

Town and Country Planning Act 1990 (as amended)

Appeal by: Avant Homes Central

An Appeal Against the refusal of Full Planning Permission  
for 74 no. dwellings at land off Moorthorpe Way, Sheffield.

Rebuttal of the evidence of Dr Nicola Rivers

Ecology and Nature Conservation

By

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# 1 Local Wildlife Site Designation

- 1.1 Dr Nicola Rivers, in her evidence to the inquiry on behalf of the Rule 6 Party claims that, site E meets the qualify criteria for being selected as a Local Wildlife Site (LWS).
- 1.2 I have set out in my proof of evidence why the evidence before the inquiry does not support this assertion (see my proof of evidence CD 4.8.1 paragraphs 5.48 – 5. 49). My key criticism of Dr Rivers’ approach is that in order to meet the LWS selection criteria she has had to rely on historical, out of date, data *and* data which has been collected by ‘Owlthorpe Action Group volunteers, [and] *it is not known exactly what survey methodology they used or the botanical ability of the volunteers*’ see (CD4.8.7 paras 26). Such an approach is not scientifically robust.
- 1.3 The Wildlife Trust have published a short guide to Local Wildlife Sites (Appendix 1). On page 2 the document explains how sites are selected ‘*They are identified and selected locally, by partnerships of local authorities nature conservation charities statutory, agencies, ecologists and local nature experts, using robust, scientifically-determined criteria and detailed ecological surveys.*’ The emphasis is that LWS site selection must be robust and scientifically justified.
- 1.4 Dr Rivers approach does not meet these criteria as this data was not based on detailed ecological surveys. Indeed, the detailed ecological surveys that OAG has presented to the inquiry (CD 4.8.7) clearly show that area E does not meet the LWS criteria.
- 1.5 The requirement for LWSs to be identified using robust surveys is set out in the government guidance on the Natural Environment where NPPG at paragraph 013 Reference ID: 8-013-20190721, final sentence it is stated ‘*Selection criteria need to be developed with reference to the standard criteria in the following question, with all sites*

*that meet the relevant criteria (informed by detailed ecological surveys and expertise) then being selected’.*

- 1.6 It should also be noted that any candidate LWS site needs to be considered by the Sheffield City Local Wildlife Site Panel. As is often the case, as described in the NPPG government guidance at paragraph 8-013-20190721 the panel is led by the local planning authority, Sheffield City Council. The Council is not giving evidence on ecological matters as set out in the Statement of Common Ground between the Council and the Appellant (CD4.2). The statement of common ground post-dates the submission of the Wildscapes report (CD4.8.7) and the Council were clearly cognisant of OAG’s claim regarding LWS status of the site E when the SOCG was agreed. The Council does not regard the proposed development as being contrary to policies GE11, 12 or 13.

## 2 Hedgerow Regulations

- 2.1 Dr Rivers has claimed that the hedgerows that will be lost to the development fall under the Hedgerow Regulations 2017 (CD4.8.1.7) (see paragraph 4.12 of Dr Rivers’ proof of evidence (CD4.8.3)). I have presented evidence in my proof which demonstrates that the hedgerows in question do not fall under the remit of the Hedgerow Regulations (paragraph 5.20 CD 4.8.17).
- 2.2 I feel that it is also important to point out that even if the hedgerows were to fall under the Hedgerow Regulations (which they do not) the Regulation are not a barrier to remove *per se* but simply trigger the need for the Regulations to be followed and the application for a ‘*hedgerow removal notice*’. It should also be noted that under regulation 6 1(e) hedgerows can be removed where planning permission has been granted.
- 2.3 Sheffield City Council has confirmed in their letter to the appellant’s agent of 24<sup>th</sup> November 2020 ‘*In relation to the hedgerow, we do not have a specific objection to it’s*

[sic] *loss from an ecological aspect.*' (CD4.8.1.8)

- 2.4 Furthermore, the Owlthorpe Planning and Design Brief (CD5.19) does not require the retention of hedgerows through the site.

### 3 Mitigation Hierarchy

- 3.1 Dr Rivers has also claimed that she cannot see any evidence that the mitigation hierarchy has been followed. I presume that her reference here is to paragraph 175 (a) of the NPPF which states,

*When determining planning applications, local planning authorities should apply the following principles:*

*a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused'.*

- 3.2 Firstly, it is clear that the removal of the hedgerow, and indeed the other effects of the development, cannot be considered as 'significant harm' for the reason set out in my proof of evidence at paragraphs 5.22 – 5.28. Notwithstanding the lack of significant harm, it is clear the development of the site has already been considered in terms of comparative assessment and the judgement reached that it is appropriate for development, so cannot be avoided. The site has been allocated for housing under the UDP and the Core Strategy and this has been confirmed in the 2017 Design and Planning Brief, therefore the unavoidable need for the development has been thoroughly established. Mitigation is not possible for hedgerow 1 as it falls within the footprint of the development. As a last resort compensation is being offer both in the form of creation of new hedgerow within the site and planting new hedgerows as part of the BNG proposal. The BNG proposals also compensate for the loss of other habitats within

the site, namely new woodland and grassland as the BNG payment will be used to introduced conservation into the woodland and make ecological improvements to the grassland adjacent to the site (see below).

3.3 The loss of the hedgerow and other habitats is therefore entirely consistent with para 175 (a) of the NPPF.

3.4 The same principle also applies to the loss of other habitats within the proposed development site. The young woodland and neutral grassland which has developed on the site are secondary habitat which have colonised since the fields ceased to be managed as farmland. The habitats are not unique nor are they particularly diverse and are not irreplaceable. The habitats within the site are not protected by law nor do they meet the site selection criteria for LWS selection. The development does not cause significant ecological harm. Nonetheless mitigation and compensation measures are being offered.

3.5 The government's guidance on the Natural Environment makes it clear that the biodiversity net gain (compensation) complements the mitigation hierarchy (see NPPG paragraph 024 Reference ID: 8-024-20190721).

## 4 Off-site improvements

4.1 Dr Rivers has claimed that the grassland areas adjacent to the development site upon which it is proposed to introduce new management, as part of the biodiversity net gain proposal, are already under positive conservation management (see her proof of evidence paragraph 5.5). The inclusion of these areas as BNG management is therefore not appropriate. While it is the case that some areas of the grassland are included in a current Higher Level Stewardship agreement this agreement does not cover the entire

grassland areas which are proposed to be managed. Furthermore, it is clear the grazing which is part of the HLS agreement is not sufficient to manage the grasslands properly and it is evident that most of the grassland is rank and species poor. The proposed BNG fund will therefore enable ecological improvement of these grassland areas and contrary to Dr Rivers' assertion will provide demonstrable ecological gain.

## 5 OAG alternative development proposal.

5.1 Owlthorpe Action Group has put forward an alternative layout for the proposed development. It should be noted that this alternative proposed by OAG would not demonstrably change the ecological impacts, particularly on grassland when compared against the appeal scheme layout B. Figure 1 show the OAG scheme overlaid on their own ecological survey map of the site.

Figure 1. (over page)



