

# Planning Committee

## Supplemental Agenda

<b>Meeting date</b>	7 <sup>th</sup> December 2023
<b>Officer</b>	Thomas Frankland
<b>Agenda Item</b>	18 North Road, Stevenage, Herts, SG1 4AL
<b>Proposal</b>	Outline planning permission for the demolition of existing dwellinghouse and erection of an up to 76 bedroom care home (Use Class C2). Detailed design of access with appearance, landscaping, layout and scale as reserved matters.
<b>Reference</b>	23/00107/FPM
<b>ADDENDUM INFORMATION</b>	

### **Late Representations – 4 Daltry Road**

Members will be aware that 4 Daltry Road, the neighbouring property immediately to the north of the site, is home to a young adult with severe and complex disabilities (hereinafter referred to as “A”). On 4<sup>th</sup> December, the Council received representations made on A’s behalf by her court-appointed deputy, in opposition to the application. This addendum summarises those representations and sets out officers’ advice regarding the weight that they should be given in the assessment of the application.

The representations are principally concerned with the nature of A’s disabilities and the particular impacts that the development would have on her as a result of those disabilities. Statements from a number of the professionals involved in her care are included. The full representations are enclosed as Appendices 1 and 2.

### Background and Care Needs

A sustained a brain injury at birth, which resulted in a diagnosis of Dystonic Cerebral Palsy level IV, affecting all four limbs. She also has difficulties with executive function, language and feeding, as well as convergent squint and neuropathic bowel and bladder.

A’s cerebral palsy presents as extremely limited global and fine motor control, and involuntary full-body writhing motions. Her severe movement disorder results in uncoordinated movements of her arms and legs, involuntary movements, joint contractures, spasticity and muscle spasms. She requires the use of a powered wheelchair for all of her mobility, which she controls by using her foot to manipulate a joystick. She has extremely limited ability to use her arms or hands for functional activities and can only achieve a standing position when supported by two people.

A’s difficulties with executive function mean she has problems with areas such as memory, processing and fatigue. She also has impaired concentration, impulsivity and hyperactivity, and is extremely sensitive to loud and sudden noises, which cause her increased pain and further reductions in muscle control. She is non-verbal and requires the use of specialist devices to communicate, again controlled by her foot.

A lives with her family at 4 Daltry Road, which was purchased on her behalf in 2007. At the time of the purchase, it was considered to be the only property within a 50-mile radius that was both suitable for her needs at that time and capable of being adapted to meet her future needs. The property has since been adapted by way of single storey extensions to both sides and the rear, which provide specialist

accommodation in the form of a hydrotherapy pool, changing room, bedroom, physiotherapy room and assisted bathroom.

A's care is provided at 4 Daltry Road. In addition to the assistance of her family, she is reliant on an around-the-clock, 2:1 care package with a large number of professionals supporting her. This includes care workers, a physiotherapist, occupational therapist, speech and language therapist, psychologist, and care manager, who all have face-to-face engagement with A and attend the property regularly. They will generally attend to A in her room, which is a multi-functional dayroom, therapy room, changing room, activity room and bedroom. All personal and intimate care is carried out in this room and the adjoining assisted bathroom. Consequently, A's case manager estimates that A spends 90% of her time in this room.

### Impact

The impacts that the proposed development would have on A is set out in detail in the statements from the various members of her care team. These impacts can be put into three categories: loss of natural light; loss of privacy; and noise.

Dealing with these in order, the loss of light to A's room would primarily affect her in the same way that it would any other person i.e. by making the room appear dark, dull and unappealing. This would be exacerbated by the fact that she spends such a significant amount of time in the room and there would also be an additional impact which would be highly specific to A, which is that the loss of light would make using the various devices she uses to communicate more difficult.

In the main report on the application, it is concluded that the loss of light to A's room would result in unacceptable living conditions for the occupiers of 4 Daltry Road. This conclusion was reached in view of the way in which the room is used, rather than the particular impacts that the loss of light would have on A as an individual. In other words, the impact would be equally unacceptable for anyone using the room in a similar way, for example an elderly person with limited mobility. The only truly specific impact resulting from A's circumstances arises as a result of her use of specialist communication devices and whilst this does perhaps exacerbate the issue further, it is not sufficient to materially alter officers' view.

Turning to privacy, the potential impact is that A would be required to keep the curtains drawn in her room for significant periods of time, owing to the extent of the activities that take place there. These include typical activities such as changing but also activities more specific to A's condition such as physiotherapy.

Again, officer's conclusions on this issue remain unchanged from the main report, for the reason that clear and unobstructed views into a neighbour's private living space would be unacceptable regardless of the intensity of the use of that particular room. In this case, officers view is that those views simply wouldn't exist, certainly not to the extent that would be materially harmful under ordinary circumstances or these more particular circumstances. Views over 4 Daltry Road would be limited to the front driveway or the far end of the rear garden even when views from very oblique angles are taken into account. The one potential exception being the windows in the flank gable end (which are shown on the plans but not on the elevations) but as explained in the main report, these could be fitted with obscure glass and fixed shut if necessary.

Turning finally to noise, the development would have a particular impact on A because of her sensitivities to loud and sudden noises, which trigger a strong startle reflex and excessive involuntary movements. Due to the strength of her muscles, these movements could be harmful both to A and those attending to her. They would also result in difficulty eating (due to a risk of choking), as well as using devices to move and communicate, and would disrupt physical therapy sessions. Continuous exposure to noises of this sort, for example during the construction phase of the development, would have a very significant impact on A's health and wellbeing.

In the main report, officers conclude that the impacts of noise from demolition and construction, as well as the ongoing noise from the use once operational, would be acceptable. Under normal circumstances, officers would maintain this view, since there is nothing particularly exceptional about the development works and the proposed use is not an inherently noisy one. However, it is clear that A's personal

circumstances are such that this activity, which would otherwise be quite ordinary, would have a significant adverse impact her living conditions. The question is then whether A's personal circumstances and the associated impacts of the development form a material consideration in the assessment of the application, since personal circumstances are typically immaterial.

### Case Law

It is a widely-held belief that personal circumstances are not material to the determination of planning applications and as a general rule, this is true. Planning is concerned with the use of land in the public interest and the starting point for the assessment of any application is the development plan, which rarely, if ever, takes account of the circumstances of individuals. However, such circumstances can and on occasion should be held to be material.

In order to be material, the ultimate test for any consideration is whether it serves a planning purpose, where a "planning purpose" is one which relates to the character of the use of land, per Viscount Dilhorne in *Newbury District Council v. Secretary of State for the Environment* [1981] A.C. 578. It is well established that the personal circumstances of an individual may satisfy this test, as set out by Lord Scarman in *Westminster City Council v Great Portland Estates plc* [1985] AC 661:

*"Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of our environment the human factor. The human factor is always present, of course, indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance. But such circumstances, when they arise, fall to be considered not as a general rule but as exceptions to a general rule to be met in special cases. If a planning authority is to give effect to them, a specific case has to be made and the planning authority must give reasons for accepting it. It follows that, though the existence of such cases may be mentioned in a plan, this will only be necessary where it is prudent to emphasise that, notwithstanding the general policy, exceptions cannot be wholly excluded from consideration in the administration of planning control."*

The same point was made by Ouseley J in the more recent case of *Basildon District Council v The Secretary of State for the Environment, Transport and the Regions* [2001] JPL 1184:

*"From that analysis I conclude, first, that quite apart from any considerations of common humanity, the needs of these particular gypsy families were a material consideration because they had a need for this development in this location. Those personal circumstances entitled the Secretary of State to have regard to them as relevant to the decision he had to make in the public interest about the use of the land for the stationing of residential caravans. Their particular need for stability in the interest of the education of the younger children can also reasonably be seen as an aspect of the wider land use interest in the provision of gypsy sites, which interest includes the need for stable educational opportunities. There is also a public interest in the planning system providing stable educational opportunities for gypsy families, including these gypsy families."*

In summarising the relevance of these passages in *South Bucks District Council v Porter* [2003] 2 AC 558, Lord Bingham states:

*"Thus the Secretary of State was entitled to have regard to the personal circumstances of the Gypsies"*

*South Bucks District Council v Porter* [2004] UKHL 33 is also informative on the issue of personal circumstances, albeit the materiality of such circumstances was not in itself at stake in that judgement. As Lord Brown states:

*"To my mind the inspector's reasoning was both clear and ample. Here was a woman of 62 in serious ill-health with a rooted fear of being put into permanent housing, with no alternative site to go to, whose displacement would imperil her continuing medical treatment and probably worsen her condition. All of this was fully explained in the decision letter (and, of course, described more*

*fully still in the reports produced in evidence at the public inquiry). Should she be dispossessed from the site onto the roadside or should she be granted a limited personal planning permission? The inspector thought the latter, taking the view that Mrs Porter's "very special circumstances" "clearly outweighed" the environmental harm involved. Not everyone would have reached the same decision but there is no mystery as to what moved the inspector."*

In summary, personal circumstances may be material to the determination of planning applications, provided that they serve a planning purpose relating to the character of the use of land. In particular, the impact of development on the health of an individual and their prospects of avoiding those impacts may be of relevance but only in special cases where the impacts would be exceptional. In having regard to such circumstances, it is incumbent on a local planning authority to make a specific case and give reasons for accepting them, with the interests of the public remaining as the overriding consideration.

### Applying the Case Law

In this case, A's personal circumstances are clearly inextricably linked with the character of the use of 4 Daltry Road. It was initially purchased and then subsequently extended and adapted specifically to meet her needs, and the particular way in which it is now used is dictated by her care. This use is not only of benefit to A and her family but is also of value to the local community, since it enables her to live at home as part of that community rather than in an institution. As such, officers are satisfied that consideration of A's personal circumstances serves a planning purpose.

From the statements provided by A's care team, there can be little doubt as to the seriousness or complexity of her disabilities, or her need to be provided with highly specialised care and accommodation. The evidence presented to officers also suggests that were the development to go ahead, it would compromise this care by affecting her physiotherapy and speech therapy sessions, as well as her ability to eat, sleep, and carry out other day-to-day tasks which are essential for her dignity and the already limited degree of independence she currently enjoys. These impacts would be most acute during the construction phase but could persist through the operational phase and would have serious and long-lasting effects on her health and wellbeing. Officers find this evidence to be compelling.

The prospects of A being able to avoid these impacts are extremely limited. Her room, which is located directly adjacent to the boundary shared with the application site, is the only space at the property which has been adapted to meet her needs. It is also highly unlikely that there are any other suitable properties within a reasonable distance, considering the availability of such properties when 4 Daltry Road was initially purchased and how extensively it has been adapted since.

It follows that A has a pressing need to continue her very specific use of 4 Daltry Road and could not reasonably carry out the same use elsewhere. The proposed development would effectively prohibit that use by imposing intolerable and unavoidable living conditions on A, which would be to the detriment of both her and by extension, the wider community.

A's circumstances are clearly exceptional. Dystonic Cerebral Palsy affects only around 24,000 people across the UK (representing less than 0.0004% of the total population) and the proportion of those who happen to live adjacent to the site of proposed major development is likely to be vanishingly small. A's living arrangements are the direct consequence of her disabilities and the particular impacts that she would suffer as a result of the proposed development would not be experienced by those without the same disabilities.

In light of the above, officers consider A's personal circumstances to be material to the assessment of the application and further consider that they should be afforded great weight. In contrast to the cases referenced above, this weight is not carried in favour of development on her own land but against the development of adjacent land. Nonetheless, the same principles apply and the relevant tests have been satisfied. A's personal circumstances have resulted in a particular use of 4 Daltry Road which is of significant value to the character of the community and the proposed development would compromise this use. It is by no means unreasonable to balance this against the potential benefits of the proposal, which are themselves considerable.

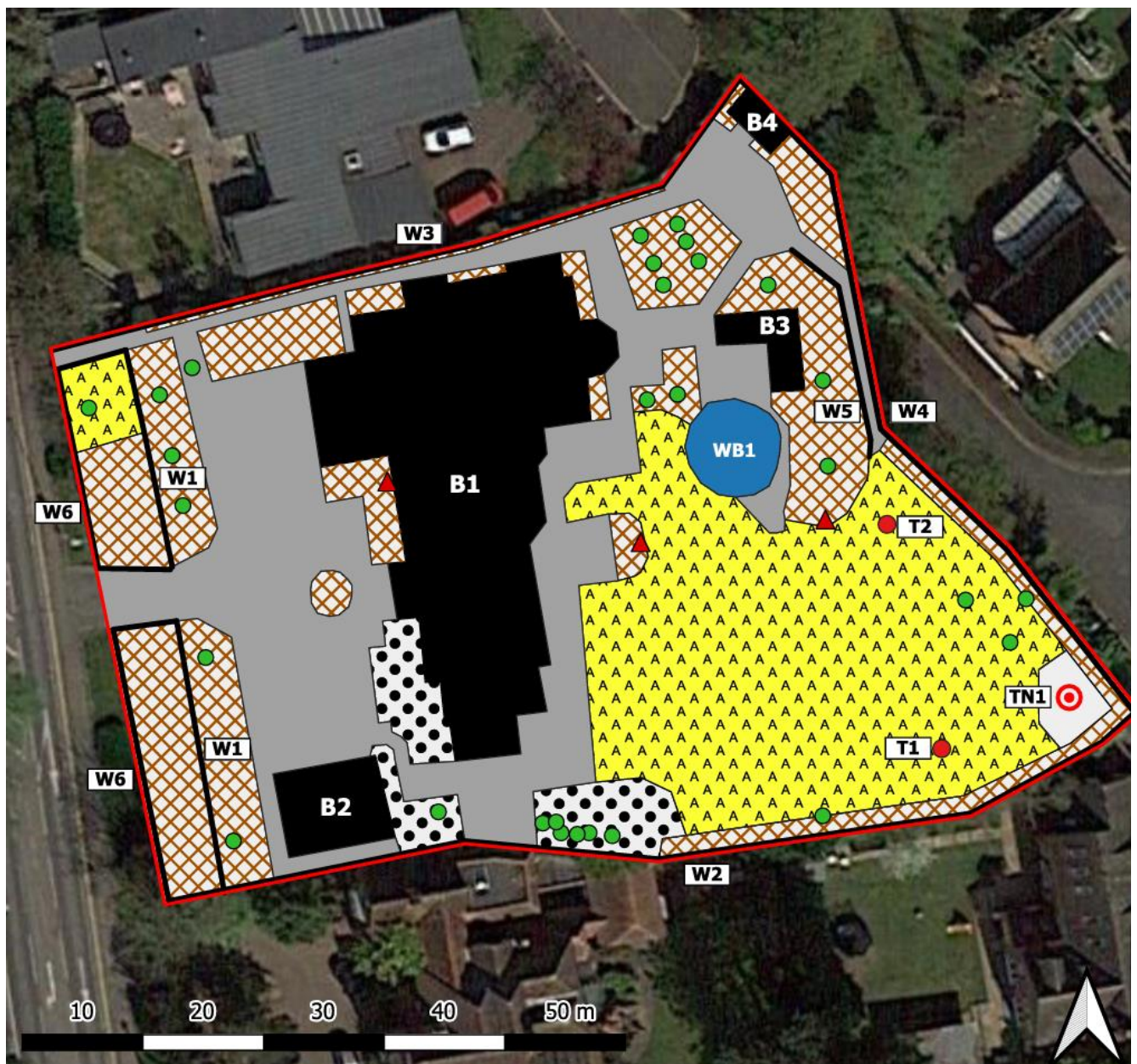
Consideration of A's personal circumstances therefore reinforces the recommendation to refuse planning permission for the proposal as set out in officers' main report. It is recommended that this be set out as an additional reason for refusal, as follows:

2. The proposed development, by reason of its scale and siting, would cause excessive noise throughout the construction and operational phases, resulting in intolerable living conditions for the occupants of 4 Daltry Road. The proposal is therefore contrary to Policies GD1 and FP7 of the Stevenage Borough Local Plan 2019 and the aims and objectives of chapter 12 of the NPPF 2023.

## Ecology

Officers are still awaiting updated advice from Herts and Middlesex Wildlife Trust regarding the submitted bat surveys, which were submitted part way through the determination period. Given that the application is recommended for refusal, with no prospect of further work being carried out on the application to overcome identified issues, it is necessary for officers to reach a conclusion on the bat surveys in the absence of any further advice.

A plan of the buildings on site is shown below.





The preliminary ecological appraisal, which was submitted at the outset, recommended two nocturnal bat surveys of building B1, three surveys of B2, and one survey of B4. Upon the identification of a roost, it was recommended that one further survey of B1 and two further surveys of B4 be carried out. All of the surveys were required to be carried out between May and September, with at least one survey of each building being carried out between May and August.

The submitted bat survey report shows that B1 was surveyed a total of three times, B2 twice, and B4 once. B1 was upgraded because of the discovery of a roost, while B2 was downgraded because internal access was gained (it had initially been assessed as having a high potential for bat roosts because access could not be gained).

Two bat roosts were identified within B1. These are assessed as being non-breeding summer roosts for common pipistrelle. No emergence or re-entry activity was recorded at B2 or B4.

The proposed development would involve the demolition of B1. It would therefore result in the destruction of a bat roost, for which a European Protected Species Licence would be required from Natural England.

As local planning authority, the Council is a competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017. It is therefore necessary to consider whether the applicant has taken appropriate measures to avoid, mitigate and compensate for any negative effects on bats, and whether they would be likely to be granted a licence to carry out the works.

In terms of avoidance, the works affecting the bat roosts i.e. the demolition of B1, would be carried out between October and April to avoid the summer roosting period. Since no hibernation potential was identified on the site, this would minimise the potential for disturbance.

No mitigation is possible because the building must be entirely demolished to facilitate the development.

Compensation would be provided in the form of 1no. bat box attached to a nearby mature tree and 2no. bat bricks within the replacement building. This would ensure a like-for-like replacement of roost types with no net loss of roost sites. Given the proximity of the proposed compensation to the lost roosts, it is considered that the bat population would be able to continue to function as before. These avoidance and compensation measures are therefore considered to be appropriate and should be secured by condition in the event that planning permission is granted.

For a licence to be granted, two tests must be met: first, a licence must not be issued unless there is no satisfactory alternative; and second, it must not be issued unless the action authorised by the licence would not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range. A licence may be granted for reasons of overriding public interest, including those of a social or economic nature. This applies to the current proposal, which would confer significant public benefits through the provision of supported housing.

There is no satisfactory alternative to the granting of a licence because the works affecting the roosts must be carried out to facilitate the development. There is no realistic possibility of the proposal being designed in a way that retains the existing building on the site.

Given the proposed avoidance and compensation measures, officers are satisfied that the destruction of the roosts would not be detrimental to maintaining the species. It is noted that common pipistrelle is the most common species of bat in the UK.

Having regard to all of the above, officers are confident that a licence would be granted by Natural England. It follows that the impact on protected species is not an impediment to the granting of planning permission and there is no conflict with Policy SP12 in this respect.

The submitted bat survey report also recommends a sensitive lighting strategy for bats. This should also be secured by condition in the event that planning permission is granted.

## **Flood Risk and Drainage**

Officers received a brief update from the LLFA on 6<sup>th</sup> December. They have advised that the development would likely have an acceptable risk on flood risk, subject to the provision of satisfactory drainage scheme and flood resilience measures. However, firm proposals have yet to be put forward as to the form the drainage system would take.

The reason for this is that in the absence of infiltration testing, it remains unclear whether infiltration would be capable of limiting surface water runoff to greenfield rates. The alternative, should infiltration prove not to be viable, would be to discharge to the surface water sewer on North Road, as the current drainage system on the site is assumed to do. This existing drainage system would need to be replaced but it has yet to be surveyed and it is unclear where it meets the public sewer. Additionally, there is no evidence of agreement to discharge rates from Thames Water.

Furthermore, the current scheme is reliant upon underground tanks for attenuation. This is among the least sustainable drainage system designs, with surface features being preferable.

Having failed to demonstrate a feasible drainage system, it is recommended that flood risk be added to the reasons for refusal, as follows:

3. The applicant has failed to demonstrate that the proposed development would adequately deal with surface water runoff, which could result in increased flood risk to the site itself and elsewhere. The proposal is therefore contrary to Policies FP11 and SP2 of the Stevenage Borough Local Plan 2019 and the aims and objectives of chapter 14 of the NPPF 2023.