**Section 78 Town and Country Planning Act 1990**

**Land off Moorthorpe Way Sheffield**

**Appeal by Avant Homes Ltd**

**LPA ref: 10/03143/FUL**

**PINS Ref: APP/J4423/W/20/3258555**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Final Submissions of the Council**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Introduction**

1. The Council’s Opening Submissions introduced the appeal and provided an outline of its case on the main issues. The Council relies on its opening submissions, and submits the evidence called and tested entirely supports the refusal of planning permission. These Closing Submissions address issues B to E as set out in Opening.
2. Before doing so, it seems worthwhile to set out some preliminary points which inform the issues.

The nature of this application

1. Firstly, the points set out at the outset of its case (see Opening submissions paragraph 5) hold true:

“It is fundamental to the Council’s refusal of permission that this is an application for full planning permission. The Council does not – and never did – take issue with the principle of developing this site. It is a site the Council wants to see – and in due course sites C and D - come forward (although it is not correct that the Council relies on the site within its five year housing land supply (“HLS”)[[1]](#footnote-2). It should only come forward, however, if and when a high quality design is presented that makes appropriate and efficient use of this development opportunity, and which accords with the design guidance and opportunities identified in the allocation-specific Planning and Design Brief (“the Brief” - CD 5.19). Unfortunately, that is not the case with the appeal proposals. The scheme has been improved through the appeal process with the iterative amendments – but ultimately remains unacceptable and should be refused to allow a better and appropriate scheme to come forward. The permission granted for site E – and the design principles thereby endorsed – will have significant implications for the development of sites C and D.”

1. Secondly, the merits of the appeal proposals are necessarily confined to the land-use consequences of the development, including conditions and obligations. The appeal proposals are not tied to a masterplan, and the wider off-site park proposals included at Mr Walshaw’s App. 22 do not form any part of this application[[2]](#footnote-3). It is too late also to make any further amendments to the plans (which were the subject of very late amendments in December). The scheme must be judged on the basis of the plans accepted by the Inspector to comprise this application (SoCG 4.15). That includes the shown tree loss and the proposed landscaping details. It also includes the units shown as affordable housing. The Appellant has been given every chance to present the appeal scheme it wishes to present and must now stand by it.
2. Thirdly, there was some suggestion in the oral evidence of Mr Bolton that the Council’s case had changed insofar as it viewed issues C and D as raising design issues. There has been no change in the Council’s case. As set out in the Council’s opening (see paragraphs 7 to 11 and 13) the Council’s case places design (in the sense in which the Framework uses that term) at the heart of its case. In the Framework good design is not limited to architectural or detailed design – design is about how places function and their quality; and the same is true of CS74[[3]](#footnote-4). This is all very clearly set out in the Framework under the heading “Achieving well-designed places”, and paragraph 127 in particular sets out the range of matters that are required to achieve appropriate design. This was clearly set out in our Opening at paragraphs 7 and 8:
3. “National policy requires permission to be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions[[4]](#footnote-5). In concluding on whether proposals amount to good – as opposed to poor – design local design principles and supplementary planning guidance should be taken into account. Such guidance helps provide clarity, and provide a framework for creating distinctive places with a consistent and high quality standard of design[[5]](#footnote-6). Where an application is a full one, if the design does not meet these standards then permission should be refused.
4. National policy also provides guidance on the standard a development must achieve. It must function well and add to the overall quality of the area.[[6]](#footnote-7) It must deploy good architecture, layout and appropriate and effective landscaping to ensure it is visually attractive. Residential development must be sympathetic to local character, including the local landscape setting, and it must establish a strong sense of place, creating an attractive, welcoming and distinctive place to live. It must optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development including green and open space. It must create places that are safe and inclusive[[7]](#footnote-8).”
5. The reason for refusal addresses issue C explicitly by reference to NPPF 127, and an assessment against 127 NPPF is addressed in the Council’s statement of case, and CS74, and in more detail in the proof and rebuttal of Mrs Hull[[8]](#footnote-9). The statement of case is perfectly clear that the proposals are contrary to CS74 and design principles G1 G3 in the Brief, and this all relates to paragraph 127 and 125 and the question of the appropriate form and design of the development. This is not inconsistent with anything in the SOCG, which is addressing the specific detailed issues that are not in dispute, such as the detailed road layout in relation to road hierarchy, safety, alignment, highway and footpath widths and turning spaces. These points do not go to the fundamental problem with the overall character of the development as a result of its layout and design which in effect strike the wrong balance between green space, green infrastructure and green character and built form. There can be no doubt – as Mr Walshaw acknowledged – that a failure to take the opportunities available to improve the character and quality of an area, and the way it functions, taking into account the Brief, means that the requirements of national policy for good design are not met and permission should be refused. Mr Bolton readily and rightly agreed that this was simply the consequence in national policy of failing to achieve the expectations of national policy in paragraphs 124 to 129 of the Framework (130).

**Issue C: Character, Green Infrastructure and Open Space**

Policy and Guidance

1. National policy has been summarised above and is set out in paras 124-130 NPPF. As Mr Walshaw – the Appellant’s Urban Design witness – agreed[[9]](#footnote-10):
2. Permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area;
3. That requires site and contextual appraisal to identify the opportunities available to improve that character and quality and then for the design to take them;
4. Local Plans should set out design visions and expectations (125), and supplementary planning documents should be used to provide clarity as to design expectations (126);
5. Here, H14[[10]](#footnote-11) provides specific design expectations, as does CS74 which is tailored to the specific local circumstances and distinctiveness of Sheffield (see paragraphs 12.13 and 12.14 of the supporting text). Consistent with the Framework CS74[[11]](#footnote-12) requires development to be high-quality and take advantage of and enhance the distinctive features of the area. These policies are clear that they will be implemented through use of planning briefs and supplementary planning documents.
6. The Brief (CD5.19) represents an adopted set of local design expectations and opportunities specifically tailored to the three Owlthorpe sites as advised by the Framework (126), and an assessment of whether the proposals amount to good design within the meaning of the Framework should be informed by an assessment against the Brief to judge the success of the scheme.
7. The national and local policy position is therefore common ground. Not so, the Brief. Indeed, it became clear that Mr Walshaw’s interpretation of the Brief is not only different from the Council’s, but fundamental to his design approach of providing “another urban block of housing with very limited internal green spaces” but and a peripheral “green necklace” as a replication of the prevailing character of the area[[12]](#footnote-13).
8. The interpretation of planning policy and guidance is to be undertaken in a common-sense way giving words their ordinary meaning in context and having regard to the objectives of the guidance. The Brief should be read as a whole, and as guidance for practical decision-making[[13]](#footnote-14).
9. The objectives of the Brief include to promote high-quality development that contributes positively to the local neighbourhood, and to optimise the value of the setting and site features such as its distinctive landscape and topography. The Vision at 2.2 is consistent that the new development at Owlthorpe should reflect the distinctive green character of the setting and utilise the site’s natural assets. 5.5.1 of the Brief reminds developers of the UDP requirement to retain mature trees, copses and hedgerows wherever possible. The Brief conducts a site appraisal which begins by emphasising that the sites are all Greenfield. The first “Key Opportunity” identified consistent with the NPPF is “Optimising the greenfield character, topography and landscape value of the sites and context[[14]](#footnote-15). None of these objectives or opportunities is limited to the edge of or outside the site. They all apply to the site as a whole and the character of the development as a whole. They all envisage a development that has a character that reflects the green character of the site and its setting.
10. The Brief then sets out a series of “key design principles” that the development should address. The critical principles that go to the character of the development are all presented under the heading: Green Environment. Giving the words their ordinary meaning in the context of the objectives:

G1. This address interfaces between the built form and woodland edges and open spaces. It requires these interfaces to be carefully design to enhance land scape quality and to provide value to the residents of the scheme.

G2. This has a broader role. It is concerned with the “development of character” of the proposals. It is not limited to the edges – if it were it would be unnecessary given G1. It requires the landscape setting to feature significantly in the overall character of the scheme. It does not say or mean that only the periphery of the site should feature the landscape setting – which would be meaningless after G1. Not only would it be at odds with the objective and vision but it would leave the overall character of the development unaddressed. The preferred reading is the only one that gives effect to the vision, objectives and opportunities that apply to the site as a whole. Incidentally, this is also consistent with the original interpretation of Mr Walshaw in his proof at 5.73 which applies G2 to the overall character of the scheme as a whole. Here the landscape setting of the site has a particularly green and woodland character, which must be a significant feature of the character of the development.

G3. This requires an assessment of the positive and negative effects of a development on green infrastructure to ensure that the overall effect is positive in that regard.

1. The Appellant appears to view the key design principles without any regard to the objectives or opportunities identified for the site, and as somehow overridden by Figs 19 and 20. This is mistaken for a number of reasons. Firstly, all policy and guidance must be read as a whole in light of its context and its objectives. Secondly, the Brief could not be any clearer that any development must address the key design principles and so effect must be given to these principles (6.3.1). Thirdly, the Urban Design Framework (Fig 19(2)) is high-level guidance expressly to be read in conjunction with the principles. It is not in any sense setting out the appropriate balance between green-space and built form, or a final internal layout. That is for an individual design. For example, Figure 19 does not show any landscaping whatsoever within site E. That does not mean there should be no landscaping – which would be directly contrary to the Green Environment principles. It means that such matters are left for assessment against the design principles. Fourthly, Fig 20 is a high-level conceptual masterplan. It is not purporting to show the balance of development – although it does reflect a number of the key principles from Fig 19 such as the sensitive green edges around all of the N, W, and SW boundaries of the site, and that buildings should front these. Clearly the careful design of the interface is left to G1 at this level of analysis, as is the overall character left to G2. Fig 20 also shows at an illustrative level highly permeable built edges to the sensitive green edges, and significant peripheral planting.

Site Context

1. The site is a greenfield site with re-establishing woodland on the site, and established woodland to the north. The design principles in the Brief have been developed following site and context appraisal and are specific to these sites. The DAS[[15]](#footnote-16) at p29 is not complimentary about the character of nearby housing estates and identifies that there is an opportunity to create a development with its own identity.
2. Mr Walshaw’s proof of evidence set out an analysis of the key characteristics of the nearby housing areas. This identified one of their prevailing characteristics as “the very limited amount of internal green spaces breaking up the built form within the neighbourhood”[[16]](#footnote-17)/ “green infrastructure forming a “green necklace” to large blocks of housing development with no/no notable internal greenspaces breaking up the built form”[[17]](#footnote-18). Mr Walshaw considered this feature “striking”[[18]](#footnote-19). Mr Walshaw was initially clear when asked, but subsequently confused, as to whether this was a positive or negative characteristic of the area. His first position was clear that this is a negative feature. And that is plainly right. He revisited the point on realisation that this was also a feature of his design. However, even then, he accepted that the striking feature identified at his paragraph 3.12 was a negative one (although he added by itself).
3. A second key characteristic identified is that the development often turns its back or sides on to site edges and trees with no active frontage which is described as “poorly conceived”[[19]](#footnote-20) and creating “poor relationships”[[20]](#footnote-21).
4. In his proof Mr Walshaw also recognised that the Brief had appreciated these shortcomings in the area and set out to “correct… this pattern of development”. This is further confirmation that (a) replication of the prevailing pattern does not improve but harms the character and quality of the area and (b) is inconsistent with the Brief.
5. As to the site, the Inspector will have the benefit of a detailed site visit. Mr Topping refers to the site having an “intrinsic green and open character”[[21]](#footnote-22) (albeit his judgment is that the appeal scheme preserves it). The site is entirely greenfield, and the extent of tree groups is clearly shown on the tree constraints plan (CD1.10B).

The Scheme

1. It is common ground that proposals must add to the quality of the area, be sympathetic to local character including landscape setting, and optimise the potential of the site to accommodate an appropriate amount and mix of development including green space (NPPF 127), and that if opportunities to improve the character and quality of an area are not taken the development should be refused (130).
2. And yet Mr Walshaw’s evidence is clear that the proposed development “replicates”[[22]](#footnote-23) the prevailing character and setting of the area with its urban core and green space around the edges. These estates are identified as comprising “large blocks of housing development encircled by connected green spaces and with very little green space permeating these estates[[23]](#footnote-24)”; and this pattern is again “replicated” by the appeal proposals and allegedly the Brief in setting “a vision for another urban block of housing with very limited internal green spaces and a strong green necklace of open space around the edges”[[24]](#footnote-25).
3. It is therefore impossible to see how Mr Walshaw’s evidence and design approach is consistent with national or local policy, and represents a significant failure to take the opportunities that the site presents (as is required). His approach to the site replicates key and striking characteristics of the area which he himself – on reflection – identified as negative characteristics. Mr Walshaw also saw the provision of “another urban block of housing with very limited internal green space” as the “vision” of the Brief[[25]](#footnote-26). This really underscores the errors of the Appellant in understanding the site and the Brief. It also underscores the nature of the opportunity to improve the character and quality of the area not being taken, which was identified expressly in the Brief: Optimising the greenfield character, topography and landscape value of the sites and context[[26]](#footnote-27).
4. Obviously, the Council relies on the evidence of Mrs Hull and that is not repeated in any detail. The following points may serve as a helpful aide-memoire:
5. The appeal proposals are fairly described, consistent with Mr Walshaw’s evidence, as a large block of housing development with very little green space permeating[[27]](#footnote-28), another urban block of housing with very limited internal green spaces[[28]](#footnote-29), a large block of housing development with no notable internal greenspaces breaking up the built form[[29]](#footnote-30). This is a key negative feature of the scheme.
6. Overall character/balance of green space/green infrastructure and hard built form: This can be seen clearly by considering the tree loss and landscaping proposals. Notwithstanding the considerable groups of woodland across the site (which are plainly natural features of the site), the appeal proposals involve the loss of almost all the tree groups and individual trees across the site. Only 43% of one tree group is retained (the northern part of G9 in the north-eastern part of the site). Over a hectare of land covered by woodland tree groups are to be removed[[30]](#footnote-31). There is almost no planting proposed along the western or south-western boundaries – see CD 1.14B. There is nothing along the length of the western boundary, very limited planting in the corners, and no planting within the site at all on the length of the south-western boundary. This is despite these boundaries being identified as sensitive green edges in the Brief, to be addressed by active frontages and through careful design at these frontages. The notion of a green necklace is overstated. The only real area of proposed planting is to the north. None of the building frontages along the western or south-western boundaries actually fronts on to the sensitive edge at all. There is very limited planting on road frontages, and it fails entirely to permeate the development , or reflecting the Brief to enable the landscape setting to be a significant feature in the character of the development (G2)). There are across the site no more than occasional trees in front gardens[[31]](#footnote-32). The degree of green space and landscaping within the housing area is contrary to the Brief and gives the housing a very urban character.
7. Northern edge: very few properties address the woodland edge as shown in the Brief. The revised proposals provide a linear area of planting, but the illustrations (see Mr Walshaw’s App. 27) show how the proposed large houses present a hard edge that does not allow for the landscaping to permeate through the edge or be incorporated into the character of the housing development itself; at parts the development is hard against and extends through roads and parking spaces into the 15m buffer zone. The hard urban character is a product of the design choice of placing large, wide units with little space between, and the failure to incorporate any real greenspace within the housing area. In reality, the greenspace is segregated from the block of housing (e.g. App. 27 figure 10).
8. Western edge: the development here allows very little on-site planting, removes all the establishing woodland within the site boundary, and presents a hard edge of retaining wall and close boarded fence, with the housing failing to address the sensitive green edge and reproducing the poor relationships identified in other housing estates in the area as deprecated by Mr Walshaw. It bears no relation to the requirements of the Brief to address the frontage, or to the conceptual masterplan which shows significant gaps between buildings providing opportunities for permeation of the bult form.
9. South-western edge: This long frontage exhibits the same shortcomings of the western edge with almost no perimeter planting as such, only very one standard tree. The boundary treatment comprises in places significant retaining structures with close-boarded fences on top, with all units backing or siding on to it. Off-site it is intended to plant a hedgerow beyond the boundary fence (see the landscape masterplan at Mr Topping App. 8 to be addressed as part of the Biodiversity Net Gain proposals (Mr Baker app.4).
10. Green character and landscaping: the character of the development – and its hard urban form – is a product of design choices. The Arboricultural Impact Assessment (CD 2.9B) is clear that none of the groups of trees are unsuitable for retention within a scheme. Indeed, it recommends the retention of large parts of groups G7, G8 and G9. G7 and 8 are (on the scheme as amended, but not previously) entirely lost, and 43% of G9 is retained. No other groups of trees or individual trees across the main site are retained at all. The only replacement planting of note is to the north, and this is broadly linear, and neither it nor its character permeates through to the rest of the development. Mrs Hull considers the proposed liner planting, with one pocket north of plot 23, to be linear and artificial. Overall, the loss of woodland across the site is approx.. 0.6 ha[[32]](#footnote-33). There is no-on site peripheral planting along the western or south-western edges. Off-site cat. B trees are retained, but there is no identified scheme of off-site planting along these boundaries. Mr Baker’s Appendix 4 identifies a hedgerow along the S-W boundary, but otherwise only management within unit 1 to a value of £6,000. There are no specific off-site planting proposals secured through the scheme.
11. In conclusion, the scheme fails to meet the requirements of national policy and development plan policy. The proposals do not appropriately reflect the site’s opportunities, or its green character, and the balance between green space and built form is inappropriate. It is common ground that the Brief should attract substantial weight, and that an assessment against the Brief serves as a means of assessing compliance with development plan policies (although it is not itself a development plan policy). The proposals fail to comply with the Brief as properly interpreted. Applying national policy, planning permission should be refused. Applying development plan policies, the proposals are contrary to the development plan.

**D: Efficient Use of Land**

National and Local Policy

1. It has long been a central tenet of national policy, a corollary of the objectives of boosting housing and promoting good design, that development must make an effective and efficient use of land[[33]](#footnote-34). This sits alongside the policy requirements to improve the environment. Paragraph 122 brings into this consideration the character of the area and the importance of securing well-designed places. This is not to drive down density, but to optimise it – see 127(e). Paragraph 123(c) makes clear that applications which fail to make an efficient use of land should be refused.
2. The development plan provides specific guidance on what constitutes an efficient use of land for land located in proximity to the super-tram – the range being 40-60 dph. It is fair to say that this does not mean any density below that range must be refused, but it does mean that a lower density must be specifically justified – the burden being on the appellant (as Mr Bolton acknowledges[[34]](#footnote-35)) – by reference to the good design, the character of the area, or the need to protect a sensitive area[[35]](#footnote-36).
3. The Brief also gives guidance on density. It anticipates – taking into account topography and a dominance of family housing – a density figure at the lower end of the 40-60 dph range or possibly below it across the sites[[36]](#footnote-37). It provides a density range in table 8 based on the 40-60 range, and Fig 20 illustrates areas of housing at 30 and 40dph.
4. The Council calculates the scheme density at 28dph, the appellant 30dph (the difference being whether the regarded land area in the northern planting area should form part of the development area[[37]](#footnote-38)). Either way it is clear that the density is well below the expectations of development plan policy and the Brief, and the Council’s view as explained by Mr Hull is that the proposal amounts to the inefficient use of land.
5. Efficient use of land should not be equated to “output” in terms of number of dwellings[[38]](#footnote-39). A particular output can be achieved in a number of ways through a different layout/arrangement, a different range unit sizes, different plot sizes, a different balance between built and green space (as Mr Walshaw agreed[[39]](#footnote-40)). Careful consideration of the appeal layout and house types shows that the appeal layout deploys large footprints, and little greenspace within the housing area. This reduces the efficiency of the land use, and reduces the opportunity for character-enhancing green space. CD1.3B and Mr Walshaw’s Appendix 13 shows a number of large footprint 4 and 5 bedroom detached houses with floorspace figures up to 1759 sq ft. The footprints are up to 127m for the 5 beds and 104 sq m for the 4 beds. Consideration of the other house types, including the affordable, show the ability for family housing to be delivered with much more efficient land take. This is also demonstrated through the affordable housing units which are delivered at much higher density while still providing a range of housing including family housing. This is clearly seen by considering the house types listed in CD 1.3B, the footprints and ratios in App. 13. A reduction in built footprint enables more space for green space and open space, or for both more green space and a higher number of smaller units depending on the specific design, and so a different balance of development. The market housing on site proposes 22 x 3 bed, 32 x 4 bed and 3 x 5 bed; it proposes 57 units of which 47 (82%) are detached and 10 are semi-detached. None are terraced. The affordable units propose 13 terraced units and one pair of semi-detached units. The density is a product of design and house type choice.
6. The justification for this low density can be dealt with succinctly on the evidence presented to the inquiry:
7. Character: the DAS itself maintains that the site provides the opportunity for a development of its own identity. This is a standalone development site governed by site specific design principles. The character of the area – including its negative features as referenced above – provides no basis for an inefficient use of land.
8. Family Housing: Mrs Hull and Mr Bolton are agreed that family housing is generally 3-bed and above. The specific proposals are not justified by any requirement to provide family housing.
9. Good design: The Council does not consider the proposals amount to good design. There is a clear overlap here between issues C and D. The site presents opportunities for a more balanced development.
10. Topography: The appellant asserts that the density is justified by the particular topography, but this is not made out. There is not a single plan or drawing which justifies an individual house width, garden depth, or plot size by reference to topography, as Mr Walshaw agreed[[40]](#footnote-41). Further, the levels vary across the site and CD1.6B makes clear that there are many sections where levels present no particular issue. The DAS makes no reference to a density or character driven by levels As Mrs Hull explained. The drawings relating to character zones within the site are inconsistent as between Mr Walshaw’s proof of evidence (App. 23) and his rebuttal (page 9). Reference is made to section L-L in CD 1.6B but as Mrs Hull pointed out insofar as this suggests level difficulties to the southern part of the site, the southern corner of the development where the affordable housing is proposed delivers the highest densities across the site. As she also noted, Mr Walshaw’s rebuttal itself acknowledges that there are different options as to how to deal with levels including fronting the boundary as per the brief, but stepping down through a range of retaining walls, and split levelled or sloping gardens. No specific sections have been presented for this southern part of the site showing how higher density is delivered alongside managing level changes.
11. For all these reasons, the proposals represent an unjustified and inefficient use of land.

**E: Integration of Affordable Housing**

Policy

1. The Council’s SPD on affordable housing (CD 5.16) insists that affordable housing should not be differentiated by design, quality, specification, or by location within the site (policy GAH5). There is no reason to seek to add any gloss or to re-write this guidance – its meaning is clear. It is reinforced by the section on how the guidance will be implemented which refers to ensuring that the affordable housing units are integrated into the scheme, and that the specification of the affordable units is equivalent to the market units. This is consistent with the creation of inclusive communities and social integration (as per Mrs Hull at 6.61 and 6.68). Core Strategy policy CS40 provides that new housing must contribute to the provision of affordable housing and the supporting text makes clear that the way in which affordable housing should be provided will be addressed through supplementary planning guidance.
2. Mrs Hull explained why in her view the scheme differentiates the affordable housing in terms of its design, quality, specification and location within the site. This is set out in her proof of evidence from 6.51 to 6.62, and this is not repeated. In summary, the affordable housing is predominantly clustered in the southern part of the development in the highest part of the site. It comprises almost entirely terraced units, which do not feature in the market housing. It looks out over a parking court, the only parking court in the site, it has small plots which back onto the retaining wall along the southern boundary. Overall it has notably lower amenity than the market units (in relation to outlook, privacy, quality of amenity space and living conditions (Hull 6.61). This is not to say that the residential amenity of those units is unacceptable in itself – but rather than when assessed for location, design, quality and specification there is a differentiation as between the affordable and the market units. The fact that the Council will accept it in its capacity as housing authority is neither here nor there. This is a planning assessment as to the equivalence of the units in relation to the broad range of matters covered by GAH5.

**A: Comprehensive Development**

1. One of the objectives of the Brief is to enable a comprehensive approach across the three allocated Owlthorpe sites. As noted above the appeal proposal is a planning application for development within its own red line not tied to any masterplan. It therefore relies entirely on the Brief to secure a comprehensive approach to the three sites.
2. It is apparent that there is a difference between the Appellant’s approach through Mr Bolton, which focuses on whether development of site E physically or practically inhibits the development of sites C and D, and Mrs Hull who views the matter (as per the reason for refusal) as going to the “proper planning of the wider area”. It is not a question of precedent per se, but of diluting or re-writing the key design principles established through the Brief. Mrs Hull recognised that if the Inspector’s view is that the proposals fully accord with those design principles then the point does not arise. However, if those principles are breached, then site E is granted a contrary to the set of established design principles conceived to govern the totality of the development, and so undermines those principles. This is contrary to the objective of the Brief to “enable a co-ordinated and comprehensive approach the future uses of the site”[[41]](#footnote-42), and the requirement that the sites be considered as a whole to ensure comprehensive development[[42]](#footnote-43). For example, if the first development to come forward breaches the Green Environment principles any future proposal for sites C and D will be judged not only alongside the Brief but alongside the character and design principles of the development permitted on Site E.
3. It is through the production, consultation on and adoption of a development brief that such an approach can be taken in a way that enables individual planning applications to come forward. Central to the effectiveness of this mechanism is that each application that comes forward, and especially in the case of the first application to come forward, complies with the principles established within and through the Brief. Otherwise, the grant of permission will conflict with and practically re-write and re-define those principles.
4. In the Council’s view, that is the case in the event that the appeal proposals are permitted. The Brief provides careful guidance on the green infrastructure balance across the development of the sites, and as to density, and the sensitive treatment of the edges and interfaces with landscape setting. It is not a case of having to show that no one would develop sites C and D if the appeal scheme is permitted, but rather of recognising that the control of those developments which should be found in the Brief will be undermined, and so the proper and comprehensive planning of the sites as a whole, comprehensive allocation is undermined.

**Decision-making approach and Planning Balance**

1. There is common ground as to the proper approach to paragraph 11 of the Framework. Both parties consider the development plan broadly up to date.
2. There is no challenge to the Council’s housing land supply figure of 5.4 years. Accordingly, the appeal falls to be determined under section 38(6) PCPA 2004. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF does not alter the statutory presumption. The Council concludes that the development does not accord with the plan as a result of each and all of the points raised in the reason for refusal.
3. It is also common ground that the starting point for the consideration of this appeal is that this is an allocated site for housing, and the principle of residential development is established. This is of significance. The Council’s concerns relate to the form not the principle of development. Of course, if the Inspector considers the form complies with the Brief and the development plan then permission will be granted. If, however, there is non-compliance then attention shifts to the justification that outweighs the breach of the development plan and the Brief.
4. In general terms the delivery of housing and the site’s contribution to the housing supply should be given significant weight (as agreed in the SOCG at 7.11). But it does not justify the inappropriate form, layout and character of the development. No case is presented that the general housing need is urgent. Mr Bolton agreed that not only can the Council demonstrate a 5 year supply of housing land, but that its housing position in terms of both forward-looking supply (5 yr HLS) and backward-looking supply (The Housing Delivery Test performance is 112%[[43]](#footnote-44) over the past three years) is meeting every expectation of national policy. Last year 3,101 units were delivered against a requirement including the buffer of 2,238 – boosting the supply of housing.
5. Mr Bolton raises some qualitative issues as to house type, but agrees that the Framework leaves such issues to planning policy and the market[[44]](#footnote-45). Mrs Hull has presented evidence as to the particular housing position in Owlthorpe, which, as to the existing housing stock, already has a high proportion of detached and family housing, and a high degree of under-occupation. However, for reasons given above, it is agreed that the site should provide a dominance of family housing, the proposed mix is appropriate and helps address a specific need[[45]](#footnote-46). The housing contribution is a benefit of the development of the site, but the Council does not consider the form/character, density and treatment of the affordable units acceptable. As to affordable housing, Mrs Stephens acknowledges there is a real need for affordable housing, and in this context an additional 15 units is welcome and beneficial. New development is not the only source of increasing the affordable housing stock – Mrs Stephens the efforts the Council is making outside of the development control process which provides a considerable source of supply over the next five years (8.5% of the supply[[46]](#footnote-47)).
6. These points, however, largely go to the principle of development. They do not justify breaches of the development plan or the Brief, or of national policy. As set out in Opening:

“The Council, and Mrs Hull, recognise that there are benefits from the delivery of 72 units, of which 15 are to be shared ownership. The benefits of housing on the site goes to the reason why the site was allocated, and to the principle of its development. However, it does not – and cannot – justify the failure to meet the requirements of national and local planning policy for good design. It cannot be put more clearly than it is in national policy. The creation of high quality buildings and places is fundamental to what the planning and development process should achieve[[47]](#footnote-48). Good design is a key aspect of sustainable development. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. This stipulation is reinforced in circumstances where the endorsement of less than good design will carry across to sites C and D. If the Inspector concludes that the proposals do not meet the appropriate design standards for good design then national policy provides the answer to this appeal. It must be refused.”

1. Before concluding, some peripheral points raised by the Appellant in questioning or comment fall to be addressed:
2. Saved development planning policies Mr Bolton suggests in his evidence (e.g. 7.18) that where a development plan policy is saved the supporting test has not been saved and carries no weight. This is not correct – see paragraph 18 of R (oao Cherkley Campaign Ltd [2014] EWCA Civ 567. The supporting text is not blue pencilled. The statutory provisions save any supporting test relevant to the interpretation of policy so that the policy continues with unchanged meaning and effect. As relevant here, H13 and H14 both have supporting text that makes clear the policy will be given effect through SPG. This has a direct bearing on the effect of the policy, which provides for good design and layout. In any event, the point would not apply to CS74 which is not a saved policy and also makes clear that the policy requirements for high quality development will be implemented through supplementary planning guidance. Further, and in any event, the point seems entirely academic given that both Mr Bolton and Mr Walshaw consider assessment against the Brief as relevant to an assessment of whether policies H14 and CS74 are met.
3. Alternative schemes: There was a suggestion in Mr Bolton’s re-examination that the Council had not demonstrated the shortcomings of the scheme by presenting an alternative design. If that was intended to be a criticism, it is without foundation. As set out above the national and development plan position is clear. A development must meet the tests for high quality design. This involves taking the available opportunities to improve the character and quality of an area. Through NPPF 127 planning decisions should ensure that developments meet the terms of sub-paragraphs (a) to (f). It must also make an efficient use of land. In this case, it must comply with Brief. This does not mean that before a Council can refuse a scheme on such grounds it needs to design a better scheme. That is to confuse the principles that apply to the determination of planning applications. The Council recognises that a scheme should not be refused if it is acceptable in planning and design terms just because there is a better scheme. But it remains for an applicant to show how the scheme complies with national and local policy – or is otherwise justified. If it does not then it should be refused regardless of whether an alternative scheme is presented. It is not for a local planning authority to re-design a scheme. It is the Council’s case that the scheme has a number of shortcomings when assessed against national and local polity which it has failed to justify and which mean permission should be refused.
4. Acquisition History: Although Mr Bolton refers to the procedures relating to the offering of the site to the market this is irrelevant to the planning merits. Those fall to be assessed under the statutory duties that apply to the determination of planning applications. The position of the Council as local planning authority in relation to this appeal is as set out in the Decision Notice and the Council’s evidence to the inquiry.
5. For all the above reasons the Council submits that permission should be refused.

**Landmark Chambers, GUY WILLIAMS**

**180 Fleet Street,**

**London EC4A 4HG 21st January 2021.**

1. See Laura Stephens’ rebuttal at 2.1 [↑](#footnote-ref-2)
2. See Council’s Note on the status of this document. [↑](#footnote-ref-3)
3. CD5.14 [↑](#footnote-ref-4)
4. NPPF 130 [↑](#footnote-ref-5)
5. See NPPF paras 126 and 130. [↑](#footnote-ref-6)
6. NPPF 127 [↑](#footnote-ref-7)
7. NPPF 127 [↑](#footnote-ref-8)
8. On a word search there are no fewer than 20 references to NPPF 127 in Mrs Hull’s evidence and explicit substantiation of non-compliance with it. [↑](#footnote-ref-9)
9. All in cross-examination by GW [↑](#footnote-ref-10)
10. CD5.4 [↑](#footnote-ref-11)
11. CD 5.14 [↑](#footnote-ref-12)
12. See proof at 6.54 [↑](#footnote-ref-13)
13. This should be uncontroversial – see e.g. Wavendon Properties Ltd v SSHCLG [2019] PTSR 2077 at 43; Keep Bourne End Green v Buckinghamshire Council [2021] JPL 181 at 78 applied to PPG [↑](#footnote-ref-14)
14. At 6.2 [↑](#footnote-ref-15)
15. CD2.21 [↑](#footnote-ref-16)
16. Proof 3.12 [↑](#footnote-ref-17)
17. Proof 3.21 (3) [↑](#footnote-ref-18)
18. 3.12 [↑](#footnote-ref-19)
19. Proof 3.13 [↑](#footnote-ref-20)
20. App. 6 [↑](#footnote-ref-21)
21. 3.1.10 [↑](#footnote-ref-22)
22. 5.14 [↑](#footnote-ref-23)
23. 6.53 [↑](#footnote-ref-24)
24. 6.54 [↑](#footnote-ref-25)
25. 6.54 [↑](#footnote-ref-26)
26. Brief 6.2 [↑](#footnote-ref-27)
27. 6.53 [↑](#footnote-ref-28)
28. 6.54 [↑](#footnote-ref-29)
29. 3.21(3) as a key characteristic that is “replicated” 5.14 [↑](#footnote-ref-30)
30. Mr Topping proof 4.1.9 [↑](#footnote-ref-31)
31. Xx Mrs Hull [↑](#footnote-ref-32)
32. See Topping proof 4.1.9 – new planting of 0.48ha against a loss of 1.1ha. [↑](#footnote-ref-33)
33. See now NPPF 118 and 122 [↑](#footnote-ref-34)
34. XX GW [↑](#footnote-ref-35)
35. See CS26 0 CD 5.11 [↑](#footnote-ref-36)
36. CD5.19 para 5.1.2 [↑](#footnote-ref-37)
37. See SoCG CD 4.2 at 7.22 [↑](#footnote-ref-38)
38. As repeatedly suggested in cross-examination by the Appellant. [↑](#footnote-ref-39)
39. XX GW [↑](#footnote-ref-40)
40. XX GW [↑](#footnote-ref-41)
41. 1.2 [↑](#footnote-ref-42)
42. 3.2.6 [↑](#footnote-ref-43)
43. Mrs Stephens’ at 3.5 [↑](#footnote-ref-44)
44. XX GW by reference to NPPF 61. [↑](#footnote-ref-45)
45. See SoCG at 7.28 [↑](#footnote-ref-46)
46. LS in the round table session by reference to the Stock Increase Programme – see CD4.10.2.8 at 3.26 and 3.28 [↑](#footnote-ref-47)
47. NPPF 124 [↑](#footnote-ref-48)