



## Appeal Decision

Inquiry Held on 22 June – 2 July 2021

Site visit made on 23 June 2021

**by R. Catchpole BSc (hons) PhD MCIEEM IHBC**

an Inspector appointed by the Secretary of State

**Decision date: 2<sup>nd</sup> September 2021**

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**Appeal Ref: APP/F0114/W/21/3268794**

**Homebase Site, Pines Way, Westmoreland, Bath BA2 3ET**

- 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 Ms O Birtwistle (Senior Living Urban (Bath) Ltd) against the decision of Bath & North East Somerset Council.
  - The application Ref: 20/00259/FUL, dated 20 January 2020, was refused by notice dated 5 January 2021.
  - The development proposed is a new care community (Use Class C2) comprising care residences and care suites and ancillary communal, care and well-being facilities, offices in Use Class E(g)(i) together with associated back of house and service areas, pedestrian and vehicular access, car and cycle parking, landscaping, private amenity space and public open space.
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### Decision

1. The appeal is allowed and planning permission is granted for a new care community (Use Class C2) comprising care residences and care suites and ancillary communal, care and well-being facilities, offices in Use Class E(g)(i) together with associated back of house and service areas, pedestrian and vehicular access, car and cycle parking, landscaping, private amenity space and public open space at the Homebase Site, Pines Way, Westmoreland, Bath, BA2 3ET in accordance with the terms of the application, Ref: 20/00259/FUL, dated 20 January 2020, subject to the conditions set out in the schedule at the end of this decision.

### Preliminary Matters

2. The Inquiry sat on non-consecutive days between 22 June and 2 July 2021 and an unaccompanied site visit was carried out on 23 June 2021. The site visit was carried out according to an agreed itinerary [CD 10.5.11] which included views of the appeal site from the habitable rooms and outdoor areas of Nos. 6-8 Albert Crescent.
3. The Council gave four reasons for refusal in its decision notice but has since withdrawn the third and fourth reasons which, respectively, relate to car parking provision and the mitigation of tree loss. A Statement of Common Ground [CD 10.5.1] states that this resulted from further clarification of the parking arrangements, the submission of a revised landscaping scheme [ID1] and the submission of a completed s106 planning obligation through which a financial contribution towards off-site tree planting has been secured [ID25]. I am satisfied that there are no substantiated grounds that would lead me to

question the Council's position on these matters. The Council continued to defend its position in relation to the first two reasons for refusal and this is the basis on which this appeal has been determined.

4. As the proposal potentially affects the setting of listed buildings I have had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
5. The National Planning Policy Framework 2021 (the Framework) and a new National Model Design Code were published after the close of the Inquiry. The main parties were given an opportunity to highlight any effect that these publications might have on their respective cases. I have taken the responses I have received into account in my decision-making.

### **Main Issues**

6. The main issues are:
  - the effect on the character and appearance of the surrounding area, having particular regard to the City of Bath World Heritage Site (WHS) and special regard to the settings of the Bath Conservation Area (BCA) and other designated heritage assets; and
  - the effect on the living conditions of occupants of residential dwellings on Albert Crescent, Western Terrace and The Mews with regard to privacy and outlook.

### **Reasons**

#### *Background*

7. The appeal site is located in close proximity to Bath city centre and covers an area of approximately 1.8 ha. The main access lies the south west, via Pines Way, and an ancillary access is also present from Stothert Avenue, which lies to the west. The site is currently occupied by a large, Homebase retail shed that is no longer in active use. This structure occupies the southern part of the site with the northern part being occupied by an extensive area of car parking.
8. The surrounding land use is mixed with residential dwellings located immediately to the north and north west, a Sainsbury's petrol filling station to the south west, two large office buildings (Pinesgate) to the south and a Sainsbury's overspill car park immediately to the east. A number of light industrial units are also located near the south eastern corner of the appeal site.
9. The River Avon passes in close proximity to the north eastern boundary, as does a riverside walkway, linking the overspill car park with the Bath Western Riverside (BWR) development. A pedestrian route and a mature belt of trees flank the opposite bank nearest to the appeal site beyond which lies the Grade II\* Norfolk Crescent and an associated public open space/ green. The southern bank of the river delineates the boundary of the BCA and the site lies within the City of Bath UNESCO WHS.
10. The scheme is regenerative and seeks, among other things, to create residential units and care suites in the C2 use class. A total of 288 units would be created with the majority (approximately 253) comprising accommodation designed to support the long-term needs of residents who are capable of

independent living but who require some ongoing care or support. There would also be approximately 30 'care suites' and 5 'care residences' that would be designed to support those residents who have a greater need for care on a shorter-term basis.

11. A number of other uses would also be present including a range of communal facilities comprising a restaurant, café/bar, occupational therapy/wellness centre, a gym, a library, treatment and therapy rooms and around 1,865 m<sup>2</sup> of office space for independent use that would not be directly related to the day-to-day operation of the scheme. Consequently, the proposal would deliver a mixed-use development whilst being a predominantly residential scheme.
12. The appeal site forms part of a larger site which has been allocated for redevelopment under policy SB7(B) (Sydenham Park) of the Bath and North East Somerset Core Strategy and Placemaking Plan for Bath 2017 (PPB) [CD 4.2]. This states that residential development should account for a significant proportion of floor space with over 500 residential units being allocated. It also has a B1 employment floor space requirement of around 14,000 m<sup>2</sup> and a 150-bed hotel as well as complementary food and drink establishments.
13. It is common ground between the parties that the principle of developing the appeal site to provide an extra care community is acceptable within the context of Policy SB7(B) and that the remainder of the Sydenham Park allocation has sufficient capacity to accommodate the residual quantum of development that is required. It is also common ground that the appeal scheme would not compromise the future redevelopment of the remaining, allocated area.

#### *Character and Appearance*

14. The vision for the Sydenham Park area, as set out in the commentary to the above policy, states that it represents 'an exciting opportunity to create a new city destination ... that responds to the bold architectural presence of Green Park Station' and creates 'a new city quarter that complements the new residential development of Bath Western Riverside and represents a confident new stage in the evolution of the city.'
15. This contrasts with the existing townscape that is characterised by low rise utilitarian sheds, extensive areas of car parking and a gyratory system with a poorly related development at Pinesway which the Council acknowledges is 'an anomaly within the fabric of the city' [CD 10.4.10]<sup>1</sup>. The Council also acknowledges that the wider area has 'few commendable characteristics' [CD 10.4.10]<sup>2</sup>.
16. The appellant goes further and characterises the townscape quality of the appeal site as poor [CD 10.3.14]<sup>3</sup>. Among other things, a lack of spatial enclosure, poor legibility, a lack of active frontages, poor architectural quality and underutilisation are identified as detracting elements and I agree. I observed that the immediate area has a stark, utilitarian character that is dominated by car use with very few positive, placemaking attributes and entirely lacking in architectural merit.

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<sup>1</sup> Paragraph 4.4

<sup>2</sup> Paragraph 4.3

<sup>3</sup> Paragraph 4.7

17. Turning to the wider area, I observed that the context of the site is strongly influenced by the scale, massing and materials of the BWR development to the west which the Council accepts as defining the current context of the site [CD 10.4.10]<sup>4</sup>. I observed a range of building heights up to eight storeys. Whilst the latter was associated with two landmark buildings nearest the river, I also observed that Fredrick House has up to seven storeys and an extensive frontage facing onto Midland Road. The massing of this building is such that it dominates the street scene of Midland Road and is clearly visible from the junction with the Lower Bristol Road. A mixed palette of materials has been used throughout the scheme which includes the extensive and prominent use of dark metal cladding on the recessed, upper storeys of these buildings.
18. The site context is also influenced by the development closest to the northern boundary, along Albert Crescent and Western Terrace, which has a more intimate and varied scale. This also utilises areas of metal cladding, as part of the upper storey detailing, which has a light-coloured finish. The development contributes to a distinctive and modern river frontage and is a well-considered continuation of the residential use of the south bank of the river. The fresh modernity of its design and the prominent visual break provided by the River Avon and its flanking vegetation clearly differentiates it from the Georgian city beyond.
19. The design response to the appeal site is founded on the requirements set out in Diagram 10 of SB7 [CD 4.2] and would result in three mixed-use buildings (A/B, C and D) fronting onto two routes that pass through the appeal site on an east-west alignment. One of these would maintain the line of Sydenham Park Street through the creation of a pedestrian precinct between buildings C and D. This would be characterised by active commercial frontages, as set out in the appellant's design proof [CD 10.3.19]<sup>5</sup>. The other throughfare to the north would provide the main vehicular access to the site and would be situated between buildings A/B and C. This would provide access to an underground parking facility as well as the internal courtyard associated with building A/B.
20. The proposed building heights would vary between two and six storeys with the heights generally rising towards the southern part of the appeal site where the ridge heights of building C and D would be around 21 m above ground level with a parapet height of around 20 m [ID 19]. Building A/B would be a mix of two and four storeys with the top of the latter being set back from the main elevation. The design steps down to two storeys where it is adjacent to Albert Crescent/Western Terrace and at the corner of the northern throughfare, when approached via Stothert Avenue [CD 10.5.12]<sup>6</sup>. Building C would be predominately six storeys, with a four-storey element fronting onto Pinesway, whilst building D would be six storeys. Both buildings would have a similar setback to their upper floors, as would also be the case for building A/B.
21. In terms of urban typology, whilst the scale, massing and density of the proposed buildings would mark a significant change in the appearance of the site, it would nevertheless be in keeping with the evolving character of the post-industrial river corridor as expressed through the BWR development. I find that the proposal would create a highly legible street scene that would be read as a complementary, visually modulated neighbourhood with clear

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<sup>4</sup> Paragraph 3.4

<sup>5</sup> Figure 43, paragraph 5.1.15

<sup>6</sup> Artist's Impression - View 1 from Stothert Avenue

- circulation routes that would be re-enforced by changes in building height, such as the two-storey element of the south eastern corner of building A/B. An active and engaging public realm would also be created along the river frontage [CD 10.5.12]<sup>7</sup> with clear pedestrian links to Victoria Bridge and beyond.
22. The Council's position on the townscape effects and cohesiveness of the design narrowed during the course of the Inquiry to the relationship with the two-storey element of building A/B, as defined above, and building C. It was established in cross-examination that it was the difference in the height and massing of these two buildings that went to the heart of the Council's concerns over design cohesiveness [ID24]. The appellant has drawn my attention to the chamfered layout of this corner, the width of the street and the parapet height of Building C. Taken together, I find that the variation in height, building articulation and common architectural language adds significant visual interest in addition to supporting the legibility of the public realm. As noted above, the chamfered corner invites the eye towards one of the main routes through the site. The elevational language is also varied in more subtle ways with the window recessing, engaged brick columns, corbelled brickwork and the setback of the upper floors all creating a clearly stratified, lively and cohesive, vertical architectural composition.
23. Given the above, I find the concerns over cohesiveness lacking in merit and inconsistent with the guidance in the BWR Supplementary Planning Document 2008 (BWRSPD) [CD 5.1] which states that heights should not be 'consistently applied across a site or across development blocks'.
24. Turning to materials, I note that neither the Council's design nor heritage witnesses objected to the use of sheet metal or buff brick in the proposed scheme and that this was also the position of the case officer who recommended the granting of planning permission. Mr Neilson, in response to a direct question that I put, acknowledged that the use of brick should be encouraged and would be a more authentic response to the appeal site that would have been historically characterised by a diverse range of materials, including brick.
25. However, the Council's planning witness maintained that the use of buff brick and sheet metal was prohibited in the BWRSPD despite the widespread, prominent and highly contrasting use of the latter throughout the BWR scheme. When questioned about the use of this material, Mr Griggs-Trevarthen conceded that it is a prominent feature of this development. Bearing this in mind, as well as its use at Albert Crescent/Western Terrace and the extensive corrugated metal sheeting of Green Park Station, I find that this aspect of the guidance can only be given limited weight when the evolving character of this area is taken into account.
26. Turning to the matter of buff brick, the established character and therefore the relevance of the BWRSPD is less equivocal and I accept that it is not a frequently encountered material in the locale. However, there is a tension with SB7(B) which notes that 'the location would benefit from a clear identity and point of differentiation, one with a strongly defined built environment'. In urban design terms, it is hard to see how the use of a light-coloured brick and pointing would fail to meet this requirement or how the use of an alternative

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<sup>7</sup> Artist's Impression – View 2 Riverwalk

- facing material, such as Bath Stone, would result in anything other than a bland contextualisation lacking clear differentiation and identity.
27. Consequently, I find that both brick and sheet metal would offer a more honest and grounded expression of the industrial heritage of the site which is visually and topographically distinct from the Georgian City and, as such, is capable of accommodating a greater degree of townscape change and the adoption of a more clearly articulated identity.
  28. Turning to building heights, the Bath Building Heights Strategy 2010 [CD 10.2.6] places the appeal site in Zone 3, the Valley Floor, which it describes as being 'visually distinct from the Georgian City with a fragmented townscape and a variety of building heights'. I note that this guidance has not been formally adopted and cannot be considered part of the development plan but that it is nevertheless a material consideration. It recommends that building shoulder heights in this zone should generally be 4 storeys with one additional, setback storey within the roofscape. It also suggests that an additional storey may be acceptable in certain circumstances. The most relevant being where a building fronts onto public space and marks key locations, such as corners or gateways.
  29. The strategy provides area-based guidance on the appropriate height of new development to ensure the protection of the Outstanding Universal Value (OUV) that defines the WHS. I deal with townscape effects at this point and shall address the effect of the proposed heights on OUV and heritage assets in the following section. I note that the design steps down with its 2, 3 and 4 storey elements and also steps up to 6 where there would be a clear urban design purpose. Although there was disagreement over the nature of the public realm at the western end of the appeal site, where Sydenham Park Street would meet the existing road network, the Council's design witness accepted that this would have a nodal function in cross-examination and I agree.
  30. As such, I note that building D would act as a clear point of demarcation within the public realm in terms of signifying the gateway to a broad, pedestrianised zone linking the proposed development to Sainsbury's and the city centre, when looking east, along the line of Sydenham Park Street. The four-storey element of building C sweeps round to these higher, facing elements which draws attention to the gateway thus stressing its architectural function. I do not find the heights of building C or D to be excessive or out of proportion with the proposed townscape bearing in mind the separation distance between buildings C and D, setback of the upper floors and the width of the Pines Way gyratory.
  31. Notwithstanding my heritage conclusions, I find that the proposed building heights would accord with the principles of good urban design and be consistent with the BWRSPD insofar as it supports building heights of between 4-6 storeys. I also note that building height and massing vary considerably across the city given the monumental scale of some of its historic buildings and that the location of the proposed scheme on the valley floor would not lead to any significant townscape disruption as a result.
  32. Given the above, I find that the proposal would not harm the character and appearance of the surrounding area and would be consistent with policy SB7 of the (PPB) [CD 4.2] as well as policies D1, D2, D3 and D5 of the Bath & North

East Somerset Core Strategy Placemaking Plan – District-Wide Strategy and Policies 2017 (DSP) [CD 4.2] that seek, among other things, to ensure that new development contributes positively to local distinctiveness, identity and history, creates legible connections and buildings that are flexible and adaptable, improves areas of poor design, responds to urban morphology, contributes positively to urban fabric through an appropriate grain and delivers well designed and articulated buildings with active frontages.

*Historic Environment*

33. The Council identified direct harm to the WHS as well as harm to the setting of the BCA and a number of listed buildings. The heritage assets potentially affected, as well as the scope of the impact on the WHS, could not be agreed between the parties [CD 10.5.7]. The Council's heritage witness confirmed during the course of the inquiry that the potential harm to the assets results from the top two floors of building C and D, as set out in his proof [CD 10.4.8]. This is consistent with the views of Historic England but only insofar as the potential harm that would be caused to the setting of Norfolk Crescent, the WHS and the setting of the BCA because these were the only three assets for which it expressed any concern [CD 10.3.17]<sup>8</sup>.
34. In its heritage proof, the Council maintains that the proposal would also cause harm to the setting of a Grade II\* Watchman's Box located on the edge of the green near Norfolk Crescent, a group of Grade II buildings that are mostly arranged along the Lower Bristol Road comprising Victoria Buildings, Belvoir Castle and Park View and the Grade II Green Park Station to the east of the site. The Council offers no reasoning concerning why the significance of these assets would be affected and simply concludes a 'moderate impact' in all instances according to ICOMOS guidelines [ID10].
35. My questioning during the inquiry elicited no further elucidation of how the significance of these assets would be affected beyond visual juxtaposition of the top two floors of buildings C and D and a failure of the appellant to adhere to a 'rule of thumb' that new buildings must always be subservient. The rule of thumb not only lacks policy support but also fails to account for the significant variation in height and scale in the Georgian City, as previously noted. In response to a question I put, the Council's planning witness confirmed that the assessment of harm to the heritage assets was based entirely on intervisibility and the intrusion of the proposal into general views. I find this approach unsatisfactory because it has not been grounded in an objective analysis of how the settings of these assets contribute to their special interest and how that would then be affected by the proposal. Taking each in turn.
36. The Watchman's Box (Ref: 1395748) dates from around 1810 and the design is attributed to John Palmer who was also responsible for the first phase of Norfolk Crescent. Given its proximity to the Crescent and the nearby green, its historical function and setting is highly localised and directly related to the past protection of the residents of Norfolk Crescent. The proposal would not detract from this group value or its neo-classical style which is closely matched by the nearby buildings. Consequently, there would be no loss to the evidential value of this asset, as a police shelter, when experienced within this context nor would it be so visually overwhelmed that this relationship would, in any way, be disrupted.

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<sup>8</sup> Appendix 9

37. Turning to the listed buildings that the Council identify along the Lower Bristol Road, these form an intact Georgian terrace of varying height comprising 1-6 Victoria Buildings (Ref: 1395093), Nos. 7-10 Victoria Buildings (Ref: 1395094), 11-24 Victoria Buildings (Ref: 1395096), Nos. 25-27 (Ref: 1395099) and Nos. 30-32 - Belvoir Castle (Ref: 1395102). The Council has also identified harm to the setting of 1-6 Park View (Ref: 1394334) which is located at the rear of the western end of the main terrace and orientated at approximately 90° to the Lower Bristol Road.
38. I observed that the buildings fronting onto the Lower Bristol Road are all of a similar style, material and era and date from the mid-late 19<sup>th</sup> century. They are illustrative of modest, speculative Georgian development along one of the key historic routes into the city. They are faced with limestone ashlar with low parapets and shallow roof pitches. The architectural language is restrained and consistently expressed to give a relatively homogenous façade with tiered pediments on scrolled brackets above many of the doorways and a first-floor banding course that provides a degree of architectural integration. The simplicity of expression and scale of these dwellings gives them an artisanal charm that contrasts with the larger set pieces within the city, such as Norfolk Crescent. Park View terrace has a more vernacular character and comprises a short row of dwellings with detached gardens facing the main elevation which, whilst faced in limestone ashlar, lacks any significant architectural detailing. This is suggestive of lower status dwellings when placed in the context of their cramped arrangement and lack of any street frontage. Overall, this group of buildings of modest scale and mixed character evoke the varied uses and fortunes of the historic community that would have inhabited this part of the city.
39. With the exception of Park View, which is almost wholly self-contained, the experience of these buildings is essentially kinetic given their compact linear form along the Lower Bristol Road. As such, they are experienced and appreciated at close quarters as movement occurs along this road which provides the setting in which they must necessarily be understood. I observed that there is an abrupt change in scale and character of the townscape when moving east towards the appeal site with a contemporary context dominating after the junction with Brougham Hayes and Victoria Bridge Road.
40. Whilst the proposal would form a relatively prominent feature of the streetscene at this point, it would be read within the context of a much altered, modern townscape [CD 1.12.8]<sup>9</sup> with only limited juxtaposed views from the south side of the road being present in the area proximate to the eastern end of the terrace [CD 1.12.8]<sup>10</sup>. Moreover, there would be no material intervisibility with 1-6 Park View and my own observations suggest that the legibility of its backland setting and historical juxtaposition with the buildings fronting onto the Lower Bristol Road would remain unaffected given the fine-grained arrangement of these buildings.
41. Consequently, I find that the setting and thus the special interest of these listed buildings would not be harmed nor would the development compromise an understanding of the pattern and form of Georgian town planning that these buildings signify as part of their group value. In this regard, I note that the prominent juxtaposition of Fredrick House with Belvoir Castle and the fact that

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<sup>9</sup> View 2 – Brougham Hayes junction with Lower Bristol Road - Proposed

<sup>10</sup> View 1 – Lower Bristol Road Looking East at Lorne Road - Proposed



- the latter remains clearly differentiated despite the significant massing of the former.
42. Bearing in mind the separation distances and clearly differentiated materials of the proposed scheme, I also find that it would preserve the OUV and thus the significance of the WHS because this historic route into the city and the remnant Georgian town planning would remain clearly legible. The buildings would not be overwhelmed by the proposal which would be located in a modern townscape context and set back, at an oblique angle, to the line of the Lower Bristol Road.
  43. Turning to Green Park Station (Ref:1396267), I do not find the Council's views credible in relation to this building because its primary orientation and architectural engagement faces east, towards the city, rather than towards the appeal site. Its main elevation, which denotes its principal architectural significance, comprises a neo-classical composition, faced in limestone ashlar with a rusticated ground floor. The rear elevation is dominated by the former mouth of the train shed comprising a Victorian wrought iron structure on limestone rubble walls.
  44. The western context of this building is much altered with only an iron lattice bridge denoting the line of the rail route to the former marshalling yards and engine sheds. As it has already been established that the proposal would preserve the associated corridor identified in Diagram 10 of SB7(B), the only question that remains is whether the scale and massing of the proposal would be so large and incongruent that it would visually overwhelm the train shed and undermine its legibility. I observed that this would not be the case because of the monumental scale of the station as well as the considerable separation distance and intervening vegetation that is present. Added to this is the fact that the historic relationship between the station to the appeal site would remain legible given the alignment and industrial character of the lattice bridge which clearly denotes the historic route of the rail line to the west.
  45. The Council has highlighted differences in the conclusions of the heritage statements submitted with the application and the conclusions of the appellant's heritage witness [CD 1.2.19, CD 1.6.4 and CD 1.10.4]. These were summarised in a table that was submitted during the course of the Inquiry [ID14]. I have carefully considered this evidence in relation to the above heritage assets and nothing would lead me to reach a different conclusion. The reasoning, as it relates to impact, is limited and goes to matters of judgement upon which I hold a different view for the reasons I have set out above.
  46. Furthermore, this evidence relies, in part, on the application of the DMRB<sup>11</sup> heritage impact assessment methodology to the setting of listed buildings. I note that irrespective of its commonalities with the ICOMOS guidance [ID10], its use is not supported in HE guidance [CD 6.14], the Planning Practice Guidance 2016 (as amended) (PPG) or the Framework in this particular context and carries very little weight as a result.
  47. Consequently, the outstanding heritage issues that remain to be determined relate to the effect of the proposal on the WHS, the setting of the BCA and the setting of Norfolk Terrace.

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<sup>11</sup> Design Manual for Roads and Bridges 2007 (as amended)

48. The City of Bath WHS is a designated heritage asset of the highest significance. It was inscribed in 1987 and the designation covers the entire city which encompasses an area of around 29 km<sup>2</sup>. The WHS Management Plan (WHSMP) identifies six headline attributes which express the essential qualities of the OUV [CD 6.5]. Of these, the parties agree that Attribute No. 5 'The Green Setting of the City in a Hollow in the Hills' and Attribute No. 3 'Georgian Town Planning' are the ones most relevant to this appeal with the Council also identifying Attribute No. 4 'Georgian Architecture' as being important as well as some additional components of the first two attributes [CD 10.5.7].
49. In terms of Attribute No. 3, the visual homogeneity arising from a limited palette of colours and the 'uniform scale and height of buildings' are identified as well as views and vistas that have been deliberately created. This links to the transposition of Palladio's ideals to the specific geography of the valley that has been expressed in terms of a picturesque landscape which is described in the OUV statement as a precursor to the garden city movement. This is also reflected in, among other things, the layout of crescents with adjacent open areas which are expressed on a monumental scale by the Royal Crescent and to a lesser extent, Norfolk Terrace.
50. Turning to Attribute No. 5, this reflects the importance of the wider landscape in terms of the verdant, undeveloped hillsides that surround the city as well as the sylvan skyline that is apparent from many locations throughout the city. The preservation of these elements, as well as the presence of defensive walls that provided the nucleus for the 18<sup>th</sup> century remodelling of the city, has led to a compact form of development within the topographic basin that has avoided the extensive and unattractive urban sprawl characteristic of most English cities.
51. Turning to Attribute No. 4, this identifies the importance of particular set pieces and the works of noted architects which includes John Palmer who is associated with, among other things, the design of Norfolk Crescent. The extent, quality and consistency of expression of the neo-classical, Palladian architecture over the course of a century has led to a well-integrated and harmonious city that has not relied on a single masterplan or patron but instead has arisen through opportunistic means which the WHSMP describes as a 'testament to the architects and visionaries of that period'.
52. Given the above, the special interest of the WHS, insofar as it relates to this appeal is the planned relationship of the built environment to its landscape setting as well as the consistent and sustained architectural expression of neo-classical, Palladian ideals, at different scales, as expressed through a common palette of building materials.
53. Turning to the BCA, it was first designated in 1968 and is city-wide conservation area covering approximately 1,486 ha. Although covering a wider area and intended for another purpose, the Bath City Wide Character Appraisal SPD 2005 nevertheless describes its character [CD 5.2]. It notes that there can be considerable variation in height between buildings of the same number of storeys due to different floor to ceiling heights that were traditionally defined by the 'rates' system<sup>12</sup>. Consequently, the generally uniform heights and scale of the city, typically expressed as comprising 3-4 storeys, must necessarily be considered within this context.

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<sup>12</sup> Paragraph 6.4.1

54. It also emphasises the inherent quality of buildings that result from the use of a limited palette of natural materials mainly comprising Bath stone, Welsh slate, painted iron and painted timber. It notes that the colours and subtlety of natural weathering gives rise to a highly cohesive visual quality that is further supported by the widespread use of fine ashlar facings with thin jointing. However, other materials are also highlighted in terms of the use of Bath stone rubble in back and side walls as well as red brick, pennant sandstone and white/grey lias limestone in outlying areas.
55. The BCA itself is divided into 16 different character areas with a narrow section of the Brassmill Lane, Locksbrook and Western Riverside area running along the southern bank of the river, immediately adjacent to the appeal site, whilst the City Centre area incorporates the facing northern bank of the river and the built environment that lies beyond. The Brassmill appraisal [CD 6.2] identifies the River Avon as the dominant feature with a character that has largely arisen from extensive post-industrial redevelopment, most notably at the BWR site. It highlights a mixed, light industrial and commercial character with pockets of residential dwellings largely comprising Georgian terraces, Victorian villas and modern apartment blocks. It identifies the increases in building height, as a result of the BWR development, as a potential threat.
56. In contrast, the City Centre Character Appraisal [ID26] notes that the facing area marks the westernmost extent of Georgian city which terminates in the 'fine curve' of Norfolk Crescent and the other buildings facing onto the adjacent green. This area also includes Green Park Station which is highlighted as a demonstration of Georgian Bath's influence on Victorian architecture as expressed in the design of its principal façade by J.H. Saunders for the Midland Railway.
57. Given the above, as well as my own observations, I find that the setting of the BCA, insofar as it relates to this appeal, comprises the transitional, post-industrial river corridor that is characterised by modernist architectural forms juxtaposed with glimpses of the westernmost extent of the historic city, as experienced by the recreational users of the river corridor and the occupants of riverside dwellings. The Council confirmed, in response to one of my questions, that no defined, historic views associated with the BCA would be affected by the proposal.
58. Turning to Norfolk Crescent, this comprises the two separate Grade II\* listings of 8-18 Norfolk Crescent (Ref: 1395745) and Cumberland House (Ref: 1395744). The listing for the latter notes that it is part of symmetrical crescent that originally comprised 18 large houses since converted into flats. It describes these as being situated behind a fine ashlar facade dating from around 1810 that was most likely designed by John Palmer, completed by John Pinch and reconstructed in the 1960s following severe war damage. The listing for the former notes that it originally comprised a total of eleven houses and was constructed between 1800-1820.
59. The architectural significance of the Crescent is linked to its main façade which is on a monumental scale. It reflects Palladian ideals comprising a balanced composition with a high degree of uniformity and repetition of features such as the giant order, Ionic pilasters at each end with set forward bays, continuous ground floor rustication, a consistent attic storey and continuous first floor, wrought iron balconies. The central section is set forward and denoted by six

giant order, Ionic pilasters that are spanned by a simple, unadorned pediment. It faces across an open green and the western reaches of the river with only oblique views of the appeal site and what would have originally been Sydenham Park Meadow at the time of its construction [CD 10.3.14]<sup>13</sup>.

60. The listing notes that Norfolk Crescent was part of an ambitious proposal, on land leased in 1792 to an attorney named Richard Bowsher. The appellant's heritage evidence suggests that the green may have originally been a formal garden but that by 1848 it had assumed a more informal character [CD 10.3.14]<sup>14</sup>. There is also a suggestion that Bowsher's original intent was to develop the whole of this area for housing which would have led to a more enclosed setting<sup>15</sup>. However, these elements of the scheme were never to see fruition and the area remained open. Consequently, any relationship with land on the southern bank of the river which incorporates the appeal site can only be viewed as opportunistic at best in terms of Georgian town planning and not in any way equivalent to other planned, set pieces such as the Royal Crescent.
61. Given the above, as well as my own observations, I find that the setting of Norfolk Crescent, insofar as it relates to this appeal, to be associated with the juxtaposition of this building with the green and nearby palace-fronted terrace of Nelson Place that is also attributed to John Palmer. They mark the westernmost extent of the Georgian city and have no planned, historic relationship with either the river or the land beyond which appears to have been deliberately screened from view in subsequent years by riverside tree planting [CD 10.3.14]<sup>16</sup>. They are to be appreciated through movement in and around their immediate environs and through the glimpsed views across the river from its southern bank.
62. Turning to the potential impacts of the proposal, these have been explored through a Landscape Visual Impact Assessment (LVIA) [CD 1.3.27] and a series of Visually Verified Montages (VVM) [CD 1.12.8]. It is common ground between the parties that the LVIA methodology is sound and that the images are complete and have been prepared in accordance with best practice. The Bath Preservation Trust has suggested that more viewpoints should have been considered to fully appreciate the impact. However, I have carefully reviewed the LVIA and have visited the site and evaluated the proposal from the different viewpoints, as well as a significant number of other locations and I am satisfied that the views are representative. I find the most relevant to comprise VVM 5, VVM 6, VVM 8 and VVM 12.
63. VVM 5 shows a view of the site from the adjoining pavement near the eastern end of Nelson Place. This shows that there would be a limited occlusion of views of the sylvan skyline to the south during the winter months and that views would be maintained, to a lesser extent, by one of the 2 storey elements of building A/B nearest to Albert Crescent/Western Terrace. My own observations suggest that this effect would not be present during the summer months given the thick belt of trees along the northern bank of the river. Whilst the proposal would be visible from the riverside path during these months, the angle of view as well as the height of the existing structure is such that there would be no significant loss of more distant views directly across the

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<sup>13</sup> Paragraph 4.21-4.22

<sup>14</sup> Paragraph 6.19

<sup>15</sup> Appendix 4, figure A4.10

<sup>16</sup> Paragraph 6.23

- river to the southwest when moving along this route. Even if this were the case, they would be peripheral to the main views of users which are orientated along the river on a broad east-west axis. Consequently, I find the landscape impact would be slight (adverse) from this perspective.
64. Turning to VVM 6, this shows a view of the site from Victoria Bridge. It is clear from this image that the currently expansive views of the wooded hillsides to the south would be restricted. However, the Inquiry established that this would be limited to up to around 70 m of kinetic views as individuals move south along Victoria Bridge Road. As such, I accept that the occlusion would be transient and that a significant extent of the view would nevertheless remain unaffected, as is apparent from Figure 18 [CD 1.12.8]. Consequently, I am satisfied that no significant adverse impact would result in relation to this particular view. As a result, I find the landscape impact would be negligible from this perspective.
65. Turning to VVM 8\8b, this shows two different views of the site from Stothert Avenue. This demonstrates how the view would change with the falling gradient of this road with more distant views of the sylvan hillsides to the east being largely occluded and only visible through the gap created by the two storey, southwestern element of building A/B. Moving closer to the appeal site, it becomes clear that the existing structure obscures more distant views of the surrounding hillsides and that there would be no significant material change to more proximate views. Whilst partial views of the upper floors of Norfolk Crescent would be obscured during the winter months, which would reduce the juxtaposition of the Georgian city at this point, I only give this limited weight because such views are only glimpsed with the nearby listed buildings of the Lower Bristol Road providing a more prominent expression of Georgian town planning. Given the above, I find the landscape impact would be moderate (adverse) from this perspective.
66. Turning to VVM 12, this shows a more distant viewpoint from Kelston View in the vicinity of Bath City Farm. This demonstrates that the compact form of the city would be maintained and that the proposed building heights would not lead to an incongruent built form capable of competing with important set pieces, such as the Royal Crescent. Moreover, the light-coloured brick would lead to a harmonious integration with the lighter colour palette of the surrounding city. The massing, varied heights and sheet metal of the proposed scheme would simply be read as a less prominent continuation of the BWR development. Consequently, I find the landscape impact would be slight (beneficial) from this perspective.
67. Whilst the proposal would be visible from the BCA, I find that it would be clearly read within the context of the post-industrial river corridor and the modern placemaking of BWR and Albert Crescent/Western Terrace rather than as part of the Georgian city. This would be further re-enforced by the clear visual break provided by the river and its vegetation. I also find that the poor quality of the site currently detracts from the setting of the BCA and that this is exacerbated by its unkempt and derelict appearance.
68. Consequently, I find that the proposal would have a positive effect on the immediate setting of the BCA and that this would consequently enhance its significance thus gaining support from paragraph 206 of the Framework. For similar reasons and bearing in mind the circumscribed setting of Norfolk

Crescent and visual break of the river and intervening vegetation, I find that there would be a neutral effect on its setting thus preserving the special interest of this listed building.

69. I note the concerns of Historic England in relation to harm to the setting of the BCA and Norfolk Crescent [CD 10.3.17]<sup>17</sup> [ID28]. Whilst I have given them careful consideration, I have nonetheless reached a different conclusion in relation to the setting of these assets for the reasons I have given. The proposal would be read as a clearly differentiated phase in the development of the city in an area that is able to accommodate new placemaking which has suffered from a post-industrial legacy that has clearly detracted from the setting of at least one of these assets and thus its significance.
70. Turning to the WHS, I do not find that the consistent and sustained architectural expression of neo-classical, Palladian ideals, at different scales, as expressed through a common palette of building materials would be compromised despite the use of buff coloured brick and sheet metal. This is owing to the individual site characteristics and historical antecedents for, albeit darker, brick and sheet metal at this location as well as the considerable precedent that has been set by the BWR for use of the latter. Moreover, the capacity of the site to accommodate a wider range of materials and architectural forms is much greater than one more directly juxtaposed with the historic core of the city which would be considerably and justifiably more constrained.
71. I can find no harm to any of the other elements of Attribute 4 of the OUV because views of key visual landmarks would not be disrupted, there would be no harm to the setting of any monumental buildings or ensembles designed by notable architects and the fact that the widespread survival of Georgian fabric, including historic street furniture, would be unaffected. Nor can I find any harm in relation to Attribute 3 of the OUV given the lack of any impact to the setting of the buildings along the Lower Bristol Road, the modern context provided by the BWR and the transitional, post-industrial nature of the appeal site.
72. However, the planned relationship of the built environment to its landscape setting is a different matter and whilst the compact form of the city would not be compromised, for the reasons I have already given, I nevertheless find harm from the occlusion of distant views of the green hillsides and sylvan skylines at key viewpoints (VVM 5 and VVM 8). The proposal would therefore fail to preserve Attribute 5 of the OUV of the WHS and consequently, given the expectations of paragraph 199 of the Framework, I give this harm substantial weight in the heritage and planning balances of this appeal.
73. Paragraph 199 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets or from development within their setting and that this should have a clear and convincing justification. Bearing in mind that such views would not be completely occluded and the geographical extent of the WHS, I find that the proposal would lead to less than substantial harm to this heritage asset.

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<sup>17</sup> Appendix 9

Paragraph 202 of the Framework advises that such harm should be weighed against the public benefits of the proposal.

74. Whilst the main parties agree that there would be less than substantial harm to the WHS, no agreement could be reached over the level of harm within this category. The Council maintains that the effect on a wider range of attributes would lead to moderate harm [CD 10.4.8]<sup>18</sup> whilst the appellant maintains that the effect on a narrower range of attributes would only lead to slight harm [CD 10.3.14]<sup>19</sup>. I find a narrower range of attributes at play for reasons I have given which would necessarily lead to a more limited effect on the WHS than the one the Council envisages. As was the case for other heritage assets, the Council has sought to rely on ICOMOS guidelines [ID10] and the heritage statements submitted with the original application [CD 1.2.19, CD 1.6.4 and CD 1.10.04]<sup>20</sup> to set the level of impact rather than on any detailed reasoning.
75. As the appellant points out<sup>20</sup>, an assessment of moderate harm requires a significant impact according to the ICOMOS guidelines. In particular, I note in Appendix 3B of the latter that a moderate impact to historic urban landscape attributes would need 'changes to many key historic building elements, such that the resource is significantly modified' whilst a moderate impact to historic landscape attributes would need 'change to many key historic landscape elements, parcels or components ... visual change to many key aspects of the historic landscape'. It was established during cross-examination that the Council had applied these criteria to a localised area rather than the whole of the WHS despite the fact that paragraph 207 of the Framework requires account to be taken of the relative significance of any elements that may be affected and their contribution to the WHS as a whole.
76. As such, I find the Council's case in relation to the level of harm to be overstated given the extensive geographical context of the green bowl and the localised, adverse effects of the scheme on a very limited number of general views. In ICOMOS terms, I find that this would equate to a minor impact because there would only be 'change to few key historic landscape elements, parcels or components'. Despite being at the lower end of the 'less than substantial spectrum', I nevertheless give this harm substantial weight. As with the other heritage assets, nothing in the heritage statements submitted with the original application would lead me to a different conclusion.
77. Given the above, I find that the proposal would be contrary to policy HE1 and B4 of the DSP [CD 4.2], CP6 of the Bath & North East Somerset Core Strategy 2014 (CS) [CD 4.1] that seek, among other things to ensure that all development helps to sustain and enhance the historic environment, support the delivery of the WHS Management Plan, avoids harm to the OUV of the WHS that is not outweighed by public benefits and ensures environmental quality is fostered both for existing and future generations.

#### *Heritage Balance*

78. Turning to the public benefits of the proposal, the main parties were unable to reach an agreement on a discrete range of benefits which necessitated the submission of a comparison table during the course of the Inquiry [ID12]. In

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<sup>18</sup> Paragraph 5.8

<sup>19</sup> Paragraph 8.13

<sup>20</sup> ID24, footnote 65

general terms, the Council acknowledges that the scheme would provide benefits but that these are overstated and subject to 'double counting' [ID23]. More specifically, it suggests that the contribution the scheme would make to extra care housing, the site allocation, 5-year housing land supply and the short-term delivery opportunity all amount to the same thing, *i.e.* housing delivery.

79. I accept the Council's argument that the contribution that the scheme would make to the Sydenham Park allocation and 5-year housing land supply amount to the same thing and that delivery of a scheme of this scale within five years would be unremarkable. However, the overarching fact remains that approximately 253 units of long-term housing would be created that would help to deliver more than half the allocated housing for the site and that this would consequently make a significant contribution to the 5-year housing land supply and help to address the national housing crisis. Added to this is an additional 35 units that are intended to meet a higher level of need although admittedly this would be on a shorter-term basis and thus carry reduced weight. Nevertheless, I give this public benefit substantial overall weight for the above reasons.
80. In terms of the extra care housing, there is an acknowledged shortfall in the rationale of policy H1 of the DSP [CD 4.2]. It highlights the identified need at that time as comprising 479 extra care units with an additional 192 specialist dementia units<sup>21</sup>. The appellant's evidence suggests that the unmet need for extra care units is likely to rise to around 515 by 2023 with an escalating number thereafter that will reach around 768 units by 2040 [CD 10.3.7]<sup>22</sup>.
81. In cross-examination the Council confirmed that these estimates and the underlying methodology of the assessment undertaken by the appellant [CD 2.2] are not disputed and that the scheme would help to meet the identified unmet need. The Council also confirmed that the moderate weight it gave to this benefit only flowed from the contribution it would make to general housing targets despite the fact no other schemes had come forward in the plan area to address this need. However, I find this benefit to be more nuanced because it goes beyond merely delivering general needs housing.
82. I am mindful of the fact that the PPG has identified that the need to provide housing for older people is 'critical' because their proportion of the overall population is increasing. It emphasises that offering older people a better choice of accommodation to suit their changing needs can help them live independently for longer, feel more connected to their communities and help reduce costs to the social care and health systems<sup>23</sup>. Bearing this in mind, as well as the established unmet need, I give this public benefit substantial weight.
83. In terms of improved health outcomes and reduced NHS costs, the Council's closing position disputed the weight to be given to this benefit because it would be no more than would be expected from well-designed, general needs housing that complies with the National Design Guide 2021 [CD 6.11]. This states that 'well-designed places include a variety of homes to meet the needs of older people, including retirement villages, care homes, extra-care housing,

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<sup>21</sup> Paragraph 360

<sup>22</sup> Paragraph 6.2

<sup>23</sup> Paragraph: 001 Reference ID: 63-001-20190626



sheltered housing, independent living and age-restricted general market housing. They are integrated into new settlements with good access to public transport and local facilities'<sup>24</sup>.

84. It follows that various types of specialist housing that are well integrated into new areas of development are envisaged rather than a 'one size fits all' approach to general needs housing or wholly voluntary toolkits that promote health and wellbeing [CD 10.4.2]<sup>25</sup>. In any event, I have no alternative scheme before me that provides any evidential basis for such a comparison. I consequently find this assertion to be unsubstantiated and that the scheme would offer something that goes beyond the benefits provided by well-designed, general needs housing. In this respect, I note the undisputed evidence from Aston University [CD 10.3.9 and ID16] that was cited in Mr Spencer's proof [10.3.2]<sup>26</sup>. This shows that GP visits for individuals in care communities fell by 46% in comparison with people over 85 who lived in their own home and that the average time in hospital fell from 8-14 days to 1-2 days.
85. During the course of the Inquiry, the Council highlighted the fact that there is no evidence to suggest what proportion of residents would require enhanced support over and above the minimum requirement of 2.5 hours per week and that the scheme would only benefit those who had the means to pay. In response to a question I asked, it became clear that all future occupants would be means-tested to ensure their financial assets were sufficient to meet the long-term costs of residency.
86. However, the available evidence suggests that existing extra care provision in the plan area is skewed towards 'affordable' extra care with only 50 units currently attributable to the private care sector [CD 2.2]<sup>27</sup>. The Council's own Market Position Statement<sup>28</sup> highlights the fact that it knows little about self-funders in its area despite being acknowledged as a significant part of the wider 'care market'. It notes that it purchases just under a quarter of the care home beds in the local area which, it suggests, indicates that around 75% are occupied by a combination of self-funders and people placed by other Council's or NHS bodies.
87. Moreover, homeowners comprising over 66% of older households in the Council area will not be eligible for either existing or future 'affordable' extra care developments [CD 2.2]<sup>29</sup>. It follows that a significant uplift in provision is needed to ensure equitable access to improved health outcomes for all individuals irrespective of their financial status. The bottom line is that there is a unmet need of 515 units that is rising and that this scheme would improve the wellbeing and health outcomes of a significant proportion of the local population who would not qualify for 'affordable' extra care.
88. As far as the extent to which enhanced levels of extra care would be delivered by the scheme, I note the Oxford Brookes study<sup>30</sup> that indicates that the average level of care provided in extra care schemes as being around 12 hours

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<sup>24</sup> Paragraph 117

<sup>25</sup> Appendix 2 – Building for a Healthy Life

<sup>26</sup> Paragraph 4.62

<sup>27</sup> Table T18

<sup>28</sup> Market Position Statement – Adult Social Care Services for Adults 2018/19 – 2020/21, extracts in CD 2.2

<sup>29</sup> Table T2

<sup>30</sup> Bolton, J. (2016) Predicting and managing demand in social care. A discussion paper.

per week [ID17]. Whilst this evidence is anecdotal and taken out of context, it nevertheless seems reasonable to assume that individual needs will increase over time and that the ongoing support offered by the scheme will significantly extend the scope for independent living beyond that which would occur in general needs housing. Given the above, I give this public benefit substantial weight.

89. The parties agree that the proposal would be in a sustainable location but differ on the degree of weight to be attributed. The appellant maintains that this carries significant weight because of the emphasis the PPG places on the location of housing for older people [CD 10.3.2]<sup>31</sup>. I accept that there would be high levels of accessibility to local amenities and level walking routes along the river. Bus services are also closely situated on the Lower Bristol Road and Pines Way that would facilitate longer journeys by alternative transport modes. Whilst it is an inherent characteristic of the site, the fact remains that there is extremely limited scope for high density development of this type in such close proximity to the city centre. The ease with which future occupants would be able to access local services and recreational activities would directly contribute to their wellbeing. Consequently, I give this public benefit substantial weight.
90. The economic benefits of the scheme outlined in the Economic Impact Assessment were not challenged by the Council [CD 1.2.13]. In terms of the construction phase, it has been estimated that the scheme would generate about £54.3 million in wages and about a £62.4 million contribution to Gross Domestic Product (GDP) as well as the recruitment of new entrant trainees into the construction workforce. As this would be temporary in nature, I give this moderate weight.
91. Turning to the operation phase, a total of around 234 jobs would be created that would generate wages of about £6.1 million per annum and about a £10.9 million per annum contribution to GDP [CD 1.2.13]<sup>32</sup>. These jobs would be associated with the mixed-use development of the site with around 155 jobs being attributed to the office space, around 20 to the nursery and about 59 to the care offer. A number of indirect and induced benefits are also highlighted in the report which suggests that a further 49 jobs would be created by the scheme<sup>33</sup>.
92. Whilst the estimated occupancy level of the office floorspace may be more uncertain in a post-pandemic world, these nevertheless amount to substantial economic benefits. The Council also accepts that there would be a net increase in jobs in comparison to the previous use of the site [CD 10.4.2]<sup>34</sup>. Bearing in mind the significant weight that paragraph 81 of the Framework places on the need to support economic growth and productivity and the undisputed evidence that is before me, I give this public benefit substantial weight.
93. The parties agree that substantial weight should be given to the regeneration of the appeal site which is currently an under-utilised, 'brownfield' site. This is consistent with paragraphs 120(c) and 120(d) of the Framework which places substantial weight on the use of 'brownfield' land within settlements and which also requires decision-makers to promote and support the development of

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<sup>31</sup> Paragraph 4.63

<sup>32</sup> Section 4.1

<sup>33</sup> Section 4.2

<sup>34</sup> Paragraph 7.27

under-utilised land and buildings. I consequently give this public benefit substantial weight.

94. The Council has suggested that Historic England guidance on tall buildings [CD 6.7] applies in this instance and that alternative designs or schemes might be more sustainable because they would be able to deliver the same public benefits alongside a positive improvement to the local environment. In this respect it suggests that the removal of the top two storeys would only result in the loss of 46 units and that there is no evidence to suggest that this would make the scheme unviable. However, this cuts both ways and there is no evidence to suggest that the scheme would remain viable if a further reduction in overall capacity were to occur.
95. In cross-examination, Mr Serginson noted that the service charges would need to go up but was unable to say whether the economic benefits of the scheme would remain the same. More importantly, Mr Nielson's cross-examination established that the preservation of views of the green bowl and thus the significance of the WHS would only be possible if all buildings were two-storeys. The Council therefore conceded that four stories would still lead to occluded views. Consequently, even if the scheme remained viable with the removal of the top two floors, this would not lead to a positive improvement because the harm to the WHS would remain. In the absence of any other alternative scheme, I find the Council's position without merit on this particular point.
96. Drawing all this together and having established the public benefits, I find that substantial weight should be given to the harm to the significance of the WHS on account of the views of the green hillsides that would be occluded but that this would be outweighed by the substantial, cumulative weight of the identified public benefits which are supported by the Framework and which includes a positive enhancement to the setting of the BCA. This is an important material consideration in the determination of this appeal.

#### *Living Conditions*

97. The private view from a window is not of itself regarded as a planning matter and there is no 'right to a view'. However, some proposals can change a view to such an extent that the residential amenities enjoyed by existing occupants would be significantly eroded. In this respect, significant concerns have been raised in relation to the effect of the proposal on the occupants of existing dwellings immediately to the north of the site along The Mews, Albert Crescent and Western Terrace. The Council's case, as summarised in the second reason for refusal, is that there would be a loss of privacy. Local residents have highlighted additional concerns relating to a potential loss of daylight and sunlight as well as disturbance from the operation of air extraction equipment.
98. Technical evidence has been submitted by the appellant in relation to these last two areas and I have no such evidence to the contrary or any reason to believe that the methodologies that have been applied to the daylight and sunlight assessment [CD 1.12.5], noise assessment [CD 1.12.9] or the ventilation and extraction statement [CD 1.3.43] are flawed. In response to a question I put to Mrs Payne during the round table discussion, it became apparent that the significant material harm alleged in relation to both these factors was a matter of opinion that was not based on the conclusions of the technical assessments I have before me.

99. In relation to daylight and sunlight, the potential loss of daylight was evaluated through well-established tests associated with Vertical Sky Component (VSC) and Daylight Distribution (DD) whilst the potential loss of sunlight was measured through Annual Probable Sunlight Hours (APSH). It demonstrated that 20 of the 24 properties that were analysed would meet the VSC threshold for every window. Of the four properties that did not meet the threshold (1-3 Western Terrace and 4, 5, and 6 The Mews) only seven windows out of a total of 27 would be affected with an exceedance range of between 1-7%. In terms of DD, 23 out of 24 properties showed no change. Of the one property that would be affected (Palladian), only two rooms out of 137 would be affected with an exceedance of 9% and 34%. Whilst high, these were considered to be non-habitable rooms from the narrow design of the windows. Since I have no evidence to suggest otherwise, I find the extent of this impact to be limited. Turning to APSH, all of the windows analysed would meet the requirement for sunlight and the sunlight threshold for outdoor areas would also be met in all instances.
100. Whilst there would be a marginal exceedance of the daylight threshold in the habitable rooms of some properties, the overall nature of this impact would be minor. Paragraph 125(c) of the Framework advises that decision makers need to take a flexible approach to guidance relating to daylight and sunlight where the efficient use of development sites would be compromised. Moreover, the associated guidelines also stress the need for flexibility in high density, urban environments. Given the above, I find that the limited loss of daylight that is likely to result to be within acceptable tolerances at this location and that a significant adverse effect on living conditions would not result with respect to a loss of daylight or sunlight.
101. Turning to noise, the Noise Policy Statement for England introduces the concept of observable effects which are applied by the World Health Organisation. The PPG adopts the same framework and advises that noise impacts should be assessed as being above or below the 'significant observed adverse effect level' and the 'lowest observed adverse effect level' for a given situation<sup>35</sup>. It goes on to advise that at the lowest level, when noise is not perceived to be present, there is no effect. As the noise exposure increases, it will cross this 'no observed effect level'. However, noise only has no adverse effect so long as the exposure does not cause any change in behaviour, attitude or other physiological responses. It is important to bear in mind that noise can affect the acoustic character of an area but not to the extent there is a change in quality of life<sup>36</sup>. In this respect it is important to measure the ambient noise environment to determine whether there would be a material change at key locations where impacts are likely to occur.
102. The noise assessment report [CD 1.3.33] highlights the fact that current Government advice to Local Planning Authorities makes reference to British Standard 4142:2014 (BS 4142) as being the appropriate guidance for assessing commercial operations and fixed building services plant noise<sup>37</sup>. It goes on to highlight that this standard provides an objective method for rating the significance of impact from industrial and commercial operations and describes a means of determining sound levels from fixed plant installations

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<sup>35</sup> Paragraph: 003 Reference ID: 30-003-20190722

<sup>36</sup> Paragraph: 005 Reference ID: 30-005-20190722

<sup>37</sup> Paragraph 2.3

and for determining the background sound levels that prevail on a site. I find this approach to be robust and have no evidence before me to suggest that its application is flawed in this instance.

103. Mrs Payne, in her oral submission to the Inquiry, suggests that the 65 decibels (dB) highlighted in the noise assessment 'would be present and disruptive'. In this respect I note Figure 5 and Table 9 of the assessment which shows the location and maximum sound power level ( $L_w$ ) that was used for the predictive modelling of potential noise impacts that range between 65-67 dB. However, noise generated at source is not the same as the noise experienced at nearby receptors which was predicted as being no greater than 30 dB  $L_{Ar,15min}$ , which would be an acceptable night-time noise effect. Given that Table 3 of the assessment shows the ambient sound level at monitoring Position 5 as being 44 dB  $L_{Aeq,8h}$ , the impact would be at the 'no observable effect level' because it would not exceed the ambient background and would consequently not be perceptible. Bearing this in mind, as well as the fact that a suitably worded condition could ensure compliance with this prediction, I am satisfied that there would be no material impact on living conditions with respect to noise.
104. Turning to the loss of privacy, it is clear from my site visit that the outlook from the existing properties would change significantly. Views of an open car park and the wider landscape would be curtailed and a significant number of windows, many of which would be full height and single aspect, would face the existing properties. This would not only affect habitable rooms but also outdoor areas that are above ground floor level. Separation distances would vary with the closest property and therefore the greatest impact being experienced by No. 8 Albert Crescent. I also note the proximity of Nos. 7 and 6 Albert Crescent in this respect as well as the first floor living areas of The Mews that would have direct views of the garden and northernmost elevation of building A/B. I also note the proximity of Nos. 2 and 3 Western Terrace.
105. The extent of overlooking from the nearest windows at the first-floor level of the proposed scheme has been summarised in Figure 58 of Mr Dean's proof [CD 10.3.19]. In response to one of my questions, the appellant also provided a summary of all the nearby, north-facing windows which indicates that a total of 71 habitable room windows associated with 21 units would face the existing properties on the nearest elevation of the proposed scheme [ID7]. I also note that there would be more distant views from other north-facing elements of the scheme, as indicated in an associated plan that was submitted [ID8].
106. Given the above, I have little doubt that the sense of being overlooked as well as the levels of privacy would change but the key question is whether significant harm would be caused to residential amenity or would the resulting grain of development and associated levels of privacy be appropriate and reasonable to expect at this location bearing in mind the appeal site allocation and its city centre location.
107. As with the design, the context for this high-density scheme is the BWR development which generally has a greater scale and massing. Figure 57 of Mr Dean's proof shows the comparative separation distances between the two developments [CD 10.3.19]. I confirmed during the course of the Inquiry that these measurements were not disputed by the Council. In terms of the separation distances to the nearest properties these range from between

13.4 m to 18.5 m which the case officer's report found to be broadly consistent with an informal 18 m 'rule of thumb' [ID4]<sup>38</sup>.

108. I note from this diagram and my own observations, that the rectilinear, parallel arrangement of the BWR development has led to a comparable development intensity with extensive overlooking between properties as would be expected in any dense-grained, urban environment. Consequently, I find the general level of intervisibility would be appropriate at this location and suitably moderated by the two-storey massing of the nearest elements and offset angle of the higher four storey elements, most notably at the north-eastern corner of building A/B.
109. Significant harm to the living conditions of the nearest properties would be mitigated through screening that would be planted along the northern boundary of the appeal site that would be secured, in perpetuity, as part of the planning obligation. Moreover, the nearest first floor windows to the gable end of No. 8 Albert Crescent would have fixed external louvres [ID3] that would reduce the extent of overlooking and help to maintain the privacy of this dwelling. This could be secured through a suitable condition, as would be the case for screens to prevent overlooking from a roof terrace, as discussed at the Inquiry.
110. Drawing matters together, I find that significant harm would not be caused to the living conditions of nearby residents with respect to privacy, sunlight, daylight or noise and that the proposal would therefore be consistent with policy D6 of the DSP that seeks, among other things, to ensure that development achieves appropriate levels of privacy, outlook and natural light to existing occupiers as well as avoiding significant harm to the amenities of such individuals in terms of loss of light, increased noise and overlooking.

#### *Planning Obligation*

111. A completed planning obligation has been agreed by the main parties that would ensure the delivery of the following:
- Financial contribution of £26,348 for targeted recruitment
  - Training package to secure a range of training opportunities
  - Financial contribution of £41,486.12 for off-site replacement trees
  - Financial contribution of £4,500 for additional fire hydrant provision
  - Undertaking to connect to the district heating network when available
  - Financial contribution of £286,143 for open and green space provision
  - Restricted occupancy criteria and care definition for the care units
  - Landscape management plan to ensure screening is maintained
  - A transport service to manage the car use of future occupants
112. I find the training and recruitment clauses necessary in order to secure local opportunities for employment and training on the development site, either in construction or as part of the end-use. The assumed cost has been

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<sup>38</sup> Paragraph 94

- benchmarked against similar scale developments in the district and I am satisfied that it is proportionate as well as being explicitly supported by national and local policy, as set out in the Council's compliance statement [ID29].
113. I find the tree planting contribution necessary to make the scheme acceptable in planning terms because it would involve the removal of 48 established trees in the existing car park. Whilst a significant number of replacements would be on site, there remains a requirement to make a contribution towards the provision of 19 off-site replacement trees. I find the cost of planting trees in areas of hardstanding to be proportionate and supported by local policy.
114. I find the fire hydrant contribution to be necessary because building regulations require major new development to be within 100m of a fire hydrant and because central Government does not provide any funding to the Avon Fire & Rescue Service for the capital cost of growth-related infrastructure. Avon Fire and Rescue Service have calculated the cost of installation and five years maintenance of the fire hydrants. I have no reason to doubt that the cost is not proportionate to keeping future occupants safe and I am satisfied that this has local and national policy support.
115. Although the District Heat Network is not ready to receive a connection from the appeal scheme, I note that the Council is actively seeking to expand the network in this area and will eventually be able to provide a connection. I find this necessary because the scheme falls within an identified District Heating Priority Area and connection is supported by local policy.
116. I find the open space contribution necessary because a green space strategy identifies the locality as having a deficit supply of parks and recreation space (-3.18 ha) and amenity green space (-0.68 ha). As the scheme would generate a demand for these amenities and place an additional pressure on the existing provision, I find this clause necessary. The local Parks Department has calculated the overall capital cost of providing the relevant off-site green space typologies and I have no reason to doubt this cost. It is anticipated that the funding will directly contribute to local provision through the Waterspace River Park and River Line projects and I am satisfied that it is supported by local policy.
117. I find the restricted occupancy of the care units essential to ensure the continued C2 use of the building even though the spouses or partners of qualifying persons would continue to live in the units after the qualifying person may have moved on to a more specialised care facility or has passed. There was some discussion of potential occupancy by dependants during the Inquiry, but I am satisfied that this would be adequately controlled by only permitting continued occupancy by spouses or partners.
118. There was also some discussion about whether the obligations should be binding on freehold and leasehold owners and occupiers. Whilst I accept that it would be the intention of the appellant to enforce the relevant terms of the obligation, a different operator may not have the same intent. Consequently, I find that clause 7.9.3 would be necessary in planning terms to ensure strict compliance with the necessary restrictions so that the building can meet the ongoing extra-care needs of the local population and not morph into a C3 residence over time.

119. I find the landscaping management plan necessary in order to secure effective screening in perpetuity along the northern boundary of the appeal site where it is adjacent to existing properties along Albert Crescent, The Mews and Western Terrace, as already discussed.
120. I find transport service provision is necessary in order to reduce car use and to promote the wellbeing of future occupants. In relation to the latter, it would promote greater social integration through organised day trips and support the day-to-day activities of less able occupants. I am satisfied that this is supported in policy terms.
121. Overall, I find that all of the provisions of the agreement are necessary in order to make the development acceptable, taking into account the terms of the compliance statement that the Council has provided and the roundtable discussion at the end of the inquiry. I conclude that the statutory tests in paragraph 57 of the Framework are met and that the provisions of the planning agreement are material considerations in this appeal.

### **Other Matters**

122. The site is situated in close proximity to the River Avon which provides supporting habitat for the Bath and Bradford on Avon Bats Special Area of Conservation (SAC) and could be subject to lighting impacts arising from the proposed scheme. Relevant case law<sup>39</sup> states that if a plan or project, either alone or in combination with other plans or projects, is likely to have a significant effect on an SAC then an Appropriate Assessment must be undertaken by the Competent Authority to determine if an adverse effect on integrity would occur.
123. It was established at the Inquiry that the Council failed to identify a likely significant effect and screened out any potential, unmitigated impacts. However, I do not share this view given the proximity of the proposal to the river and the presence of a clear impact pathway, namely light spillage affecting the commuting and foraging behaviour of horseshoe bats. In the absence of mitigation, I have no evidence before me to suggest, beyond reasonable scientific doubt, that an adverse impact would not result. I consequently find that the scheme could have a potential adverse effect on the integrity of the SAC.
124. The appellant has submitted evidence concerning proposed lighting design measures [CD 10.5.15] and has agreed to a condition to mitigate the potential adverse effect on the SAC. I have consulted Natural England (NE) on this matter as well as on the wording of the suggested condition. NE has indicated that the light spill resulting from the proposals would remain within acceptable thresholds and that the exclusion of all up-lighting will help to ensure the continued use of the river corridor by light-sensitive, horseshoe bats. It concludes that the scheme will not have an adverse impact on the Bath and Bradford on Avon Bats SAC and that the condition will secure suitable mitigation [ID27].
125. Given the above and in the absence of any evidence to the contrary, I am satisfied that the mitigation measures would reduce the adverse effects of the

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<sup>39</sup> European Court of Justice ruling (Case C323/17 – People Over Wind and Sweetman 2018) relating to the application of the Habitats Directive.



proposal to a *de minimis* level and that the integrity of the SAC would thus be preserved.

126. I accepted a late representation on behalf of Norfolk Crescent Green Residents Association concerning plans associated with the Bath River Line Project [ID21] as they were unable to join the virtual event due to technical difficulties. It highlights the fact that the project includes proposals to punctuate the tree canopy and vegetation along the river bank adjacent to Norfolk Crescent green in order to improve visual connection between the green and the nearby river [ID22]. However, this is a consultative document that has not been adopted and does not form part of the development plan. As such, whatever proposals may or may not come to fruition is uncertain and it can only be afforded negligible weight as a result.
127. Additional concerns raised by local people to the proposed development, with regard to parking, odour, overdevelopment, tree loss and alternative uses of the site are acknowledged. Many of these matters were considered in the case officer's report and I support the view that the concerns do not warrant the refusal of the scheme. Furthermore, additional tree planting would be secured through the planning obligation. Consequently, these matters were not determinative in my decision-making.

### **Planning Balance**

128. Planning law<sup>40</sup> requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
129. It is clear that the proposal would conflict policies HE1 and B4 of the DSP and policy CP6 of the CS as a result of the harm that would be caused to the WHS. Although I found no conflict with policy D6 of the DSP, there would nevertheless be a reduction in daylight to a limited number of dwellings which weighs against the proposal. It is also clear that the proposal would be inconsistent with the design code set out in the BWRSPD on account of the proposed use of buff brick and metal cladding.
130. However, substantial material considerations weigh in its favour in relation to housing land supply delivery, the regeneration and reuse of previously developed land, the enhancement of the BCA setting, improved provision of extra care accommodation, improved health outcomes and NHS savings, long-term economic benefits and the delivery of development in a sustainable location. These would not only clearly and substantially outweigh the harm to the significance of the WHS but also the other harms that I have identified.
131. I therefore conclude that when assessed against the Framework and development plan as a whole, I find the benefits of the scheme would demonstrably outweigh the harms. The sum of this balance amounts to a material consideration of sufficient weight to clearly justify a determination other than in accordance with the development plan.

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<sup>40</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 (as amended)

## Conditions

132. I have considered both the wording and grounds for the conditions suggested by the Council in accordance with the tests set out in paragraph 56 of the Framework. In addition to the standard time limit condition [1], a condition requiring the development to be carried out in accordance with the plans is necessary to ensure that it is implemented as approved [2].
133. I have withdrawn permitted development rights in order to ensure that the intended uses are maintained and potentially more harmful alternatives controlled [3]. A detailed scheme of archaeological investigation and preservation is necessary because the site lies within an area of major archaeological interest [4]. I have specified finished floor levels and adherence with flood resilience measures because of the location of the site in the river floodplain and the resultant need to mitigate potential impacts from flooding [5-6].
134. A range of measures are necessary in order to manage pollution risks to surface waters and groundwaters due to the proximity of the scheme to the River Avon [7-10]. Given the post-industrial nature of the site, a range of investigative and remediation measures are necessary in the interests of public health [11-14]. Measures to protect trees, ensure biodiversity net gain and manage gulls are also necessary in the interests of nature conservation [15, 21-22 and 33]. A related condition is also necessary to ensure there would be no adverse effect on the integrity of the SAC [23].
135. Turning to living conditions, a number of conditions are necessary to avoid disturbance and control odour during the construction and operation phases of the development [17, 18 and 16]. Further conditions are also necessary to reduce the loss of privacy to nearby residents [36 and 37]. Bearing in mind the sensitive nature of the location, a range of conditions are necessary in the interests of character and appearance [19, 20, 24-25 and 32].
136. A number of conditions are also necessary to encourage a sustainable form of development and to help mitigate the effects of climate change [27-31 and 34]. A condition for a management plan to regulate access to the publicly facing elements of the scheme is necessary to ensure accessible provision of services to the local community [35]. A final condition securing the necessary parking provision is necessary in the interests of highway safety [26].
137. I have not imposed a suggested condition that attempted to achieve a water efficiency of 110 litres per person per day as the amount of water used in private residences would vary according to need and imposing a limit would not only be unenforceable but also contrary to public health and wellbeing.
138. All pre-commencement conditions have been accepted by the appellant in writing and are consequently compliant with the necessary legislation<sup>41</sup>.

## Conclusion

139. For the above reasons and having regard to all other matters raised I conclude that, subject to the attached schedule of conditions and the obligations in the planning agreement, this appeal should be allowed.

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<sup>41</sup> The Town and Country Planning (Pre-commencement Conditions) Regulations 2018

*R. Catchpole*

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:
  - A-10\_001 Rev P01: DEMOLITION PLAN
  - A-10\_300 Rev P01: DEMOLITION - ELEVATION - NORTH AND SOUTH
  - A-10\_301 Rev P01: DEMOLITION - ELEVATION - EAST
  - A-10\_302 Rev P01: DEMOLITION - ELEVATION - WEST
  - A-01\_002 Rev P03: PROPOSED SITE LOCATION PLAN
  - A-20\_001 Rev P03: ROOF LEVEL MASTERPLAN / SITE PLAN
  - A-20\_002 Rev P03: LEVEL 00 MASTERPLAN
  - A-20\_003 Rev P03: LEVEL 01 MASTERPLAN
  - A-20\_004 Rev P03: LEVEL 02 MASTERPLAN
  - A-20\_005 Rev P03: LEVEL 03 MASTERPLAN
  - A-20\_006 Rev P03: LEVEL 04 MASTERPLAN
  - A-20\_007 Rev P03: LEVEL 05 MASTERPLAN
  - A-20\_100 Rev P03: BUILDING A & B - LEVEL 00
  - A-20\_101 Rev P03: BUILDING A & B - LEVEL 01
  - A-20\_102 Rev P03: BUILDING A & B - LEVEL 02
  - A-20\_103 Rev P03: BUILDING A & B - LEVEL 03
  - A-20\_104 Rev P03: BUILDING A & B - LEVEL ROOF
  - A-20\_107 Rev P03: BUILDING C & D - LEVEL 00
  - A-20\_108 Rev P03: BUILDING C & D - LEVEL 01
  - A-20\_109 Rev P03: BUILDING C & D - LEVEL 02
  - A-20\_110 Rev P03: BUILDING C & D - LEVEL 03
  - A-20\_111 Rev P03: BUILDING C & D - LEVEL 04
  - A-20\_112 Rev P03: BUILDING C & D - LEVEL 05
  - A-20\_113 Rev P03: BUILDING C & D - LEVEL ROOF
  - A-20\_300 Rev P03: BUILDINGS A-B - NORTH ELEVATION & COURTYARD SECTION
  - A-20\_301 Rev P03: BUILDINGS A-B - SOUTH ELEVATION & COURTYARD SECTION
  - A-20\_302 Rev P03: BUILDING C - NORTH & SOUTH ELEVATIONS
  - A-20\_303 Rev P03: BUILDING D - NORTH & SOUTH ELEVATIONS
  - A-20\_304 Rev P03: SITE - EAST ELEVATIONS
  - A-20\_305 Rev P03: SITE - WEST ELEVATIONS
  - A-20\_306 Rev P03: SITE SECTIONAL ELEVATION E-E

A-20\_307 Rev P03: SITE SECTIONAL ELEVATION F-F  
A-20\_308 Rev P03: SITE SECTIONAL ELEVATION H-H & I-I  
A-20\_310 Rev P03: CONTEXTUAL ELEVATIONS  
A-21\_300 Rev P03: TYPICAL BAY STUDY - SHEET 01  
A-21\_301 Rev P03: TYPICAL BAY STUDY - SHEET 02  
A-21\_302 Rev P03: TYPICAL BAY STUDY - SHEET 03  
A-21\_303 Rev P03: TYPICAL BAY STUDY - SHEET 04  
A-21\_304 Rev P03: TYPICAL BAY STUDY - SHEET 05  
A-30\_100 Rev P02: TYPICAL UNIT LAYOUTS - 1 BED M4(2) & M4(3)  
A-30\_101 Rev P02: TYPICAL UNIT LAYOUTS - 2 BED M4(2) & M4(3)  
A-30\_102 Rev P02: TYPICAL UNIT LAYOUTS - 3 BED M4(2) & M4(3)  
A-30\_103 Rev P02: TYPICAL UNIT LAYOUTS - AGED CARE SUITES  
LTS 101(08) 101 Rev D: LANDSCAPE GENERAL ARRANGEMENT PLAN  
A-20\_115 Rev P01: BUILDING A & B - BASEMENT LEVEL  
A-20\_008 Rev P01: LEVEL B1 MASTERPLAN  
A-21\_305 Rev P01 WINDOW OVERLOOKING STUDY

- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) the ground floor commercial units hereby approved shall be used only for purposes defined as Use Class E(g)(i) and (ii) and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
- 4) Prior to the commencement of development, a programme of archaeological work is to be implemented in accordance with the submitted written scheme of investigation that has been submitted to and approved by the Local Planning Authority (Bristol & Bath Heritage Consultancy Ltd, January 2020, Report 18010 Rev C) as amended by the WSI Addendum (Bristol & Bath Heritage Consultancy Ltd, 7 October 2020, Report 18010 Addendum, Rev A).

The programme of archaeological work shall provide a controlled excavation of all significant deposits and features that are to be disturbed by the proposed development and shall include any building techniques and measures necessary to mitigate the loss or destruction of any further archaeological remains. The archaeological works shall be carried out by a competent person(s) and completed in accordance with the written scheme of investigation.
- 5) The development hereby permitted shall be constructed with finished floor levels set at a minimum 20.360 m above ordnance datum (AOD) as per drawings A-20\_300 Rev P03: Buildings A-B – North Elevation & Courtyard Section, and A-20-301 Rev P03: Buildings A-B – South Elevation & Courtyard Section. The proposed Finished Floor Levels for

Buildings C and D shall be set at a minimum 20.310 m AOD and 20.250 m AOD respectively as per drawings A-20-302 Rev P03: Building C – North & South Elevations and A-20-303 Rev P03: Building D – North & South Elevations.

- 6) The development hereby permitted shall be constructed with all flood resistance and resilience measures as detailed in page 13 of the Energy and Sustainability Statement, dated 01 July 2020, that was submitted to and approved by the Local Planning Authority. The measures shall be fully implemented prior to first occupation and thereafter retained and maintained for the lifetime of the development.
- 7) No drainage systems for the infiltration of surface water to the ground are permitted other than with the written consent of the Local Planning Authority which shall be obtained prior to the installation of any drainage works. Any proposals for such systems must be supported by an assessment of the risks to controlled waters. The development shall be carried out in accordance with the approved details.
- 8) Piling using penetrative methods shall not be carried out other than with the prior written consent of the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 9) During the demolition and construction of the development hereby permitted, there shall be no storage of spoil, construction or demolition materials within 8 m of the southern bank of the River Avon or within areas of the site designated as Flood Zone 3 by the Environment Agency Flood Map for Planning.
- 10) No development approved by this planning permission shall commence until such time as a scheme for the prevention of pollution during construction has been submitted to and approved in writing by the Local Planning Authority.

The scheme shall include details of the following: site security; fuel oil storage, bunding, delivery and use; spillage procedures; containment of silt/soil contaminated run-off; disposal of contaminated drainage, including water pumped from excavations; and a site induction package for the workforce highlighting pollution prevention and awareness.

The development shall thereafter be carried out in accordance with the approved details.

- 11) No development shall commence until an investigation and risk assessment of the nature and extent of contamination on site has been carried out and its findings have been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a competent person and shall assess any contamination on the site, whether or not it originates on the site. The assessment must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and shall include:
  - a) A survey of the extent, scale and nature of contamination;
  - b) An assessment of the potential risks to human health, property (existing or proposed) including buildings, pets, trees and service lines and pipes, adjoining land, groundwaters and

surface waters, ecological systems and archaeological sites and ancient monuments; and

- c) An appraisal of remedial options, and proposal of the preferred option(s).
- 12) No development shall commence until a detailed remediation scheme, which has been prepared by a competent person, to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment, has been submitted to and approved in writing by the Local Planning Authority, unless the findings of the approved investigation and risk assessment has confirmed that a remediation scheme is not required. The scheme shall include:
- a) all works to be undertaken;
  - b) proposed remediation objectives and remediation criteria;
  - c) timetable of works and site management procedures; and
  - d) where required, a monitoring and maintenance scheme to monitor the long-term effectiveness of the proposed remediation and a timetable for the submission of reports that demonstrate the effectiveness of the monitoring and maintenance carried out.

The remediation scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

The approved remediation scheme shall be carried out prior to the commencement of development, other than that required to carry out remediation, or in accordance with the approved timetable of works.

- 13) No part of the development hereby approved shall be occupied until a verification report, which is to be carried out by a competent person (that demonstrates the effectiveness of the remediation carried out) has been submitted to and approved in writing by the Local Planning Authority, unless the findings of the approved investigation and risk assessment has confirmed that a remediation scheme is not required.
- 14) In the event that contamination which was not previously identified is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. Thereafter an investigation and risk assessment shall be undertaken, and where remediation is necessary, a remediation scheme shall be submitted to and approved in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme, a verification report (that demonstrates the effectiveness of the remediation carried out) must be submitted to and approved in writing by the Local Planning Authority prior to first occupation of the development.
- 15) No development shall commence until a Detailed Arboricultural Method Statement with Tree Protection Plan following the recommendations contained within BS 5837:2012, prepared by a competent person, has been submitted to and approved in writing by the Local Planning Authority. The arboricultural method statement shall incorporate a provisional programme of works; supervision and monitoring details by

an Arboricultural Consultant and provision of site visit records and compliance statement. All works shall be carried out as agreed.

- 16) Prior to installation of mechanical plant equipment, the details of the mechanical plant equipment (excluding that serving individual residential apartments) including details of external flues and plant shall be submitted to and approved in writing by the Local Planning Authority. Noise levels associated with mechanical plant shall not exceed the predicted levels set out in a report to the Local Planning Authority (Acoustics Noise Assessment Report, Revision 11, 2 October 2020, Hoare Lea). All mechanical plant (excluding that serving individual residential apartments) shall be installed and maintained for the lifetime of the development in accordance with the approved details.
- 17) There shall be no works on the site related to demolition or construction, or any deliveries to or dispatches from the site undertaken outside of the hours of 08:00 and 18:00 (Monday to Friday) and 08:00 and 13:00 (Saturdays). There shall be no work and the site shall be closed on Sundays and all public and bank holidays.
- 18) Notwithstanding the submitted documentation, a site-specific Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development (including demolition). The CEMP must demonstrate the adoption and use of best practice to reduce the effects of noise, vibration, dust and site lighting. The plan shall include the following:
  - a) Procedures for maintaining good public relations including complaint management, public consultation and liaison;
  - b) Arrangements for liaison with the Local Planning Authority's Environmental Protection Team;
  - c) Mitigation measures as defined in BS 5528: Part 1 and 2 shall be used to minimise noise disturbance from construction works;
  - d) Control measures for dust and other air-borne pollutants. This must also take into account the need to protect any local resident who may have a particular susceptibility to any air-borne pollutants;
  - e) Measures for controlling the use of site lighting whether for safe working or for security purposes;
  - f) Details of deliveries (including storage arrangements and timings);
  - g) Contractor parking;
  - h) Traffic management;
  - i) Wheel wash facilities;
  - j) Site compound arrangements; and
  - k) Site opening times.

All demolition and construction shall proceed in accordance with the details so approved.

- 19) Notwithstanding the submitted documentation, no occupation of the development hereby permitted shall occur until a hard and soft landscape



scheme has been submitted to and approved in writing by the Local Planning Authority showing details of all trees, hedgerows and other planting to be retained, finished ground levels, a planting specification to include numbers, density, size, species and positions of all new trees and shrubs, details of existing and proposed walls, fences, other boundary treatment and surface treatment of the open parts of the site, and a programme of implementation. This shall not include the area subject to the Landscape Management Plan specified in Schedule 2, Clause 4 of the planning obligation.

- 20) All hard and/or soft landscape works shall be carried out in accordance with the approved hard and soft landscape scheme. The works shall be carried out in accordance with a programme (phasing) which is to be submitted and approved in writing by the Local Planning Authority. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the Local Planning Authority. All hard landscape works shall be retained in accordance with the approved details for the lifetime of the development.
- 21) No development (including demolition and site clearance works) shall take place until full details of a Wildlife Protection and Enhancement Scheme have been submitted to and approved in writing by the Local Planning Authority. The details shall include:
- a) Method statement for enabling works, demolition and construction phases to provide full details of all protection and mitigation measures, including, where applicable, proposed pre-commencement checks and updated surveys, for the avoidance of harm to bats, reptiles, nesting birds and other protected wildlife, and proposed reporting of findings in writing to the Local Planning Authority prior to commencement of works;
  - b) Detailed proposals for the implementation of the wildlife mitigation measures and recommendations of the approved ecological report (Ecological Appraisal - Including Building/Tree Inspection and Bat Survey results, January 2020, Nicholas Pearson Associates) and ecological addendum (Ecological Addendum - Revised proposal submission – October 2020, Nicholas Pearson Associates), including wildlife-friendly planting and landscape details; additional and strengthened Green Infrastructure; provision of bat and bird boxes, with proposed specifications and proposed numbers and positions to be shown on plans as applicable; specifications for fencing to include provision of gaps in boundary fences to allow continued movement of wildlife;
  - c) A timetable for the implementation of the wildlife mitigation measures; and
  - d) Demonstration of measurable biodiversity net gain.

All works within the Wildlife Protection and Enhancement Scheme shall be carried out in accordance with the approved details and completed in accordance with specified timescales.

- 22) The development hereby approved shall not be occupied until a report produced by a suitably experienced ecologist confirming and demonstrating, using photographs, completion and implementation of the Wildlife Protection and Enhancement Scheme in accordance with approved details, has been submitted to and approved in writing by the Local Planning Authority.
- 23) No new external or internal lighting shall be installed without full details of proposed lighting design, which shall be fully in accordance with the principles and predicted light spill levels of the approved illumination impact study (Illumination Impact Update Lighting Design & Apartment Design Addendum, Hoare Lea, October 2020), being first submitted to and approved in writing by the Local Planning Authority.

The submitted details shall include: proposed lamp models and manufacturer's specifications, proposed lamp positions, numbers and heights with details also to be shown on a plan; predicted lux levels and light spill onto sensitive features including the River Avon and bankside habitats; all measures to limit use of lights when not required and to prevent upward light spill and light spill onto trees, boundary vegetation and adjacent land; and the proposed compliance checks and operational monitoring and reporting. The lighting shall be installed, maintained and operated thereafter in accordance with the approved details.

- 24) No construction of the external walls of the development shall commence until a schedule of materials and finishes, and samples of the materials to be used in the construction of the external surfaces, including roofs, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 25) No construction of the external walls of the development shall commence until a sample panel of the proposed brickwork to be used has been erected on site, approved in writing by the Local Planning Authority and kept on site for reference until the development is completed. The development shall be undertaken in accordance with the approved details.
- 26) The areas allocated for parking and turning, as indicated on the submitted plans, shall be kept clear of obstruction and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.
- 27) The development hereby approved shall not be occupied until details of Electric Vehicle Charging Points (EVCP) have been submitted and approved in writing by the Local Planning Authority. Details shall include:
- a) The total number of car parking spaces to be provided with EVCPs;
  - b) The number/type/location/means of operation; and
  - c) A programme for the installation and maintenance of EVCPs and points of passive provision for the integration of future charging points.

The Electric Vehicle Charging Points as approved shall be installed prior to occupation of that part of the scheme and retained in that form thereafter for the lifetime of the development.

- 28) The development hereby approved shall not be occupied until bicycle storage for at least 86 bicycles (43 stands) has been provided in accordance with details which have been submitted to and approved in writing by the Local Planning Authority. The bicycle storage shall be retained for the lifetime of the development.
- 29) A travel plan welcome pack shall be submitted to and approved in writing by the Local Planning Authority. The approved pack shall be issued to all owners and occupiers prior to first occupation. It shall include information on bus and train timetables, examples of different fares and ticket options, key cycle and walking routes and details of any car share or car clubs to encourage alternative means of transport.
- 30) No occupation of the development shall commence until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be operated in accordance with the approved Travel Plan.
- 31) No occupation of the development shall commence until a Service Management Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be operated in accordance with the approved Service Management Plan.
- 32) No decals shall be affixed to the windows of the ground floor commercial units hereby approved unless first approved in writing by the local planning authority.
- 33) A Gull Management Strategy shall be submitted to and approved in writing by the Local Planning Authority prior to first occupation of the development hereby approved. The strategy shall be implemented in accordance with the details so approved.
- 34) Prior to first occupation of any part of the development hereby approved the following tables (as set out in the Local Planning Authority's Sustainable Construction Supplementary Planning Document, Adopted November 2018) shall be completed by competent persons, in respect of the completed development, submitted and approved in writing by to the Local Planning Authority together with the further documentation listed below:
  - Table 2.1 Energy Strategy (including detail of renewables);
  - Table 2.2 Proposals with more than one building type (if relevant);
  - Table 2.3 (Calculations);
  - Building Regulations Part L post-completion documents for renewables;
  - Building Regulations Part L post-completion documents for energy efficiency; and
  - Microgeneration Certification Scheme (MCS) Certificate/s (if renewables have been used).
- 35) Prior to first occupation of the development, a Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Management Plan shall regulate public access to the communal parts of the development which are open to the public, namely: the wellness suite (including gym and swimming pool, changing and shower facilities),

multi-use space and café/restaurant all of which are located at the ground floor level of the development. The Management Plan shall include details of:

- a) The parts of the development which will be available to both the public and residents of the scheme;
- b) Opening hours of these facilities for the public and residents of the scheme;
- c) The details of the membership scheme for the wellness suite;
- d) The details of the booking system in order to access the multi-use space and restaurant/café; and
- e) The membership scheme for the wellness suite shall be maintained for the lifetime of the development.

The Management Plan as approved shall be implemented prior to the first occupation of the development and thereafter maintained for its designated purpose for the lifetime of the development.

The Management Plan shall be subject to review following 5 years from first occupation of the development. On review of the Management Plan the developer shall submit to the Local Planning Authority details of the public use of the facilities and any proposed amendments to the Management Plan for the Local Planning Authority's approval. Any amendments to the Management Plan shall only be implemented following a written approval by the Local Planning Authority.

- 36) No development above the ground level shall take place until the details of the directional louvres to be installed to the windows of unit A2-109 (shown on drawing A-20\_101 Rev P03: Building A & B – Level 01) and illustrated in drawing A-21\_305 Rev P01: Window Overlooking Study, are submitted and approved in writing by the Local Planning Authority. The directional louvres shall be implemented prior to the first occupation of the unit and permanently maintained in strict accordance with the approved details.
- 37) No development above the ground level shall take place until the details of a privacy screen along the north and east facing boundaries of the roof terrace on building A/B (shown on A-20\_103 Rev P03: Building A & B - Level 03) have been submitted to and approved in writing by the Local Planning Authority. The privacy screen or equivalent measures shall be implemented prior to the first occupation of the development and permanently maintained in strict accordance with the approved details.

## **APPEARANCES**

### **For the Appellant**

Mr Rupert Warren QC      Instructed by CMS  
He called                      Mr Matthew Serginson, Guild Living  
   Mr Tim Spencer B-TECH TRP MRTPI, Nexus Planning  
   Dr Chris Miele, BA (hons) MA PhD MRTPI, Montagu  
   Evans  
   Mr Stewart Dean BA (hons), Marchese Partners  
   Mr David Harvey, Nicolas Pearson Associates

### **For the Council**

Mr Jonathan Darby              Instructed by Bath and North East Somerset Council  
He called                      Mr Steve George BA (hons) DipUD MA MRTPI, Bath and  
   North East Somerset Council  
   Mr Adrian Neilson BA (hons) MA MSc IHBC, Bath and  
   North East Somerset Council  
   Mr Neil Williamson BA (hons) MA FLI PPLI FCMI, Bath  
   and North East Somerset Council  
   Mr Christopher Griggs-Trevarthen BSc MSc MRTPI, Bath  
   and North East Somerset Council

### **Interested Parties**

Cllr Sue Craig, Kingsmead Ward  
Ms Joanna Robinson BA (hons) MA Dip Arch Con, Bath Preservation Trust  
Mrs Payne, Local Resident  
Mr Payne, Local Resident  
Mr Robert Wee, Local Resident  
Mr Keith Russell, Local Resident

## **ANNEX A - DOCUMENTS SUBMITTED**

- ID1 – Revision D – Landscape General Arrangement Plan
- ID2 – Revision P3 – Building A & B – Level 01 Plan
- ID3 – Revision 01 - Window Overlooking Study Plan
- ID4 – Paginated Planning Committee Report
- ID5 – Landscape Impact Comparison Table
- ID6 – Updated List of Drawings for Conditions
- ID7 – Analysis of North Facing Windows
- ID8 – North Facing Elevation Windows (Highlighted)
- ID9 – Computed Generated Graphic Animations (x3)
- ID10 – ICOMOS Guidance on Heritage Impact Assessment
- ID11 – Errata to Dr Miele’s Proof
- ID12 – Public Benefits Comparison Table
- ID13 – Appeal Decision (3263347), Walton-on-Thames
- ID14 – Heritage Impacts Comparison Table
- ID15 – SoS Appeal Decision (3226914), Brentford
- ID16 – Aston University Research Report 2015
- ID17 – Caterwood Care Provision Summary
- ID18 – Clarification Note on NHS Savings Calculations
- ID19 – Confirmation of C&D Building Heights
- ID20 – Acceptance of Pre-Commencement Conditions
- ID21 – Bath River Line Project
- ID22 – Late Representation, Norfolk Green Residents Association
- ID23 – Council’s Closing Submission
- ID24 – Appellant’s Closing Submission
- ID25 – Completed s106 Planning Obligation
- ID26 – Draft City Centre Character Appraisal, Bath Conservation Area 2015
- ID27 – Natural England Planning Inspectorate Consultation Response
- ID28 – Historic England Letter to Inquiry, 10 June 2021
- ID29 - S106/CIL Compliance Statement, BaNES Council