

**APPELLANT'S CLOSING SUBMISSIONS**

**APPEAL BY AVANT HOMES CENTRAL**

**LAND AT MOORTHORPE WAY, OWLTHORPE, SHEFFIELD**

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

**RICHARD SAGAR**

## INTRODUCTION

- 1 These closing submissions are made on behalf of the appellant, Avant Homes Central and are to be read with the Appellant's Opening Submissions, the Appellant's written evidence and supporting material, and the Statement of Common Ground<sup>1</sup>.

## OVERVIEW

- 2 The appeal is proceeding with a revised scheme that is agreed to be an improvement in terms of a series of matters, including affordable housing integration, greater retention of trees and greater set back from the northern woodland. This scheme has not been considered by members. Officers have attempted to interpret the reasons for refusal, but as these do not follow a recommendation for refusal by officers in the first place, there isn't a more detailed document to look to for that purpose.
- 3 The recommendation for approval<sup>2</sup> was detailed and balanced. The key aspects of it are set out in the evidence of Mr Walshaw, Mr Bolton and Mr Topping. There was no suggestion in the report of a lack of comprehensive development<sup>3</sup>. In relation to trees and landscape, it is concluded that the scheme was consistent with NPPF<sup>4</sup> and has of course been revised and improved since. On design, it was concluded that the scheme is consistent with CS74 and H14<sup>5</sup>. In relation to density, pages 48 and 49 of the report fairly set out the policy position at a national and local level. It correctly concludes that the proposal is consistent with NPPF, with density judged to be reflective of the type of housing needed, the need to be sympathetic to character and to achieve good design. It also concludes in relation to ecology<sup>6</sup> that the scheme is consistent with the NPPF, does not cause significant harm, adequately mitigates and compensates for its effects and delivers net gain. Affordable housing is assessed at pages 50- 51 and it is concluded that there is policy compliance at Core Strategy and national policy level. No issue is taken regarding the

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<sup>1</sup> CD4.2.1

<sup>2</sup> CD 2.38

<sup>3</sup> Indeed none was made at any time during the consideration of the application.

<sup>4</sup> See p71 of CD 2.38

<sup>5</sup> 73

<sup>6</sup> See pages 58 and 62

nature of the affordable housing.

- 4 During the consideration of the application, the Brief for the site<sup>7</sup> featured as a material issue and no question of failure to comply with it was raised. In this regard, it is important to note that the case officer and author of the report to committee was also a joint author of the Brief; Mr Baxter.
- 5 The final section of the report<sup>8</sup> was balanced and led to the clear conclusion that 11 c of NPPF was engaged and development should be approved without delay. It recognised some areas of the scheme were not perfect, but concluded there was strong Development Plan and NPPF policy support for the scheme.
- 6 There are also a series of agreed matters in the Statement of Common Ground<sup>9</sup> that are relevant to the issues now being argued in this appeal. Not only is the principle of housing development agreed but also that principle accords with H13, C24, doesn't conflict with S7 of the UDP and the delivery of housing is to be given significant weight<sup>10</sup>; that the affordable housing mix meets the need<sup>11</sup>; that policy allows departure from the high level targets of CS26 on density<sup>12</sup>; that the overall housing mix meets the identified needs and policy<sup>13</sup>; that there is no basis to refuse on any ecological matter<sup>14</sup> and that in terms of design, the appearance of dwellings, amenity and all the road layout and details are agreed<sup>15</sup>. This latter point is significant. It bears directly on the Council's latest arguments about houses facing perimeter roads to the west and south of the site and many other aspects of layout. The perimeter blocks of the scheme and the resultant development plots available for housing are agreed. Further on the matter of landscaping, there is agreement that the urbanising effects of a significant amount of housing development the site is

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<sup>7</sup> CD 5.19

<sup>8</sup> 83-86

<sup>9</sup> CD 4.2.1

<sup>10</sup> 7.11

<sup>11</sup> 7.20

<sup>12</sup> 7.24

<sup>13</sup> 7.26

<sup>14</sup> 7.33- 7.45

<sup>15</sup> 7.51

accepted in principle<sup>16</sup>.

7 Within this context there is clearly a degree of "mission creep" now apparent in the case presented by the Council. There is a noticeable extension of the refusal reasons. The comprehensive development complaint is now no longer present. It has morphed into a somewhat inchoate precedent point that is not free standing and depends on the success of the other arguments, notwithstanding each site will provide different constraints and issues to address. The green and open character point has grown into points of design, notwithstanding the only policy reference was to NPPF 127, which does deal with green character, but has been used to introduce new issues that are not of a green character nature. Further the affordable housing case has moved from integration, in the sense of where the housing is grouped, to simply that the houses are different in nature, but importantly acceptable if the same houses were market housing<sup>17</sup>. These matters will all be explored further below.

8 It is also noteworthy that much of the Council's case alludes to a better scheme being found. There is no suggestion that this would be Mr Wood's scheme and Mr Wood was quick to reverse out of any suggestion that his proposals should be given weight in the decision. Indeed he was invited to and gave no response to the many criticisms of it in Mr Walshaw's rebuttal. The Council has offered no suggestion of another scheme and planning decisions as a matter of principle have to assess the scheme in question. It is trite that the test is whether there is harm or policy conflict, not whether there may be another unidentified proposal that could be better. Refusal for the mere possibility of a better scheme, absent demonstrable harm is anathema to the planning system. It is this scheme that needs to be judged, for what it proposes, not something different.

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<sup>16</sup> 7.63

<sup>17</sup> XX SH- note also that the surplus of affordable housing would allow a swap of housing from affordable to market and apparently address the concerns of difference, but clearly lead to a worse outcome- as described by Mr Bolton.

## **MAIN ISSUES**

- 9 The main issues in this case are as follows:
- 9.1 Ecological impacts on the site and the area;
  - 9.2 Comprehensive development;
  - 9.3 Response of the scheme to the area's character, green infrastructure and open space;
  - 9.4 Density; and
  - 9.5 Integration of affordable housing into the layout.
- 10 No other new main issues arose during the course of the inquiry.
- 11 It is also relevant as indicated already that the Council's case on comprehensive development has evolved. Mrs Hull accepted that if the Inspector does not accept the Council's case on density, character or affordable integration that the Council's argument on comprehensive development would fall away<sup>18</sup>. Therefore, I address comprehensive development after the other three issues in dispute between the Appellant and the Council.

## **PRINCIPLE OF DEVELOPMENT**

- 12 The principle of development is not disputed between the Appellant and the Council<sup>19</sup>. Indeed, it is notable that a number of other parties who are objecting to the appeal proposal accept the principle of development on the site (CPRE, Wildlife Trust and Clive Betts MP). Even Mr Wood flirts with accepting this.
- 13 As the OAG's evidence demonstrates, the development of the Site has been anticipated since 1967<sup>20</sup>. The site is identified as a Housing Site in policy H13 of the UDP<sup>21</sup> and on UDP Proposals

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<sup>18</sup> Mrs Hull XX

<sup>19</sup> See paragraph 7.1 of Mrs Hull POE

<sup>20</sup> Figure 1 CD 4.10.3.1

<sup>21</sup> CD 5.4

Map 7<sup>22</sup>. The UDP Proposals Map also indicates that an area of the Site is designated a local shopping centre under policy S7<sup>23</sup>. S7 is however permissive of housing. It states that housing is an acceptable use on land subject to this designation. There is therefore no conflict<sup>24</sup>.

- 14 The supplementary text to policy H13 states that the policy will be put into practice by "*Providing appropriate advice to developers, which could include supplementary planning guidance or planning briefs*". Such advice has been issued by the Council via the Housing Sites (C, D, E), Moorthorpe Way, Owlthorpe - Planning and Design Brief of 2014 (updated in 2017) (the "Brief"). The Brief is not part of the development plan and does not become so because of the text in the plan, but does set out an acceptable planning approach to the development of the site and the overall master planning of the area. This is the very masterplanning exercise that Mr Betts MP and the OAG argue is required. Simply put, it has already taken place. It is agreed that the Brief carries substantial weight, but can be departed from so long as any departure causes no harm<sup>25</sup>.
- 15 The reason for refusal only identifies conflict with the Brief at paragraph 3.2.6, although it is noted that the Council have *extended* this to G1, G2 and G3. These relate to Mrs Hull's concerns over green character and will be addressed in due course.
- 16 In addition to H13, the development is also supported by Core Strategy policy CS24 c. This policy prioritises the development of previously-development land; however, it expressly supports the development of greenfield land in this location, referred to as the Owlthorpe Township<sup>26</sup>.
- 17 Councillor Johnson argued that policy CS47 is relevant, and that the Site is open space. However, as was agreed between the Council, OAG and the Appellant, the Site is allocated for housing and not for open space. This policy is therefore not relevant.

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<sup>22</sup> CD 5.8

<sup>23</sup> CD 5.5

<sup>24</sup> See Mr Bolton responses in OAG XX and Mrs Hull XX

<sup>25</sup> SH XX and RB Chief

<sup>26</sup> CD 5.10

## ECOLOGY

18 The Council raise no objections on ecological grounds. The Statement of Common Ground highlights the following areas of agreement:

18.1 "Appropriate Ecological Assessment and survey effort has been undertaken to determine the impacts of the development." (7.34)

18.2 "The impact of the development, including any cumulative effects, on the Local Nature Sites (Owlthorpe and Westfield Plantation LWS), woodland, bats, breeding birds, common toad, badger and hedgehog was subject to appropriate detailed assessment and the survey outcomes are agreed." (7.39)

18.3 "Based on the mitigation measures recommended in the EcIA and agreed by the Council's ecology officer, 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."  
(7.40)

18.4 "Policy GE11 of the UDP, which suggests blanket protection of the natural environment, is not fully in accordance with paragraph 170 and 175 of the Framework and should be afforded moderate weight. Its terms are in any event complied with. It is not part of the Council's case that GE13 is an applicable policy and it is agreed that the terms are in any event complied with." (7.41)

18.5 "A biodiversity net gain is achieved through the development based on the landscape proposals within the site including within the buffer zone, POS and drainage areas, as well as an off-site contribution of £230,400 to enhance the adjacent LWS." (7.44)

18.6 "There is no reason related to harm to ecology or wildlife that would warrant refusal of permission." (7.45)

19 There is also common ground between the Appellant and the OAG on this topic. Dr Rivers confirmed that the OAG are not objecting to the quality and sufficiency of the survey work undertaken on behalf of the Appellant<sup>27</sup>. Dr Rivers also confirmed that her evidence does not seek to argue that the Appellant should survey sites C or D<sup>28</sup>, nor has her evidence alleged any harm to birds, mammals or invertebrates.

20 As context, it also has to be borne in mind that Dr Rivers objected to the application before she was acting for OAG, but confined her concerns to matters she described as capable of being overcome and did not object to the principle of development of the site. Indeed most of the concerns she raised are now accepted as addressed; sufficiency of survey, clarity of the woodland buffer and clarity of the BNG package.

#### Local Wildlife Sites

21 Dr Rivers' case is that the Site, Site C and Site D "individually and collectively all meet the Sheffield Local Wildlife Site Criteria for grasslands"<sup>29</sup>. She has submitted the data underlying her case to the Local Wildlife Site Panel prior to the exchange of evidence<sup>30</sup> and requested that the Site be designated. This request has not been determined and the Site is not a Local Wildlife Site. Dr Rivers suggested that we should assume the Site is a Local Wildlife Site, in advance of the panel making their determination. Mr Baker clearly and cogently rejected this approach stating it would "entirely undermine efforts to formalise the process"<sup>31</sup> of assessing local wildlife sites. Such an approach would be to predetermine the outcome of a complex and evidence based process.

22 The Panel is led by the Council and it is highly material that they received Dr River's request prior to signing the SoCG and concluding evidence, which confirmed that the Council took no ecological point in relation to this appeal. If the Council had any concerns in relation to ecology,

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<sup>27</sup> See also paragraph 3.8 of Dr Rivers POE and in XX

<sup>28</sup> In XX

<sup>29</sup> See paragraph 3.13 of Dr Rivers POE

<sup>30</sup> In XX

<sup>31</sup> Mr Baker Chief



no doubt they would have been raised.

- 23 Dr Rivers explained that there must be a total of "10 or more botanical indicator species present, including at least 5 strong positive indicators"<sup>32</sup> for a site to qualify as a local wildlife site. No reliance is placed on other means of determining if a site could be a LWS. In particular no work has been done to look at Red Book species and the assessment against the Sheffield Nature Conservation Strategy is completely inconclusive.
- 24 There was a disagreement at the inquiry over two key aspects of the data; the use of old records in making this assessment and the use of volunteer and inexpert survey. As explained by Mr Baker, records are fundamentally different to survey and it is survey that is required to make any assessment. In addition the records are particularly old. The survey by volunteer members of OAG is unreliable. This much is acknowledged by Wildscapes themselves<sup>33</sup>. Records are a useful pre survey indicator of what to consider in scoping and preparing for a survey, but are no substitute. In addition the records for the majority of species are 10 or more years old.
- 25 Mr Baker explained that the use of records and in particular old ones was "an approach that is not scientifically robust"<sup>34</sup>. The data relied upon from SBRC is historical, has not been collected in a systematic way or was collected by unknown parties whose botanical ability is unknown<sup>35</sup>. The PPG stresses that the assessment of potential local wildlife sites should be "informed by detailed ecological surveys and expertise"<sup>36</sup>.
- 26 In addition to the SBRC data being records and not survey, CIEEM provides general advice on the lifespan of ecological reports and surveys<sup>37</sup>. This states that ecological reports and surveys more than three years old are "unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated". This discounts the reliability of the SBRC data for this purpose. Not only does it fail to amount to proper survey, but its age brings further problems to its

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<sup>32</sup> See paragraph 3.15 of Dr Rivers POE

<sup>33</sup> CD 4.8.7 at 26

<sup>34</sup> See Mr Baker rebuttal paragraph 1.2

<sup>35</sup> See paragraph 5.48 of Mr Baker POE

<sup>36</sup> CD 4.10.57 paragraph 013 Reference ID: 8-03-20190721

<sup>37</sup> ID6

reliability.

- 27 Based on Dr Rivers' evidence, no party has identified the requisite number of species in site E to qualify as an LWS. It is only by combining four different data sets that this could possibly be the outcome. Of the four data sets, for the reasons set out above, two are unreliable. However, even if they are all combined there has to be reliance on the SBRC record of 2011 of Southern Marsh Orchid for 5 strong positive indicators to be present. This species was not however present when the site was surveyed by OAG, Wildscapes or BWB in the last two years.
- 28 The professional surveys, undertaken by Wildscapes and BWB, found a combined total of two strong positive indicators for site E. The unreliable surveys of OAG state that they have recorded two further strong positive indicators. Even combining all three surveys is not enough. The high point of the OAG case is that there should be reliance on records (not survey) that are 10 years old for a species that has never been found since.
- 29 The second attempt by Dr Rivers to make a LWS case is by combining sites C, D and E. There is no cogent basis for doing so. Site E is separated from C and D by a road and put simply if it doesn't qualify on its own, the idea of extending the area until a large enough accumulation of species is achieved is not a sound as an approach. That should be the end of the matter for the Site. Nevertheless, the Wildscapes survey (CD 4.8.7) sets out that, even if sites C, D and E were grouped together, they would not pass the test for a Local Wildlife Site - as only 4 strong positive indicators were identified<sup>38</sup>. For the reasons already set out this cannot change because of old records or unreliable survey from SBRC and OAG.
- 30 The Site is not a Local Wildlife Site. The evidence produced by the OAG and the Appellant demonstrates that the Site does not meet the criteria of a Local Wildlife Site, which is further supported by the approach of the Council. The process to make it a LWS needs to rely on expertise and detailed and reliable survey. This does not exist.

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<sup>38</sup> Oxeye Daisy was recorded by both BWB and Wildscapes, so only counts once.

31 As a separate matter Mr Wood argues that the already confirmed LWS at Ochre Dike and Owlthorpe are covered by GE13 – Areas of Natural History Interest and Local Nature Sites. This is misplaced. These sites are not identified on the UDP Proposals Map as either an Area of Natural History Interest or a Local Nature Site. Such a designation cannot be implied, this would entirely subvert the plan-making process. They are clearly LWS and this is a non-statutory, local designation, but it doesn't carry the weight of, and is not implied into the development plan.

### Woodland

32 It is agreed that the concept of a buffer to an ancient woodland is a product of guidance and is no part of the development plan, the NPPF or the NPPG. The standing advice of Natural England<sup>39</sup> is guidance and its weight has to be judged accordingly.

33 In relation to ancient and veteran trees there is agreement that the trees are adequately protected and that there will not be development in the RPA of these trees. This is significant as these trees are, in the large part, on the woodland edge.

34 Dr Rivers did not rely on the recent OAG measurements of trees to make a different case on this matter and was wise to do so. The sum of that document is that two trees of relevance are claimed to be inaccurately measured, but one is in the wrong place- actually some 30 m further away from the development than OAG suggested and the other has been inaccurately measured, as explained by Mr Topping in his re-examination.

35 All development, be that built development or regrading, is agreed to be outside the RPAs of all of the woodland. Indeed, a buffer has been shown from the worst case location - 15m from the fence line. This extends 15m south onto land that was, until 20 years ago, agricultural fields that will have been drained, ploughed and subject to the use of the usual pesticides and herbicides. The soils here are not of a woodland nature and neither is the land former woodland. The purpose of the buffer is primarily to protect the RPAs of the trees and it does this with ample extra land

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<sup>39</sup> CD 4.8.19

for that purpose. The RPAs are also sufficient for the purposes of the water and all other necessary nutrients for those trees to thrive, as explained by Mr Topping by reference to BS 5837

36 The permanent incursion into the buffer is tiny; some 5 % of the area. The regrading is modest in extent and the land raising is all outside the RPAs. The regrading has no effects on water for trees. The buffer is in total materially greater than 15 m, with some areas as much as 40 m.

37 The evidence of Professor Rotherham on this matter was a general presentation of issues to consider with development and woodland. There was no examination of the scheme itself or the trees and woodland in question. This is significant as there was no actual allegation or evidence of harm to trees caused by this development from any party and the Council have no concerns on these matters either. The high point of the case of OAG is that there may be areas that need further assessment, but no evidence of harm caused by this scheme was presented, in spite of an expert such as Professor Rotherham assisting with their case.

38 On the topic of the SUDs area, the standing advice is that SUDs development in the buffer should be avoided unless RPAs are respected<sup>40</sup>; they are. It goes on to say that SUDs in buffers should also be avoided, unless any change to the water table does not adversely affect woodland.

39 Firstly the woodland in this area is not claimed by OAG to be ancient woodland and there is no clear indication that it is<sup>41</sup>. Secondly there is no evidence of the water table being affected. The SUDS is designed and located so that it is sufficiently away from the woodland and indeed wet ground is something the OAG are keen to retain.

40 The location of the SUDs, relative to the buffer, is clearly shown on the drawing at Mr Topping's appendix 1<sup>42</sup> and the pond itself (the water storage area) is not in the buffer at all. Some works for its construction are, but these can be viewed in terms of the effects on RPA, which they fall outside and are separated from a metalled pathway. The land here and on the northern edge of the

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<sup>40</sup> CD 4.8.19

<sup>41</sup> CD 4.9.4.1 page 2

<sup>42</sup> CD 4.9.1.2

main part of the development slopes towards the woodland and will provide catchment for the future of the trees.

41 Mr Topping and Mr Baker's evidence is clear and considered. It is to be commended. There will be no deterioration of the woodland as a consequence of the development; the test is NPPF 175 c.

42 Hedgerow

43 There are two hedgerows that are relevant to the scheme. The first, referred to as "H1", runs through the middle of the Site; while, a second runs along the western boundary and is referred to as "H2"<sup>43</sup>. H1 is better described as a former hedgerow as it is gappy, defunct, subsumed in other planting and forms no boundary function.

44 Dr Rivers confirmed that the OAG's concern relates only to H1<sup>44</sup>. Dr Rivers did not raise any issue in relation to H2<sup>45</sup>, which is unsurprising since it is to be retained and is not affected by the proposed development.

45 The Council confirmed in its letter to the Appellant's agent, dated 24th November 2020, that 'In relation to the hedgerow, we do not have a specific objection to it's [sic] loss from an ecological aspect.<sup>46</sup> Mrs Hull confirmed in XX that the Council raised no ecological point in relation to hedgerows. It is also noted that the Brief does not require the retention of hedgerows through the site.

46 Mr Baker's evidence explains that H1 is of relatively poor-quality, is subsumed by scrub<sup>47</sup> and "it is not now functioning as a hedgerow"<sup>48</sup>. Based on aerial imagery, it also appears to have been grubbed out between 2010 and 2011 such that anything there now is not really a hedgerow at all<sup>49</sup>

47 Dr Rivers has suggested, based on age alone, that H1 falls under the Hedgerow Regulations 2017

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<sup>43</sup> See CD2.12.A and Figure 1 of Mr Baker's POE

<sup>44</sup> In XX and paragraph 4.10 of Dr Rivers POE

<sup>45</sup> This was put to Dr Rivers in XX

<sup>46</sup> CD 4.8.1.8

<sup>47</sup> See paragraph 5.22 of Mr Baker POE

<sup>48</sup> Mr Baker EiC

<sup>49</sup> Mr Baker POE Appendix 1 CD 4.8.1.2

(CD4.8.1.7). In XX, Dr Rivers accepted that the regulations did not apply to this hedge, with the possible caveat that it may be common land. However, it isn't. Common land has a specific legal meaning. The Regulations do not apply to H1<sup>50</sup>. Further, it is also important to point out that even if the hedgerows were to fall under the Hedgerow Regulations (which they do not) then this is not a barrier to development, but simply triggers the need for the Regulations to be followed. The grant of planning permission addresses the point on its own.<sup>51</sup>

48 The loss of hedgerow H1 has been fully included in the DEFRA Metric Calculations and the loss of hedgerow H1 will be compensated by off-site habitat creation, including a new hedge to the southern boundary of the site. This fully addresses the general high level duty under S41 of the Natural Environment and Rural Communities Act 2006 to "take such steps as appear reasonably practicable" related to hedgerows as a priority habitat.

#### Biodiversity Net Gain

49 There is no policy in the development plan to provide biodiversity net gain for any project. The Environment Bill sets out the proposal for securing a 10% net gain for most projects; however, the Bill is not law, there is no secondary legislation to explain its detail and there is no guidance as to its application. 10% is not an amount of gain that can be insisted upon<sup>52</sup>.

50 Appellant has agreed to pay £230,400 to the Council to fund offsite biodiversity improvements, in accordance with NPPF policy 175 (d). This will secure measurable net gains for biodiversity. This offer has been agreed with the Council and it is recognised as a benefit which should be taken into the planning balance<sup>53</sup>. It is a significant and substantial benefit.

51 Dr Rivers' evidence was written when she was unaware of what was proposed to be done with the money. We now have clarity that it will be spent on land next to the site, owned by the Council and the delivery of it will be managed and run by the Council. The only remaining issue appears

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<sup>50</sup> See paragraph 5.20 of CD 4.8.17

<sup>51</sup> CD 4.8.1.7- Reg 6

<sup>52</sup> See also Appeal at Brickhill Street, South Caldecote, Milton Keynes MK17 9FE - Appendix 5 of CD 4.8.1.6

<sup>53</sup> CD 4.2.1 paragraph 7.50

to be a lack of understanding of how the sum was calculated and a question as to whether the existing stewardship of the land, on which the works and management will be undertaken, had been taken into account. These matters are fully addressed and explained in Mr Baker's evidence and agreed with the Council.

52 Mr Baker explained in his oral evidence, his proof<sup>54</sup> and his rebuttal<sup>55</sup> the comprehensive approach the Appellant has taken to biodiversity net gain. Mr Baker has also prepared an indicative ecological management plan<sup>56</sup> which shows how the contribution would be spent and net gain delivered.

53 Mr Baker explained in Chief that he "concurred" with Wildscapes assessment that the development would bring about a BNG loss of approximately 25 units. To this he has applied the value per unit from the Impact Assessment of the Bill and come to a figure of some £274,000. That would include land costs which are irrelevant here. Taking those into account he concludes that the offer being made is comfortably supported by the BNG approach, as well as his and the Council's judgement on the matter. He also noted that the current draft DEFRA metric is a very blunt tool and seems to value some poor habitats in such a fashion as to be unreliable in its current form.

54 Mr Baker explained in his evidence why he does not agree with exploiting the weakness in the metric, to justify creating low value habitats, simply because they are easier to create. What is proposed in the BNG Management Brief in his appendix 4 is a bespoke set of measures that addressed biodiversity gain in the locality, as close as possible to the area of loss, in a tangible and deliverable way that is far closer to the objective of BNG than a payment with no connection to outcomes. It will bring demonstrable ecological gain to the area.

55 Mr Baker also considered the current Higher Level Stewardship ("HLS") agreement which benefits some of the areas of neighbouring grassland. This agreement does not however cover the

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<sup>54</sup> CD 4.8.1 - paragraph 6

<sup>55</sup> CD 4.8.1.9 - paragraph 4

<sup>56</sup> CD 4.8.1.5 - see Appendix 4 to Mr Baker's POE

entire grassland areas which are proposed to be managed. Further, Mr Baker noted that the grazing, which is part of the HLS agreement, does not appear to be taking place at present and is not sufficient to manage the grasslands properly. It is also important to stress that the land subject to the HLS agreement is "only a small fraction"<sup>57</sup> of what the Appellant is proposing. The proposed BNG fund will therefore enable ecological improvement of the grassland and woodland areas and contrary to Dr Rivers' assertion will provide demonstrable ecological gain.<sup>58</sup>

56 Taking into account these factors, the Appellant is firmly of the view that the BNG fund of £230,400 will provide sufficient biodiversity gain plus 10% to offset the ecological impacts of the proposed development and the Council agree.

#### **CHARACTER, GREEN INFRASTRUCTURE AND OPEN SPACE**

57 The green and open character point raised by the Council now concentrates on matters of detailed design. This is a marked change from officers views during the application process, where it was concluded that the "*given the green infrastructure within the site and density of the housing scheme it is considered that it will sit comfortably in its wider context*" and that the design and layout "*will create a distinctive character and high quality feel to the development*"<sup>59</sup>.

58 There are however a number of areas of common ground between the Council and the Appellant which identify the marginality of the Council's objection. Paragraph 7.51 of the SoCG confirms that issues of: appearance, residential amenity, overlooking and road layout are agreed. While paragraph 7.30 records that the development provides in excess of the open space requirements set in policy H16.

59 It is important to start by recognising that the Council's case is the defence of the reasons for refusal. This is all about the green and open character of the site, recognising that of course the principle of a substantial number of houses is agreed to cause an urbanising effect. The case is

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<sup>57</sup> Mr Baker Chief

<sup>58</sup> See Mr Baker rebuttal paragraph 4.1

<sup>59</sup> CD 2.38 internal page 72



not about poor design, which is not alleged by Mrs Hull and does not form any other aspect of, as the refusal puts it, not responding to "the *area's* prevailing character of abundant green infrastructure and open space" (my emphasis).

60 In Mrs Hull's evidence, as explored in XX, the Council's case covers the following matters;

- The desire to see more green areas extending into the scheme.
- The visual effects of the loss of trees on the northern boundary, notwithstanding the new replacement planting.
- The relationship with the southern edge and the hedge on the top of the hill.
- The fact that there are gardens rather than an estate road facing the western boundary and that the houses have their backs to this boundary.

61 There is no concern expressed by the Council in terms of tree value or arboricultural matters as such; the issues are visual only as confirmed in XX.

62 When analysed, there does not appear to be any suggestion in the Council's case that development should be set back from the southern or western boundaries any further than it is. In addition the development is set back materially further from the northern boundary than is suggested by the figures in the Brief and it doesn't seem that the extent of the buffer as such is in dispute.

63 The argument about more green areas in the site is also to be viewed in the context of the density arguments that I return to in a moment. In principle more green areas would squeeze down the developable area and challenge the ability to get more units on the site. In recognition of this it appears (from Mr William's questions of Mr Walshaw at least) that the suggestion here might be smaller houses and bigger gardens. This was not Mrs Hull's evidence however.

64 The only policy document of any specificity in relation to the approach to this Site is the Brief, so

it is important to look to see what it suggests. Anything beyond what the Brief suggests is without any clear basis.

65 Mrs Hull accepted that Figures 19 and 20 were the culmination of all the text that had gone before them in the Brief and that development that aligned with those drawings could not be said to be inconsistent with the Brief, its purpose and objectives or its principles, though they are to an extent illustrative drawings. It is agreed that these plans do not conflict with the rest of the Brief. It is also important to note the clear acceptance by Mrs Hull that departure from the Brief is acceptable so long as it causes no harm.

66 To the issue of more green spaces in the heart of the development site, figures 19 and 20 of the Brief clearly do not show this. They show some areas along roads for tree planting and this is delivered by the scheme. They show some green areas in sites C and D in the form of swales and they show a larger area of planting in the north eastern end of site D, but nothing similar in the appeal site. There is no suggestion at all of "green fingers" running through the site from any fair and proper reading of figures 19 and 20 of the Brief.

67 Indeed, the terms of figures 19 and 20, allowing for their degree of illustrative nature, show development to the edges of the site, considerably closer to the northern area of woodland (see RW Appendix 34<sup>60</sup>) and roads or private driveways right to the western and southern boundaries of the site. They show no green spaces in the site and they show the "spine road" encroaching into the 15 m buffer to the northern woodland. One can fairly conclude that these meet the principles of G1, 2 and 3 of the Brief and there is certainly no suggestion from Mr Baxter who wrote the Brief and reported the application to committee to the contrary.

68 Mrs Hull's argument about more green areas within the site relied on her interpretation of design principle G2. However it seems that to get to her view one would have to ignore figures 19 and 20 and then place an unrealistic "gloss" on the words of G2. It says simply "The landscape setting must feature significantly in the development of character". As explained by both Mr Walshaw

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<sup>60</sup> CD 4.11.1.2

and Mr Bolton, the setting is properly understood to be the area around the site and that it must feature in the development of character is far removed from the notion of "green fingers" extending into the site.

69 Paragraph 6.3.2 of the Brief notes that Figure 20 "*shows a conceptual layout, using the design principles set out below and the Urban Design Framework*". This highlights that the Council considered principle G2 when preparing Figure 20. It shows the landscape setting featuring significantly at the edges of the development site, not within it.

70 This fully accords with Mr Walshaw's position, that the most important features of the Site are around the edges and that this is where the setting can be appropriately incorporated into the design. Mr Walshaw was pushed in XX on whether the lack of green areas within surrounding residential estates was a negative feature; the suggestion being that this was one that he had repeated. The full extent of his answer has to be understood.

71 Firstly, the principle negative feature was explained as the relationship of those estates to their edges and that was the point to address. That said Mr Walshaw was addressed in this scheme and an improvement made. The absence of green areas within other estates and any negativity of that has to be seen in an overall balance of the best response to the site, taking the Brief into account and that is what Mr Walshaw was clear he had achieved. In particular, he clarified that he regarded a "central developable area with green edges as a positive". He went on to explain that in any event there was ample green within the heart of this proposal and pointed out the areas of planting, street trees and their visual effects on greening the internal layout. The opportunity to improve the area is a judgement as to the overall outcome and Mr Walshaw was very clear on this; that improvement would be achieved.

72 The development will provide a soft edge to the north, which assimilates the woodland into the development<sup>61</sup>. A good illustration of this is provided by Mr Topping's appendix 8<sup>62</sup>. The buffer

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<sup>61</sup> See CD 1.14B

<sup>62</sup> CD 4.9.1.10

area is not linear, steps in and out, has character and interest in the forms and composition of the planting regime as explained by Mr Topping and the houses are at different angles to the planted green area along its length. This is shown on Mr Walshaw's Appendix 27, in particular on Illustrative Views 7, 8 and 10. It is interesting that the criticism of these views was mostly of view 2, with the suggestion that the gaps between houses were small. The tension with the Council's density case in this respect is palpable; this is the area they complain is too loose and not dense enough.

73 To ensure an appropriate buffer is provided to the sensitive northern boundary, the built form has been pulled further back from the woodland to the north, considerably further than is shown on Figure 19<sup>63</sup>.

74 Mr Walshaw and Mr Bolton rejected Mrs Hull's suggestion that the gaps between the blocks of built form on Figure 20 could be intended for green spaces. As a matter of fact, they are not shown as green space. Mr Walshaw, relying on his extensive experience of preparing such documents, confirmed that if this was the intention he would expect it to be clearly labelled as such.

75 Mrs Hull also objected to the proposed removal of trees along part of the northern boundary (in particular tree groups G7 and G8). This objection was limited to the visual impact<sup>64</sup>. Unfortunately this concern is far too simplistic. It fails to understand the condition of the trees, what would be required in terms of management (thinning and replacement if an attempt was made to keep them) and was more driven by a concept of tree loss rather than the reality of what is entailed with trying to keep them.

76 In this regard it has to be noted that there is nothing in the layout that requires all of G7 and 8 to be removed. Though described by Mrs Hull as a backwards step from the earlier layout, the changes provide more and not less space for trees to remain, but a careful and conscious decision

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<sup>63</sup> See Mr Walshaw Appendix 34 – 4.11.1.2

<sup>64</sup> Mrs Hull XX

has been taken to provide a better solution. Interestingly, Mrs Hull confirmed that if it was considered appropriate to retain tree groups G7 and G8 that this could be dealt with by condition<sup>65</sup>. That is not the Appellant's proposal, but this answer confirms the marginal nature of the area of her concern.

77 Mr Williams explored with Mr Topping the results of his Arboricultural Impact Assessment and Arboricultural Survey. Mr Topping explained in Chief that his conclusion that tree groups 7 and 8 should not be retained is driven by their existing baseline quality. He explained that these groups are of low quality and that, if they were to be retained and subject to appropriate management, what would be left would not warrant retention or would leave a worse starting point than new, properly planned and substantial trees being planted in their place. The landscape proposals<sup>66</sup> would deliver what Mr Topping considers to be a "very natural structural boundary" with "much greater species composition"<sup>67</sup>. Mr Topping's qualitative assessment was not challenged.

78 The wider mitigation works delivered by the scheme should also be borne in mind. There is significant planting in the northern buffer and by the attenuation basin. Further, the section 106 agreement secures a significant contribution towards off-site tree planting.

79 Mrs Hull's position about the relationship with the southern boundary and retaining wall is borne of a failure to understand the topography and the need for retaining structures. This, as a principle, was ultimately accepted in her rebuttal, but still without understanding properly the choices that have to be made about where retaining should be. A clear illustration of the misunderstanding of the 3 D geography is her opinion that the southern boundary retaining structure could be seen from viewpoint 3 on Figure 19, which will now have been examined on the site visit. It cannot be seen and in any event if it could it would be a view out over the top of and not to this structure.

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<sup>65</sup> Mrs Hull XX

<sup>66</sup> CD1.14B and 1.15B

<sup>67</sup> Mr Topping Chief

80 The retaining walls are a necessary response to the topography of the Site and Mrs Hull acknowledged in XX that there are no amenity issues relating to the retaining features.

81 The challenge to designing the scheme is to drop 3 m over a relatively short distance from the southern boundary to the "spine road", with both having fixed levels. Mr Walshaw confirmed that the distance does not provide the opportunity for a perimeter block (outward facing to both the road and the southern boundary) and so either houses face south, to a road and then retaining, with their backs to the main "spine road" or as the scheme shows them. The better solution by far is as proposed. The road layout is also agreed as confirmed in the SoCG.

82 Assuming the houses face the "spine road" the next question is where the 3 m level drop is taken. The site sections, in particular L-L<sup>68</sup>, demonstrate the challenges Mr Walshaw faced. Mrs Hull confirmed that she would not favour a retaining wall in front of the spine road, for obvious reasons. She instead speculated that sloping gardens, or gardens at different levels could be utilised, but acknowledged the difficulties of this. Mr Walshaw explained that he considers providing gardens that are level to be an important design objective. It would have been possible for the development to front the boundary; however, this would have created a poor aspect and split level housing also leads to less appropriate forms of housing.

83 Mr Walshaw explained the approach taken to the western boundary in chief. He explained that the LWS that neighbours the site is not public realm and does not provide an urban edge. Therefore, the criticisms he makes of nearby developments, for turning their back, does not apply here. He believes that not having an active frontage will screen the development in views from the LWS, further it will provide new residents with an attractive setting. It will also place new housing in the setting of the trees, which will be a benefit for residents of the scheme. Finally he explained the extent of retaining structure – less than a metre and then falling to grade as the boundary moves north.

84 There is further tension in the Council's case on the western boundary. On the one hand, they

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<sup>68</sup> CD 1.6.B.1

accept the proposed road layout in the SoCG<sup>69</sup> and on the other they seek to argue that the road layout should be amended so that development fronts on to this boundary. It is difficult to understand what harm the Council allege is caused by the design of the western boundary. Indeed to use the words of the Brief at G1, it is carefully designed and does provide value to new residents. The reasons for turning the houses round are not made clear in the Council's case. There is no clear harm alleged.

85 The detailed points raised by Mrs Hull and Mr Williams do not take account of the various challenges and fixed elements that the design must fit within. The design needs to: provide a stand off from the northern boundary, deliver active frontages to the public rights of way and Moorthorpe Rise, address the topography across the site, accommodate the fixed position of the spine road and the medical centre, and deliver sensitive edges to the south and west. This must all be achieved while accommodating an appropriately high density. Design is all about balance and an overall best fit. Criticism of individual elements may appear superficially attractive. But salami slicing the design process in this way misses the bigger picture. To meet the Council's case, as it puts it on each topic, would likely result in a worse overall scheme.

86 The Council suggest a better scheme is in the ether. That is simply not the test. The evidence of Mr Walshaw, Mr Topping and Mr Bolton demonstrates that the scheme design is successful in balancing all of these push and pull factors.

## **DENSITY**

87 This issue pulls in an opposite direction to the Council's argument on green character.

88 Mr Walshaw explains that the density of the scheme is 30 dph, while Mrs Hull contends it is 28 dph. Given the extent of this difference in opinion, it was not examined at length during the course of the inquiry but their respective positions are set out in their proofs of evidence.

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<sup>69</sup> See paragraph 7.51 of CD 4.2.1

89 Policy CS26<sup>70</sup> sets densities for housing sites of 30 to 50 dph in the urban area, or 40 to 60 dph if the development is within 800m of super tram stop. However, policy CS26 states that "Densities outside these ranges will be allowed where they achieve good design, reflect the character of an area or protect a sensitive area". It is also useful context to note that if the site were only 200m further from the tram stop, 30 dph would be a density that would be policy compliant. The density argument advanced by the Council depends entirely on the site's location and in that respect the site is at the margin. However, the distance to the tram belies the character of the area. It is not urban or even built up suburban. As the Council is at pains to point out, it is abundantly green and open.

90 The Brief states that given the need for family housing and the existing landscape and topographical constraints on the site, then the final total number of dwellings across the three sites is likely to be at the lower end the range of 257 – 385 dwellings, but could even be lower than 257 dwellings<sup>71</sup>. The Brief goes on to state that the illustrative masterplan<sup>72</sup> shows densities of 30 – 40 dwellings per hectare - a range that is below the CS26 target for the reasons explained above. This indeed is what Figure 20 of the Brief shows and the use of the unadjusted CS 26 range in figure 8 of the Brief does not alter that.

91 The lower density proposed here is reflective of both the character of the surrounding built areas, which is typically low density 2 storey family housing<sup>73</sup> and strikes the right balance with the green surroundings. The surrounding estates are variously at 21 dph, 22 dph, 27 and 29 dph<sup>74</sup>. The Appellant does not say this is to be copied or followed and indeed the scheme doesn't; however, it is of relevant context.

92 The proposed density has also taken into account the sloping nature of the site which has resulted in the need for retaining wall features that are necessary to provide level gardens and access

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<sup>70</sup> CD 5.10

<sup>71</sup> CD5.19 paragraph 5.1.2

<sup>72</sup> Figure 20 of the Brief

<sup>73</sup> See Mr Walshaw Appendices CD 4.11.1.2

<sup>74</sup> Mr Walshaw Appendix 9



roads. In turn this creates amenity concerns, so some plots have been made wider and back garden longer, to address this matter. These issues would all be made more difficult to address if the density were increased and that would impact negatively on the design of the development.

93 As Mr Walshaw explains, addressing the northern edge of the site requires a lower density of development (as is set out in his evidence). Indeed that appears to be the nub of Mrs Hull's case as well, when she seeks more "integration" with the woodland. There would be an even greater reduction in density if there was any increasing the buffer to the north of the.

94 This conclusion is shared with the Planning Manager (CD2.38) who states on page 83: *'It is consistent with CS26 'Efficient Use of Housing Land and Accessibility' as although the site is below the density guidance this is appropriate given the prevailing character, the green setting, the need for family housing and to accommodate level changes.'*

## **AFFORDABLE HOUSING**

95 The quantum of affordable housing provided as part of the appeal scheme is materially more than policy requires. The scheme will provide 19% of floorspace as affordable housing, which is the equivalent of 21% of the total units proposed. The appellant is providing nearly double the policy requirement for affordable housing.

96 It is agreed by the Council that, "given the shortfall of affordable housing in past and future supply, substantial weight, should be attributed to this scale of provision"<sup>75</sup>.

97 However, Mrs Hull explained in Chief that she objected to: (i) the "cluster" of units in the south of the site; (ii) the different form of the affordable units, with most being terraced; (iii) the use of the parking court; (iv) the density of the affordable units in the south of the site; and (v) the impact of the retaining structure along the south-western boundary on the amenity of nearby units. This latter point not being put as concern as to amenity, just a difference.

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<sup>75</sup> See paragraph 10.6 of CD 4.10.1

98 Indeed it was confirmed by Sarah Hull in XX on all of these topics that if any of the affordable units were to have been market housing there was no concern. In that sense, ironically, if the Appellant had opted to simply offer a policy compliant scheme it would seem to resolve the Council's concern. Simply swapping affordable units for market housing would nullify the apparent concerns of differentiation. As Mr Bolton explained, if this is what is required to satisfy the Council then it provides a poorer outcome with less affordable housing and otherwise no scheme change.

99 It is to be noted that the affordable case has grown beyond the refusal. The refusal was about integration into the layout and that would appear to be a concern as to the location of the units alone<sup>76</sup>.

100 It is noted that the Urban Design and Conservation Officer raised no issues with the proposed affordable housing<sup>77</sup>. The Council has also agreed that the "proposed housing mix including 2, 3, 4 and 5 bedroom market and shared ownership houses is acceptable and addresses a specific need as identified by the Council's housing officer"<sup>78</sup>. The Council has further confirmed that the proposed housing design is agreed in the following respects:

*"Appearance of dwellings, Residential amenity, Overlooking of shared spaces for safe and secure environment; Road layout –road hierarchy, safety, alignment, highway and footpath widths, visibility, turning spaces"*<sup>79</sup>.

101 Policy CS 40 requires developments to contribute towards the provision of affordable housing<sup>80</sup>. The policy is silent on the matters of dispute and there can be no case made out on conflict with the development plan on this topic. Policy GAH5 of the CIL and Planning Obligations SPD<sup>81</sup> states that: *"Affordable Housing should not be able to be differentiated by design, quality, specification, location within the site, timing of the development or by significant difference in*

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<sup>76</sup> Evidence of Councillor Johnson and Mr Betts

<sup>77</sup> CD4.10.45

<sup>78</sup> Paragraph 7.28 of SoCG (CD 4.2.1)

<sup>79</sup> Paragraph 7.51 SoCG

<sup>80</sup> CD 5.11

<sup>81</sup> CD 5.16

*access to services and amenities".*

102 Mrs Hull agreed in XX that the word "differentiated" should be read as meaning not capable of easy identification. Any other approach would clearly have far reaching consequences for the delivery of housing and affordable housing as it would become so difficult to meet that it could stifle development. It would set a very difficult precedent.

103 Ten of the affordable units are in the south west of the Site, while two are to the north of the medical centre and three more are in the west of the Site<sup>82</sup>. This is an appropriate distribution across the Site, better than other schemes approved recently by the Council as explained in Mr Bolton's Appendix 2<sup>83</sup>. Neither Policy CS40, nor the supporting text, requires the "pepper potting" of affordable housing across a development. Mr Walshaw explained in Chief that Registered Providers generally request clusters of between 10 to 14 units to assist with management. However, the Appellant has still sought to disperse the units across the Site further than this. This has met with approval of the Council as the intended "operator" of the units in question.

104 The fact that a number of the affordable units are terraces should not in itself be unacceptable. The scheme contains a number of different house types and this itself doesn't pick any out as affordable. Policy GAH5 of the SPD does not state that a housebuilder cannot utilise different house types. It focuses on differentiation by design, quality and specification. As Mr Walshaw explained in his proof and in Chief the external appearance of the units is not different to the market units. The design theme is continued across all houses and the specification is not different. A number of the detached market units are arranged with only a 1.2m gap between them<sup>84</sup> and these are not to be regarded as identifiably different to the terraces. This is highlighted by Mr Walshaw's streetscenes<sup>85</sup>.

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<sup>82</sup> see CD 1.3.B

<sup>83</sup> CD 4.10.1.3

<sup>84</sup> See paragraph 2.17 of Mr Walshaw's proof CD 4.11.4

<sup>85</sup> See Mr Walshaw Appendix 28 CD 4.11.1.2

- 105 A parking court serves units 59 – 72, with four of these being market units and ten affordables. Mr Walshaw explained in Chief that there are design challenges in this corner of the site, caused by the need to create a frontage to the public right of way and across to the LEAP, while also keeping development away from the medical centre. These competing demands meant it was not possible to provide the parking for units 69 – 72 next to the plots and, as a result, a parking court has been incorporated into the design. The market units do not have a preferential arrangement when compared with the affordables. Indeed, the parking spaces for the market units are generally further away from the relevant plots than for the affordables.
- 106 The Council argue that the density of the south west of the Site is high and is not comparable to the market housing. Mr Walshaw identified in his evidence that the sample size selected by the Council is too small and exaggerates the density in this part of the development. The plan on page 8 of his rebuttal<sup>86</sup> identified the density in the "Urban Heart" of the Scheme. This demonstrates the density reduces as the development proceeds through the Site. The density of a large part of the urban heart of the scheme is relatively high and contains a mix of both market and affordable units. It is ironic that the Council are objecting to the higher density in the courtyard area; however, the increased density in the urban heart is not considered to be harmful nor lead to the easy identification of the affordable units. Plot ratios of a material number of the market and affordable units are also largely comparable, as shown in the plan at page 10 of Mr Walshaw's rebuttal to Mrs Hull<sup>87</sup>.
- 107 The relationship between the plots on the south-western boundary and the retaining wall along the southern boundary is also examined in Mr Walshaw's rebuttal. He notes that very few plots have a close relationship with it. Mrs Hull also confirmed that the Council do not object to the amenity offered to the affordable units<sup>88</sup> and this is consistent with the SoCG<sup>89</sup>. The amenity is agreed not to be substandard.

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<sup>86</sup> CD 4.11.4

<sup>87</sup> CD 4.11.4

<sup>88</sup> MrsHull XX

<sup>89</sup> CD 4.2.1 para 7.51

108 Mr Walshaw and Mr Bolton both conclude that the design and location of the affordable housing accords with all of the criteria set out in GAH5 of the SPD. This has to be addressed through the guidance as to how GAH5 is to be put into practice; there was consultation and agreement with the provider, the specification is *equivalent*, and the houses are integrated and mixed in each case with market housing. Whilst there are differences this does not allow the units to be differentiated. They are not identifiable as obviously affordable. They are better integrated than the other scheme referred to by Mr Bolton that have been found acceptable, approved and show how differences do not lead to differentiation.

### **COMPREHENSIVE DEVELOPMENT**

109 Mrs Hull agreed that if the Inspector does not accept the Council's case on density, character or affordable housing then the Council's argument on comprehensive development would fall away<sup>90</sup>.

110 The Council's case on comprehensive development appears now to concern whether the development sets the "wrong tone"<sup>91</sup> and if this could then lead to similar principles being applied to the development of parcels C and D. This "tone" issue was not directly set out in the reason for refusal, which instead referred to paragraph 3.2.6 of the Brief. There is not now any suggestion from the Council that the appeal scheme prejudices the delivery of sites C or D.

111 The Council's argument is not a proper justification for refusing to grant planning permission. Regardless of how the Council views this development, the applications which are likely to come forward in the future for sites C and D must be treated on their own merits. The sites are different, they face different issues in terms of topography, relationship to their edges, size and shape. Mr Bolton explained that the Site is different to sites C and D, with it being smaller, having more constraints and is heavily sloping. He concluded that, what is built on the Site does

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<sup>90</sup> Mrs Hull XX

<sup>91</sup> Mrs Hull XX

not determine development of sites C and D<sup>92</sup>.

112 For any argument of precedent to succeed there would have to be identical issues and circumstances involved in the development of those sites. That is not the case. That the sites are different is made clear by the fact the Brief deals with each site differently in relation to landscape and ecology at paragraph 5.5 for example.

## **HOUSING LAND**

113 The appeal is not a 5 year housing land supply case. It deals with an allocated site where the principle of development is settled.

114 The relevance of land supply, supply and demand for different types of properties and affordable housing are matters that are capable of going to the weight to be attached to the benefits of the scheme.

115 The Council published its 5-Year Housing Land Supply Monitoring Report, in December 2020, which purports to show 5.4 years of deliverable supply<sup>93</sup>. Mr Bolton explained during the roundtable session that the Appellant has not examined the Council's claimed supply, as it is not necessary to do so for an allocated site where the weight to the provision of housing is agreed to be substantial. The Appellant is therefore not contesting the Council's claimed 5.4 years of supply but does not agree it is correct.

116 Nevertheless, Mr Bolton explained why the Appellant considers the Council's claimed supply to be both temporary and marginal. The Council's requirement figure will be subject to a "very, very significant uplift"<sup>94</sup> of 35% when the amended standard methodology comes into play on 16 June 2021. This is not a matter of conjecture; it is one of certainty. It is not remotely clear how or if the Council will be able to demonstrate a five year land supply at that point. This emphasises the need to deliver on allocated sites such as this.

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<sup>92</sup> Mr Bolton Chief

<sup>93</sup> Page 12 of CD 4.10.2.8

<sup>94</sup> Mrs Stephens in the roundtable session

117 The scale of the challenge is apparent from the fact that not only will the requirement go up by some 3,000 units over the next 5 year period, but that there is a need to find supply to backfill the last years completions; in excess of 5,000 units to find in total. The supply is also largely dependent on the continued delivery of a large number of high rise city centre schemes, the prospects of which with the effects of covid related market change is uncertain, and the need for continued growth in student accommodation in particular is unclear.

118 Further, Mr Bolton also highlighted the concentration of the Council's supply in two housing market areas – City Centre and City West – and the focus within those areas on student clusters and apartments. The SHMA identifies that the newly arising need is in almost inverse proportions to the past and future supply, with family housing for 3 and 4 beds at about  $\frac{3}{4}$  of the needs and only  $\frac{1}{4}$  of the supply, whilst the position for apartments is the reverse. This is not a contested fact. The Council's response, that there is an existing stock of houses, misses the point. Newly arising needs and new supply need to be aligned. The existing stock is occupied or in the case of sales, provides only for people moving; not new supply to meet the new needs. Very few people will be likely to move from family housing to a multi-story block in the city when they don't need family housing any more.

119 The Council agree that "the contribution of the site to the housing supply should be given significant weight"<sup>95</sup>. This is all the more important given the identified need and demand for family housing in this location, and the dearth of suitable sites to accommodate it. This is all the more reason why this site should be developed for the family housing it is identified to deliver.

120 The Council's argument that it is a relatively modest site, really fails to grasp the seriousness of both the current mismatch and impending need to significantly increase the rate of development. If the Council's approach is to be dismissive of housing delivery of the right type and in the right place, this will only translate into a serious and growing issue for the people of Sheffield.

121 The Council's dismissive approach to the significance of affordable housing is also symptomatic

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<sup>95</sup> See paragraph 7.11 of CD 4.2.1

of an attitude that perhaps explains the current chronic and serious under supply. The stock of affordable housing has diminished in the last decade, no grown. That loss has not been addressed by new supply and instead of the annual need being contributed towards, there has been a net reduction in supply of affordable housing. The past delivery of affordable housing is a stand out failure. A very significant part of the forward looking supply will not deliver affordable housing and it will not be expected to do so by policy. That the Council can point to less than a thousand units of affordable housing from non developer contribution (Council schemes or partnership scheme) gets to about 1 years' worth of the actual newly arising need. To then suggest that the need for affordable housing is anything other than acute and serious perhaps explains why the position has become this bad. A scheme which provides double the policy requirement should therefore be given very substantial weight in the planning balance.

## **OTHER ISSUES**

### Walkability

122 No policy requires retail provision on the site. It is not in the Brief, and the non-provision of retail accords with S7 of the UDP. There is no conflict with CS 39 in any respect, as agreed, with Mr Wood and the site is sufficiently accessible to facilities. It is only just beyond Mr Woods 800m distance to retail, but on a considered analysis of the origin of that figure and the lack of evidence base behind it, the WYG walk distances, based on actual survey are easily to be preferred. The site fits with the mean and 85%ile figures for walk distances in that evidence. There is local retail sufficiently close at Hackenthorpe and it is only a relatively short journey to an Asda superstore (1300 m) and a major destination and comparison retail centre at Crystal Peaks.

### Highways

123 In the end highways impact formed no part of the OAGs case and Mr Addison's evidence and the SoCG amply address these issues.

### Open Space



124 It is agreed with the Council that the site meets H16 and that it is not an open space in the sense meant by CS policy 47. In fact the amount of informal open space on site is double the requirement for the development. It also exceeds the amount of play space in accordance with the policy requirement.

#### Climate Change and Electric Vehicle Charging Points

125 It was agreed by Mr Wood that there is no breach of the policy in the CS that deals with climate change, as a development control policy (CS 65<sup>96</sup>). It was also agreed that the national policy of NPPF 150 and 153 require a balance of all considerations in terms of design and these include topography and landscape issues. There is no policy requirement for green roofs, only an encouragement in the SPD at CC1 to consider *where these are compatible with design*. That is not the case here, as amply illustrated by Mr Wood's own scheme.

126 The EV charging provision is policy compliant at a local level and as accepted by Mr Wood compliant with the letter of the NPPF. His comments as to the spirit of policy go nowhere; the scheme is designed to enable EV charging. The provision of EV on the scheme is appropriate.

#### **CONCLUSION AND BALANCE**

127 The Appellant firmly believes that the proposal for residential development of this allocated site accords with the terms of the development plan as a whole. Neither the Council, nor the OAG, has demonstrated any material conflict with the most important policies for the determination of this appeal and accordingly permission should be granted without delay.

128 If it was concluded that there was any conflict with any policies, then it is necessary to determine whether that amounts to conflict with the development plan overall. For the reasons explained in Mr Bolton's evidence, the Appellant does not consider this to be the case. If it were, there is still a need to consider whether there are other material considerations that indicate permission should be granted. This is a classic case of planning judgement.

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<sup>96</sup> CD 5.13

129 The Appellant has identified and the Council agree that the following matters are material considerations to which positive weight should be given. There is a dispute as to how much.

129.1 The delivery of housing - the Appellant says substantial weight and the Council agree.

129.2 The delivery of family housing - the Appellant considers this attracts substantial weight.

129.3 Affordable housing - the Appellant considers this attracts substantial weight.

129.4 BNG - the Appellant considers this attracts substantial weight.

129.5 Children's play for the site, the existing residents and future development areas - the Appellant considers this attracts substantial weight.

129.6 SUDs for the site and other development areas - the Appellant considers this attracts substantial weight.

129.7 Integration with Woodland Heights - the Appellant considers this attracts moderate weight.

129.8 Employment in construction, spending power of local residents/investment in the area and tram stop improvements - the Appellant considers these attracts moderate weight.

130 The Council's planning balance is however skewed and unreliable. The benefits of the scheme are just that. They are the positives of delivering these items. To reduce these because of claimed harms and then weigh this reduced effect against the claimed harms is clearly double counting the harms. Nonetheless it is to be noted that in Mrs Hull's proof, when the benefits are reduced by the claimed harms they are all still positive. This may be described as a linguistic point, but actually it is more telling. The true assessment of balance, even on the Council's case, appears to be in favour of the proposals and clearly was when officers considered the scheme in the first place.

131 For all these reasons, the planning balance is very clearly in favour of the grant of planning

permission for the scheme and on behalf of the Appellant that is what I would respectfully ask that you do.

**Richard Sagar**

**21.1.21**