S78 Town and Country Planning Act 1990

Land at junction of Carr Road/Hollin Busk Lane

PINS Ref: APP/J4423/W//21/3267168

Final Submissions of the Council

Introduction

1. The submissions address the following main issues:
    (1) The effect of the proposed development on the character and appearance of the surrounding area;
    (2) The effect of the proposed development on the special interest of nearby heritage assets; and
    (3) The planning balance including policy considerations and the benefits of the scheme (including housing land supply).

Issue 1: Character and appearance

2. The Council relies on the evidence of Ricardo Ares as spoken to at the RTS.

3. National policy is clear that developments should be sympathetic to local character and history, including the surrounding built environment and landscape setting[1]. Planning policies should contribute to and enhance the natural and built environment by recognising the intrinsic character and beauty of the countryside[2].

[1] 127(c)
[2] NPPF 170(b)

4. Local policy (GE4 UDP) requires – given the visibility of the site from the Green belt – that the scale and character of development should be in keeping with the area and wherever possible conserve and enhance the landscape and natural environment. The site is also within an Open Space Area in the UDP where development will not be permitted where it would harm the character of an area or harm the rural character of a wedge of countryside (LR5(i and j). CS47(b) of the Core strategy seeks to safeguard open space that is of high quality or of landscape value. The land forms part of the open space protected by policy CS72 for its green, open and rural character on the edge of a built up area. The plan describes the land at Hollin Busk as a large and integral part of the countryside south of Stocksbridge, prominent in local views and providing an important visual break between the settlements of Stockbridge and Deepcar.

5. There are three key elements to the Council's objections under this heading, that fall to be considered in the above policy context:

    (a) The landscape quality of the existing site and the immediate surrounding area and the resulting extent of harm to the character of the area;
    (b) The extent of harm to visual amenity at both local and wider levels;
    (c) The role of the site in visually separating settlements and how the proposals undermine that role.

6. (a) Landscape quality: Mr Ares considers the site character to be typical of the pastoral uplands of this part of Sheffield (the appeal site lies within the Pastoral Hills and Ridges character area of the Sheffield Preliminary Landscape Character Assessment[3]), and to display a consistent rural character. The pastoral fields, dry stone walls, wooded boundaries and openness combine to create a pleasant and scenic feel. Having regard to relevant factors within GLVIA 3, box 5.1[4], Mr Ares considers that the site is of high landscape quality. Having regard to the ability of this landscape to accommodate residential development of the scale proposed, Mr Ares considers that the landscape sensitivity of the site is also high. The proposed development would result in the loss of the site's landscape fabric, most obviously the loss of its open pastoral fields, as well as alterations to the boundary features. The magnitude of landscape effects would be

[3] CD7.2
[4] CD7.5

high. Overall, Mr Ares disagrees with the conclusion of the submitted LVIA that the immediate impact on the site would be moderate adverse reducing to moderate/minor adverse. The result is an overall finding of significant harm with major adverse effects on the landscape character of the site and immediate surrounding area. The Inspector will, of course, form his professional judgments informed by a detailed site visit. Following the discussion at the RTS it is perhaps worth emphasising that Mr Denney relies on the impacts as assessed in the LVIA. Mr Ares considers the landscape and scenic quality, sensitivity and impact to be considerably understated in that assessment. However, the LVIA itself recognises considerable impacts on the site and the surrounding area[5]. Mr Ares also draws attention to the wider landscape (and visual) effects. It is worth noting the inspector's assessment in the 1991 appeal decision[6] that the area of land between Royd and Hollin Busk (effectively the OSA designation):

(a) "is a most attractive area of open land which still, despite its proximity to the urban areas, exhibits a predominantly rural character and appearance. The small fields bounded by dry stone walls and the gentler undulations of the land create, in my view, a typical hill-farming landscape". (92)

(b) "I am convinced …that this area of open land does effectively separate the communities of Stocksbridge and Deepcar in this particular area". (93)

(c) "…the site performs an important role in linking the open, Green belt land to the south with the Fox Glen to the east and the open land to the north of Broomfield Lane. In so doing, an open "wedge" is created leading into the heart of the built-up area. This wedge acts both as a "lung" for the local residents and an ecological corridor". (94)

(d) "The third and very important role of the appeal site is the contribution it makes to the character and landscape quality of the area. I find that from Hollin Busk Lane there are extensive views across the open fields of the appeal site to the Don Valley and the hills beyond. Therefore, walking or driving along the lane, the landscape and character of the surroundings is predominantly rural and of high visual quality. The prominence of the appeal site in the landscape, and its role as a forefront to the valley and hills

[5] See the impacts assessed at Appendices B and C of the LVIA (Mr Denney's app. 1)
[6] CD 5.23a

beyond is even more pronounced when viewed from higher land to the south". (95)

7. There have been no changes to the land since that assessment – and that assessment aligns closely to that of Mr Ares and contrary to that of Mr Denney. It is also consistent with the assessment of the Council in choosing to protect the land through the development plan as an Open Space Area in LR5 (as having rural character and being a "wedge" of open countryside) and CS72 (as being an "integral part of the countryside south of Stocksbridge, prominent in local views and providing an important visual break between the settlements of Stocksbridge and Deepcar. Its rural character is greatly valued locally…"[7]). Regardless of any arguments about weight, these policies are founded on an assessment of the role of the land as found by the Council in promoting two local plan documents and endorsed through examination. The outlier is the assessment by the Appellant. (This is not to say that appeal decision is of much weight in determining this application (SOCG 5.1) but it does help understand the role of the wider area now protected by the OSA and assessed by that inspector).

8. (b) Visual amenity: Mr Ares has reviewed the likely visual receptors, including those longer distance views north of the site omitted from the LVIA[8], which are all high sensitivity. He has also reviewed the sensitivity of the identified views, noting that those in close proximity to the site along Carr Road and Hollin Busk Lane which should be assessed to reflect their use by pedestrians along the footway. Mr Ares has assessed the magnitude of effect from the identified representative viewpoints and combined this with the sensitivity and value of the views to identify the significance of visual effects. He concludes in those near viewpoints including along Carr Road and Hollin Busk Lane there would be major adverse visual impact taking into account the totality of the development. From the northern viewpoints the impacts would be moderate adverse. This includes highly sensitive views (walked on the site visit) from Hunshelf Bank. The local residents have emphasised how much the openness and appearance of this land is valued.

[7] Para 12.8
[8] See RA Appendix C

9. (c) Separation of settlements: The site forms part of a green gap which includes Green Belt to the north through the appeal site and Fox Glen to the south towards the valley bottom (well-illustrated on p17 of the DAS[9]). It separates Royd (as part of Deepcar) and Hollin Busk (as part of Stocksbridge). The nature of the development proposals would alter significantly the role of the appeal site as part of this wedge and undermine its separating function despite its clear policy protection. The fact that the proposals do not fill the gap is not the point. They introduce significant suburban development into open countryside whose openness is fundamental to its function. As noted in the heritage section these fields have performed their existing open, pastoral function for centuries.

10. For these reasons, the appeal proposals are considered to be contrary to the policies identified above, and the first reason for refusal is made out. Mr Denney also recognised that there was harm to the character and appearance of the area (albeit less than that assessed by Mr Ares), and relies on the planning balance to address this. This gives rise to important points as to the application of national policy. Para 127(c) NPPF says that planning decisions should ensure that developments are sympathetic to local character including the surrounding built environment and landscape setting. This is not only about how land is developed by whether it should be. Similarly, para 170(b) says that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. There is no in-built balancing exercise. Where a development would cause harm to the intrinsic character of the countryside, and harm the rural character of an area, this amounts to non-compliance with these policies. "Recognising" the intrinsic character and appearance of the countryside means registering harm to it as contrary to national policy and harmful in its own right. For the above reasons the Council considers the proposals to be contrary to both national and local policy.

[9] CD1.10

Issue 2: Listed buildings

11. There is agreement as to the assets affected being Royd Farmhouse and Barn and Associated Outbuildings, each of which is listed at grade II. It also agreed that the appeal site forms part of the setting to those buildings makes a positive contribution to their significance[10]. It is further agreed that the proposed development will form a change in the setting of Royd Farmhouse and the Barns and Associated Outbuildings, and that this change will cause harm to the significance of the assets. The principal disputes relate to (a) the degree of contribution to the significance of the listed buildings made by their setting and the appeal site as part of it, and (b) the degree of impact on significance. The Council, through Mrs Masood, assess the harm as substantial, and the Appellant, through Mr Bourn, assesses it as less than substantial.

12. National Policy is set out through the NPPF and the NPPG. It is clear that in considering the impact of a proposal on the significance of a listed building great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Any harm to the significance of a heritage asset requires clear and convincing justification[11].

13. Different policy tests apply in relation to substantial and less than substantial harm (in NPPF 195 and 196 respectively). The Government has provided specific guidance on this threshold in the PPG. Substantial harm is a high test – as an example: "*an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest*"[12]. This represents the Government's up-to-date interpretation of the threshold. As made clear in Bramshill[13] the degree of harm and the approach to its assessment is a matter for the decision-maker. Mr Bourn refers to the Bedford case[14] but that was not intended to provide a legal interpretation of the meaning of substantial harm in all cases, and the Government clearly sees the PPG as consistent with any dicta in Bedford, which it is. In Bedford the Court was considering

[10] Heritage SoCG at 1.23
[11] NPPF 193-194.
[12] PPG 18a - 1017
[13] CD 5.7
[14] CD5.5

whether an inspector's decision included a public law error. Jay J. concluded that in the context of indirect harm one "one was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced" (26). The notion of 'very much reduced' is in any event very broad in scope. The inspector had reached his decision without the current PPG guidance, and informed by the previous guidance that accompanied PPS 5 (12). In short, the approach now should be, reflecting Bramshill and the PPG, that the decision-maker should form his own view on whether the harm is substantial, and that will include where *the adverse impact seriously affects a key element of its special architectural or historic interest*. The Council considers that the agricultural setting of the farmhouse and barns is a key contributor to the architectural and historic significance of their significance and is effectively eradicated by the development.

14. A clear structure for considering cases of development in the setting of assets is given in HE's GPA3. As above, in this case the particularly contentious steps are steps 2 and 3:

    - Assess the degree to which these settings and views make a contribution to the significance of the heritage assets or allow their significance to be appreciates;
    - Assess the effects of the proposed development, whether beneficial or harmful, on that significance or on the ability to appreciate it.

15. The Council relies on the evidence of Ms Masood and the discussion at the RTS. It is clear from the discussion at the RTS informed by the SoCG that the appeal site forms part of an agricultural landscape that has remained largely unchanged for centuries. The farmhouse and surrounding fields have co-existed for centuries. Field patterns across the appeal site remain substantially the same[15]. The farm and barns took their place as a vernacular, functional farmhouse on the edge of the agricultural hamlet of Royd. The architectural and historic interest are the subject of significant functional contribution through the agricultural and historic setting which explains their form, function and placement. The buildings themselves are relatively simple and functional. This is important. As Mrs Masood explained the architectural and historic significance of the

[15] See e.g. the 1855 OS – RM fig 6.

asset is not particularly in the fabric – it is in the whole (ie the relationship between the fabric and the setting). Some listed buildings will be of significant design interest with fine architectural detail, complex elevations etc. This is not the case here. The buildings themselves are simple and functional and their design is largely a product of their function and placement in an agricultural setting.

16. There is group value between the barns, the farmhouse and the curtilage listed buildings, for example the pigsties set against the boundary of the appeal site. There are high levels of intervisibility between the listed building and their curtilage and the appeal site. Indeed, standing next to the pigsties at the entrance to the field there are very clear views across the site – and from the appeal site back to the farm complex. Mrs Masood considers the physical and visual connection between the buildings and the historic field system to be seamless and intrinsic. Mrs Masood concludes that the agricultural setting within the hamlet of Royd makes a very substantial contribution to the setting of the assets and is a fundamental element of the significance[16]. It appeared at the RTS that Mr Bourn places considerable reliance in his analysis on a clear distinction between the immediate setting, the courtyard and garden, and the wider setting. But that is a false distinction. Historically and functionally this distinction does not exist. The farmhouse – always residential – has one continuous setting which includes the garden, pigsties/outbuildings and the fields as one whole.

17. The scale of the effect on this agricultural setting is very significant. It takes the fields out of agricultural use for the first time in hundreds of years, and removes any functional link visually or historically between the buildings and their historic farmland. The proposed houses occupy 4 of the 5 open fields. It is fair to say, as Mrs Masood does, that the agricultural character of the setting will be eradicated. The reduction in significance goes to the essence of the asset as rural farmhouse, barns and outbuildings in a historic agricultural field pattern. The interest in the fabric would remain – but little else – these being simple, functional buildings explained by their setting. The device within the amended scheme to allow for some public open space and a drainage basin to be visible from the garden of the listed building – appearing in a residential, and inevitably suburban setting – does nothing to reduce the effects of the fundamental

[16] Proof 5.4

change in character of the fields. Mr Bourn frankly recognised the limitations of the mitigation, describing the masterplan layout amendment as a "nod" to the assets. The dry stone walls may be partly retained but they become meaningless in relation to the listed buildings. Royd farmhouse becomes not a farmhouse, but a house on the edge of a modern residential estate.

18. In terms of the PPG, Mrs Masood considers that the adverse impact does seriously affect a key element of the significance of the listed buildings architectural and historic interest. It therefore meets the test of substantial harm.

19. As a result, the proposals fall to be addressed under NPPF 195. They are also in conflict with Saved UDP policies BE15 and BE19, as well as LR5(e). In the event that, contrary to the above, the harm is found to be less than substantial then the harm must be given considerable importance and weight within the planning balance under NPPF 196 to provide a clear and convincing justification for the harm. The heritage policies contain the central objective of the Framework – that is reflective of the statutory duty (S66LBA 1990) to pay special regard to the desirability of preserving listed buildings and their settings. Policies BE15 and BE19 and LR5(e) UDP reflect this duty, albeit they lack the in-built balancing exercises within NPPF 195 and 196. Mr Bourn draws attention to the Bramshill judgment, where Court of Appeal upheld the giving of significant weight to analogous policies, and that: "the absence of an explicit reference to striking a balance between "harm" and "public benefits" in the local plan policies does not put them into conflict with the NPPF, or with the duty in s66(1). Both local and national policies are congruent with the statutory duty". In those circumstances the correct approach is to recognise the breach of the development plan policy which may be given significant weight on the grounds they are not inconsistent with the Framework, and consider the benefits as part of the consideration of other material considerations. (The judgment is entirely clear on this point, and the point is not dependent on the inspector's overall balancing exercise as appears to be being suggested. The Inspector had to apply the policies under section 38(6)).

Issue 3. Planning Balance

Decision-making structure

20. All planning applications have to be determined under s38(6) of the 2004 Act, that is in accordance with the development plan unless material considerations indicate otherwise. The relevant policies of the development plan are identified in the evidence of Mr Chapman[17], and in the planning statement of common ground[18]. The policies that the Council considers are breached are set out in relation to the above two issues. Mr Chapman's conclusion is that the proposals fail to accord with the development plan read as a whole, and so there is a statutory presumption against the development.

21. The inquiry has heard considerable evidence as to the weight to be given to the development plan policies in support of the Appellant's argument that the most important policies for determining the application are out of date. The Appellant takes a particularly forensic approach to this exercise, which is unnecessary. The Supreme Court has often warned of the "over-legalisation" of the planning process[19]. It also seeks to give a meaning to out-of-date so that even policies of moderate weight – and wo which care to a fir degree consistent with the Framework – are considered to be "out-of-date"[20]. In Gladman Developments Ltd v SSHCLG [2021] the Senior President of Tribunals Sir Keith Lindblom re-emphasised that the courts should resist the over-complication of concepts that are basically simple (32(1)). The weight to be given to compliance or conflict with the development plan is a matter for the decision-maker and forms part of the harms and benefits within the tilted balance. The caselaw is clear that para. 213 NPPF applies in assessing whether policies are out-of-date (see Wavendon at 56 and 58). That paragraph specifically addresses the term "out-of-date" and makes clear that this is a matter of degree on assessment for consistency with the framework. The Appellant refers to the comment by the Court in Bloor Homes (cited at para. 48 of Wavendon) that policies "may have been overtaken by things that have happened since it was adopted, either on the ground or in some change in national policy, or for some other reason". This is a general comment covering many situations.

[17] Para 6.1
[18] In section 6
[19] For example in para 23 of the judgment in Hopkins Homes Ltd v Suffolk Coastal DC [2017] UKSC 37
[20] RB XX GW

For example, if a plan protects an area of open space that policy may be overtaken by events if planning permission is granted for development of part of it. But where it remains in the same condition as when designated, the policy is not out of date. It should be assessed for consistency with the Framework. Other matters may be relevant to the assessment, but the focus should be on the particular policy being considered and the consistency of its objective and its development control test. As Mr Chapman explained[21] the development plan (both UDP and CS) operates by having a series of policies that identify the particular role of identified areas of land. This is not a development plan that has a strict settlement boundaries approach, or a blanket protection of countryside for its own sake. All of the policies that the Council relies on here are specifically related to the role of the land in contributing to the character and appearance of the area, and providing the setting for listed buildings. Where one has *development control* policies these can readily be assessed for consistency with the Framework. Local policies will often add specific detail to reflect the characteristics of the area in question. This is the case here, where plan policies recognise the particular value of the LR5/CS72 area as being open and rural in character. The development control test is bespoke. It reflects the particular characteristics of land, and seeks to avoid harm to that particular character It does not fall to be rewritten - but assessed for consistency with the Framework. The Framework is entirely supportive of, and indeed insists upon, development being sympathetic to local character and its landscape setting, and it recognises the intrinsic character and beauty of the countryside. The precise wording of the policies is not the same as the NPPF, but the objectives are consistent. It is reasonable to allocate these policies moderate weight (or more), as Mr Chapman has done. It is wrong to seek to give these tailored local policies limited weight or less based simply on the changing housing requirements of the area. Regardless of the housing requirement the appeal site has been identified as worthy of protection for its landscape, visual and heritage qualities, all of which are supported by national policy. It is submitted that Mr Chapman's assessment of weight reflects the right balance between the continuing objectives of national policy relating to character appearance, the intrinsic character of countryside, and heritage matters while recognizing that the wording and broader policy context is not wholly aligned.

[21] In XX by RS

22. It follows from this that the basket of the policies that are most important for determining the application is not out-of-date.

23. The NPPF is a material consideration. The Appellant alleges that the tilted balance within paragraph 11 of the NPPF is engaged. That will only be the case where:
    (1) The most important policies for the determination of the application are out of date, or deemed out of date by the absence of a five year housing land supply (para. 11(d)); and
    (2) The application of policies in this Framework that protect areas or assets of particular importance does not provide a clear reason for refusing the development proposed (11(d)(i).

24. Listed buildings are identified as an asset of particular importance through footnote 6. The tilted balance can only then apply in any event if the development control tests in NPPF 195 or 196 (as appropriate) are passed.

25. The evidence of Mrs Stephens shows that the Council is able to demonstrate a five year housing land supply, and so the policies are not deemed out of date for that reason.

26. Accordingly, the Council's conclusion is that the proper decision-making structure for this determination is the straightforward balancing exercise required by section 38(6) of the 2004 Act, and not the tilted balance. In addition, the tilted balance would not be engaged due to the failure to pass the appropriate development control test in the NPPF relating to the protection of listed buildings.

Substantive Balance

27. The substantive harm that the Council relies on is that identified under issues 1 and 2 above. For the reasons summarised above national policy recognises the *intrinsic* character and beauty of the countryside and requires development to be *sympathetic* to local character and the surrounding built environment and landscaping. It gives great weight to the conservation of the significance of listed buildings. Those fundamental tenets of national policy underpin a number of the most important local plan policies, which deserve weight accordingly.

28. The appeal site is within a designated area of open space for the purpose of LR5 of the UDP– the designation speaking to the role of the openness and appearance of the appeal site and surrounding open land. It is also affected by GE4 which protects the visual amenity of the Green Belt by ensuring that development conspicuous from the GB will be in keeping with the character of the area, consistent with NPPF 141 as well as 127© and 170(b). It is also part of a specific area of Countryside Not in the Green Belt protected under CS72 of the Core Strategy to be protected as open countryside due to its green open and rural character, as part of a larger and integral part of the countryside south of Stocksbridge which is prominent in local views and provides an important visual breach between the settlements of Stocksbridge and Deepcar, with its rural character greatly valued locally. It is consistent with, not inconsistent, national policy that such areas should be the subject of specific development control tests to maintain their character. The Appellant seeks to downplay the weight to be given to these policies but in reality they do serve the broad objectives of the Framework described above, in a way tailored to the local planning authority area and the specific characteristics of it, and specific areas of it, including the appeal site. The policies are also consistent with the NPPF's support for the redevelopment of brownfield land, particularly within settlements[22]. The development of greenfield sites outside of the settlement does not accord with the underlying objectives of the suite of locational policies identified by Mr Chapman, which again are broadly consistent with the objectives of the Framework (CS23, CS24, CS33 and CS63(h), and fall to be assessed by refer to NPPF 170(b) as well as local plan policies addressing character and appearance. The Appellant appears to blend questions of compliance and consistency. Mr Chapman is correct[23] to recognise that where proposals are sympathetic with local character and do recognise the intrinsic character and beauty of the countryside then they will substantially comply with local policies. But that is not this case – the appeal site is identifiably open and rural in character and appearance and those qualities are protected through the development plan. Development which harms that character (LR5(i), or harms the rural character of this as a wedge of open countryside (LR5(j)), or harms the area's green, open and rural character (CS72) will be contrary to the specific development plan policies as well as

[22] NPPF 117/118.
[23] As explained in cross-examination

the NPPF, the two being broadly consistent in objective. Further, the appellant seeks to diminish the policy by reference to the current definition of Open Space in the NPPF. But this is not an open space policy in the sense or providing for public recreation. It is a policy about the open character of land whether publicly or privately accessible. Public access is nothing to the point. This is another example of over-complication. Mr Bolton's proof takes the approach of looking at previous national policy to see how it has changed over time (for example under PPG2 re GE4). But the only relevant assessment is as against current national policy.

29. For these reasons (a) the basket of most important policies is not out of date, and (b) these policies attract moderate weight or more (GE4) giving rise to a strong presumption against the development given the primacy of the development plan, and this policy harm also weighs in the tilted balance should the inspector consider it appropriate to apply it.

30. There are benefits through the development of the appeal site, principally the delivery of up to 85 homes of which (the floorspace equivalent of about) 8 or 9 will be affordable. These must be assessed in the context of the supply and delivery of housing.

Housing Land Supply

31. The Council's position is that the appropriate HLS figure taking a base date of 1 April 2020 is 5.4 years.

32. The Council maintains that it is critical that a consistent approach is taken to the base date for the requirement and the supply side of the equation. The appropriate base date is 1 April 2020. The completion data for a base date of 1 April 2021 is not available. Each element of the supply has been assessed as deliverable at that date within the meaning of the Framework. A robust and reliable approach has been taken.

Student accommodation

33. The issue of student accommodation should be straightforward, but is made complicated by the Appellant. This is purely a question of housing supply – not requirement. The requirement side is set by the standard methodology which includes for growth within the student age population with specific household formation rates applied[24]. Housing supply is concerned with units of accommodation. It does not distinguish by size or type. A one bedroom flat is just as much a unit of accommodation as a five bedroom house. The PPG (68-34) is clear about including student accommodation within the supply. It establishes the principle. This is because the provision of purpose-built student accommodation will release existing student houses back to the general market and such student provision will prevent the conversion of other general market housing into student use. It must do one or the other. This is irrespective of the growth in student population. Say 500 units are built. In two scenarios the student population rises by (a) 0, or (b) 1000. In (a) 500 students can move out of general housing freeing it up. In (b) 500 students move into the general housing stock reducing that stock as available for general residential use. But if no units had been provided there would be 1000 students in the general housing stock.

34. The Appellant has wrongly blended supply and requirement factors and put forward an unnecessarily complicated way of accounting for student units of accommodation. The only analysis that is required is in relation to the number of units. Where units are self-contained there is no difficulty at all. The PPG is itself clear that a one bedroom studio counts as one unit. It seems entirely illogical that on Mr Bolton's approach a self-contained 7 bedroom flat does not. The option available to authorities – which the Council has declined in favour of a conservative and simple approach – is where the authority wishes to analyse bedspaces to drive up the contribution above the number of units of accommodation. For example, if an 80 bed hall of residence is provided that is only one self-contained unit of accommodation. But an authority may analyse the census information to identify the average size of a student household – say 4 – in which case the 80 beds may count as 20 units as that is the equivalent within the housing stock. Similarly, if there were 10 x 8 bedroom cluster flats. This is the same approach as is

[24] As explained by Mrs Stephens' E-in-C.

taken in relation to nursing homes[25]. It is also, as Mrs Stephens explained, the approach taken by the Government as to how it requests Housing Flows Reconciliation for the purposes of the Housing Delivery Test. This is significant as it reflects what the Government considers to be delivery against the LHN requirement.

35. There is nothing in the PPG to support Mr Bolton's suggestion of having regard to the growth in student population. Mr Bolton appears to base his approach on an inspector's decision[26]. That decision is entirely distinguishable. The particular concern in that case was seeking to understand the relationship between student growth in a bespoke FOAN which did not include for halls of residence. The question was then whether such accommodation should contribute to the supply. The alignment of the FOAN and supply arises quite often in relation to other forms of residential accommodation such as student and C2 uses. That issue does not arise where the LHN is used – the PPG is unsurprisingly consistent as between the LHN assessment and the guidance on counting students. The current PPG guidance was not addressed in evidence before the inspector as it did not exist[27]. The earlier version of the PPG referred only to student accommodation that released general housing – it did not make the link to the role of student accommodation in enabling general market housing to remain in general residential use. The SoS did not address the issue. The decision does not provide any assistance in the present circumstances and does not consider current guidance.

36. The Council's approach is robust and conservative.

Requirement Issues

37. There are really two issues (that make any difference) and they are related. These are the questions of the base date and the urban uplift.

38. Firstly, these issues arise only as matters of interpretation of planning guidance. The Courts have repeatedly made clear that planning practice guidance should be interpreted

[25] PPG 68-35
[26] CD 5.19.
[27] See the Appellant's submissions at IR 107 entirely focused on the question of demonstrating a release of housing.

practically and flexibly. It is not a like a contract or statute and it should be interpreted having regard to its purpose. Relevant principles of interpretation were summarised in Wavendon Properties Ltd v SSHCLG[2019] JPL 1504 at para 43, including:

…

"ii) The task of interpretation of the meaning of the planning policy should not be undertaken as if the planning policy were a statute or a contract. The approach has to recognise that planning policies will contain broad statements of policy which may, superficially, conflict and require to be balanced in ultimately reaching a decision (see *Tesco Stores* at [19] and *Hopkins Homes* at [25]). Planning policies are designed to shape practical decision-taking, and should be interpreted with that practical purpose clearly in mind. It should also be taken into account in that connection that they have to be applied and understood by planning professionals and the public for whose benefit they exist, and that they are primarily addressed to that audience.

(iii) For the purposes of interpreting the meaning of the policy it is necessary for the policy to be read in context: (see *Tesco Stores* at [18] and [21]). The context of the policy will include its subject matter and also the planning objectives which it seeks to achieve and serve. The context will also be comprised by the wider policy framework within which the policy sits and to which it relates. This framework will include, for instance, the overarching strategy within which the policy sits."

39. And see also R (oao Keep Bourne End Green) v Buckinghamshire Council [2021] JPL 12, which considered the PPG on housing needs where Holgate J said (at 35(3): "Relevant policy and guidance on the assessment of housing need is not framed in mandatory or inflexible style"; and later criticised the Claimant: ". That is the kind of legalistic, overly forensic, approach to policy guidance, particularly guidance addressed to practitioners, which the courts have repeatedly sought to discourage."

40. The objective of the urban uplift is to boost housing by identifying a higher need figure in the 20 largest cities and urban centres in England. It does not reflect a genuine local need figure – it is driven purely by policy. It is not a punishment for the largest cities, but it is intended that those authorities can respond to the uplift. Although a blanket uplift, the PPG makes clear that the increase is to be met by the cities and urban areas themselves rather than the surrounding areas (this is plainly a reference to the areas surrounding the individual cities not adjoining local planning authority areas in which

case it would be entirely irrelevant and otiose). It asks authorities to prioritise brownfield urban sites. All of this is consistent with the uplift seeking a future response from authorities – not a retrospective application.

41. Secondly, this is a point of importance. If Mr Bolton is correct, the transitional provision imposes an entirely inflexible (and arbitrary) increase to the housing need figure for the largest 20 cities in the country including London regardless of whether they are in a position to calculate their 2021 housing land supply to set against the target. Mr Bolton does not point to any such city which is in a position to do so.

42. Thirdly, this change is not the result of a change in national policy, which would be the subject of detailed consultation. The decisions that Mr Bolton refers to (4.23) relate to when the 2018 NPPF introduced the local housing need test. This change in national policy meant that inspectors had to set aside local plan requirements in prescribed circumstances and apply the local housing need test. That is not analogous to the present situation where the standard method remains in planning practice guidance, and the only issue is as to when an additional step within that methodology applies. Those decisions are accordingly of no assistance. As Mr Bolton confirmed the present issue has not been addressed by the Courts or on appeal and there is no guidance on the point other than that at PPG 2a – 35, 37, 38, 39 (although as the Inspector is aware the same issue arises for determination on the Hepworth appeal: APP/J4423/W/20/3262600).

43. It follows that the issue is to be resolved by interpreting the guidance reasonably and pragmatically in context. The Council's interpretation is straightforward. Consistent with PPG 68-004 (which is the guidance relating to the calculation of the 5 year supply – entitled Housing Supply and Delivery, which reflects the tile above NPPF 73) the Council chooses to demonstrate a five year HLS by using the latest evidence available through its Annual Monitoring Report. The latest version is dated December 2020. The new supply year began on 1 April 2021 and the Council is preparing as quickly as it reasonably can the new AMR for 2021 which will be published next month. PPG 2a-37 explains that before the transition date local planning authorities need not apply the uplift "for example when determining the housing requirement for the 5 year housing land supply. After this date, the new standard method (ie with cities and urban centres uplift) will apply for relevant decision-making purposes." The Council interprets this

to mean that when – as here- the Council sets out its definitive housing land supply position it must reflect the urban uplift – and it will. That one paragraph of the guidance does not mean that on 17 June the 20 largest cities in England (with inevitably some of the largest supply figures) must publish or have published a revised definitive supply position regardless of the reasonable practicalities of doing so. Mrs Stephens explained what is involved in the process – it is complex – and certain aspects of it cannot begin until after 1.4.21 and the Council is reliant on other bodies for information.

44. The PPG is flexible and is meant to apply in response to circumstances. What is the point in applying the automatic uplift to the 2021 requirement when the supply for that year is not yet assessed? This is not intended to be a punishment.

45. The Council's interpretation is entirely consistent with the PPG and NPPF read as a whole. The Council can demonstrate a five year supply (NPPF 73) because it has published an AMR (Dec. 2020) and relies on this as the latest evidence on the subject (68-040). It is preparing a new AMR for decision-making purposes, and will include the uplift when determining the housing requirement and assessing the supply against is for decision-making purposes (2a-37).

46. This approach is also entirely consistent with the Government's approach to the housing delivery test – which is also an element of the "relevant decision-making" purposes through the setting of the buffer (NPPF 73) and applying the tilted balance in certain circumstances (para 11). The Government position is not to asse performance during the year 21/22 against the uplift (2a-38).

47. This is all at one with the inherent discretion that the PPG confers on authorities in preparing its HLS. Take for example the question of the base date. The PPG refers to taking the current year – but that means no more than setting housing growth to the base date consistent with the year of your assessment. The PPG (2a) applies for all purposes. So if you have a plan period 2019-2034 and are preparing the housing requirement in say 2021 you will take year 0 as 2019 and apply step 1 household growth figures from then. If it is December 2020 and you are considering 5 yr HLS in an AMR then you will use a base date of April 2020. This remains the case is you are calculating HLS in January 2021. There is absolutely no basis to change to a year of 2021 simply

because December moves into January. This housing need remains the same and will typically be taken back to the base date of 1 April. Due to completions information supply in Sheffield always has an April base date. So in March 2021 and April 2021 it remains appropriate to take the base date of April 2020 while supply is recalculated. This is not proscribed by the PPG which is entirely flexible based on circumstances. Even if it were prescribed in guidance an authority could choose not to follow it for good reasons.

48. Once the base date is properly identified as 1 April 2020 the requirement situation fits into place. It would be nonsensical to apply the uplift which comes into play in June 2021 to a requirement that addresses 1 April 2020 to 30 March 2021.

49. The Appellant's argument appears to be that because the calendar date is now 2021 that the base date must be 1 April 2021. That is another example of ignoring the reality of the process. The supply from 1 April 2021 will be available next month, and can then be applied to the requirement. The very concept of "five years' worth of housing against their requirement" inherently involves the assessment of the same five year period. If you assess the requirement for the period from 1 April 2021 for 5 years against the supply from 1 April 2020 you are not assessing whether there is 5 years' worth of housing. In some authorities the requirement is stepped year by year. It is fundamental to the concept that you consider the same five year period. The Appellant relies on a decision of an inspector on an appeal in Stowmarket (CD 5.37). That case appears unusual in that the HLS was recalculated to an October base date. As a result there was criticism that the supply ran from October 2018, and the requirement from April 2019 under the LHN. The inspector, in those circumstances, found a misalignment between the requirement and supply was inevitable (59). However, the Council submits that consistency is desirable for the reason given above. This is an assessment of need against supply. It should be internally consistent. In the current circumstances there is no inevitable inconsistency and an approach should be taken that minimises any inconsistency. As in all exercises under the PPG simplicity and practicality should prevail. A base date of 1 April 2020 enables an identification of the requirement pursuant to the PPG and an assessment of deliverable supply in the same period. It is perhaps understandable that appellants seek to complicate matters to enable a submission that the Council cannot demonstrate a five year supply. But such

complication is contrary to a straightforward and pragmatic application of guidance whish is intended to be a fairly simple analysis of demand versus supply in the same period.

Deliverability

50. Each element of the supply has been assessed as deliverable at the base date within the meaning of the Framework. A robust and reliable approach has been taken. This was explained by Mrs Stephens by reference to the December 2020 AMR[28]. All sites are assessed against the definition of deliverable in the NPPF and by category e.g. full permission (app. 1), outline permission (app. 2). Excluded sites are also set out (apps 4 and 5). All landowners are contacted where possible to understand the position and the timeframe. All the material is considered to assess the deliverability of the site as at the base date. Monitoring continues but it is not used to alter the supply at the base date. It is used in the preparation of next year's AMR. This again is to ensure consistency. For example, if a site began construction in September 2020 – but had been excluded or held back by the Council in its assessment – the additional supply would not be taken into account on grounds of consistency. It is important to remember that the essential test for deliverability includes availability and suitability and achievability. The touchstone for achievability is a "realistic prospect that housing will be delivered on the site within 5 years". The presumption for category A sites – ie that they are deliverable – includes all three aspects. Therefore, e.g. it is presumed that a site which has full planning permission is available for development unless there is clear evidence that housing will not be delivered within 5 years. These submissions do not repeat the detail of the evidence and the RTS, but rather make one simple submission: The evidence of Mrs Stephens demonstrates that the Council undertakes a thorough exercise of assessment specifically applying the relevant tests and contacting landowners/agents wherever possible in order to assess whether – at the base date – there is clear evidence of non-delivery within five years. In fact, the exercise goes well beyond that and allows a trajectory to be ascertained. The exercise is consistent across sites. A number of sites are omitted as a result (App. 4). It is inevitably the case that a well-resourced appellant repeating that exercise several months later may identify some conflicting information.

[28] Her Appendix 2.

But that falls well short of "clear evidence that homes will not be delivered". It may make delivery questionable – but that is not the test.

51. In relation to Category B the Council has again taken a cautious approach. All of the sites disputed by the Appellant are the subject of either the Council's Stock Increase Programme or developments by Sheffield Housing Company. These are explained by Mrs Stephens in evidence (proof 3.21 – 3.25). In every case there is clear evidence of the housing to be delivered. Each site is supported by a pro forma filled in by the most knowledgeable person relating to the site, that is the SIP programme manager or the development manager for the site. The assessment of deliverability is then undertaken by Mrs Stephens armed with that direct information from those with a total understanding of the site and funding issues, and her own knowledge of the Sheffield housing market and the sites in question. The funding arrangements for the SIP have been explained by Mrs Stephens and the SIP funding is secured, and there is clear evidence that the SHC sites will deliver as anticipated. Mr Bolton's concerns of "optimism bias" have no evidential foundation and are really no more than a cavil. The NPPF asks councils to go and get clear evidence to support the category B sites in the housing land supply. That is what the Council has done. A number of points raised by Mr Bolton are observations that fall short of clear evidence one way or the other. For example, not securing discharge of conditions is not probative until the consent has expired; an ongoing use is consistent with future implementation; the fact that an applicant accepted changes during the application process does not suggest the permission ultimately granted is unviable or unachievable – on the contrary the applicant is unlikely to negotiate changes that render the permission pointless; the assessment is as at the base date, not now.

52. The most up-to-date Housing Delivery Test results show Sheffield's housing delivery to be 123% over the past three years against the local housing need figure, demonstrating a good record of housing delivery[29].

53. Leaving aside some of the technical aspects of the 5 year HLS the following contextual points are relevant. The most recent supply is calculated to 1 April 2020. Leaving aside

[29] Laura Stephens proof of evidence at 3.6

the student issue the argument about supply at that date is the difference between 5.4 yrs and 4.5 yrs[30]. The urban uplift is not a reflection of local need, but only policy. There is therefore a considerable identified supply of deliverable housing sites to add to the strong record of delivery in recent years as shown through the HDT.

54. In this context, Mr Chapman assesses the benefits deriving from the contribution of 85 units to the housing stock to be of moderate weight.

55. As to affordable housing the underlying statistical analysis is agreed and the Council acknowledges that there is a significant need for affordable housing. As Mrs Stephens explained the Council is doing what it can to address this, most immediately through the SIP, and in due course through the Local Plan - the SIP by itself providing approximately 900 units in the next five years[31]. As Mr Chapman explained the weight to be given is affected by the scale of delivery, and also the proportion of units delivered that are affordable. Mr Bolton suggests substantial weight should be given to affordable housing. One can test that by considering what weight would be given to the delivery of 100 units, or 100% affordable. It is submitted that the scale of delivery must be relevant to the wight given to a benefit. Delivery of much greater levels of affordable housing should plainly be significantly more than 8 or 9 units, and so the attribution of limited weight to that scale and proportion of contribution is reasonable. Mr Chapman does not accept that the issue of family housing should be separated out and assessed apart from the market and affordable housing delivery. That appears to be consistent with the Secretary of State decisions at CD5.24 (see paras 27 and 41 of the SOS decision, and 382 and 415 IR) and CD5.8 at paras 33) where in the context of much much larger schemes significant weight was given in the round to the housing contribution overall.

56. There are other benefits but nothing which attracts significant weight. There will be short-term construction jobs and an increase in the local population, which Mr Chapman attributes moderate weight. The provision of open space is also given moderate weight in light of the existing provision, which includes Fox Glen and the playground which are in close proximity to the site. The appellant does not provide

[30] SoCG HLS 3.4
[31] See Mr Stacey at 6.9

evidence of a particular desire for this additional provision locally. The on-site mitigation is justified in policy terms but is not a significant benefit. The appeal proposals add little to this provision.

57. The other claimed benefits are effectively mitigation and attract only limited weight. Where a measure is proposed as mitigation this is obviously relevant to weight as the provision of it is necessary to make the development acceptable and for it to be taken into account as part of the reasons for granting the scheme in any event under the CIL Regulations 2010.

58. For the reasons given by Mr Chapman and summarised above the non-compliance of the proposals against the development plan attracts considerable weight in presuming against the scheme. The important policies are broadly consistent with the relevant NPPF objectives. The NPPF does not displace the statutory presumption in favour of the development plan. In this case, the NPPF pulls in the same direction as the development plan.

59. The tilted balance is not engaged for the reasons given above. Mr Chapman concludes that the NPPF 195 balancing exercise lies against the scheme as the substantial harm to the identified heritage assets is not outweighed by substantial planning benefits. The Appellant does not claim otherwise.

60. In event, considered collectively the harm does significantly and demonstrably outweigh the benefits of the scheme so that the tilted balance is not met.

61. Accordingly, planning permission should be refused.

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29th June 2021