

**IN THE MATTER OF AN INQUIRY TO DETERMINE AN APPEAL UNDER S.78
OF THE TOWN AND COUNTRY PLANNING ACT 1990**

MADE BY CHURCHILL LIVING

**REDEVELOPMENT FOR RETIREMENT LIVING ACCOMMODATION FOR
OLDER PEOPLE COMPRISING 41NO. APARTMENTS INCLUDING COMMUNAL
FACILITIES, ACCESS, CAR PARKING AND LANDSCAPING.**

68 & 70 KEYMER ROAD, HASSOCKS, BN6 8QP

CLOSING STATEMENT FOR MID-SUSSEX DISTRICT COUNCIL

Introduction

1. It is not in dispute that there is a need for specialist housing for older people in the District, to which this scheme would make a modest contribution. However, the Council's Development Plan and national planning policy as set out in the NPPF makes clear that the delivery of housing should not come at the expense of good design which respects its surroundings and the residential amenity of neighbouring residents. The NPPF¹ requires developments to 'optimise' the potential of the site to accommodate and sustain an appropriate amount of development, not to 'maximise' the amount of development, whatever its harms.
2. So far as this scheme is concerned, the adverse impacts are clear. The development would result in a significant increase in the scale of built form on the site, which would both dominate the plot in which the building sits as well as being out of character with the scale of surrounding buildings and townscape, in turn causing harm to the character and appearance of the area and to visual amenity from nearby vantage points.
3. There would be also significant adverse harm to the residential amenity of a number of nearby residential dwellings and, in particular, 72 Keymer Road and 9 and 10 The

¹ NPPF, Paragraph 135(e)

Minnels by reason of the perception of overlooking and 66A Keymer Road by reason of noise and light emissions.

4. Thus, while there is a need for specialist housing in the district, the benefits of this scheme in terms of the delivery of the additional units over and above that which would produce an acceptable scheme of development are firmly outweighed by the harms to which this scheme would give rise.
5. The Council's objection to the proposals concern the following issues, having regard to the main issues identified by the Inspector:
 - (1) The effect of the proposed development on the character and appearance of the area;
 - (2) The effect of the proposed development on the living conditions of the occupiers of neighbouring residential properties, with particular regard to privacy, noise and disturbance, and light pollution

Effect on character and appearance

6. Policy DP26 of the District Plan requires development to be 'well designed and reflect the distinctive character of the towns and villages' and sets out a number of criteria which must be fulfilled, including, of particular relevance to this issue, that development:
 - a. is of high quality design and layout and includes appropriate landscaping and greenspace.
 - b. contributes positively to, and clearly defines, public and private realms and should normally be designed with active building frontages facing streets and public open spaces to animate and provide natural surveillance.
 - c. creates a sense of place while addressing the character and scale of the surrounding buildings and landscape.
 - d. optimises the potential of the site to accommodate development.
7. A number of points fall to be made in respect of Policy DP26:
 - a. Design must be of a 'high' quality.

- b. Development must contribute positively to both public and private realms and the effect of the development on the private realm is as relevant in policy terms, as its effect on the public realm.
 - c. The way in which the development relates to its surroundings is highly relevant to policy compliance as development must take account of the character and scale of the surrounding buildings in the way that it is designed. This means that the scale of development must be appropriate, not only having regard to the site itself but to the scale of surrounding development.
 - d. Development must ‘optimise’ the development of the site, which is different to ‘maximising’ the development of site.
 - e. A building must create a sense of place in its own right, but in so doing must respond appropriately to its context.
8. Policy 9 of the Hassocks Neighbourhood Plan, similarly, requires development to take account of a number of ‘design principles’ including, of particular relevance here, that it:
- a. Is of high quality design and layout.
 - b. Contributes positively to the private and public realm to create a sense of place.
 - c. Respects the character and scale of the surrounding buildings and landscape.
 - d. Protects open spaces and gardens that contribute to the character of the area.
 - e. Protects valued townscapes and the separate identity and character of Hassocks, Keymer and Clayton.
 - f. Positively responds to the local vernacular character of the defined Local Townscape Character Area.
9. Principle DG39 of the Council’s Design Guide SPD², entitled “Deliver appropriately scaled buildings” provides that “*the scale of new buildings should relate to their context (rural or urban), their location within the hierarchy of routes and whether they act as a focal point, landmark or corner building and the topography of a site.*”

² CD8.6

10. There is an agreed description of the site and its immediate surroundings in the SoCG³ as well as in the proofs of evidence of Mr Giles and Mr Smith. The village of Hassocks has a Townscape Appraisal⁴, which forms part of the evidence base for the Neighbourhood Plan and which locates the appeal site within Area 10 ‘Adastra’.
11. As described by Mr Giles in greater detail in his proof of evidence (see, particularly, paragraph 3.5) and in the proof of evidence of Mr Smith⁵, the appeal site and the area surrounding it reflect in several ways characteristics identified in the townscape appraisal. Overall, Hassocks is identified as having an ‘open, verdant arcadian charm and domestic scale.’ Area 10 is identified to have a varied character with an ultimately ‘expansive feel.’ The appraisal notes, however, that ‘The subtlety of the period charm of the village is easily eroded by any lack of cohesion of materials and form, however. This makes it particularly vulnerable to insensitive change.’
12. The village also has a Design Guide⁶ which identifies the area as having a mix of architectural phases and differing styles but which cautions against seeing that variation as a precedent for ‘badly designed and inappropriately scaled developments.’
13. Both the Townscape Appraisal and the village Design Guide are agreed by both parties to be material considerations in the determination of the appeal.⁷
14. As explained by Mr Giles, the locality of the site is characterised by a predominantly traditional vernacular and is verdant, with mature trees and gardens as a pleasant and prominent feature. There are many detached houses set within relatively large plots as well as some terraced houses. Of particular importance for the issues in the appeal, most of the houses in the surrounding areas are positioned to address the roads they front onto and sit within generous gardens which are proportionate in size to the scale of the houses. This has the effect that the buildings, whatever their age or size, sit comfortably within their plots with space both in front and behind them.
15. Mr Smith has suggested⁸ that both 68 and 70 Keymer Road have curtilages that are considerable larger than other residential properties in the area and that the overall

³ CD7.2, paragraphs

⁴ CD8.9

⁵ See paragraph 2.3.3 of his proof

⁶ CD 8.8, page 10

⁷ Character and Appearance Roundtable Session

⁸ Mr Smith Proof, para 2.2.7

coverage of built form on the appeal site makes the appeal site uncharacteristic of its context. The Council firmly disagrees with this analysis. 68 and 70 Keymer Road are highly characteristic of the locality, being detached dwellings set with a generous garden, proportionate to their size. While it is right that the dwellings themselves and plots they sit in are relatively larger, to a limited extent, than other dwellings in the locality, that does not mean that they are uncharacteristic of it. There are, as noted above, many detached houses of varying sizes within the character area and Mr Smith accepts that scale and spacing do vary.⁹ In each case, as is the case here, the gardens are proportionate to the size of the dwelling and, as such, 68 and 70 Keymer Road are characteristic of the wider locality, even though being slightly larger than other nearby detached houses.

16. Mr Smith has referred to the appeal decision for the redevelopment of two detached dwellings at Orchard House/Orchard Lane (Ref: APP/D3830/A/07/2054498)¹⁰ and it is notable that what he takes from this decision (see paragraph 2.3.17 of his proof) is the identification of a ‘spacious’ quality of development in the area, which is entirely consistent with the assessment above and a description which is apt to describe the appeal site.
17. The Appellant also suggests that the area is characterised by buildings with a footprint comparable to that proposed by the appeal scheme and by other three-storey buildings.¹¹ Again, this is disputed by the Council. It is important to look closely at the comparable examples that the Appellant seeks to rely upon in support of its assertions.
18. For example, as Mr Giles explains in his proof of evidence, the Villa Adastra Care Home (to the east of the appeal site, numbered 8 in Figure 8.2) has a similar footprint to the appeal site but is only two storeys in height and set back some 30m from the main road. It sits comfortably within its plot.
19. Fitzjohn Court (to the west of the appeal site, numbered 7 in Figure 8.2) is a three-storey building but is of no significant depth so not comparable in terms of footprint.

⁹ Mr Smith Proof, para 2.3.4

¹⁰ CD 6.4

¹¹ By reference to analysis set out in 8.2 and 8.4 of the Figure Pack accompanying the proof of Mr Smith’s evidence.

20. Orion Parade (further to the west, numbered 6 in Figure 8.2) is a three storey parade of shops with flats above which fronts Keymer Road along one elevation and Dale Terrace on its other. The building ‘reads’ as being one with two frontages, rather than one with a large rear projection (as is the case with the appeal site), and which helps to assimilate its scale within the street scene. Even then, however, the building is noted as having a detracting effect on local character in the Townscape Appraisal. That serves to make two points. First, merely because there exists a large, three-storey building in the locality does not mean that that building provides a positive precedent for further such development. Secondly, the fact that a three storey mixed-use building fronting the main road may be assimilated into the street scene does not demonstrate that a large, three-storey rear projection to a significant depth in the plot is also acceptable.
21. While the boundaries to the plots of 68 and 70 Keymer Road are vegetated to some extent, the appeal site is nonetheless visible from the surrounding area and, in particular (see paragraphs 3.6 – 3.8 of the proof of Mr Giles):
- a. From Keymer Road
 - b. From the Orion Car Park to the south-west
 - c. From Dale Avenue and the residential dwellings which back onto the appeal site
 - d. From 9 and 10 The Minnells
22. There is particularly limited intervening vegetation between the appeal site and the neighbouring plots along the southern part of the western boundary (particularly 66A Keymer Road and the Orion Car Park) and between the appeal site and those at the southern end of the eastern boundary (particularly 9 and 10 The Minnells).
23. The appeal scheme would introduce a three-storey building on the appeal site with a large frontage on Keymer Road and rear projection of significant depth. Notwithstanding that the uppermost storey of the building would be within the roof, the building would ‘read’ as a three-storey building in the western and eastern elevations of the rear projection given the existence of prominent dormers within the roof and the fact that there would be three full height storeys of accommodation with regular window openings. It is only from the (relatively narrow) southern elevation of the rear projection that the building would present as a two-storey building.

24. The appeal proposals would ‘overdevelop’ the site because they would introduce an uncharacteristically large building onto the plot, which would be out of proportion both by reference to the plot itself and, irrespective of the size of the plot, by reference to the predominant character of the buildings in the surrounding locality. In particular, the scale of the rear projection,¹² as shown on the west and east elevation drawings, is totally out of character with the surrounding settlement form. While some of the buildings in the locality have rear projections, none are of a comparable scale to what is proposed here, namely a 50m long projection to a height of three storeys to a significant depth within the plot. The significant depth of the projection would mean that the building would be positioned closer to the rear boundary of the site than the front removing the sense of spaciousness and the proportionate rear garden that is locally characteristic.
25. The significantly increased massing would also be visible from either side of the front elevation facing Keymer Road, from the Orion Public Car Park to the west, from surrounding private properties, and in glimpsed views between the houses on Dale Avenue.
26. The Council has sought to work with the Appellant through the Council’s design review panel process. The Council has consistently raised the issue of the scale of the building as being objectionable from the outset of that process. In the panel’s initial comments on the application, they raised the concern that ‘the massing to the south was felt to be too much and would benefit from being shortened at the southern end.’ While the Appellant addressed some of the comments raised by the panel through the submission of amended drawings, mostly in respect of minor detailing and layout, no amendment was made to the scale of the building and, in particular, the size of the southern projection. The Council’s Urban Designer’s concern in respect of the scale of the building was maintained following the submission of those amended drawings.¹³
27. The Council has therefore been consistent in its position that the proposed development is too large, whatever the amendments made to its finer details, and that position remains in this appeal. The Council accepts that the appeal site could accommodate an increase in density and an increase in the footprint of the building on the site. It cannot

¹² See the elevational drawings at CD2.7 and CD2.8

¹³ See paragraph 12.7 of the officer’s report to committee at CD3.1

accommodate what is proposed by way of the appeal scheme. The scheme simply goes too far.

28. The footprint, scale and massing of the building by reference, in particular, to the three-storey rear projection does not 'address' the scale of the surrounding built form (which are all two-storey buildings), would not result in a 'high quality' development and would not 'optimise' the potential of the site, as required by Policy DP26. It would contravene the equivalent elements of Policy 9 of the Neighbourhood Plan.

Effect on residential amenity

29. As stated in Opening, there are two aspects to the Council's concern in respect of the living conditions of neighbouring residential occupiers.

30. First, the carpark and scooter store which are proposed to be located immediately adjacent to the boundary with 66A Keymer Road will lead to significant harm to the occupiers of that dwelling by reason of noise and lighting disturbance. Secondly, the scheme would cause harm to the privacy of adjoining occupiers and, in particular, the occupants of 72 Keymer Road and 9 and 10 The Minnells.

31. Policy DP26 provides, so far as relevant to this issue, that development must demonstrate that it:

does not cause significant harm to the amenities of existing nearby residents and future occupants of new dwellings, including taking account of the impact on privacy, outlook, daylight and sunlight, and noise, air and light pollution (see Policy DP29)

32. As Mr Giles explained in the roundtable session, policy DP26 is a relatively open-textured policy which requires a decision-maker to exercise a judgment, rather than to apply quantitative standards to issues of amenity.

33. The policy is supported by the Mid Sussex Design Guide, which is addressed in greater detail below by reference to each of the issues arising.

34. The Appellant queried why the Council had not raised a conflict with Policy DP29 given its concerns in respect of noise and lighting. Mr Giles frankly accepted that, in hindsight, the Council could have raised a breach of Policy DP29 but did not (and did not seek to at this stage) and that it made little practical difference to the approach that

the Inspector was required to take. There can be no dispute that the Council has identified that the scheme would give rise to an unacceptable impact on 66A Keymer Road by reference to noise and light and the Inspector will need to exercise a judgment as to whether the proposals would cause significant harm in that regard by reference to Policy DP26. If the Inspector agrees with the Council's position, he will have to weigh the planning harm in the balance. Whether or not the Council has or has not otherwise identified a conflict with Policy DP29 does not alter that analysis.

35. So far as the impact on 66A Keymer Road is concerned, the Mid Sussex Design Guide identifies, at Principle DG48 that noise disturbance and light pollution can be reduced by avoiding parking where it will create noise and headlight nuisance from vehicle movements.
36. The western part of the appeal site along the boundary with 66A Keymer Road is quiet, tranquil and relatively unaffected by vehicle noise from Keymer Road. The appeal proposals would introduce 16 vehicle parking spaces in this area immediately behind the dwelling at 66A and extend along the mutual boundary towards the end of the garden, as well as the access roadway and scooter store alongside and to the front of the house. These elements of the appeal scheme would essentially transform what is currently experienced as a tranquil garden area into a carpark and give rise to harmful noise and disturbance to the garden of 66A, the conservatory to its rear elevation, and any open windows to the rear of the house as a result of comings and goings of residents and visitors, and the sound of cars manoeuvring in and out of the site and parking spaces. The headlights of manoeuvring vehicles would also give rise to light disturbance affecting the upper rear windows of number 66A in particular, causing significant harm to amenity.
37. The Council does not agree with the Appellant that such impacts could be adequately mitigated through the use of barriers. While there is some intervening boundary vegetation along the northern part of the mutual boundary nearest to the house being predominantly shrubs and small trees, the southern part is very open with a low fence and no other screening. The only space available for additional planting between the parking spaces and the mutual boundary is a narrow strip of land approximately 2.5m wide and it is unlikely that sufficient depth of planting could be achieved to adequately mitigate the impacts.

38. Turning to the impact of the scheme on the privacy of the occupants at 72 Keymer Road and 9 and 10 The Minnells, the Appellant has taken issue with the Council's suggestion that the 'perception' of harm to privacy could give rise to 'significant' harm within the meaning of the policy. Policy DP26 is not prescriptive as to what may constitute 'significant harm' to privacy and requires the decision-maker to exercise a judgment, having regard to the particular circumstances of the development in issue. As Mr Shellum accepted, this could, in principle, encompass the perception of harm in appropriate circumstances.
39. The Mid Sussex Design Guide addresses the issue of privacy in Principle DG45¹⁴ by reference to various elements which should be considered through the design process and which can have an effect on privacy. They include the relationship of buildings to each other including the positioning and design of windows and doors, the topography and relative height of adjacent buildings and the relationship of the parking, gardens, front defensible space and balconies with the adjacent buildings.
40. As Mr Giles explained in the roundtable session, the Council has chosen not to specify any particular separation distances as being acceptable, whether in the Design Guide or elsewhere in the suite of policy documents produced by the Council. As such, the decision-maker needs to exercise a judgment in the circumstances. In so doing, it will be important to take into account the relative heights of the buildings in deciding whether there would be an adverse impact from overlooking. A taller building ought to be further away from neighbouring development than a shorter building given the greater potential for adverse impacts, not merely from the height of the built form but also from the number of windows, which is a direct consequence of the number of storeys.
41. The northeastern flank of the appeal scheme (see Elevation D-D2 at CD2.8) would be 10m from the rear garden boundary of 72 Keymer Road at three storeys in height. While obscure glazing would prevent direct overlooking, this elevation would appear imposing to those using the currently private rear and side garden of number 72 and cause an oppressive perception of being overlooked from an elevated position close to the boundary. The existing vegetation on the boundary is patchy and would, being

¹⁴ CD8.8 at p.122

partly deciduous, provide even less screening in winter. This would cause significant harm to the occupants of 72 Keymer Road.

42. While there is mature vegetative screening between 11 The Minnells and the appeal site that would serve to mitigate the effect of the development, such screening does not exist between 10 The Minnells and the appeal site and 9 The Minnells and the appeal site. It is unrealistic to think that the mature vegetation to the north could be recreated within a reasonable timeframe along the boundary to the south.
43. The appeal scheme would create a three-storey flank elevation of clear-glazed windows at 18m from the boundary of these properties, across three storeys. In respect of 9 The Minnells, particularly, the development would transform the experience of this private garden and patio and cause a significantly harmful sense of overlooking.
44. The impacts described above would cause 'significant' harm to the residential amenity of the occupants of these dwellings within the meaning of Policy DP26 and unacceptable harm within the meaning Policy 9 of the Neighbourhood Plan so as to conflict with those two policies.

(3) The Development Plan

45. As set out by Mr Giles in his proof of evidence and further elaborated upon in his oral evidence, the proposals would be contrary to the Development Plan, when taken overall by reason of the conflict with Policies DP26 and Policy 9 of the Neighbourhood Plan as described above.
46. Mr Giles confirmed in answers to Mr White KC that he had taken into account the entirety of the Development Plan in reaching his conclusion and, in particular, those policies with which the proposals complied. The fact that Mr Giles did not list in his proof of evidence those policies that were complied with is of no significance, notwithstanding Mr White KC's repeated suggestion that this was somehow a flaw in his approach. Those policies were taken into account (and listed in the SoCG) and, for obvious reasons, Mr Giles focused his reasoning as to why there was overall non-compliance with the plan on those policies where there was non-compliance. As Mr Giles explained, whether there is compliance with the Development Plan overall is not a mathematical exercise and the fact that there may be compliance with the majority of

relevant Development Plan policies is not determinative. Mr Giles' conclusion of overall non-compliance was based on the significance of the conflict with Policies DP26 and Policy 9, as he explained.

(4) Planning Balance

47. The Council accepts that scheme would bring about benefits in planning terms. In particular:

- a. the scheme would deliver a specialist form of housing for older people that would meet an identified need for such housing in the district.¹⁵ It would deliver that need on a site with previously developed land in a sustainable location.
- b. the scheme is likely to lead to the release of some under-occupied housing to indirectly contribute to general housing land supply
- c. the scheme would deliver consequential economic benefits through the construction and occupation phases of the development.

48. The Appellant has sought to disaggregate many of the social benefits of the scheme and accorded each of those factors separate, substantial, weight in the planning balance. The Council would urge caution in such an approach, which tends to artificially load the planning balance in favour of the grant of permission. Merely because different paragraphs of the NPPF are supportive of the delivery of housing and, in particular, specialist housing forms of housing on previously developed land does not mean that, in reality, each of those factors are separate benefits, given that they all flow from the delivery of housing. The Appellant has also claimed certain benefits which the Council disputes arise at all. In particular, the Appellant has claimed that the scheme would deliver environmental benefits. When tested¹⁶, these claimed benefits turned out either to be duplicative or measures to mitigate the otherwise harmful impacts of development.

¹⁵ Identified in the emerging plan to be 801 market units of housing with support (retirement living or sheltered housing) to 2038

¹⁶ During Mr Shellum's cross examination

49. The Council accepts the principle of development on the site and that the site could deliver an intensified use on a larger footprint than currently exists. However, this is a scheme which has sought to ‘maximise’ the delivery of housing on the site, at the expense of townscape character and residential amenity when the NPPF tells us that we should be ‘optimising’ the development of the site, namely delivering the ‘right’ amount of housing without causing unacceptable harm as described above.
50. Taken together, the Council maintains that the adverse impacts of the scheme outweigh the harms and that permission should be refused.

12 September 2024

Jack Parker

Cornerstone Barristers