

SECTION 78 APPEAL BY
McCARTHY & STONE RETIREMENT LIFESTYLES LIMITED

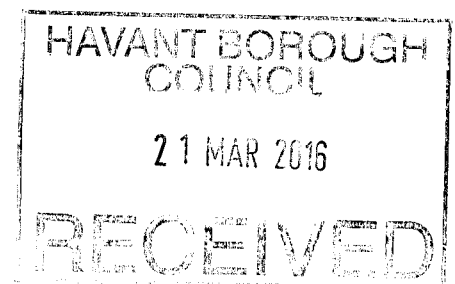
STATEMENT OF COMMON GROUND

DRAFT 1 22 DEC 2015
February 2016

SITE:

LAND AT, 38-44 LONDON ROAD
PURBROOK
WATERLOOVILLE
PO7 5LJ

THE PLANNING BUREAU LTD
TOWN & COUNTRY PLANNING ACT 1990



STATEMENT OF COMMON GROUND

**APPEAL BY McCARTHY & STONE RETIREMENT LIFESTYLES LTD
AGAINST THE DECISION OF HAVANT BOROUGH COUNCIL TO REFUSE PLANNING
PERMISSION FOR THE DEMOLITION OF EXISTING BUILDINGS AND REDEVELOPMENT TO
FORM 42 NO RETIREMENT APARTMENTS FOR OLDER PERSONS INCLUDING COMMUNAL
FACILITIES, PARKING PROVISION AND ASSOCIATED LANDSCAPING; AND 2NO.
COMMERCIAL/RETAIL UNITS.**

SITE:

**LAND AT, 38-44 LONDON ROAD
PURBROOK
WATERLOOVILLE
PO7 5LJ**

LOCAL PLANNING AUTHORITY REFERENCE: APP/15/00896

PLANNING INSPECTORATE REFERENCE: TBC

APPEAL HEARING

1.0 INTRODUCTION

- 1.1 The Statement of Common Ground has been prepared jointly by the Appellant and Havant Borough Council. The purpose of this Statement is to set out as much of the agreed factual information about the proposal as is possible. Where/if there remains a difference of opinion between the parties; the Council's comments are set out in **bold underlined type**, whereas the Appellant's comments are set out in **bold type** as pursuant to Procedural Guide Planning appeals – England July 2015.

2.0 CORE DOCUMENTS

- 2.1 To assist the Inspector, Hearing Core Documents will be prepared to include documentation relevant to this Appeal. The title of the Core Document is as follows:-

- Core Document – Drawings including Design and Access Statement and other documents submitted and considered as part of the planning application.
- Core Document – Planning Policies

- 2.2 The above-mentioned document to form part of the Appeal submission.

3.0 AREAS OF COMMON GROUND

DESCRIPTION OF DEVELOPMENT AND OF THE SITE SURROUNDINGS

- 3.1 The planning application subject of this Appeal is for the demolition of existing buildings and redevelopment to form 42 retirement apartments for older persons

including communal facilities, parking provision and associated landscaping; and 2No. commercial/retail units.

- 3.2 A full description of the proposed development and the design approach taken is considered in Sections 4.0 and 5.0 in the accompanying Design and Access Statement. However, the Council considers that this does not fully describe the works required to the access on London Road or the parking arrangements on Stakes Road, or provide details on how the shop units would be serviced.

RELEVANT SITE HISTORY

- 3.3 The site has been the subject of a number of applications which are detailed in the Planning Officer's Report.
- 3.4 There are a 5no. Businesses which occupy the site address, all of which are currently in operation. It is accepted by both parties that car sales are a sui generis use and that the MOT garage, tyre fitting businesses and specialised motorbike repair centre fall within Class B2 of the Use Classes Order. The area of disagreement between the parties is in respect of the builder's merchant which the LPA deem to fall within Class B8 of the Use Classes Order whereas the appellant considers that such is a sui generis use.
- 3.5 As far as is relevant to this appeal, the site has an extensive planning history, parts of which -maybe considered relevant to the appeal process for both parties.
- 3.6 The respective parties will comment on the reliance of the above as they may deem appropriate in their respective cases.

THE APPLICATION SUBJECT OF THIS APPEAL

3.7 The application subject of this Appeal (LPA Ref: APP/15/00896) was submitted to the LPA in August 2015. No pre application discussions took place between the parties for this specific scheme. However there were a number of errors and the application was not validated by the LPA until these were rectified.

3.8 The application was validated on the 11th September 2015. The planning application and this appeal therefore refer to those drawings and documents which composed the validated application.

3.9 Post submission there was an exchange of correspondence and ultimately the application was refused under Delegated Powers for the followings reasons:

1. **The proposed development would lead to the loss of existing employment uses on the site including Class B uses. These uses make a valuable contribution to the local economy providing employment and services to the community. In the Local Planning Authorities opinion it has not been satisfactorily demonstrated that the site is not fit for purpose or financially unviable for B use class employment, or other types of economic development, in particular it is not satisfied that a suitable comprehensive marketing exercise has been carried out. Therefore the proposal is contrary to policies CS2 and DM3 of the Havant Borough Local Plan (Core Strategy) 2012 and the National Planning Policy Framework 2012.**
2. **In the absence of binding arrangements for the provision of on-site affordable housing or alternatively an acceptable contribution in lieu of on-site provision the proposal fails to make adequate provision for affordable housing in the interest of creating mixed communities and responding to housing need. Furthermore the financial contribution offered does not meet the assessed contribution requirement and in the absence of independent third-party review and viability testing is considered unacceptable. As such the proposed development is contrary to policy CS9 of the Havant Borough Local Plan (Core Strategy) 2012, the adopted Havant Borough Council Housing SPD July 2011 and the National Planning Policy Framework 2012.**
3. **The proposal, without completion of the appropriate binding arrangements to secure a contribution towards the Solent Recreation Mitigation Project, is contrary to the Council's Policy on contributions towards measures of mitigation adopted by the Local Planning Authority. These seek to ensure that the provision is made from new development towards mitigating against increasing recreational pressure on the Solent SPA. The development is therefore contrary to policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2012 and Policy DM24 of the Havant Borough Local Plan (Allocations) 2014 and the National Planning Policy Framework 2012.**

4. On the basis of the information provided and the absence of binding arrangements necessary to secure the alterations the surrounding highway network as anticipated in the submitted Transport Assessment and shown on the proposed plans, it has not been adequately demonstrated that the access and highway works associated with the London Road access and the parking spaces on Stakes Road would not result in harm to the amenity and safety of road users of the highway. The proposal is therefore contrary to the policies CS16, CS20 and DM11 of the Havant Borough Local Plan (Core Strategy) 2011, and the National Planning Policy Framework 2012.

RELEVANT POLICY GUIDANCE

- 3.10 It is agreed that the following are the relevant policy/guidance considerations in respect of this Appeal, albeit that the Appellant and the Council may disagree as to the weight, if at all, that should be placed on particular documents.

NATIONAL PLANNING POLICY

- 3.10 The National Planning Policy Framework (NPPF) was published on the 27th March 2012. This document sets out the Government's objectives for the planning system. The following chapters are considered relevant although other parts of the NPPF may also be relevant and referred to by the appellant or Havant Borough Council:

- Chapter 1 - Building a strong competitive economy.
- Chapter 4 - Promoting sustainable transport.
- Chapter 6 - Delivering a wide choice of high quality homes.
- Chapter 7 - Requiring good design.
- Chapter 8 - Promoting healthy communities.
- Chapter 10 - Meeting the challenge of climate change, flooding and coastal change.
- Chapter 11 - Conserving and enhancing the natural environment.

NATIONAL PLANNING POLICY GUIDANCE

- 3.11 The National Planning Policy Guidance (NPPG) was adopted as an online document on the 6th March 2014 and was accompanied by a written ministerial statement that revoked a number of previous planning policy guidance documents.
- 3.12 It is considered that the following sections of the NPPG are relevant to the Appeal scheme:
- (i). Housing and Economic Development Needs Assessment

- (ii). Viability
- (iii) Design
- (iv) Planning Obligations
- (v) Use of Planning Conditions

THE COMMUNITY INFRASTRUCTURE LEVY REGULATION 2010

- 3.13 Particular reference to Regulation 122 setting out the legal tests for Planning Obligations

THE DEVELOPMENT PLAN

- 3.14 The Development Plan comprises of the Havant Borough Local Plan (Core Strategy) 2011 and the Havant Borough Local Plan (Allocations) 2014.

Havant Borough Local Plan (Core Strategy) 2011

CS2 Employment
 CS4 Town, District and Local Centres
 CS9 Housing
 CS11 Protecting and Enhancing the Special Environment and Heritage
 CS14 Efficient Use of Resources
 CS16 High Quality Design
 CS17 Concentration and Distribution of Development in Urban Areas
 CS20 Transport and Access Strategy
 CS21 Developer Requirements
 DM3 Protection of Existing Employment and Tourism Sites
 DM7 Elderly and Specialist Housing Provision
 DM10 Pollution
 DM11 Planning for More Sustainable Travel

 DM13 Car and Cycle Parking on Residential Development
 DM 14 Car and Cycle Parking on Non Residential Development

Havant Borough Local Plan (Allocations) 2014.

DM17 Contaminated Land

DM20 Historic Assets
 DM24 Recreational Disturbance to Special Protected Areas (SPAs) from Residential Development
 AL1 Presumption in Favour Sustainable Development
 AL3 Town, District and Local Centres

Non Development Plan Documents

Solent Recreation Mitigation Project Interim Mitigation Strategy

(<https://www.portsmouth.gov.uk/ext/documents-external/env-srmp-interim-mitigation-strategy.pdf>) (2014)

Havant Borough Council Housing SPD 2011

Havant Borough Council Developer Contributions Guide 2013

Other Documents

Other relevant documents that may be put forward on behalf of the Appellant or

Havant Borough Council

ISSUES TO BE ADDRESSED

3.15 It is agreed that the main issues to be addressed are as follows:-

- (i) The proposal results in the loss of existing employment uses on the site including Class B uses. These uses are considered by the Local Planning Authority to make a valuable contribution to the local economy providing employment and services to the community. These issues will be addressed and the development will be assessed against the Policy requirements of Policies CS2 and DM3 of the Havant Borough Local Plan (Core Strategy) 2011 and the NPPF. If the development is contrary to these policies, whether in accordance with Section 38 (6) of the Act, there could be other material considerations which the Inspector concludes warrant a deviation from the adopted development plan.
- (ii) In relation to Affordable Housing, whether the proposed development makes adequate provision for affordable housing in the interests of creating mixed communities and responding to housing need. If not, has this been justified Rachael I would delete the yellow bit and independently assessed by third party review – it has been independently assessed by Alder King in relation to viability. These matters to be reviewed against the requirements of Policy

CS9 of the Havant Borough Local Plan (Core Strategy) 2011, the adopted Havant Borough Council Housing SPD 2011 and the NPPF. If the development does not meet these policy requirements, whether in accordance with Section 38 (6) of the Act, there could be other material considerations, which the Inspector concludes warrant a deviation from the adopted development plan.

(iii) In relation to the legal requirements under the Conservation of Habitats and Species Regulations (2010 as amended) (The Habitats Regulations), whether the proposed development would be likely to cause a significant effect on the Portsmouth Harbour Special Protection Area (SPA) and the Chichester and Langstone Harbours SPA (The Solent SPAs). A significant effect could potentially be removed through the provision of a mitigation package in line with that suggested in the Solent Recreation Mitigation Partnership's Interim Mitigation Strategy (it should be noted that the current level of mitigation, adjusted for inflation, is £174 per net additional dwelling).. This is to be assessed against the requirements of Policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011, Policy DM24 of Havant Borough Local Plan (Allocations) 2014, the NPPF and the Habitats Regulations. If the Inspector, as competent authority under the Habitats Regulations, considers in their Habitats Regulations Assessment that the proposal would be likely to lead to a significant effect on the Solent SPAs, it would be contrary to the provisions of the Habitats Regulations. As such, it would be unlawful for the appeal to be upheld and for planning permission to be granted.

(iv) In relation to Highway matters, whether the proposed development adequately demonstrates (in the absence of binding arrangements to secure alterations to the surrounding highway network), that the access and highway works associated with the London Road access and the parking spaces on Stakes Road would not result in harm to the amenity and safety of users of the highway. This to be assessed in relation to the requirements of

Policies CS16, CS20, DM11 of the Havant Borough Local Plan (Core Strategy) 2011 and the NPPF and other relevant guidance. If not, whether in accordance with Section 38 (6) of the Act, there are material considerations, which outweigh the adopted planning policies.

~~(iv)~~—

(v) Section 106 agreement requirements

AGREED DRAWING NUMBERS

3.16 The following drawings are those under consideration by the Council now the subject of Appeal (Ref: TBC):-

<u>Drawing No</u>	<u>Description</u>
SE – 2168–03 – AC– 001	Site Location Plan
SE – 2168–03 – AC– 002D	Proposed Site Plan Site Layout Plan
SE – 2168–03 – AC– 003D	Ground Floor Plan
SE – 2168–03 – AC– 004B	First Floor Plan
SE – 2168–03 – AC– 005B	Second Floor Plan
SE – 2168–03 – AC– 006D	London and Stakes Road Elevations
SE – 2168–03 – AC– 007B	East and South Sectional Elevations
SE – 2168–03 – AC– 008 A	South Courtyard and South Elevation
SE – 2168–03 – AC– 009 A	West Courtyard Elevation
SE – 2168–03 – AC– 010D	Street Elevations
SE – 2168–03 – AC– 011 A	Artist Impression 1 of 3
SE – 2168–03 – AC– 012 A	Artist Impression 2 of 3
SE – 2168–03 – AC– 013 B	Artist Impression 3 of 3
SE – 2168–03 – AC– LA-001B	Landscape Plan
PP/3066/M&S/Purbrook	Topographical Survey
8817-01	Tree Constraints Plan

3.18 In addition, the following documents were also submitted in support of the application:

Acoustic Report

Arboricultural Report

Phase 1 Habitat assessment

Planning Biodiversity Checklist – not sure if his was completed by us or the LPA

Bat Absence/Presence Update Letter August 2015

Bat Absence/Presence Report September 2015

Archaeological Desk Based Assessment

Energy Statement

FRA Summary

Japanese Knotweed Report

Planning Statement

Construction Method Statement

Heritage Statement

Initial Drainage Assessment

Landscape Rationale by Outer Space.

Site Investigation Report

Statement of Community Involvement.

121 Meeting Notes

Community Feedback Analysis Notes

Transport Statement

Vendors Asbestos Survey

Financial Viability Appraisal

DAS.

CIL Planning Application Additional information

Utility Record Search

CONDITIONS

- 3.19 Should the Inspector be minded to allow this Appeal- the appellants suggest that the following conditions, supplied by the Appellant, be attached to any decision:-

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

2. Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be carried out in accordance with the following approved drawings - Drawing numbers:

SE - 2168-03 - AC- 001	Site Location Plan
SE - 2168-03 - AC- 002D	Proposed Site Plan
SE - 2168-03 - AC- 003D	Ground Floor Plan
SE - 2168-03 - AC- 004B	First Floor Plan
SE - 2168-03 - AC- 005B	Second Floor Plan
SE - 2168-03 - AC- 006D	London and Stakes Road Elevations
SE - 2168-03 - AC- 007B	East and South Sectional Elevations
SE - 2168-03 - AC- 008A	South Courtyard and South Elevation
SE - 2168-03 - AC- 009A	West Courtyard Elevation
SE - 2168-03 - AC- 010D	Street Elevations
SE - 2168-03 - AC- 011A	Artist Impression 1 of 3
SE - 2168-03 - AC- 012 A	Artist Impression 2 of 3
SE - 2168-03 - AC- 013 B	Artist Impression 3 of 3
SE - 2168-03 - AC- LA-001B	Landscape Plan 8817-01
Tree Constraints Plan	

Reason: To ensure the development is implemented in accordance with the permission granted.

3. A landscaping scheme shall be submitted to the LPA for approval before the building is occupied. The approved landscaping scheme 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 date of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of the amenities and character of the area.

4. No persons under the age of 60 years of age and or a partner of 55 years shall occupy any of the retirement living units hereby permitted with the exception of guests and / or warden(s), unless otherwise agreed in writing by the local planning authority.

Reason: To ensure that sufficient parking is provided with the proposed development.

Council – to provide suggested conditions for consideration in due course.

AGREED ISSUES

3.20 The issues set out below are those put forward by the Appellant. However, where the Council objects to the proposed wording these are shown in **bold underlined type**:

1. It is agreed that the site is within a recognised settlement/built up area.
2. It is recognised that the site is in a **relatively** sustainable location. **Relative to what? London?**
3. It is recognised there is a need for retirement living accommodation for older persons within the Borough
4. It is accepted that the proposed design is acceptable in design/townscape terms and there is no in principle objection to the proposed palette of materials subject to a planning condition in relation to samples for approval.
5. It is accepted that the proposed development would not give rise to any unacceptable neighbour relationships.
6. It is accepted that the proposal would not adversely affect the character and appearance of the adjoining Conservation Area **or the setting of nearby Listed Buildings.**
4. It is agreed that the level of car parking provision being proposed is sufficient to meet the needs of the proposed development and did not form a reason for refusal.

6. There is no in principle highway objection to the proposals subject to the resolution of Refusal Reason 4 **and the necessary binding agreements.**
7. There is no in principle objection to the proposed development identified in subject to the submission of a satisfactory UU/Sec 106 Agreement for an appropriately scaled mitigation package to remove the significant effect which would otherwise be likely on the Solent SPAs. This would be in the **form of a payment of £7,693.40¹. It is considered that should a sufficiently scaled mitigation package be secured, this would remove Reason for refusal 3.**
8. It is accepted that in principle should the development be financially viable that a contribution towards affordable housing should be by way of a commuted sum, in lieu of an on site provision. If agreement were to be reached regarding this issue, Refusal Reason 2 would be overcome.
9. **It is accepted that the proposed development would lead to the loss of some Use Class B employment at the site.**

¹ SRMP mitigation package - £174 per net additional dwelling. Havant Borough Council set out in para 5.31 of the Developer Contributions Guide that a monitoring fee of £8.70 per dwelling. Hence the scale of the mitigation package can be calculated as $(42 * 174 + 8.70) = 7673.40$