

## **Committee Report**

**Item No: 6B**

**Reference: DC/21/06519**  
**Case Officer: Bradly Heffer**

**Ward: Sudbury South West.**

**Ward Member/s: Cllr Sue Ayres.**

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## **RECOMMENDATION – GRANT PLANNING PERMISSION WITH CONDITIONS**

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### **Description of Development**

Planning Application - Construction of 41no. Retirement Living apartments for older persons including communal facilities, access, car parking and associated landscaping. Conversion and restoration of Belle Vue House to form 2no. dwellings (following partial demolition)

### **Location**

Belle Vue House & Old Swimming Pool, Newton Road, Sudbury, CO10 2RG

**Expiry Date: 30/06/2022**

**Application Type: FUL - Full Planning Application**

**Development Type: Major Small Scale - Dwellings**

**Applicant: Churchill Retirement Living Ltd**

**Agent: Planning Issues Ltd**

**Parish: Sudbury**

**Site Area: 0.57 hectares**

**Density of Development:**

Gross Density (Total Site): Approximately 76 units per hectare

**Details of Previous Committee / Resolutions and any member site visit: None**

**Has a Committee Call In request been received from a Council Member (Appendix 1): No**

**Has the application been subject to Pre-Application Advice: Yes – DC/21/03378**

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## **PART ONE – REASON FOR REFERENCE TO COMMITTEE**

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The application is referred to committee for the following reason/s:

This is a major application to develop on land that is owned by the District Council.

Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the 1990 Act (as amended) defines a local finance consideration as a grant or other financial assistance that has been, that will or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in

payment of the Community Infrastructure Levy. Whether or not a finance consideration is material or not will depend upon the circumstances.

However, noting the advice within the Planning Practice Guidance, it would not be appropriate to make a decision based on the potential for the development to raise money for a local authority.

On that basis, officers afford no determinative weight to the consideration of any financial gain to be made by the Council in relation to this application noting its synergy with the related application for the new park entrance.

#### **SEQUENCE OF APPLICATION CONSIDERATION – NOTE TO MEMBERS:**

**It should be noted that this report has been drafted on the basis that application DC/22/00985 has been considered and that Committee have resolved to grant planning permission therefor. That outcome is a material consideration in the determination of this application and if that is not the case then a verbal update will be given by Officers to guide Committee.**

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## **PART TWO – POLICIES AND CONSULTATION SUMMARY**

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### **Summary of Policies**

NPPF – National Planning Policy Framework 2021

#### **Core Strategy – February 2014**

CS1 - Applying the presumption in Favour of Sustainable Development in Babergh  
CS2- Settlement Pattern Policy  
CS13 - Renewable / Low Carbon Energy  
CS14 - Green Infrastructure  
CS15 - Implementing Sustainable Development  
CS18 – Mix and Types of Dwellings  
CS19 – Affordable Homes  
CS21 - Infrastructure Provision

#### **Babergh Local Plan saved policies – June 2006**

EN22 - Light Pollution - Outdoor Lighting  
CN01 - Design Standards  
CN03 - Open Space within Settlements  
CN04 - Design & Crime Prevention  
CN06 – Listed Buildings – Alteration/Extension/Change of Use  
CN08 - Development in/near conservation areas  
RE07 - Large Scale Recreation  
TP15 - Parking Standards - New Development  
SD02 - Sudbury Town - MUAs - Business & Service  
SD03 - Sudbury Town - MUAs -Shopping & Commerce  
SD04 - Sudbury Town - Mixed Use Areas - Residential Development  
EM24 -

SPD – Open space, Sport and Recreation Strategy (Sept 2010)

## Neighbourhood Plan Status

This application site is not within a Neighbourhood Plan Area.

## Consultations and Representations

During the course of the application Consultation and Representations from third parties have been received. These are summarised below.

### A: Summary of Consultations

#### Town/Parish Council

**Sudbury Town Council** has commented as follows:

‘Sudbury Town Council recommend **REFUSAL** of this application on the following grounds:

- The land on which the retirement home would be built is NOT ‘Brownfield’ land, but ‘Open Space’. The definition of ‘Brownfield’ excludes *land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, **parks, recreation grounds** and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time.* This area was once the outdoor swimming pool, then a BMX park. Both activities within an ‘Open Space’. Assuming the site is classed as ‘Open Space’, then the proposed plans are contrary to the National Planning Policy Framework (NPPF) paragraph 84 which requires;  
*"d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship."*
- The proposal is overdevelopment and would cause detrimental harm to the historical town centre, Conservation area and neighbouring grade 1 and grade 2 listed buildings along King Street and especially St Peter’s Cultural Centre. Currently there is a view of St Peter’s from within Belle Vue and there is a view of Belle Vue from the tower of St. Peter’s. This development would mean the loss of the existing historical view looking down King Street towards Belle Vue. This proposed building would be too big and too high for this key site at the entrance to the town centre.
- Lack of car parking provision – Churchill’s case studies are based on larger towns and cities where public transport is more frequent. This isn’t the case in a Suffolk market town like Sudbury. Most public transport isn’t available during the evenings or on Sundays. Car usage would be much more than anticipated and the residents of these apartments are likely to have visitors arriving by car.
- Highways issues – The Town Council note the comments made by Suffolk County Council Highways, however they still have concerns over the safety of the public

crossing this junction. This area is already busy and congested even before the potential increase of traffic from approved housing developments.

- The Town Council support the comments and concerns made by Anglian Water and Suffolk County Council regarding the disposal of surface water.
- The Town Council support the comments made by Babergh's Arboricultural Officer.
- A survey of the bat population within this area should be carried out before any permission is granted for development.
- There is a lack of evidence provided that Sudbury needs this type of retirement living accommodation.
- Sudbury Town Council are concerned that these plans would close the existing vehicle and pedestrian entrance to Belle Vue Park before planning permission has been granted for an alternative entrance. Full details of the new entrance to Belle Vue Park should be confirmed before any planning application is granted to close the existing entrance.'

### **National Consultee**

**National Highways (formerly Highways England)** has advised it has no objection to the proposals.

**Sport England** advises that the application proposal does not fall within its statutory or non-statutory remit.

**Historic England** does not wish to comment on the proposals and advises that the views of the Council's own specialists should be sought.

**Natural England** has no comments to make but draws attention to its standing advice in relation to development impacts on protected species.

**Anglian Water** has requested that an advisory note be added to an approval decision notice which identifies it has assets close to or crossing this site. It is also advised that foul drainage from this development is in the catchment of Sudbury Water Recycling Centre that will have available capacity for flows. Lastly it is advised that the preferred method of surface water disposal would be to a SuDS.

### **County Council Responses**

**SCC Highway Authority** has confirmed it has no objection to the proposals subject to the imposition of conditions on a grant of planning permission. It is also identified that Suffolk County Council is currently investigating the feasibility of further crossing facilities in the area and a contribution of £42 000, secured through s106 agreement, is requested in order to make the development acceptable in this regard.

**SCC Growth and Sustainable Planning** has identified that a CIL contribution of £9 072 would be sought, to enhance and improve library provision that would serve the proposed development.

**SCC Active Travel Officer** has identified that the development does not meet the threshold to require a Travel Plan in accordance with Suffolk Travel Plan Guidance.

**SCC Suffolk Fire and Rescue Service** requires that access to buildings for fire appliances and fire fighters must accord with Building Regulations. It is identified that no additional water supply for firefighting purposes is required in respect of this planning application.

**SCC Lead Local Flood Authority** has advised that conditions should be attached to a grant of planning permission.

**SCC Archaeology** advises that the conclusions of the desk based assessment submitted as part of the planning application are supported; the potential for the proposal to impact archaeological remains can be considered low, and conditions are not considered necessary in this case.

**Suffolk Constabulary** has confirmed that there is no objection to the proposals. Various comments are made in relation to aspects of the development and also the use of the wider park.

**The Sudbury Society** advises it supports the proposal put forward for consideration by Members as it secures the future of Belle Vue House and improves the appearance of this prominent site. The density of development should be checked and further exploration of direct access to the park should be explored. A further representation states that it is absolutely essential that any planning approval imposes a condition on the applicant to undertake the conversion and renovation of Belle Vue House.

### **Internal Consultee Responses**

**Strategic Housing** has lodged a holding objection to the proposals on the basis that affordable housing provision is not made on the site. Inter alia the following comment is made, ‘...subject to consideration and judgement by planning colleagues, it is not necessarily accepted that affordable housing should not be provided on this site...’

This issue will be considered further in this report.

**Economic Development** are supportive of the proposal; identifying it as a significant step forward in realising the Sudbury Vision objectives for the regeneration of the town. It is noted that the last use of Belle Vue House was as offices and in this regard policy EM24 of the adopted plan is relevant. In this regard, the following comment is made:

*‘...As referenced in the applicant’s planning statement, the Council has actively marketed the site for a variety of commercial and community uses on multiple occasions between 2015 and 2021 with no viable alternative use identified. The site has been vacant and subject to anti-social behaviour since this point. We feel that this extensive marketing meets the criteria for EM24...’*

The **Heritage Team** has identified that the proposal would be likely to cause impacts on the settings of identified heritage assets. In addition, some heritage benefits to Belle Vue House are identified. It is stated that if the application is approved various conditions should be attached to a grant of planning permission.

**Waste Services** has identified that the development must be suitable for a 32 tonne refuse collection vehicle. Waste storage and bin collection points should also be provided.

**Place Services Ecology** has a holding objection in place at the time this report was written, and Members will be updated at the Committee meeting.

**Place Services Landscape** has recommended that conditions be added to a grant of planning permission.

The **Arboricultural Officer** has noted that the proposed development would require the removal of a number of trees; their loss can be offset with an appropriate planting scheme. It is however identified that a yew tree (T13) should be retained if at all possible. It is also noted that a detailed arboricultural method statement will be required via condition.

**Environmental Health – Noise, Odour, Light and Smoke** requests the imposition of conditions on a grant of planning permission.

**Environmental Health – Air Quality** has identified that the development is unlikely to affect the good air quality at and around the site. It is also advised that DEFRA and the Institute of Air Quality Management (IAQM) provide benchmarks for the scale of development that may start to cause a deterioration of air quality that requires further assessment. IAQM indicate that concerns may start to occur on developments which generate 500 vehicle movements a day, and that this development falls short of this threshold.

**Environmental Health – Land Contamination** has no objection to the proposed development. It is requested that the LPA is contacted in the event that unexpected ground conditions are encountered, and it is noted that responsibility for the safe development of the site rests with the developer.

**Environmental Health – Sustainability** has recommended the imposition of a condition on a grant of planning permission.

**Private Sector Housing** has no comments to make.

**Public Realm** has provided a lengthy consultation response in which the following summarised points are made:

- The former swimming pool site was replaced by a bespoke pool and leisure centre in 1987 (refurbished and extended in 2019).
- The former swimming pool site was utilised as a BMX park, but this use has since ceased. A replacement facility was provided in the park in 2019.
- Negative feedback has previously been received regarding the existing access to the park of Newton Road.
- The redundant areas and empty buildings give rise to vandalism.

## **Representations**

At the time of writing this report at least 161 comments have been received. It is officers' opinion that this represents 159 objections and 2 in support. A petition has also been received that has been signed by 813 signatories digitally and 220 on paper. A verbal update shall be provided, as necessary.

The following issues, in summary, have been identified below:

Affect local wildlife/ecology  
Air quality  
Application is lacking information  
Boundary issues  
Building work  
Conflict with district plan  
Conflict with neighbourhood plan  
Conflict with NPPF  
Cumulative impact of reducing open space  
Design  
Development too high  
Dominating/overbearing  
Drainage  
Harm to listed building  
Health and safety

Inadequate access  
 Inadequate parking provision  
 Inappropriate in a conservation area  
 Increase in pollution  
 Increased danger of flooding  
 Increased traffic/highway issues  
 Landscape impact  
 Light pollution  
 Loss of light  
 Loss of open space  
 Loss of outlook  
 Loss of privacy  
 More open space needed on development  
 No benefits to local residents  
 No recreational space in Sudbury  
 Noise  
 Not a brownfield site  
 Out of character with the area  
 Over development of site  
 Overlooking  
 Potentially contaminated land  
 Residential amenity  
 Scale  
 Sequential test  
 Strain on existing community facilities  
 Sustainability  
 This would make another eyesore  
 Trees

A separate objection has been received from Babergh Green Party which identifies loss of amenity space, sustainability, building height, pedestrian access and safety and biodiversity net gain as areas of objection.

Representation has been received from the Sudbury Society that expressed support for the scheme presented for Members' consideration. It is also requested that a condition be imposed on the applicant to undertake the conversion and renovation of Belle Vue House.

This represents an officer summary of the representations received. The representations received are available to view on the Council's website.

## **PLANNING HISTORY**

<b>REF:</b> DC/21/06519	Planning Application - Construction of 41no. Retirement Living apartments for older persons including communal facilities, access, car parking and associated landscaping. Conversion and restoration of Belle Vue House to form 2no. dwellings (following partial demolition)	<b>DECISION:</b> PCO
<b>REF:</b> DC/22/00985	Planning Application - Demolition of existing retaining wall to former swimming pool site. Construction of new retaining wall, park	<b>DECISION:</b> PCO

entrance landscaping to Belle Vue Park and pedestrian crossing to Cornard Road.

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## **PART THREE – ASSESSMENT OF APPLICATION**

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### **1. The Site and Surroundings**

- 1.1 The site for this proposal comprises part of the former outdoor swimming pool located at Belle Vue Park, Sudbury, Belle Vue House and associated land, and part of the park land itself. The site is roughly rectangular in shape and has a given area of approximately 0.6 hectares. It is bounded to the north and west by Newton Road (including the adjacent roundabout junction). To the east the site bounds the curtilage of the first in a row of established dwellings that front the south side of Newton Road. To the south the site abuts and includes Belle Vue Park. Topographically, the site slopes from east to west and also towards the existing vehicular entrance to the site off Newton Road, located towards the north-western corner.
- 1.2 The application site contains Belle Vue House, which has locally listed status and is considered to be a non-designated heritage asset. Originally a dwelling, the two storey building has previously been utilised for office purposes but is currently unoccupied. The site also contains part of the former open air swimming pool and associated walls, gates etc. Following its discontinuance as a pool, the site was subsequently used as a BMX facility – now ceased. This part of the site is currently utilised as a depot. The overall site also contains a number of mature trees and other vegetation.
- 1.3 In the surrounding area is a mix of commercial and residential development. Notably King Street, to the west of the site, contains a number of shops and other commercial premises and leads towards the historic core of the town. There are a number of listed buildings in the vicinity of the site, as well as locally listed buildings (including Belle Vue House). In addition, site is in close proximity to Sudbury conservation area – the nearest boundary of which is drawn around development in King Street.

### **2. The Proposal**

- 2.1. This planning application seeks full permission for the following elements:
  - Construction of a new building to contain 41no. retirement living apartments on part of the site, together with the provision of a new vehicular access off Newton Road, and new parking and servicing spaces.
  - The restoration and conversion of Belle Vue House to form 2no. dwellings.

**Members should note that the original submission proposed 42no. apartments. However, subsequent changes to the design of this building have resulted in a reduction of the proposed units to 41no.**

- 2.2 The proposed retirement living accommodation would be contained within a single L-shaped building, comprising individual elements of between 3 and 4 storeys in height, which would be located at the western end of the identified site. Vehicular access to the site would be provided via new access from Newton Road, to the east of its current position. This access would lead to parking/servicing areas to serve the proposed development, as well as a gated access to the



converted Belle Vue House to the east. The submitted plans also show the provision of outdoor amenity spaces to serve the proposed development.

- 2.3 The following extracts are taken from the Planning Statement submitted as part of the application and are included here for Members' information:

*'...The accommodation proposed is specifically designed to meet the needs of independent retired people, and provides self-contained apartments for sale. A key aspect of the design is that the units are in a single block. This is essential for control over access, with safety and security being a key concern for individuals as they age. It also provides much greater benefits for social interaction. This is enhanced with the communal space, in particular the owners lounge, coffee bar and garden...The apartments are sold by the Applicant with a lease containing an age restriction which ensures that people of 60 years or over, or those of 60 years or over with a spouse or partner of at least 55, can live in the development. It is suggested that this is secured...by condition...Notwithstanding the age restriction, the average age of purchasers of the apartments are 78 years old, with the average age of all occupiers being late 80s. Typically, 70% of apartments are single occupancy, often occupied by a widow. The decision to purchase this type of development is predominantly needs based, with residents forced to move as their existing property is no longer suitable or they can no longer access the shops or services that they need...'*

- 2.4 In regard to the proposals for Belle Vue House, the submitted scheme seeks to sub-divide the building vertically, in order to create 2no. semi-detached dwellings. The works would include the demolition of an existing single storey side extension to the east side of the existing building, in order to increase the amount of garden amenity land available to the east and improve internal accessibility. As part of the works, it is also proposed to provide a new ground floor extension serving the westernmost dwelling with a roof terrace above, together with a converted attic space (to enable a fifth bedroom) served by reinstated dormer window features. Each dwelling would be served by its own ground floor access, and parking/turning facilities would be provided to the north of each new dwelling, accessed via a gated access leading from the parking/service area serving the apartment accommodation proposed to the west.

### **3. The Principle Of Development**

- 3.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that *'If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.'* In this regard, the relevant development plan documents consist of the Core Strategy (2014) and the saved policies of the Local Plan (2006). A key material consideration is the National Planning Policy Framework (NPPF) 2021. Paragraph 7 of the NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. At paragraph 8, this is defined as meaning that there are three overarching objectives which are interdependent and need to be pursued in mutually supportive ways: economic, social, and environmental. The NPPF goes on to state, however, that they are not criteria against which every decision can or should be judged (para. 9).
- 3.2 Members are advised that, within the adopted development plan the site for the proposal is located within a defined Mixed Use Area, with a smaller part of the site having an allocation for open space and/or recreation. This Mixed Use and open space designation is shown on Inset map 1b of the Local Plan and an extract will be made available as part of the Committee presentation.

3.3 In the adopted development plan, it is identified that the policies of particular relevance to the Mixed Use Area allocation are identified as policies SD02, SD03 and SD04. In regard to the part of the site with an open space allocation, policy CN03 is engaged. Notwithstanding their age, policies SD02, SD03 and SD04 are not considered to be in conflict with the NPPF and therefore may be afforded full weight. Policy CN03 is not considered to be wholly consistent with the NPPF and as a result less weight is given to it; as will be explained in subsequent paragraphs of this report, it is the application of national policy in relation to the loss of designated open/recreational space that is given greater weight in the circumstances of this application.

3.4 It is appropriate to refer to the supporting text in Chapter 10 (paragraph 10.14) which describes Mixed Use Areas thus: *“The principal shopping area is fringed with areas of mixed land uses, including shops, small businesses, housing and community facilities. It is intended that the very mixed nature of these areas, which is an essential and particular feature of the town centre, should continue. However, it will be important to ensure that different uses can exist side by side and remain. Development proposals will therefore be assessed against Policy SD02.”* This text does not carry “development plan” weight but sets the scene for such Mixed Use Areas. In relation to policy SD02 this states:

*‘In the Mixed Use Areas and SD04 of Sudbury, uses in Class B2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) will not be permitted.’*

As this proposal does not include a B2 use (which defines general industry within the Use Classes Order) this policy is not of relevance to this particular application.

3.5 Policy SD03 states:

*‘Change of use of premises to retailing and the introduction of small-scale retail developments in the Mixed Use Areas of Sudbury town centre will be permitted, provided there is no adverse effect on the environment, residential amenity and the highway network, and the scale is compatible with the surroundings.’*

In this regard, Members will note that the proposal does not include a proposed change of use of premises to retailing, so no tension with this policy arises.

3.6 Finally, policy SD04 states:

*‘In the Mixed Use Areas of Sudbury town centre, residential development will be permitted, particularly where:*

- use is made of vacant or under-used buildings, or*
- residential development would result in a more appropriate use of land, provided it has no adverse effect on the vitality and viability of the town centre.’*

3.7 This policy is of specific relevance to the proposal, bearing in mind that the application seeks approval for residential development, albeit that the majority would be for a specific type of occupancy. The proposal seeks to re-use a locally listed building for residential purposes, and in addition would result in the redevelopment of a site formerly occupied by a leisure facility which is no longer in operation. In addition, it is not judged that the proposal would have an adverse effect on either the vitality and viability of Sudbury town centre. In fact, the introduction of a residential use in this location has the potential to increase demand for services and facilities in the town centre. On this basis, it is considered that the proposal would not conflict with the aims of the identified policy.

3.8 In relation to the relevant open space policy CN03, this states:

*'Development leading to the loss of important open space, visually important gaps in the street scene or recreational facilities within towns and villages will not be permitted.'*

- 3.9 A small part of the application site is designated as open space and the area coincides with retained trees and amenity open space of the proposed retirement apartments. As such there would be a change in the tenure of this space from public open space to private open space. Therefore, and on a strict view, there is tension with the identified policy in this regard. In consideration of the weight to be afforded to this policy, bearing in mind its wording, it is noted that the NPPF, at paragraph 99 does address the issue of the loss of open space in a more flexible way as follows:
- Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:
- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
  - b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
  - c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.
- 3.10 In regard to the above NPPF requirements, the wording of policy CN03 arguably may be judged to be inconsistent with the Framework as it does not include criteria that identify mitigation for the proposed loss (criteria a – c listed above) and is inflexible and too restrictive as a result. Additionally, the identified requirements of the NPPF are considered by officers to be satisfied due to the synergy between this scheme and the associated proposal to improve the public entrance to the park, as part of wider improvements that are intended by the landowner (criterion b). Officers consider that the identified loss should be balanced against the broader parkland improvements that this development would facilitate, as described in the adjacent park entrance improvements application reference DC/22/00985. The consideration of this application and any resolution thereon **should only** follow the consideration and a resolution to grant permission on application DC/22/00985 as this engages paragraph 99 (b). ). As a consequence, the significance of any conflict or tension with policy CN03 is less weighty as a result because it is the application of national planning policy that is preferred. In any event, and notwithstanding the application of national planning policy, the amount of land to be “lost” as a result of the development is relatively minor. With the park entrance improvement works delivered it is considered that such loss as is foreseeable by reason of this application would be replaced by better provision of space in quantity and quality in a suitable location. Accordingly paragraph 99 NPPF would be satisfied with the delivery of that space and for this reason an appropriate Section 106 obligation to link the two proposals is recommended.
- 3.11 In addition to the above identified policies, other key development plan policies relevant to the consideration of this proposal are identified to include CS1, CS2, CS14, CS15, CS18 and CS19.
- 3.12 In relation to policy CS1 this identifies the Council’s commitment to securing sustainable development in the District. The policy is reflective of the NPPF and has full weight in the determination of planning applications. In this regard, the scheme is considered to propose residential development in a sustainable location on the periphery of the town. The redevelopment of the site is considered to comply with the spatial strategy of CS2 which sequentially directs most new development to the towns and urban areas of the district.

- 3.13 Policy CS14 specifically relates to green infrastructure and inter alia identifies that existing provision will be protected and enhanced. The element of the proposals that would involve the loss of public access to an area of parkland is considered earlier in this section of the report.
- 3.14 Policy CS15 is a lengthy and wide-ranging criteria-based policy, and it is inevitable that not every criterion will apply to a given development. The policy is concerned with the implementation of sustainable development in the district and sets out nineteen criteria which may be broadly summarised as relating to economic benefits, supporting local services, sustainable design, and creation of green spaces, minimising waste and surface water run-off and promotion of healthy living.
- 3.15 In consideration of individual criteria of the policy it is considered that the proposal is respectful of its setting and would make a positive contribution to the locality. In addition, the proposal would promote employment opportunities both during the construction and operational phases. The location of the site would mean that accessibility to service provision was convenient, and these can be accessed via non-car modes. The development includes sustainable construction elements, and has the potential to enhance overall biodiversity opportunities through the introduction of appropriate soft landscaping. In addition, the site is not subject to flood risk, and drainage systems appropriate to the site can be provided. In regard to relevant open space requirements, the scheme does make provision for amenity space for residents. However, in the case of the apartment building element of the proposals it is reiterated that an area of publicly-accessible parkland would be utilised as private amenity space.
- 3.16 Policy CS18 states that residential development that provides for the needs of the District's population, particularly the needs of older people will be supported where such local needs exist, and at a scale appropriate to the size of the development. Read alongside policy CS15 it is considered that the application proposal would, through the mix, type and size of units to be delivered, provide important accommodation to meet identified housing needs for older persons. Of itself this is a matter of significant weight.
- 3.17 Policy CS19 states that in order to promote inclusive and mixed communities all residential development will be required to provide 35% affordable housing. The policy goes on to explain that the onus is on developers to provide documentary evidence to support cases where development viability is a proven issue, and where such cases are accepted the local planning authority will determine an appropriate proportion of affordable homes, tenure mix and/or appropriate levels of commuted sums on a site-by-site basis.
- 3.18 In this case the Applicant does not propose to provide any affordable housing either on-site or by way of off-site financial contribution. Rather than provide documentary evidence to demonstrate issues of viability would prevent such a contribution being made, the Applicant points to the evidence base supporting the emerging JLP as opposed to the now historic evidence base that informed the drafting of policy CS19.
- 3.19 For ease, their commentary is set out below:

*“The Viability and CIL review study for Regulation 19 stage was published in October 2020 and provides a significant level of detail in respect of testing for housing for older people typologies. Paragraph 8.3 of this study definitively concludes that:*

*‘Older Persons accommodation is unviable with 0% affordable housing and all other policies including CIL. We recommend that this type of development is zero rated for CIL and no affordable housing is sought.’ (my emphasis)*

*This recommendation is then further set out within Table 8-1 Proposed new CIL rates where elderly accommodation (age restricted, self-contained homes with design features and support services available to enable self-care and independent living) is recommended to be exempted from a CIL charge and an affordable housing requirement.”*

- 3.20 Officers have given this position careful review and it is accepted that even if it is considered that there is a breach of policy CS19 insofar as there is no affordable housing contribution, and no documentary evidence has been provided to make out a viability case, the site-specific and contextual circumstances affecting the application are of greater weight. On balance, and giving significant weight to the JLP viability study that underpins the emerging plan (even if only limited weight is given to the JLP as a document and material consideration of itself) the lack of affordable housing contribution in this case is not fatal to the application.

#### **4. Nearby Services and Connections Assessment Of Proposal**

- 4.1. Sudbury is the largest town in Babergh district. The town has an important role in serving the shopping, leisure, social and cultural needs of the western part of the district. It benefits from extensive service provision and has public transport links to the wider area, including a train station. The nearest bus stops to the site are located at the bus station, which is approximately 150 metres southwest of the site.
- 4.2 The site for this proposal is located on the periphery of the town centre core, and it is considered that occupiers of the proposed development would have convenient access to the services that the town has to offer.

#### **5. Site Access, Parking And Highway Safety Considerations**

- 5.1. The NPPF identifies at paragraph 108 that in assessing specific applications for development, it should be ensured that, inter alia, significant impacts on the transport network and highway safety can be cost effectively mitigated to an acceptable degree. Paragraph 111 recognises that development ‘...should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe...’
- 5.2 As part of the application submission, a Transport Statement has been produced. This document includes an assessment of existing conditions and site accessibility together with an assessment of trip generation. The summary findings of the Statement are that the site is in a sustainable location, the scheme would relocate vehicular access to an improved position in comparison with its current location, a new safe means of access can be provided and parking provision for the development reflects the requirements of the occupiers. In addition, the Statement advises that the site can be accessed by a refuse vehicle and an emergency vehicle can get within 45m of all parts of the building in accordance with building regulations requirements.
- 5.3 Members will note that the proposal inter alia seeks to create a new vehicular access point off Newton Road, which would serve both the retirement apartments and also the proposed dwellings in the converted Belle Vue House. The Transport Statement advises this access would be located approximately 20 metres east of that existing, and would be in the form of a bellmouth junction – measuring 7.4 metres in width, with 2.5 metre radii. These dimensions are advised as being adequate to allow two cars to pass simultaneously. The new junction would be served by 2.4m x 43m visibility splays and footways would be provided adjacent to the vehicle access for pedestrian access. In regard to this aspect of the development, the Highway Authority has confirmed that it has no objection to the proposals, requiring final details of the proposed access to be secured through condition.

- 5.4 In terms of parking the retirement apartment proposal would provide 17no. communal spaces, of 2.4m x 4.8m dimensions. This provision is a reduction in the number that would normally be required under the Council's adopted standards, as the standard would call for 41no. spaces for the amount of units proposed. The guidance advises that this provision is required '*...unless there is the evidence base to support a reduction in the standard...*'
- 5.5 In this case the applicant company advises that independent research has been undertaken at previous Churchill developments in regard to parking demand. This has identified an average car parking demand of 0.28 spaces per apartment – which equates to a need for 12 parking spaces for a 41no. apartment development. The DAS also identifies that research identifies that, due to the average age of purchasers (at 79 years old), car ownership is lower than normal.
- 5.6 In regard to the level of parking provision proposed for the site, Members are advised that this has previously been discussed with the Highway Authority as part of pre-application engagement. That Authority has subsequently confirmed that the parking provision for the development is acceptable to it, as appropriate justification for a reduction in the amount of spaces exists. In relation to parking provision generally, it is also pertinent to note that the site is located on the periphery of the town centre and therefore access to services etc. by non-car modes would be more convenient than a location further away from the core. In this regard it is noted that the proposals include a storage facility for mobility scooters for residents of the apartments. In addition, cycle ownership is anticipated to be low, based on the occupancy of the proposed apartments. In this regard, the Transport Statement advises that covered space would be available within the mobility scooter store.
- 5.7 In relation to the parking provision that would be made for the converted Belle Vue House (1no. 3 bed unit and 1no. 5 bed unit), this would accord with the Council's standards in that adequate space is provided on each plot to accommodate 3-4 cars.
- 5.8 Clearly, a consequence of the development taking place on the identified site would be that vehicular access to the park from this location would be removed. At present it is possible for maintenance vehicles and emergency access to take place from this point. Having raised this point with the landowner, it is understood that, as part of the wider park improvements that are proposed, the access to the park from Ingram's Well Road would be improved, as necessary.
- 5.9 In addition to the above, in relation to mitigation of impacts arising from the proposed development, the Highway Authority has advised as follows:

*'...In order to access local amenities and transport connections, occupiers of the development would need to cross highly trafficked roads (such as Bell Vue Road and Cornard Road) at a busy junction using uncontrolled crossing points. Furthermore, we would consider that a high proportion of the occupiers would be vulnerable road users. Whilst several signalised crossings have been provided close to the development site, Suffolk County Council are currently investigating the feasibility of further crossing facilities in this area with the intention of providing further improvements. In order to accord with NPPF para 112, a S106 contribution is sought towards improvements to the pedestrian crossing facilities in the immediate vicinity of the development to make the development acceptable in this regard.*

*Paragraph 57 of the National Planning Policy Framework (NPPF) 2021 sets out the requirements of planning obligations, which are that they must be:*

- a) Necessary to make the development acceptable in planning terms.*

- b) Directly related to the development; and,*
- c) Fairly and reasonably related in scale and kind to the development.*

*A contribution of £42,000 accords with the above requirements and is required to make the development acceptable to the Highway Authority...'*

- 5.10 In relation to the above mitigation request, Members are advised that the applicant has confirmed the requirement is acceptable to them.
- 5.11 In summary, notwithstanding the objections to the proposals that have been received on highway safety and impact grounds, Members will note that the proposals put forward for determination have not given rise to an objection from the Highway Authority. A number of conditions are proposed for inclusion on a grant of planning permission; an element of which would include the provision of electric vehicle charging points in accordance with the Council's adopted standards. Officers support their inclusion. Further mitigation would also be secured through a s106 agreement as identified above.

## **6. Design And Layout**

- 6.1. Members are advised that the DAS submitted as part of the planning application identifies the park entrance development that is proposed on an adjacent site (currently subject to application under reference DC/22/00985) and identifies elements of that development that could contribute to the value of this proposal. To clarify, Members are not being asked to consider other development proposals (either current or potentially submitted in the future) as part of this particular application. This proposal should be considered on its own planning merits. Nevertheless this report is predicated on the acceptance of the recommendation to grant planning permission in relation to DC/22/00985 and is in part contingent on the improvement in parkland quality which engages the NPPF paragraph 99(b) consideration reported above. If that recommendation is not accepted then further review of that aspect is required.
- 6.2 Good design is a key aspect of sustainable development, as made clear in the NPPF. This requirement is reflected in adopted development plan policies CS15 and CN1, both of which identify that development will be of high-quality design that respects the local distinctiveness and built heritage of Babergh.
- 6.3 The proposed retirement apartments would be contained within a single L-shaped building that is designed to appear as a series of incremental components. Individual elements of the building would achieve either three or four storeys in height. Architecturally the building would follow a vernacular, traditional approach and materials would include the use of red and buff brick, with a reconstituted slate used on some roof elements, and red interlocking concrete roof tiles on others. Other details proposed for the exterior of the building would include the use of balcony features, and reconstituted stone cill details for some windows.
- 6.4 Internally, the building would contain a mix of 1 bed and 2 bed flats on each floor that would be accessed by a central corridor. A lift access would be provided to each floor. The upper ground floor of the building would also contain communal facilities for residents, including coffee bar, owners lounge, reception and lobby. A guest suite would be provided on the lower ground floor as would the refuse rooms.
- 6.5 The DAS advises that the position of the proposed building has been informed by the constraints of the site, including the requirement to allow vehicular access to Belle Vue House. Although the proposed building would sit forward (north) of Belle Vue House it does follow the same general orientation, which is also found on other buildings located further along Newton Road to the east.

Another intention of the design of the proposal is to present a frontage to the roundabout junction to the west of the site.

- 6.6 The context of the site surroundings is a key consideration in determining the merits of proposals for new built form. A design response proposed for one location may appear wholly incongruous in another. In this regard, an assessment of the surrounding form of development reveals a variety of building form and styles. Older buildings in the locality, including Belle Vue House itself, generally follow a traditional form, utilising materials such as brick and render, with pitched roofs clad in tiles or slates. Newer instances of built form include the shopping precinct to the west of the application site, which has a modern architectural style associated with the 1960s and 1970s. This development is of its time and visually compares unfavourably with older buildings along King Street, not least St Peters church building, which is an established landmark. There is also an instance of recent development in proximity of the application site; this being the four-storey apartment building on Newton Road, to the north of the site. This building has a contemporary architectural appearance, which introduces another design response in the locality.
- 6.7 Members will note that the proposed apartment building follows a more traditional approach architecturally, which reflects that taken with the older buildings in the area. In relation to the design of the proposed apartments, the DAS advises that inspiration has been drawn from the wider area including Belle Vue House, reflected in the use of gable features within the design as well as the use of a dark grey roof finish on some elements. The use of contrasting brick detailing is intended to be a reflection of the character of buildings found elsewhere in Sudbury. As a design response it is considered that this approach is appropriate to this prominent location on the periphery of the historic core of the town.
- 6.8 While the building is of significant size, it is considered that its overall scale would not be unacceptably intrusive in visual terms, being visually 'subdivided' into an amalgam of individual volumes, as opposed to a visually unrelieved, single volume structure. In addition, the development is designed to reflect the sloping topography of the site. In relation to the four storey elements of the proposed building, the fact that a four storey building is located in the vicinity of the application site enables an appreciation of the impact that built form of this height would have. Clearly the provision of development at four storeys in the locality has been considered to be acceptable to the Council previously. Nevertheless, liaison with the applicant regarding the apartment building's size (particularly in relation to its potential impact on the setting of nearby heritage assets) has resulted in some elements being reduced to three storeys in height, which further manages the overall visual impact this building would have.
- 6.9 In consideration of the proposed residential conversion of Belle Vue House, it is borne in mind that site constraints exist, and these would have to be factored as part of the consideration of the proposed works. For example, the circumstances of the building's location in relation to the park means that the shared boundary is in close proximity to the south elevation of Belle Vue House. However, officers consider that the private spaces serving the converted building can be achieved satisfactorily through the introduction of a suitable boundary treatment at this point, potentially augmented by soft landscaping.
- 6.10 Furthermore, the proposed dwelling nearest to the apartment building would have a limited amount of ground level amenity space. This would be offset to some extent by the provision of a terrace feature above the proposed new extension to the side (west) of this dwelling. The adjoining dwelling would have an amenity area to the side which extended to the shared boundary with the adjacent dwelling in Newton Road (identified on the submitted plans as 'The Beeches').



- 6.11 In themselves, the proposed works to the exterior of Belle Vue House are not considered to cause detriment to the appearance of this building. The existing extension to be removed at the eastern end of the building is a newer addition, and it is considered its loss would not be harmful in the overall context of the appearance of the converted building. Furthermore, the proposed extension to the west would include a parapet detail that would successfully mask its flat roof – bearing in mind the intention that this space is intended to provide a terrace facility. The reintroduction of the dormer features on the roof is also not considered to be harmful to the overall appearance of the building. Lastly, works to the western-most dwelling would also include the provision of a timber framed porch feature, in order to create a separate ground floor entrance for this dwelling. Again, it is judged that the introduction of this feature would be in keeping with the overall appearance of the converted building.
- 6.12 In regard to the proposed organisation of spaces across the site, it is considered that the scheme submitted for consideration by Members provides a responsive approach. For example, while the space to the front (north) of the apartment building would provide the parking and servicing facilities for this building, as well as the means of vehicular access for the converted Belle Vue House, the impact of this space in the street scene would be visually softened by the retained mature trees on the boundary, which would assist in filtering views. The introduction of planted features such as hedging and trees would also assist in reducing the overall impact of this space.
- 6.13 In relation to sustainable construction etc. the DAS advises that an aim of the design process for the new apartment building has been to limit both energy consumption and CO2 emissions, and utilise renewable energy. In this regard, the design would include the use of solar PV on the roof of the building, the use of energy efficient appliances, fixtures and fittings, low energy lighting, electric heaters etc.

## **7. Landscape Impact, Trees, Ecology, Biodiversity And Protected Species**

- 7.1. The conservation and enhancement of the natural environment is a fundamental theme of the NPPF, and one reflected in relevant policies CS4, CS14, CS15, CS16 and CN03 of the development plan. The site identified for the development does contain trees and the impact of the proposed development on these features is material to the consideration of this proposal.
- 7.2 In regard to visual impacts of the development on the landscape, it is of particular relevance that the site is in a prominent position in the streetscene. The introduction of a new building of the scale proposed for the retirement flats will clearly have an impact on the immediate and wider area, with extensive views available from the surroundings including from King Street. In addition, the apartment building would have a visual impact on, and be clearly visible from, the park immediately to the south of the site. In regard to Belle Vue House, it is considered that its impact may be considered neutral bearing in mind it is an established element in the street, and the scheme does not propose the significant enlargement of this particular building.
- 7.3 As mentioned elsewhere in this report, the application site has a sloping topography towards its north-western end. In this regard, the apartment building has been designed to reflect the sloping topography, with lower elements adjacent to the roundabout junction. This management of overall scale does, in your officers' view, reflect a responsive approach to the site's topography, and avoids a situation whereby a large block of development achieving a uniform height were to be proposed. In combination with the proposed building comprising a series of incremental elements, it is considered that the overall scale of development would not appear as visually incongruous in this setting. In this regard, Members are advised that following the original submission of the proposal, liaison took place with the applicants with regard to the overall scale of the proposed building as it was considered to be visually excessive, particularly when considered in the context

of its likely impacts on nearby identified heritage assets. The scheme that is put forward for determination is considered to be of sympathetic scale in this regard.

- 7.4 In relation to impact on trees on site the application submission includes an Arboricultural Impact Assessment, which includes details of the trees that would be impacted as a result of the development taking place. The Assessment identified 44no. individual trees on the application site, 4no. groups and 2no. hedges. None of the features surveyed were found to fall within category A (high quality), whilst 26no. features are considered to be within category B (moderate quality) and the remainder in category C (low quality).
- 7.5 The Assessment advises that 4no. trees would have to be removed to enable construction of the proposed apartment building. In addition, a group of small trees (identified as G33) would require removal to enable construction of a wall and vehicular gate. A further group of small trees (G29) and part of a hedge (H48) would be removed to enable construction of parking bays. In relation to the site of Belle Vue House, the Assessment notes that several stems within an identified group of trees (G38) would have to be removed to enable access around the building to affect safe demolition of an existing extension.
- 7.6 In regard to the above, the Council's arboricultural officer does not object to the proposed tree loss per se, stating that in the main the losses can be offset with an appropriate planting scheme. It is recommended that a yew tree (identified as T13 on submitted plans) should be retained, if at all possible, as it may have an historical association with the site. Members are advised that the identified tree is located within the proposed footprint for the apartment building and therefore would clearly be removed as a consequence of the development taking place. In this regard, retention of this particular feature has to be considered in relation to the benefits of the proposals, as part of the planning balance. In addition, as part of a compensatory planting scheme, secured by condition, appropriate replacement tree planting can be introduced on site.
- 7.7 In relation to ecology, biodiversity and protected species the application submission included an Ecological Appraisal. This Appraisal identified that the habitats on site are common in the wider landscape and are generally of low quality. An invasive plant species (Wall cotoneaster) was recorded on site, and its removal was recommended. In terms of protected species, the site is determined to have low potential for reptiles. However, there is likely presence of hedgehogs based on the suitability of habitat and a search by hand is recommended before any removal of dense vegetation etc. Similarly, clearance of buildings or vegetation should be completed outside of the bird breeding season. If this is not possible the Appraisal recommends that a suitably experienced ecologist '*...should check for active bird nests immediately prior to clearance of the hedgerow (within 48 hours). If an active nest is discovered, then work in that area must cease and an appropriate buffer zone installed around the nest site where no works are undertaken until such a time that the young have fledged, and the nest is no longer in use...*'
- 7.8 In relation to the presence of bats Belle Vue House was identified as having a high suitability for roosting bats, and the Appraisal recommended that further survey works should be undertaken in this regard. Having considered the submitted information, the Council's Ecological consultants lodged a holding objection, on the basis that additional survey information was required prior to the determination of the application.
- 7.9 The applicant has provided a further survey as requested and the Council's consultants have maintained their holding objection, commenting as follows, '*...The Interim Bat Survey Report (Tera Tech Ltd, June 2022) indicates that the building is unlikely to contain hibernating bats. However, a Common Pipistrelle day roost is likely present on the southwest elevation of building 1. As a result, further bat activity surveys are still required to further confirm the presence of roosting bats and characterise any roost sites. This necessary to allow the LPA to have certainty*

*on the likely impacts upon roosting bats and allow sufficient information to be present to inform a European Protected Species licence (EPSL) application if required for this scheme...'*

- 7.10 In regard to the above, the applicant has been made aware of the comment and, at the time this report was produced a further response was expected, but had not been received. Members will be updated accordingly at the Committee meeting.

## **8. Land Contamination, Flood Risk, Drainage and Waste**

- 8.1 Member will be aware that paragraph 183 of the NPPF requires that planning decisions should ensure that a site is suitable for its proposed use. Additionally, paragraph 184 identifies that where a site is impacted by contamination, responsibility for securing a safe development rests with the developer and/or landowner. In addition to the above, adopted policy CS15 inter alia the Council's intention to ensure that any risk of contamination is identified and adequately managed. In this regard, the site of the proposed retirement apartments would include land that has previously been utilised for other purposes; a swimming pool development and latterly a BMX facility and a storage depot. Members will note that the Council's Land Contamination officer has no objection to the proposals but has requested that the LPA is contacted in the event that unexpected ground conditions are encountered during construction works. A suitable note could be added to an approval decision notice in this regard. The works to Belle Vue House would include a limited amount of demolition and extension, and the proposed informative would also apply to this aspect of the overall development.
- 8.2 In relation to the issue of flood risk, the application submission includes a Flood Risk and Drainage Technical Note, which has been considered by the County Council as Lead Local Flood Authority. The identified site is located wholly within floodzone 1 and as such is assessed as having a less than 1 in 1000 annual probability of fluvial flooding (less than 0.1%). In relation to surface water flooding, the Technical Note identifies '*...that the Newton Road junction to the west of the site may be susceptible to flooding below 300mm within the 100 year design life of the scheme (medium risk). The same area is indicated to be at risk of flooding greater than 300mm during the low risk event (beyond the 1 in 1000 year event). The developable extents of the site remain at a higher elevation above Newton Road and are therefore not at risk of flooding in either event. It is important to note that the mapping ignores the presence of existing drainage infrastructure, which might otherwise serve the site and surrounding developments...*'
- 8.3 In relation to surface water drainage, the Technical Note concludes that the prevailing ground conditions are such that soakaway-based attenuation of surface water is not considered feasible. It is therefore considered necessary to discharge suitably attenuated flows to the Anglian Water surface water system. The strategy includes the provision of cellular attenuation tanks in the parking areas of the proposed development. Notwithstanding the above comment the provision of a suitable surface water drainage system, preferably SuDS, is an established aim of the Council.
- 8.4 Members are advised that when originally consulted on the application the LLFA submitted a holding objection to the proposals. This was in for the applicant to submit further information as identified by that authority. Further liaison has since taken place between the applicant's drainage consultants and the LLFA and this has resulted in the LLFA recommending that it has no objection to the proposals, subject to the imposition of conditions on a grant of planning permission. These conditions reflect the points raised in the initial consultation response, and the LLFA is therefore content to receive the requested information post-determination of the application. A specific condition would require the agreement of a strategy for the disposal of surface water, and officers consider the issue of the use of soakaways, bearing in mind the feasibility issues identified in the Technical Note, can be considered further at that stage.

- 8.5 In regard to foul water, the proposals would include the provision of a new private gravity foul network, utilising a new connection to the Anglian Water foul sewer network. In this regard Members will note Anglian Water advises that capacity for flows generated by the development is available.
- 8.6 In relation to waste, access to the site by refuse vehicles would be from the new Newton Road access. Waste would be stored in the designated integral refuse store at lower ground level, and collected within the front service area on collection days. In this regard, Members will note that the proposals have not given rise to an objection from the Council's Waste services team. The key point is that the development has been designed to be accessible to a refuse freighter, which would be able to enter and leave the site in forward gear.

## **9. Heritage Issues**

### **9.1 Legal Duties and Policy Context**

- 9.2 Section 66(1) of the listed buildings Act states that in considering whether to grant planning permission for development which affects a listed building or its setting, the decision taker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest that it possesses.
- 9.3 Section 69 of the same Act relates to the designation of conservation areas and requires that local planning authorities determine which parts within its administrative ward are areas of special architectural or historic interest; the character or appearance of which it is desirable to preserve or enhance. Section 72(1) provides for a similar duty to s66(1) with respect to any buildings or other land in a conservation area. For decision taking it requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of such an area.
- 9.4 The effect of those statutory provisions (ss.66(1) and 72(1)) is that the desirability of preserving the setting of a listed building (or character/appearance of a conservation area) must be treated as a matter of "*considerable importance and weight*", with such duties regarded as presenting a "*strong presumption*" against a grant of planning permission where harm to a designated heritage asset is identified<sup>1</sup>.
- 9.5 The development plan policies directly applicable to this application in heritage terms (as opposed to policy CN01 which is of tangential relevance<sup>2</sup>) are policies CN06, CN08, and CS15. They are among the most important for the determination of this application, where they specifically reference the historic environment. Members will be familiar with the content of those policies and their requirements.
- 9.6 The above local policies are considered to be consistent with the relevant provisions of the NPPF, particularly Chapter 16: '*Conserving and enhancing the historic environment*'. Within Chapter 16, paragraph 189 states that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 199 states that when considering the impact of a proposed development upon the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). The great weight should be given irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

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<sup>1</sup> *South Lakeland District Council v Secretary of State for the Environment and Another* [1992] 2 AC 141; *R (Barnwell Manor Wind Energy Ltd) v East Northamptonshire DC* [2014] EWCA Civ 137.

<sup>2</sup> Naturally, failure to comply with the most important policies cited – due to unresolved heritage conflicts – would also mean non-compliance with policy CN01 which seeks to secure development appropriate for its environmental context.

- 9.7 Paragraph 200 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
- 9.8 Further direction relating to assessment and treatment of harm is provided at paragraphs 196 and 204. The former states that where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision. The latter states that local planning authorities should not permit the loss of the whole or part of a heritage asset without taking all reasonable steps to ensure that new development will proceed after the loss has occurred.
- 9.9 Paragraphs 206 and 207 specifically reference conservation areas and among other things state that local planning authorities should look for opportunities for new development within them (as well as within the setting of heritage assets) to enhance or better reveal their significance. It is stated that proposals that preserve those elements of a setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably. It is also recognised that not all elements of a conservation area will necessarily contribute to its significance. Loss of a building or other element which does make a positive contribution to the significance of a conservation area should be treated as harmful, taking into account the relative significance of the element affected and its contribution to the significance of the conservation area as a whole.
- 9.10 Paragraphs 201 and 202 address the balancing of harm to designated heritage assets against public benefits, whether that be “less than substantial harm” (para. 202) or “substantial harm” (para. 201). As will be made clear it is only the paragraph 202 test that applies to this application.

Paragraph 202 states:

*“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”*

- 9.11 Harm to non-designated assets is dealt with under paragraph 203, which states that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 9.12 In light of the clear and methodical bundle of policies set out within the NPPF, Members are directed to work through them as set out above (even if the local plan policies are considered to be consistent with the Framework which officers consider to be the case). This is because, if properly applied, Members can be satisfied that they will have adhered to national planning policy and satisfied their statutory duties.

### 9.13 Assessment

- 9.14 The works would be undertaken close to a range of listed buildings, as identified at the start of this report and within the submitted Heritage Statement and comments of the Heritage Team.
- 9.15 As set out above, in accordance with s66 of the listed buildings Act special regard has been paid to the desirability of keeping those designated heritage assets from harm; in practice this means affording considerable importance and weight/great weight to any harm identified and recognising that any such harm gives rise to a strong presumption against granting permission.

- 9.16 S72 of the same Act does not apply, strictly speaking, because the site is outside of the Sudbury Conservation Area ('CA'). Nevertheless, where the site falls within the setting of the CA, local and national heritage policy still applies and great weight is still given to the conservation of that asset; thus, impact upon the CA remains an issue of considerable importance even if the statutory duty is not in play.
- 9.17 The submitted Heritage Statement is detailed and has been prepared by a suitably qualified person. It follows the stepped approach to assessing impacts upon significance through setting, as advocated by *'The Setting of Heritage Assets – Historic Environment Good Practice Advice in Planning: 3 (2<sup>nd</sup> Edition).'* Its ultimate conclusions, however, differ from those provided by the Council's own Heritage Team. On balance, and adopting a cautious stance, it is the advice of the Heritage officer that is preferred.
- 9.18 Through negotiation the application has been evolved as an iterative process and it is important to set out the overall summary of the Heritage Team, in relation to the final proposed scheme, as follows:

*"I consider that the proposal would likely cause:*

- *A very low to low level of less than substantial harm to the Bear Hotel (Grade II) because the proposed apartment block would likely be a somewhat dominant feature within the setting of this listed building, that would to some extent draw attention away from this asset and appear out of keeping with the prevailing scale of development within its setting. I consider that a very low level of harm would occur to the other Grade II listed buildings along King Street listed below for the same reasons, gradually decreasing to no harm before reaching the Church of St Peter.*
- *A very low level of less than substantial harm to the character and appearance of Sudbury Conservation Area, as the proposed building would be somewhat out of a scale with historic development within that part of the Conservation Area in close proximity, along King Street, and erode the visual connection between the Conservation Area and Belle Vue Park.*
- *A low level of less than substantial harm to the significance of the Church of St Peter (Grade I), as the proposed apartment block would likely obscure or else draw attention away from a good view of this listed building from Belle Vue Park.*
- *A low level of less than substantial harm to a non-designated heritage asset because the proposed apartment block would likely be a fairly dominating intrusion into the historic formal garden setting of Belle Vue House, although not quite as extensively as previously. Additionally, the conversion of Belle Vue House to residential may be at odds with its later history as a fairly public building.*
- *Some heritage benefits to Belle Vue House, by providing this redundant heritage asset with a new use reasonably in keeping with its significance, the removal of an unsympathetic extension, and overall restoration, thus helping ensure its long-term preservation."*

- 9.19 In respect of the identified designated heritage assets (including the Sudbury CA), it has been identified that the proposed development would cause less than substantial harm to their significance. Irrespective of findings of "very low" and "low" less than substantial harm, the harms remain serious and ss66(1) of the listed buildings Act is actively engaged alongside the policies of the development plan and the NPPF. There is a strong presumption that planning permission will be refused. It is a rebuttable presumption but there must be compelling countervailing

considerations/clear and convincing justification. Great weight should be given to the conservation of a heritage asset (and the more important the asset, the greater the weight should be).

9.20 The harms identified require to be weighed against the public benefits of the development.

The PPG defines public benefits as:

*“Public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework (para. 8). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit.”<sup>3</sup>*

9.21 With that in mind, it is necessary to address those benefits and they are set out as follows:

- Delivery of residential development in a sustainable location
- Contribution to the local economy
- Provision of accommodation specifically for older persons where there is an identified need
- Provision of new jobs, including during the construction phase of the development

No weight is given to the financial benefits that would result to the Council should this application be approved, and that includes the receipt of any land transaction.

9.22 The development would also generate a return in terms of CIL receipts at the present time, which is of itself an economic benefit, albeit of limited weight. While the primary purpose of the CIL is to mitigate the impact of new development, it would nevertheless allow for improvements to existing services and facilities that could result in wider public benefit. In any event the limited weight given to this benefit has no material effect on the heritage and planning balances to be struck.

9.23 A further benefit, in heritage terms, has been put forward in relation to the improvements and long-term security posed to Belle Vue House, alongside its restoration. However, for sake of prudence, whilst the removal of an ungainly extension is welcomed, officers afford no weight to this suggestion and Members should note NPPF para. 196 which states: *“where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision”*. This factor therefore plays no role in the heritage and planning balances relevant to the various assets affected by the development; thus, the public benefits are those bullet-pointed above.

9.24 Applying the NPPF balance under paragraph 202 it is not clear if the harm identified in respect of the various designated assets should be dealt with as independent balancing exercises between the assets harmed, or together i.e., as a cumulation of heritage harms; it is assumed from the language of the policy that each asset must be treated in turn. Regardless, officers have considered the relevant balance all ways, but the outcome nevertheless remains the same each time.

9.25 Notwithstanding the findings of harm to the significance of designated heritage assets, including to particularly important buildings of more than/exceptional special interest (noting the GI Church),

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<sup>3</sup> Historic Environment: Paragraph: 020 Reference ID: 18a-020-20190723 (revised July 2019).

and the strong presumption against the grant of planning permission in such circumstances, it still remains possible for other considerations to be even more weighty.

- 9.26 In the circumstances of this application, it is judged that the heritage harms, while notably serious and clearly appreciable, do not outweigh the particularly strong and compelling public benefits identified above. This also includes the “balanced” judgement required in relation to Belle Vue House if treated as a non-designated heritage asset.
- 9.27 The application is therefore acceptable in heritage terms though it is recognised that the heritage harms must be weighed again, alongside the various benefits as material considerations, in the overall s38(6) planning balance set out in the conclusion to this report.
- 9.28 If Members are minded to accept officers’ recommendation, then it will be important to impose the conditions suggested by the Heritage Team.

## **10. Impact On Residential Amenity**

- 10.1. Members will be well aware that impacts arising from development on residential amenity is an important planning consideration. Paragraph 185 of the NPPF identifies that new development should be appropriate to its location, taking into account issues such as impacts on health, living conditions etc. This aim is reflected in development plan policies CS15, CN01 and CN04.
- 10.2 The location of the application site is such that there is residential development within proximity. To the north of the site, on the opposite side of Newton Road and facing the site, is a recent four storey apartment building. The entrance to Belle Vue Road is adjacent to this site, which contains a number of dwellings. In addition, there is an established residential development fronting Newton Road, to the east of Belle Vue House. To the west of the application site, some residential development is mixed with the commercial development. There is also residential development located along Cornard Road to the south, although the park is located immediately adjacent.
- 10.3 In relation to the proposed retirement apartment building, the location of this is such that it is judged to avoid creating an unacceptably overbearing effect on the amenity of the dwellings in the vicinity, notwithstanding its scale. Whilst the outlook from these properties would change, this in itself is not deemed to be a harmful consequence of the development taking place, per se. Members will be aware that the protection of views across third party land is not in the remit of planning control. Nevertheless, in any event the new build is not considered by officers to constitute a visually harmful new element in the street scene.
- 10.4 In relation to issues of loss of light, shading etc. it is considered that the new building would be positioned sufficiently distant from existing dwellings so that unacceptable impacts were avoided. In assessing this issue, the fact that Belle Vue House itself would be converted to residential use as a consequence of the development proposal means that the amenity of the future occupiers of this building is also a material consideration.
- 10.5 Similarly, it is considered that the new apartment building would not result in an unacceptable loss of privacy for surrounding dwellings by reason of overlooking. In relation to the northern and western elevations of the proposed building, these would face across the public realm (Newton Road and the roundabout junction). In addition, in the case of Newton Road, the apartment building would be set back from the northern boundary, which would further limit this impact. In this regard, the newer apartment building located to the north of the site in Newton Road sits closer to the road than would be the case with this current proposal.



- 10.6 The southern elevation of the apartment building would face across the park, which is also public realm. Lastly, the eastern elevation would face towards Belle Vue House, and in this regard, it is the case that the nearest above ground floor windows facing towards the building would serve a kitchen and provide a secondary light for a living room. The position of these windows is such that they would face towards the front amenity space/parking area serving the nearest dwelling resulting from the conversion works. Therefore, it is considered an unacceptable loss of privacy would be avoided.
- 10.7 In relation to the conversion works to Belle Vue House, again it is judged that these would not result in harm being caused to the residential amenity of surrounding dwellings. The residential use of this building per se would be appropriate bearing in mind its location, and former original use. The conversion works would utilise existing openings within the building and two existing dormer features would be reinstated, which would not give rise to an unacceptable degree of overlooking due to their distances from the adjoining curtilage of the nearest dwelling in Newton Road, or the proposed apartment building. A new extension would be added to the building, on its western end, and this element would include a terrace facility at first floor, with a parapet wall detail, to provide a degree of screening. In order to further reduce the opportunity for overlooking of an outdoor amenity space that would serve the apartment building, a suitable screen feature could be secured through condition.
- 10.8 As well as consideration of the impacts arising from the development on the amenity of existing residential development in the locality of the application site, it is also necessary to consider likely impacts on the amenity of the occupiers of the proposed development itself, bearing in mind for example the proximity of the site to a busy road junction etc. The initial consultation response received from the Environmental Health officer identified a need for a Noise Impact Assessment to be undertaken, in this regard. Following receipt of the Assessment, the officer noted that road traffic noise is likely to cause an adverse effect to varying degrees. Mitigation in the form of glazing options for the affected apartments and alternative means of ventilation have also been considered. The Assessment also included consideration of noise that may arise from the park itself, specifically the skate park facility, and the impact this may have.
- 10.9 The officer, in consideration of the findings of the Assessment, has recommended the inclusion of conditions on a grant of planning permission, including a requirement for a detailed acoustic mitigation report, control of hours of construction or demolition, the agreement of a Construction Method Statement and no burning of waste and materials. Officers support this inclusion of these conditions.
- 10.10 In summary, the submitted proposal would not, in officers' view, give rise to adverse impacts on residential amenity that would justify a refusal of planning permission on these grounds. Where impacts are judged to occur, these can be addressed appropriately through the imposition of conditions attached to a grant of planning permission.

## **11. Planning Obligations / CIL**

- 11.1. Paragraph 57 of the National Planning Policy Framework (NPPF) 2021 sets out the requirements of planning obligations, which are that they must be:
- a) Necessary to make the development acceptable in planning terms.
  - b) Directly related to the development; and,
  - c) Fairly and reasonably related in scale and kind to the development.

- 11.2 Members are advised that in order to mitigate impacts arising from the development the Highway Authority has identified that a contribution of £42 000 is necessary, to be used towards improvements to the pedestrian crossing facilities in the immediate vicinity of the development to make the development acceptable in this regard. In liaison with the applicant it is established that the figure is acceptable to them.
- 11.3 Members will also note the CIL request that is made by Suffolk County Council in relation to the provision of library services, which equates to £9 072. In addition, a monitoring fee of £412 is requested.

## **12. Town Council Comments**

- 12.1 The comments received from the Town Council are fully acknowledged and appreciated. The following comments are made by officers in response:
- The adopted development plan identifies the majority of the application site as falling within a defined mixed-use area, with part of the site within an area of open space. The adopted plan includes an inset map that defines the various areas. That part of the site that is defined as a mixed use area includes the site of the former outdoor swimming pool plus Belle Vue House. It is your officers' opinion that these parts of the site do constitute previously-developed land, whereas that part of the site that is in defined open space does not.
  - The impacts of the proposed development on defined designated and non-designated heritage assets in the area have been considered in accordance with the requirements of legislation and the NPPF as well as identified development plan policies. The height of elements of the apartment building have been reduced following liaison with the applicants, to address concerns raised by the Heritage Team. In this regard officers consider that the overall height and scale of this new building are not excessive.
  - The amount of parking proposed for the apartment buildings reflects the demand that is generated on other sites run by the applicant. This reduction is justified on the basis of lower vehicle use by older residents as explained in the application submission. Having considered the information, the Highway Authority has accepted a lower standard. It is also pertinent to note the sustainable location of the site in relation to parking provision.
  - In relation to concerns regarding highway safety, this issue has not given rise to an objection from the Highway Authority. In addition, the proposals seek to create a new access to serve the overall site and this element of the application is also deemed acceptable. Various conditions suggested by the Highway Authority would be imposed on a grant of planning permission, in the event that Members accepted the officer recommendation.
  - Technical assessment provided by the applicant does identify that soakaway-based attenuation of surface water is not feasible due to ground conditions. In this regard, the LLFA has recommended conditions on a grant of planning permission that inter alia would require the applicant to submit a surface water disposal strategy.
  - The proposal would result in tree removal, as identified elsewhere in this report. This includes removal of an established yew tree. As Member will be aware, the impacts arising from the loss of trees needs to be balanced with the benefits that would result from the development, as part of the overall consideration of the planning application.

- Surveys for the presence of bats have previously been undertaken and the Council's ecology consultant has requested that further survey work is undertaken in relation to a particular building. This issue has been raised with the applicant and, at the time this report was produced a response had not been received. It is considered that the appropriate survey works can be undertaken and the recommendation to Members reflects this situation.
- The application submission provides details of the growing need for accommodation for older persons nationally and adopted policy CS18 inter alia identifies the aim to support development that seeks to meet this need.
- As noted elsewhere, a current application for a new entrance to serve the park is also under consideration. In terms of planning, each application has to be considered on its own merits. Nevertheless, there is clearly a synergy between this application and that for the new entrance. The Council, as landowner in each case, would have to address the issue of maintenance of access to the park, in the event that this planning application were to be approved. Specifically in relation to vehicular access, the park benefits from an access in Ingrams Well Road which may also be utilised and, it is understood, could be improved as part of wider improvements to the park.

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## **PART FOUR – CONCLUSION**

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### **13. Planning Balance and Conclusion**

- 13.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. The recent case of Corbett has re-emphasised that a key part of the s38(6) statutory duty is to determine whether the development accords with the development plan when viewed as a whole. It has long been recognised by the courts that it is not unusual for development plan policies to pull in different directions and that the decision taker must therefore make a judgement as to whether a proposal is in accordance with the plan as a whole, bearing in mind the relative importance of the policies which are complied with or infringed and the extent of the compliance or breach.
- 13.2 There is a statutory presumption in favour of the development plan. The NPPF, an important material consideration, reiterates this fundamental point. Within the adopted development plan, the majority of the identified site is located within a defined mixed-use area. In this regard, the development plan policies that are considered to be most relevant are policies SD02, SD03 and SD04, which relate specifically to the mixed-use area allocation within Sudbury. Officers have determined that the proposal does not contradict the requirements of these specific policies in this regard, as explained elsewhere in this report.
- 13.3 Clearly the development does conflict with the terms of policy CN03, as far as the area of the application site that is currently parkland would be utilised for private amenity purposes serving the retirement apartment development. In your officers' view, this aspect of the proposals may be considered in relation to the landowner's wider aspirations for improvements to the park – evidenced by the current application submission to improve the entrance and as such is considered acceptable in planning terms subject to an appropriate Section 106 obligation to secure those improvements. The significance of any conflict with the policy therefore falls away and it is the application of national policy in this regard that is given greater weight.

- 13.4 Other development plan policies that are identified as being key in the determination of the application are identified to include CS1, CS2, CS14, CS15, CS18, CS19, CS21, CN06 and CN08.  
In relation to the development proposal, the aims of the various policies are considered to be addressed satisfactorily.
- 13.5 The Council embraces its statutory duties in relation to the historic environment and considerable importance has been attached to the harm, albeit broadly limited, that has been identified in relation to designated heritage assets, with a balanced approach taken to the non-designated asset of Belle Vue House. Nevertheless, the benefits of the development are determined to outweigh those identified harms and the application satisfies the relevant policies of the development plan and the NPPF.
- 13.6 Overall and in the round the application is considered to accord with the development plan as a whole. The policies directly engaged by this proposal are up to date and it is considered that in the circumstances of this application the plan is up to date. Therefore, in accordance with policy CS1 and NPPF para 11.c) *planning permission should be granted without delay*. Furthermore, the benefits of the development – including the major provision of accommodation for older persons – are considered to be particularly weighty such that they clearly and decisively outweigh all identified adverse impacts including to built heritage and the minor loss of parkland (the latter of which, in any event, is subject to mitigating proposals).

## **RECOMMENDATION**

**(1) Subject to the prior agreement of a Section 106 Planning Obligation on appropriate terms to the satisfaction of the Chief Planning Officer as summarised below and those as may be deemed necessary by the Chief Planning Officer to secure:**

- A contribution of £42 000 to be used towards improvements to the pedestrian crossing facilities in the immediate vicinity of the development to make the development acceptable in this regard.
- A monitoring fee payment of £412
- Delivery of park entrance improvement works under DC/22/00985 phased to programme of application site works DC/21/06159 to ensure development within that part of the site within the open space area is linked to the construction and delivery of park entrance improvement works to the satisfaction of the Chief Planning Officer.

**(2) That the Chief Planning Officer be authorised to GRANT Planning Permission upon completion of the legal agreement subject to conditions as summarised below and those as may be deemed necessary by the Chief Planning Officer:**

- Standard time limit (3yrs for implementation of scheme)
- Approved Plans (Plans submitted that form this application)
- Agreement of external facing and roofing materials prior to commencement of works above slab level

- Agreement of the new windows and doors to Belle Vue House prior to their installation.
- Following removal of the extension to Belle Vue House to be demolished, adjacent fabric to be made good using matching materials and methods.
- Removal of any Permitted Development Rights for both the apartment block and Belle Vue House, for further boundary treatments, outbuildings, and extensions, as considered appropriate by the LPA, in order to control further works that may harm the setting of nearby heritage assets.
- Condition to ensure that the proposed conversion of Belle Vue House takes place as part of the approved works, in accordance with an agreed timescale, to ensure that the heritage benefits of the scheme are realised.
- Development being carried out in accordance with the measures identified in the submitted Arboricultural Impact Assessment
- Construction Management Plan submitted to and approved in writing by the LPA prior to the commencement of development.
- Approval of a scheme for the provision and implementation of water, energy and resource efficiency measures during the construction and operational phases, prior to the commencement of development.
- Approval of a detailed hard and soft landscaping scheme plan including replacement tree planting prior to the commencement of development
- Approval of a Landscape Management Plan prior to the commencement of development
- Conditions as may be recommended by Place Services – Ecology
- Approval of details for waste collection as identified by Waste Services
- Approval of a detailed acoustic mitigation report prior to the commencement of development
- Controls over timing of demolition and construction works
- Agreement of a Construction Method Statement prior to the commencement of development
- No burning of demolition or construction waste
- Approval of a detailed strategy for the disposal of surface water prior to the commencement of development
- Approval of details for the implementation, maintenance and management of the approved strategy for the disposal of surface water prior to the commencement of development
- Submission for approval of a surface water drainage verification report, within 28 days of practical completion of the last dwelling or unit.
- Approval of a Construction Surface Water Management Plan prior to the commencement of development.

**(3) And the following informative notes as summarised and those as may be deemed necessary:**

- Proactive working statement
- SCC Highways notes
- Notes in relation to land contamination
- Anglian Water informatives
- LLFA informatives

**(4) That in the event of the Planning obligations or requirements referred to in Resolution (1) above not being secured and/or not secured within 6 months that the Chief Planning Officer be authorised to refuse the application on appropriate ground**