**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**

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**Opening Submissions of the Council**

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**Introduction**

1. This is an appeal against the Council’s refusal of planning permission for the erection of (now) 72 dwellings on land off Moorthorpe Way, Sheffield (“the Appeal Site”). There have been a number of amendments to the application since it was submitted most recently as requested on 11th December. This reduced the number of units from 74 to 72 and made changes to the site boundaries and layout. The Statement of Common Ground has been amended and paragraph 4.15 lists the plans that now comprise the appeal proposals.
2. Permission was refused for one reason which gives rise to a number of issues. These were characterised as follows following the Case Management Conference:

Whether or not the development:

(B) prejudices the proper planning of the area by not forming part of a comprehensive scheme for the whole of the Owlthorpe development area (Sites C, D, and E);

(C) Fails to respond sufficiently to the area’s prevailing character, green infrastructure and open space;

(D) Makes efficient use of land; and

(E) Fails to appropriately integrate affordable housing into the layout.

1. The first main issue that will be addressed at the inquiry relates to the impact of the development on ecological interests (Issue A), which is not part of the reason for refusal and on which the Council does not lead evidence.
2. The Council relies on the evidence of Sarah Hull, a principal planning officer at the Council, and Laura Stephens, a planning officer at the Council. Each witness has prepared a main proof of evidence and a rebuttal proof of evidence.
3. 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-1). 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.
4. These submissions do not attempt to set out the Council’s case in any detail as it is set out comprehensively in the Council’s evidence, but rather to provide its outline.

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

1. 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[[2]](#footnote-2). 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[[3]](#footnote-3). Where an application is a full one, if the design does not meet these standards then permission should be refused.
2. 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.[[4]](#footnote-4) 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[[5]](#footnote-5).
3. The development plan allocates the site together with sites C and D (H13) and requires such allocations to create new buildings that are well designed and well laid out, and to provide appropriate environmental buffers and meet the policies for the built and green development[[6]](#footnote-6) (H14 and (H15). These housing policies are to be implemented through planning decisions and, as appropriate, guided by the publication of supplementary planning guidance. (It is wrong to suggest that supporting text is somehow blue pencilled by a saving direction – it continues to have effect so that the policy continues with unchanged meaning and effect (R (oao Cherkley Campaign Ltd) v Mole Valley DC [2014] EWCA Civ 567, at 18). In any event, such guidance remains a material consideration).
4. The Brief is up-to-date supplementary planning guidance consulted upon akin to SPD and adopted by the Council. It specifically and only relates to the development of the three Owlthorpe sites, and has as its vision that the new development at Owlthorpe should reflect the distinctive green character of the setting and utilise the site’s natural assets[[7]](#footnote-7). Its objectives include, of particular relevance to the reason for refusal, the promotion of high quality development that makes a positive contribution to the neighbourhood, to enable a co-ordinated and comprehensive approach to the sites, and to optimise the value of the setting and site features, such as its distinctive landscape and topography[[8]](#footnote-8). The requirement for a comprehensive approach across the three sites is emphasised[[9]](#footnote-9). The Brief identifies constraints and opportunities – which opportunities must be taken to comply with national policy, and provides an urban design framework. Of particular importance it sets out key design principles. These inform whether the design standards of the development plan are met. Unsurprisingly, these emphasise the importance of the green environment and setting of this open, greenfield site. It is essential that the interfaces between the development and the open space or the woodland edges are carefully designed to provide value to new residents and to enhance landscape quality. The landscape setting must feature significantly in the development of character. The development must contribute to the success of the green infrastructure in this area to enable more sustainable development and lifestyles[[10]](#footnote-10). These principles require the development as a whole to have a character that reflects the landscape setting of the site, and the opportunity it presents for a development of high landscape quality.
5. The development proposals fail to meet these design standards set out in national and local policy. The shortcomings are explained by Mrs Hull. The proposals remove almost all the successional woodland that has established on the site including at the periphery, and hedgerows, and fail to feature the landscape setting significantly in the character of the development. To the north, the woodland is removed, and replaced with a linear area of landscaping in the buffer zone to the ancient woodland which reduces the screening and effect of that woodland as a feature. The development presses hard against the 15m buffer. The green character and quality is not incorporated within the development itself, but rather pushed to its edge. Mr Walshaw’s “green necklace” is a mistake[[11]](#footnote-11). It is a repeat of mistakes made earlier and elsewhere, which the Brief moves away from.
6. To the west and the south-west the development turns its back on the off-site landscape features, and provides scant, where any, on-site peripheral landscaping. Instead, the existing woodland is presented with a retaining wall and close-boarded fence. Again, repeating mistakes made elsewhere which Mr Walshaw deprecates. Within the development, the design choices do not promote local distinctiveness, or reflect the landscape setting and potential of the site, preferring instead an “anywhere”[[12]](#footnote-12) estate containing (for the market housing only) large, detached units in large plots with little landscaped open space.

**D: Efficient Use of Land**

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[[13]](#footnote-13). 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.
2. The appellant suggests that the Council’s position is somehow inconsistent in seeking a greater role for green infrastructure within the development while also seeking a more efficient use of land. This allegation illustrates the shortcomings of the design choices made by the appellant. More efficient use of land does not mean bigger units or a larger area covered by housing or roadways. The promotion of a range of units in a more efficient layout enables greater use of green infrastructure and a better balance between built and unbuilt development. This would not prevent the delivery of a mix of housing types including family units. Here the appellant has no difficulty in promoting relatively high density development for the affordable units, but chooses very low density for the market housing across large parts of the site. This is not justified by the site conditions, or the character of the area. This is a standalone allocation across three greenfield sites, guided by specific principles in the Brief which promote development of a particular character. Properly calculated the density across the site is 28dph. The development plan seeks for an area as accessible as this one development in the region of 40-60 dph[[14]](#footnote-14) unless specific justification is made out. This particular scheme is not justified.

**E: Integration of Affordable Housing**

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).
2. Mrs Hull explains the failure in the appeal proposals to avoid such differentiation. The affordable housing is predominantly provided in terraces – the only terraces in a development of overwhelmingly detached market units. The units are largely disposed around a parking court – the only parking court in the development, and are developed at a density which is not reflective of the balance of market units across the site, and which ensures that the affordable units have reduced amenity compared to the market units. Whether or not affordable housing providers would take the units on if built is irrelevant to the planning merits.

**A: Comprehensive Development**

1. As referred to earlier, one of the objectives of the Brief is to enable a comprehensive approach across the three allocated Owlthorpe sites. This requires the sites to be considered as a whole.
2. 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.
3. 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. This, too, is explained in the evidence of Ms Hull.

**Planning Balance**

1. 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.
2. The Council is able to demonstrate a five year HLS, and the Appellant leads no evidence to the contrary.
3. In terms of the decision-making framework in paragraph 11 NPPF therefore: if the Inspector concludes (contrary to our case) that the proposals accord with the development plan then of course he should grant permission. If he concludes that the development does not accord with the development plan read as a whole then there is a statutory presumption against the development. The tilted balance within paragraph 11(d) is not engaged: there are relevant development plan policies, the most important policies are not out of date, and there is no challenge to the 5 year HLS.
4. 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[[15]](#footnote-15). 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.

**Landmark Chambers, GUY WILLIAMS**

**180 Fleet Street,**

**London EC4A 4HG 12th January 2021.**

1. See Laura Stephens’ rebuttal at 2.1 [↑](#footnote-ref-1)
2. NPPF 130 [↑](#footnote-ref-2)
3. See NPPF paras 126 and 130. [↑](#footnote-ref-3)
4. NPPF 127 [↑](#footnote-ref-4)
5. NPPF 127 [↑](#footnote-ref-5)
6. See now CS74 – which is consistent with NPPF 127 [↑](#footnote-ref-6)
7. CD 5.19 at 1.2 [↑](#footnote-ref-7)
8. 1.2 [↑](#footnote-ref-8)
9. 3.2.6 [↑](#footnote-ref-9)
10. G1 to G3, p33 [↑](#footnote-ref-10)
11. E.g. proof at 6.54 [↑](#footnote-ref-11)
12. See Sarah Hull rebuttal section 2 and 2.19 [↑](#footnote-ref-12)
13. See now NPPF 118 and 122 [↑](#footnote-ref-13)
14. CS26 [↑](#footnote-ref-14)
15. NPPF 124 [↑](#footnote-ref-15)