

APPELLANT'S OPENING SUBMISSIONS

APPEAL BY AVANT HOMES CENTRAL

LAND AT MOOTHORPE WAY, OWLTHORPE, SHEFFIELD

**PLANNING APPEAL REF: APP/J4423/W/20/3258555
LOCAL AUTHORITY REF: 19/03143/FUL**

RICHARD SAGAR

INTRODUCTION

- 1 These opening submissions are made on behalf of the appellant, Avant Homes Central (“the Appellant”), This is an appeal in relation to an application for full planning permission for residential development of land off Moorthorpe Way, Sheffield (the "Site").
- 2 These submissions briefly describe the proposals, the application process, the appeal process to date, the main issues, and the appellant’s position in respect of them.

THE APPLICATION

- 3 The Site is one of three parcels of land that are owned by the Council and form a UDP allocation¹. These will be referred to during the course of the inquiry as parcels C, D and E. The Appellant was selected by the Council as the preferred developer for parcel E (the Site), after the Council reviewed the Appellant's draft layout for both the Site and the remainder of the allocation.
- 4 The application was subsequently made and recommended for approval by a detailed officer report², that carefully and in detail, weighed the various competing issues.
- 5 The application was refused for one reason³. The reason for refusal covers four issues and these are identified as Main Issues B to E of the Case Management Conference Summary⁴.

THE APPEAL PROCESS

- 6 In response to the Council's objection to the integration of affordable housing, the Appellant held further discussions with the Council⁵. This resulted in the Appellant submitting an alternative layout which relocates some of the affordable housing within the site. The Council accepted this as a substituted plan.
- 7 This revised plan required consequential changes to be made to the other proposed plans. However, while this work was being undertaken, new survey information indicated that the original survey of the site had incorrectly plotted the boundaries and surrounding vegetation. The plans were updated to show the correct location of the site boundaries and surrounding vegetation. Further

¹ Policy H13 – CD 5.4

² CD 2.38 and CD 2.39

³ CD 2.37

⁴ CD 4.7

⁵ See SoC paragraph 6.29 (CD 4.1)

assessment was also undertaken of the woodland to the north, as ancient woodland. Further revised adjustments were put forward. These adjustments result in: (i) the removal of plots 27 and 28; (ii) changes to the house types on plots 26 and 28; and (iii) the removal of the parking associated with plots 27 and 28.

8 It was confirmed, via an email from the Planning Inspectorate on 15 December 2020, that this second plan substitution was accepted by the Inspector due to the minor nature of the changes involved. A statement of common ground was entered into between the Council and the Appellant, dated 22 December 2020, which set out the plans for which approval is now sought⁶. These plans are found in CD 1.

9 These plans were provided to OAG and the Council on 11 December. OAG confirmed, via an email dated 11 December, that it did not object to the plan substitution. Indeed, OAG indicated that the plan substitution represented an improvement to the scheme and resulted in a withdrawal of arguments about effects on ancient or veteran trees. Similarly, the Council has confirmed that it has fully considered the amended plans and has found that they provide "some improvements to the scheme".⁷

10 As a result of the plan substitution, the appeal proposal now seeks full planning permission for the *"Erection of 72 no. dwellings, formation of access road, associated landscaping works, open space works and flood storage works."*

11 OAG queried in its statement of case whether, if sites C, D and E should be assessed together and if so, whether an environmental statement should be prepared. The appellant and the Council have explained previously why the proposals for the Site do not meet the threshold for environmental impact assessment⁸. For the avoidance of any doubt, the Secretary of State directed, on 10 December 2020, that the development is not environmental impact assessment development. As such, no EIA is required.

MAIN ISSUES

12 The main issues in this case have been identified in the Inspector's Case Management Conference Summary, as follows:

⁶ See paragraph 4.15 of CD 4.2.1

⁷ See paragraph 6.1 of Sarah Hull rebuttal

⁸ See for example page 80 – 81 of the officer's report CD2.38

- 12.1 Ecological impacts on the site and the area;
- 12.2 Comprehensive development;
- 12.3 Response of the scheme to the area's character, green infrastructure and open space;
- 12.4 Density; and
- 12.5 Integration of affordable housing into the layout.

POLICY CONTEXT

- 13 The principle of housing development on the Site is not disputed by the Council⁹. The Site was identified as a housing site by policy H13 of the UDP (1998). The Site, together with parcels C and D, is effectively identified in Core Strategy CS24 part (c) as a greenfield site to be delivered for housing.
- 14 The Council published the Owlthorpe Planning and Development Brief in 2014 (with a further update in 2017) to enable a co-ordinated and comprehensive approach to the future uses of parcels C, D and E¹⁰ (the "Brief"). The Appellant will explain in evidence how the scheme has been progressed with the Brief firmly in mind. The Council and the OAG consider that significant weight should be given to this document. It shows built development across the whole of the appeal site.
- 15 The planning policy evidence will be provided on behalf of the Appellant by Mr Bolton. Mr Bolton will identify the most important policies for the determination of this appeal, assess whether they are up to date and form a conclusion on whether the proposals accord with the development plan taken as a whole. He will also provide the planning balance on behalf of the Appellant, considering the various benefits that derive from the proposals against any harms.

ECOLOGY

- 16 The first main issue is not one which is in dispute between the Appellant and the Council.
- 17 The SoCG sets out in detail the areas of agreement reached on ecological matters. This includes the following points:
 - 17.1 "Appropriate Ecological Assessment and survey effort has been undertaken to determine

⁹ See paragraph 6.3 Sarah Hull Proof of Evidence

¹⁰ See CD 5.19 paragraph 1.2

the impacts of the development".

- 17.2 "...the development will suitably avoid, mitigate and then compensate for the negligible impacts on nature conservation value from the proposed development. The retained habitats within and adjacent to the site will be enhanced."
- 17.3 "There is no reason related to harm to ecology or wildlife that would warrant refusal of permission"¹¹.
- 18 OAG's case on ecological matters is set out in the evidence of Dr Rivers. The main areas of dispute appear to concern: (i) whether the Site meets the criteria for designation as a local wildlife site; (ii) the loss of a hedgerow between Moorthope Rise and Ochre Dyke (H1); and (iii) the approach taken to biodiversity net gain and paragraph 175 (d) of the NPPF.
- 19 It is relevant to highlight that the Site was previously in agricultural use; however, this use ceased in around 2000 after the road infrastructure for the wider land was constructed. In the absence of agricultural management, the Site has been colonised by bramble scrub, mixed scrub, immature broadleaved trees, grassland and ruderal vegetation. These habitats are neither rare, nor uncommon.
- 20 There are two local wildlife sites in the locality, Ochre Dike LWS to the north of the Site and Owlthorpe LWS to the west. The woodland within Ochre Dike LWS is to be added to the Ancient Woodland Inventory by Natural England. Mr Baker and Mr Topping have considered any potential impacts of the development on this woodland and also on the two local wildlife sites. This will be discussed in evidence. There is no loss or deterioration of it.
- 21 Two hedgerows are either on or near the Site. Mr Baker has assessed these and will explain why the Hedgerow Regulations 1997 do not apply. Hedgerow "H1" lies within the middle of the Site and OAG object to its proposed removal. This hedgerow is however considered to be of relatively poor-quality, has been removed in the past, is subsumed within other planting, serves no function as a boundary feature and its loss has been fully included in the assessment of the biodiversity compensation contribution. A second hedgerow runs along the western boundary and is referred to as "H2". This hedgerow will be retained and is not affected by the proposed development.
- 22 Mr Baker sets out the benefits the scheme could deliver through biodiversity compensation and net gain. The Appellant is offering to make a payment of £230,400 to the Council to fund offsite

¹¹ Paragraph 7.34, 7.40 and 7.45 of SoCG CD4.2.1

biodiversity improvements. This is in addition to moneys for the replacement of low quality trees (£22,935.91) and for mitigation of any recreation effects on the nearby LWS (£14,000). In relation to the ecological compensation, the Appellant has prepared a management plan setting out how this money could be spent in the locality and the benefits this could deliver¹².

COMPREHENSIVE DEVELOPMENT

23 The development has been progressed with the Brief firmly in mind. It is agreed that the role and purpose of the Brief is to achieve comprehensive development. The development would positively assist with the delivery of parcels C and D by:

23.1 Providing the LEAP, which will benefit the other parcels as well as existing residents; and

23.2 Delivering the SUDS basin, which has capacity for the Site and also runoff from adjacent parcel D.

24 The officer's report does not identify any response from a statutory undertaker suggesting that the appeal proposal would prevent the development of the remainder of the allocation. The issue of comprehensive development is a construct of Council members alone.

25 The Council has accepted that parcels C, D and E can come forward as separate planning applications¹³. The Council's concern in relation to the issue of comprehensive development appears to depend entirely on their objections to character, density and affordable housing being accepted – rather than being a standalone issue¹⁴. It is now phrased as the possibility of setting the wrong tone, rather than prejudicing the rest of the development allocation.

CHARACTER, GREEN INFRASTRUCTURE AND OPEN SPACE

26 The Council allege that the design of the development does not retain and reflect the green character, infrastructure and open space of the Site¹⁵. It is however argued that the development of the site should be in accordance with the Brief. This shows development across the whole of the site, with no retained internal areas of green space or vegetation.

27 At a basic level, no residential development of the site can be delivered if the green and open

¹² See Appendix 4 CD 4.8.1.5

¹³ See Sarah Hull POE paragraph 6.65

¹⁴ See paragraphs 6.66 – 6.69

¹⁵ See paragraph 6.8 of Sarah Hull Proof of Evidence

character of the site is to be retained. It is the Appellant's case that the principle of change to the character of the area has been fully accepted by the Council in allocating the site for housing. Furthermore, in preparing the Brief, the Council has clearly articulated the form of development anticipated for the housing sites to strike the appropriate balance between competing planning considerations. The Appellant will explore in its evidence the consistency of the proposals with the Brief, taking into account issues including ecology, trees, landscape and open space, as well as density.

- 28 Mr Walshaw's evidence describes the approach that was taken to the development of the design of the appeal proposal. He describes the prevailing character of the area - with large parcels of housing set within a framework of green corridors around the edges of each estate, generally following landscape features such as watercourses and woodland.
- 29 Mr Walshaw explains in his evidence how the design and layout of the site has evolved and been refined from the original bid scheme, in consultation with the Council officers to result in a scheme which the Planning Manager considered met the requirements of Policy.
- 30 The evidence of Mr Walshaw, Mr Baker and Mr Topping demonstrate that the proposals have been developed with a clear understanding of both the physical and policy context and achieve the appropriate balance between the development of the site for housing, as set out in the Development Plan and respect for the character of the area, as well as wider policy objectives regarding density and the efficient use of land. The topography of the site is a key factor affecting the site's satisfactory development.

DENSITY

- 31 The SOCG explains that the net density of the proposals is either 28 dwellings per hectare or 30 dwellings per hectare¹⁶. This is a small difference and, while the Appellant considers the correct figure is 30, it does not alter the Appellant's position on this issue.
- 32 Policy CS26 (c) sets out a starting point for the consideration of density of 40 – 60 dwellings per hectare where sites are within 800m of a Supertram stop (as is the case here). The policy is a fairly blunt instrument as we are not here dealing with a site within a highly urban area. In other urban locations 30/ha is within the range set by policy. In any event, the policy expects departure from this range in order to achieve good design, reflect the character of the area and to protect a sensitive

¹⁶ See paragraph 7.22 CD 4.2.1

site. Paragraph 122 of the NPPF also stresses the importance of "maintaining an area's prevailing character" and "securing well-designed, attractive and healthy places". There is an inevitable trade-off between increasing density and respecting the character of the area. Density is not just a calculation, it is driven by a desire for more units on a site and an increased density, but on a smaller area of land, leading to a lower number of units is no answer to the objective of the policy.

- 33 Mr Walshaw has assessed the character of the surrounding residential areas as well as the character of the green infrastructure and its sensitivities. He has undertaken a detailed assessment of the character of the locality to inform the design of the scheme, alongside the topography and the inevitability of retaining structures given there is some 10m of level change from the southern boundary to the areas adjacent to the woodland to the north.
- 34 The Appellant will show that to create the most appropriate overall solution to design and respect the character of the site and area, providing much needed family housing the resultant density is justified in this location.

AFFORDABLE HOUSING

- 35 The affordable housing policy for the Site is set out in policy CS40 and guideline GAH2 of the CIL and Planning Obligations SPD. This requires 10% of the total floorspace to be set aside for affordable housing.
- 36 The level of proposed floorspace within the scheme for affordable housing is 19%. Nearly double the requirement. This results in 21% of the units being affordable homes. This compares to an NPPF requirement of 10%. This is a real benefit of the scheme.
- 37 The Council's objections appear to be that the development is in conflict with guidelines GAH5 of the CIL and Planning Obligations SPD because it is said that the affordable housing is distinguishable from the market housing in terms of its design, scale, siting, form and parking.
- 38 Mr Bolton examines the policy basis for the Council's objection. While, Mr Walshaw responds to the specific objections raised by the Council to the design, scale, siting, parking and form of the proposed affordable housing.

OTHER MATTERS

5 Year Housing Land Supply

- 39 On the 18th December 2020 the Council published its "5-Year Housing Land Supply Monitoring Report December 2020" (CD4.10.2.1). This claims to show a 5.4 year housing supply, as forecast

from the 1st April 2020.

- 40 The Appellant does not seek to argue that the Council does not have a 5 year housing land supply at the time of this inquiry. However, the Appellant will argue that 5.4 years is a marginal supply, particularly in the context of the future position. In just 5 months' time the requirement will be some 35% more; an extra 3,200 units will be needed. Whilst this does not affect the strict presence of a 5 year supply now, the situation is temporary and this is a highly material consideration. In addition, the location and type of supply is wholly mismatched with the demand and requirement for new housing; a further highly material consideration. The need for more family housing is clear, obvious and pressing. There are few sites that can or will deliver it. There is also an acute and pressing need for affordable housing and city centre apartments and student supply will not meet this, not least because the SPD requires no affordable housing from city schemes. This goes to the weight that should be afforded to the provision of family and affordable housing as part of this appeal, which is very significant.

Highways

- 41 Mr Addison has submitted a proof of evidence in relation to highways and accessibility matters. While no main issues have been identified on these topics, it is noted that OAG query the accessibility of the Site to nearby shops and services.
- 42 Mr Addison has included a detailed analysis of this issue in his proof of evidence and this will be dealt with further in evidence. Considerable common ground has also been reached with the Council on this topic. The Council raise no concerns in relation to highway safety, highway capacity or sustainability.

OVERALL

- 43 The Appellant's evidence will show that there is no proper basis to refuse planning permission and will in due course be asking you to allow the appeal and grant planning permission for the development.

RICHARD SAGAR
12 JANUARY 2020