. Similarly, it is necessary to impose a condition relating to clearance and development taking place outside the bird nesting season. In the interests of biodiversity, a condition relating to the provision of bird and bat boxes is imposed. It is unclear how the Council envisages an ecological landscape scheme but in any case, there is provision for this within the requirements of conditions 5-7. The same is the case in relation to the Council's suggested condition relating to replacement tree species. In order to ensure a satisfactory living environment a condition is necessary in relation to noise.
20. Finally, I have considered the Council's suggested condition relating to the removal of certain permitted development rights. However, the exceptional circumstances to justify such a course of action have not been made out to me. Furthermore, I am not aware of any such restriction applying to other surrounding development. Accordingly, the removal of permitted development rights would not meet the relevant tests and is not justified in this case.

Conclusion

21. For the above reasons, the proposal would not adversely affect the provision of healthcare and the appeal succeeds.

Hayden Baugh-Jones

Inspector

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drawing No 1542-04-11; Topographical Survey Drawing No S219 715; External Levels Drawing No B17217-200 Rev P2; Drainage Strategy Drawing No B17217-201 Rev P2; Site Layout Drawing No 1542-04-10C; 2B4P House Floor Plans, Elevations, Roof Plan & Section Drawing No 1542-04-12B; 3B5P Wide Frontage House Floor Plans, Elevations, Roof Plan & Section Drawing No 1542-04-13A; 3B5P Splayed House Floor Plans, Elevations, Roof Plan & Section Drawing No 1542-04-14C; Street Scenes Drawing No 1542-04-16C.
- 3) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii) delivery, demolition and construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 5) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) boundary treatments including walls, railings and gates;
 - ii) pedestrian access and circulation areas;
 - iii) porous hard surfacing materials
- 6) Details of soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate.

- 7) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 1542-04-10C for bicycles to be parked and that space shall thereafter be kept available for the parking of bicycles.
- 9) Notwithstanding the details on drawing no. 1542-04-10C, before the development is occupied the access road serving the development shall be provided in accordance with details that shall have first been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the access road has been constructed in accordance with the approved details.
- 10) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 1542-04-10C for cars to be parked and that space shall thereafter be kept available at all times for the parking of vehicles.
- 11) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 12) Notwithstanding the details on drawing no. B17217-201 Rev P2, no building hereby permitted shall be occupied until surface water drainage works and works for the disposal of sewage have been implemented in accordance with details that shall have been submitted and approved in writing by the local planning authority. Surface water drainage details shall include:
 - i) provisions to prevent an increase in flood risk on the site and off the site during construction;
 - ii) provisions to manage the development discharge rate to a limiting value of 5.0 l/s off site;
 - iii) provision for water re-use systems for the buildings;
 - iv) details of measures to ensure that there is no discharge of surface water to the public highway; and
 - v) over-land flow routes in the event of exceedance or blockage to the drainage system including details of how the buildings will be protected in such an event.

Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 13) Any heating systems serving the development shall meet a dry NOx emission rate of 40mg/kWh.
 - 14) The development shall not be occupied until charging points for electric vehicles have been provided for each dwelling. The vehicle charging points shall thereafter be retained for those purposes.
 - 15) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 14 days of the report being completed and approved in writing by the local planning authority.
 - 16) No development including demolition works shall take place until surveys of the trees and buildings within the site for potential bat roosts have been undertaken. Should evidence of bat species be found, a suitable avoidance or licensed mitigation plan shall be submitted to and approved in writing by the local planning authority. The approved plan shall be

- implemented in accordance with a timetable that shall first have been submitted to and approved in writing by the local planning authority.
- 17) No site clearance works or development shall be carried out during the bird-nesting season (1st March to 31st August inclusive) unless the site has first been surveyed for nesting birds by a qualified ecologist and a scheme to protect nesting birds is submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out in accordance with the approved scheme.
 - 18) Before the first occupation of the development, bird and bat boxes shall be erected on the site in accordance with details shall have first been submitted to and approved in writing by the local planning authority. Development shall be carried out as approved and the bird and bat boxes shall thereafter be retained.
 - 19) No development shall take place until a scheme for protecting the proposed dwellings and their gardens from noise from Bell Green Road and the Weavers Arms Public House shall have been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before any part of the development is occupied and retained thereafter.