



## Appeal Decision

Inquiry held on 8-11 February 2022

Site visit made on 10 February 2022

**by S Watson BA (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5<sup>th</sup> April 2022**

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### **Appeal Ref: APP/A0665/W/21/3284077**

### **Former Royal British Legion Services Club, Hooton Road, Willaston, Neston, CH64 1SJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by McCarthy and Stone Retirement Lifestyles Ltd against the decision of Cheshire West and Chester Council.
  - The application Ref 20/03141/FUL, dated 28 August 2020, was refused by notice dated 15 September 2021.
  - The development proposed is the erection of retirement living housing (category II type accommodation) with associated communal facilities, landscaping and car parking, following demolition of existing building/structures (amended scheme following refusal of application 18/01252/FUL).
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### **Decision**

1. The appeal is allowed and planning permission is granted for the erection of retirement living housing (category II type accommodation) with associated communal facilities, landscaping and car parking, following demolition of existing building/structures (amended scheme following refusal of application 18/01252/FUL) at the former Royal British Legion Services Club, Neston, CH64 1SJ in accordance with the terms of the application, Ref 20/03141/FUL, dated 28 August 2020, and the plans submitted with it, subject to the conditions in the attached schedule.

### **Preliminary Matters**

2. Reasons 3-6 of the decision notice relate to affordable housing; open space, sport and recreation; loss of a designated private open space sport facility; and the provision of healthcare services. The Council did not defend these reasons for refusal because after the decision notice was issued, these matters were resolved, following the submission of viability information and by agreed levels of financial contributions.

### **Main Issues**

3. The main issues are (i) the effect of the proposed development upon the character and appearance of the area and (ii) the effect upon the living conditions of the occupiers of neighbouring properties with particular regard to outlook.

## Reasons

### *Character and Appearance*

4. The site is a former bowling club on Hooton Road which contains a single storey building. There is a car park to the front of the site and an overgrown grassed area to the rear with trees and shrubs on the boundaries. In the vicinity of the site, Hooton Road is characterised by suburban two storey residential development. Willaston village centre is very close to the appeal site where an eclectic mix of buildings are found of various design, size and age. There is no dominant style in the general area.
5. The proposed flats would be outside of the village core and would be housed within a single, two-storey building. I accept that it would have a large footprint and extend a long way back into the site. There are no other buildings in the vicinity which extend so far back into the site as a single structure. In this respect, the proposed building would be somewhat different to the houses on Old Farm Close and Old Vicarage Road.
6. Nevertheless, the dwellings adjacent to the proposed scheme, on Old Farm Close are very close together and are mostly arranged in terraces in groups of three and more. The gaps between these buildings are very narrow and from some viewpoints from Hooton Road, impossible to see, due to the staggered layout of the houses. Due to the closeness of these existing dwellings, the appeal building would not be very visible from Old Farm Close.
7. The dwellings on Old Vicarage Road are more spaced out than they are on Old Farm Close. Whilst the proposed building would be visible between these dwellings, it would not be seen all at once as the existing dwellings would partially screen it. Furthermore, there are a few mature trees on the boundary of the site which would further break up the appearance of the proposed building. Consequently, the scale and massing of it would not be dominant or intrusive within the street-scene of Old Vicarage Road.
8. The front elevation of the proposed flats would be broken up by set-backs, gables and contrasting facing materials of brick and render. I appreciate that the building would be elevated from the level of the highway on Hooton Road. However, the level difference would not be so significant as to result in the dominance of the building upon the street-scene. Furthermore, the proposed building would be set back some distance from the edge of the highway behind the car parking area.
9. There would be views down one side of the building from the access off Hooton Road but the view would be mostly limited to the top element of the T shape. Furthermore, this view would only be glimpsed from a very short section of the street.
10. I heard the Council's concern that the built form would be continuously experienced from the start of Hooton Road when leaving the village all the way down Old Vicarage Road. However, the visibility of the building would be broken up by surrounding development. In any event, it is not unusual in built up areas to see buildings behind others. Furthermore, the proposed height of the building would be two storeys which would be consistent with its surroundings.

11. The Council referred to a previous appeal decision relating to the site<sup>1</sup>. In that decision, the Inspector referred to the nearby Cannell Court flats which he said served to confirm the incongruous nature of buildings of the scale of the previous scheme. However, the current appeal scheme has been significantly amended since that decision, including by a reduction in height. Furthermore, the appeal proposal is an entirely different design to that of the Cannell Court flats.
12. The proposed materials would be predominantly a red multi-brick and cream render with a grey tiled roof. Such materials would not be out of keeping with the mixture of facing materials and concrete tiles displayed on the houses on the adjoining roads.
13. In respect of trees, no category A or B trees are proposed to be removed. The removal of these trees is not considered by the Council to be harmful to visual amenity. The landscaping plan submitted shows replacement tree planting which would mitigate the loss of the existing trees. Retained trees would be protected during construction. Therefore, there would be no unacceptable loss of trees.
14. In summary, the proposed development would not be dominant in the street scene. It would be of an appropriate scale, height, massing and layout to its surroundings and it would be constructed in materials sympathetic to those used in the vicinity of the site. The proposal would be attractive and it would maintain a strong sense of place.
15. I therefore conclude that the proposed building would not harm the character and appearance of the area. Consequently, I find no conflict with Policies STRAT8 and ENV 6 of the Cheshire West and Chester Local Plan (Part One) Strategic Policies 2015 (LP Part One) or Policies R1 and DM3 of the Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies 2019 (LP Part Two). In combination, and amongst other matters, these policies seek to ensure that development respects the local character of an area, including through the use of layout, scale, height, massing, design and materials. Neither do I find conflict with Policy R1 of the LP Part Two which seeks that development accords with STRAT8.
16. Furthermore, I find no conflict with Paragraph 130 of the National Planning Policy Framework (the Framework) which indicates that planning decisions should ensure that developments are visually attractive.

### **Living Conditions**

17. The Council alleges harm, in terms of outlook, to the occupiers of 20 Hooton Road, 14-16 Vicarage Road and 2-5 Old Farm Close, the gardens of which all adjoin the appeal site. Neighbours also raised concerns in relation to privacy and loss of light although the Council does not allege harm in these respects.
18. The explanatory text to Policy DM2 of the Part Two LP indicates that new development should have regard to the residential amenities achieved within habitable rooms and outdoor private amenity space of neighbouring properties. It says there should normally be a minimum distance of 21 metres between facing windows of main habitable rooms and 13 metres between windows of main habitable rooms and blank walls. It also says that other considerations,

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<sup>1</sup> APP/A0665/W/19/3220775

including separation distances in the immediate surroundings, and the orientation and heights of land and buildings, will also be taken into account.

19. The rear habitable room windows of 14-16 Vicarage Road would face an elevation with only two small windows which can be obscurely glazed as they are not principal windows. Therefore, this elevation can be considered to be a blank elevation where the 13m distance applies. The distance between the proposed elevation and the facing windows of these properties would range between around 21m and 23.9m. This is far in excess of the 13m guideline.
20. The rear habitable room windows of 2-4 Old Farm Close would face an elevation with only two small windows which can be obscurely glazed as they are not principal windows. Therefore, this elevation can be considered to be a blank elevation where the 13m distance applies. The distance between the proposed elevation and the facing windows of these properties would range between about 16.5m and 17.5m. This is in excess of the guideline. The main habitable room windows of 5 Old Farm Close would be some 31.7m from the facing main habitable room windows of the proposed building which is far in excess of the guideline.
21. The two-storey elevations that would face the habitable room windows of these existing properties would be far wider than a detached or a semi-detached house. The explanatory text to Policy DM2, whilst not necessarily a closed list, gives examples where other considerations would be taken into account. It does not specifically mention wide elevations such as flatted buildings or even terraced houses. Nevertheless, the excess proposed distance between the elevations over and above the guideline distances, would compensate for the lack of physical breaks in the proposed building. Furthermore, the proposed building has hipped roofs on the part facing Old Farm Close where dwellings are closest to it. This roof form further helps to mitigate the impact as the roof would recede away from the facing windows.
22. I appreciate that the rear gardens to the houses on Old Farm Close are short but this does not affect the distance between elevations and I have not had any policies drawn to my attention that provide guidelines in respect of distances between new residential development and rear garden boundaries. Cannell Court, a two and a half storey development, is on the other side of Old Farm Close but whilst it is another building which is bigger than the surrounding dwellings, I do not consider that the appeal proposal, together with the existing building at Cannell Court would lead to an unacceptable sense of enclosure for the residents of Old Farm Close.
23. There would be Juliette balconies on the first-floor windows of the elevation facing the rear of dwellings on Old Farm Close. However, these are not true balconies as they cannot be stood on and they would be constructed of grey glass which would help to obscure views from the lower parts of the French doors. Moreover, they would be in excess of 31m from the rear windows of any house on Old Farm Close which greatly exceeds the 21m guideline for facing habitable room windows. They would also be some 26m from the garden boundaries of houses on Old Farm Close<sup>2</sup>. For these reasons, there would be no unacceptable overlooking of gardens or rooms within dwellings of the houses on Old Farm Close.

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<sup>2</sup> P47 Appellant's Design Proof of Evidence

24. The outlook from the gardens and the windows of the houses on Old Farm Close and Old Vicarage Road would become more enclosed but not to such an extent that would unacceptably harm the living conditions of the occupiers of those properties. It is not unusual to have other residential properties at the end of a garden and the Council accepts that the proposal meets the minimum distance figures contained in the explanatory text of Policy DM2.
25. Number 20 Hooton Road is next door to the appeal site. At its closest point, the flats would be about 4m from the side boundary to this house. At this point, the ground level of the appeal site would be somewhat raised so that the floor level of the building would be about 1.7m higher than at the kerbside. Nevertheless, the actual ridge height of the proposed building, at this end of the site, is shown on the submitted Context Elevations, not to be noticeably higher than the ridge of 20 Hooton Road.
26. Furthermore, there is an existing 1.5 storey extension to the side of 20 Hooton Road which projects a considerable distance to the rear of this property. There are no clear glazed windows in the side of this extension facing the appeal site. This extension is a significant structure which, together with the main dwelling, wraps around the patio area to the rear of the house and the extension would provide a significant barrier between the upper part of the T shape of the proposed building and the patio of No 20. I appreciate that the proposed building would be seen above the extension from the patio but I consider that there is adequate distance between the patio and the proposed building to avoid an undue sense of enclosure. In addition, there would not be an unacceptable loss of sunlight to the patio as the patio is south facing. Any additional loss of sunlight to the patio in the evenings would be minor as the extension itself will already cast some shadow.
27. There would be several first-floor windows, including Juliette balconies, facing the garden of 20 Hooton Road from the lower part of the T shape. However, these windows would be set some distance from the garden boundary with No 20. The appellant's Design Proof of Evidence (p47) confirms that all windows on the lower part of the T are 18-19m from garden boundaries which I consider to be acceptable. I accept that there would be some overlooking of the garden from these windows but it would not be close overlooking and it is normal for houses in suburban areas to have some overlooking of their gardens from neighbouring properties. For example, the garden is already overlooked from windows of adjoining properties on Old Vicarage Road.
28. I conclude that the proposed development would not harm the living conditions of adjoining occupiers. I find no conflict with LP Part One Policy SOC 5 or LP Part Two Policy DM2. In combination these policies seek to ensure that development does not harm residential amenity. Neither do I find conflict with Paragraph 130(f) of the Framework which indicates that development should create a high standard of amenity for existing and future users.

### **Other Matters**

29. Interested parties have raised concerns in respect of highway safety in relation to the site access, car parking and the turning of vehicles.
30. In respect of parking, there is no Council standard for retirement accommodation although sheltered accommodation would require 22 spaces for the amount of accommodation provided. The proposal would provide 30 spaces

which equates to one space per dwelling. The site is conveniently located near to shops and other services in Willaston Village which can be reached on foot and the evidence before me indicates that car ownership is low in retirement living developments.

31. In respect of the access, there would be some improvements to visibility to be secured by a condition. Furthermore, the proposed development would generate less traffic than that associated with the former Services Club during both the morning and evening peak hours and even during the entire day. I note the comments from interested parties that the access is a shared surface with pedestrians but that is not particularly unusual. I heard from interested parties at the Inquiry that the 20mph zone should be extended from just before the site access when leaving Willaston Village to beyond the site access. However, I have no substantive evidence to justify why the development would result in a need for this. In any event, the 20mph zone is so close to the site access that traffic would also be calmed in the vicinity of the site due to the transition in vehicle speed.
32. The Local Highway Authority raised no objection to the proposed development and I have no technical evidence that the parking, turning or access would be sub-standard. Therefore, there would be no harm to highway safety.
33. Interested parties have expressed concern in respect of the pressure that additional residents might place on healthcare. However, the planning obligation would secure a financial contribution towards enhancements to local NHS primary healthcare facilities.
34. Concerns have been expressed by interested parties in respect of surface water drainage. However, the drainage strategy submitted by the appellant has been assessed by the Lead Local Flood Authority and United Utilities and there were no objections. A drainage condition would ensure the satisfactory drainage of the site.
35. In respect of biodiversity, the appellant submitted an assessment to calculate whether or not there would be a net gain in biodiversity using the Defra biodiversity metric. This showed a 12% net gain in biodiversity. A condition to require a Biodiversity Habitat Management Plan together with details of reasonable avoidance and enhancement measures to protect birds, reptiles, bats and hedgehogs can secure mitigation alongside the provision of landscaping.
36. There was extensive discussion at the Inquiry about the need for the development but as I have found the development acceptable in relation to the two main issues, a demonstrable need for the proposed development is not required to justify granting planning permission.
37. A S.106 agreement has been completed by the parties. The Council has provided a CIL Regulation Compliance Statement which sets out the policy basis for each of the covenants and their compliance with Regulation 122 of the CIL Regulations.
38. The key provisions of the covenants are the provision of financial contributions towards:- the enhancement of existing bowling green facilities in the Council's administrative area; enhancements/upgrading and improvements at NHS health facilities providing primary and community health care in the ward of

Willaston, Thornton and Burton and; the enhancement of recreation facilities at local sites.

39. I am satisfied that each of the covenants would be supported by policy and would meet the tests for obligations set by Regulation 122 and echoed by the Framework in that they would be necessary to make the development acceptable in planning terms, would be directly related to the development, and would be fairly and reasonably related to it in scale and kind. I have taken these covenants into account in my consideration of the appeal.

### **Conditions**

40. The Council's suggested conditions were discussed at the Inquiry and I have considered them in accordance with the Planning Practice Guidance. In addition to the standard implementation condition it is necessary, in the interests of precision, to define the plans with which the scheme should accord. Conditions in relation to external materials, landscaping, tree protection, boundary treatment, site levels and refuse storage are necessary in the interest of visual amenity. A surface water drainage system is required to avoid flooding. Conditions relating to construction management and times are necessary in the interests of highway safety and living conditions. Conditions in relation to the proposed access and car parking is required in the interests of highway safety and visual amenity. It is necessary to undertake construction and demolition in accordance with the Preliminary Ecological Appraisal; to require and implement a Biodiversity Management Plan; and to require mitigations on the removal of vegetation in the interest of biodiversity and to protect wildlife. A condition in respect of contamination is necessary in the interest of public health. Conditions are imposed in relation to external lighting, glazing and outdoor amenity space in the interests of living conditions. A condition restricting the age of the occupants is necessary as the appeal was considered on that basis. It is necessary to construct the dwellings to reduce water consumption and carbon dioxide emissions in the interest of mitigating climate change.
41. Electric vehicle charging points are required in the interest of reducing carbon emissions. Since the Inquiry closed, Building Regulations in respect of Electric Vehicle Charging Points have changed. I have written to both parties in respect of amended wording, bearing in mind that conditions requiring compliance with other regulatory regimes will not meet the test of necessity. The Council has objected to the amended wording. Whilst it is likely that the Building Regulations would require more charging points than required by the condition, I have retained the condition in the original form so that the Local Planning Authority can control the design of at least 4 of them, taking into account its *Supplementary Planning Document, Parking Standards*.

### **Conclusion**

42. For the above reasons I find that the development would be acceptable and the appeal is allowed subject to the conditions in the schedule.

*S Watson*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Giles Cannock QC, Kings Chambers

Called:

Chris Butt MRTPI

### FOR THE LOCAL PLANNING AUTHORITY:

Mark Howells of Counsel, Kings Chambers

Called:

Robert Lester BA(Hons) MSc, Senior Planning Officer

## **Roundtable Discussion on Character and Appearance and Living Conditions**

### FOR THE APPELLANT

Kenneth Brown BSc(Hons) MA MRTPI, Managing Director, Townscape Solutions

### FOR THE COUNCIL

Robert Lester BA(Hons) MSc, Senior Planning Officer

### INTERESTED PARTIES

Iain Henrys – local resident

Glenn Ayres – local resident

Mrs Ayres – local resident

Geoff Mitchel - local resident

Councillor Myles Hogg - Willaston, Hooton, Thornton and Burton Ward Councillor

Barry Vowles – Willaston Residents' and Countryside Society

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: NW 2537-3.4-AC- 01 Rev B; NW 2537-3.4-AC -02 Rev B; NW 2537-3.4-AC-03-1 Rev B; NW 2537-3.4-AC-03-2 Rev B; NW 2537-3.4-AC-04 Rev B; NW 2537-3.4-AC-05.1 Rev B; NW 2537-3.4-AC-05.2 Rev B; NW 2537-3.4-AC-06 Rev A; NW 2537-3.4-AC-07 Rev B; NW 2537-3.4-AC-08 Rev B; NW 2537-3.4-AC-14; NW 2537-3.LA-001 Rev D; NW-2537-3-LA-002 Rev D; 9909-KC-XX-YTREE-TPP02 Rev E; McC&St-HR-W-002 Rev F; McC&St-HR-W-003 Rev K.
- 3) Prior to digging any foundations, a detailed site drainage scheme, to be based upon Proposed Private Drainage Layout drawing No McC&St-HR-W-003 Rev K, shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details before the first occupation of any dwelling. The drainage system shall be managed and maintained in accordance with the approved scheme thereafter.
- 4) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by the Local Planning Authority. The Plan shall provide for:
  - a demolition method statement
  - construction traffic and the parking of vehicles of site operatives and visitors;
  - storage of plant and materials used in constructing the development;
  - vehicle cleaning and wheel washing facilities;
  - measures to control the emission of dust and dirt during construction, including the management of any deposits of debris on the highway;
  - details of piling or other subsurface ground vibration techniques.The approved Construction Method Statement shall be adhered to throughout the construction period.
- 5) Before the commencement of the development, details of the proposed alterations to the site access, including the detailed design of the access and visibility splays, shall be submitted to and approved in writing by the local planning authority. The access shall be formed in accordance with the approved details before the first occupation of any dwelling.
- 6) Prior to the construction of the car parking area, details of the provision of two car parking spaces for people with disabilities and of four electric vehicle charging points, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented and made available for use prior to the first occupation of any dwelling and shall be maintained thereafter.
- 7) The demolition and construction phases of the development hereby approved shall be carried out in full accordance with the precautionary

measures detailed in the Preliminary Ecological Appraisal submitted with the planning application.

- 8) Prior to the removal of any vegetation or the demolition of buildings between 1<sup>st</sup> March and 31<sup>st</sup> July in any year, a detailed survey shall be carried out to check for nesting birds to be carried out by a qualified ecologist. Where nests are found in any building, hedgerow, tree, scrub or other habitat to be removed, a 4m exclusion zone shall be left around the nest until breeding is complete. The completion of breeding shall be confirmed in writing to the Local Planning Authority, by a qualified ecologist before the exclusion zone is removed.
- 9) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 10) All the trees shown on the approved landscaping plan as "to be retained" and any trees whose canopies overhang the site shall be protected by strong fencing, the location and type to be previously approved in writing by the Local Planning Authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the Local Planning Authority.
- 11) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the Local Planning Authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures and a timescale and a verification report shall be submitted to and approved in writing by the Local Planning Authority before the commencement of development.
- 12) Any contamination that is found during the course of construction that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended immediately and a risk assessment carried out and submitted to, and approved in writing by, the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed.
- 13) No development above foundation level shall take place until samples of all external facing materials have been submitted to and approved by the

- Local Planning Authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 14) No development beyond demolition and site clearance shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels.
  - 15) Prior to the first occupation of the development details of the siting, design and appearance of the boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the first occupation of the development.
  - 16) No external lighting shall be installed until full details (including siting, design, height, level of illumination, orientation and light spillage) have been submitted to and approved in writing by the Local Planning Authority. The lighting shall be implemented in strict accordance with the approved details and retained in that manner thereafter.
  - 17) The building hereby permitted shall not be occupied until the south facing windows at apartments 17 and 18; the west facing windows in apartments 23 and 24; and the east facing windows in apartments 28 and 29, as shown on the approved plans, have been fitted with a scheme of obscured glazing. Details of the type and extent/height of obscured glazing shall be submitted to and approved in writing by the Local Planning Authority before the windows are installed and once installed the obscured glazing shall be retained thereafter.
  - 18) The outdoor amenity space, as indicated on the approved plans, shall be fully implemented and made available for use prior to the first occupation of any of the dwellings hereby approved and shall be retained thereafter.
  - 19) Each unit of accommodation shall be occupied only by persons aged 55 years or over.
  - 20) Prior to the first occupation of the development, details of the siting, design and appearance of the refuse storage area shall be submitted to and approved in writing by the Local Planning Authority. The details shall be implemented as approved and made available for use prior to the first occupation of the development. The refuse storage facilities shall be retained at all times thereafter.
  - 21) A Biodiversity Habitat Management Plan together with details of reasonable avoidance and enhancement measures to protect birds, reptiles, bats and hedgehogs, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The development shall be completed and maintained in accordance with the approved details.
  - 22) Prior to the first occupation of the development the vehicle turning areas and parking spaces as shown on the approved plans shall be provided and made available for use thereafter.
  - 23) The hours of construction, including deliveries to and from the site, shall only be permitted between 08:00 and 18:00 Mondays to Fridays; 08:00

and 13:00 on Saturdays and at no time on Sundays or Bank/Public Holidays.

- 24) The flats hereby approved shall be constructed/plumbed in such a way to meet the National Housing Standard for water consumption of 110 litres per person per day and shall be retained as such thereafter.
- 25) The development hereby approved shall be designed and constructed to achieve a reduction in carbon dioxide emissions of at least 19% against the Target Emission Rate of the 2013 Building Regulations (Part L).