**S78 Town and Country Planning Act 1990**

**Land at junction of Carr Road/Hollin Busk Lane**

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

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**Opening Submissions of the Council**

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**Introduction**

1. This is an appeal into the refusal of outline planning permission for up to 85 dwellings including open space on land at the junction of Carr Road and Hollin Busk Lane (“the Appeal Site).
2. Planning permission was refused for two reasons[[1]](#footnote-1) which give rise to the following main issues as set out as agreed in the Case Management Conference Note:
3. The effect of the proposed development on the character and appearance of the surrounding area;
4. The effect of the proposed development on the special interest of nearby heritage assets; and
5. The planning balance including policy considerations and the benefits of the scheme.

**Issue 1: Character and appearance**

1. The Council relies on the evidence of Ricardo Ares, and the evidence will be heard by way of a round-table session.
2. National policy is clear that developments should be sympathetic to local character and history, including the surrounding built environment and landscape setting[[2]](#footnote-2). Planning policies should contribute to and enhance the natural and built environment by recognising the intrinsic character and beauty of the countryside[[3]](#footnote-3).
3. 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.
4. There are three key elements to the Council’s objections under this heading, that fall to be considered in the above policy context:
5. The landscape quality of the existing site and the immediate surrounding area and the resulting extent of harm to the character of the area;
6. The extent of harm to visual amenity at both local and wider levels;
7. The role of the site in visually separating settlements and how the proposals undermine that role.
8. (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[[4]](#footnote-4)), 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 GLIVIA 3, box 5.1[[5]](#footnote-5), 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 high. Overall, Mr Ares disagrees with the conclusion of the submitted LVIA that the immediate impact on the site was 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.
9. (b) Visual amenity: Mr Ares has reviewed the likely visual receptors, including those longer distance views north of the site omitted from the LVIA[[6]](#footnote-6), which are all high sensitivity. Hr 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 do not reflect their uses 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.
10. (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[[7]](#footnote-7)). It separates Royd (as part of Deepcar) and Holin 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.
11. 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.

**Issue 2: Listed buildings**

1. The Council relies on the evidence of Ruth Masood. This issue will be addressed by way of round-table session.
2. There is agreement as to the assets affected being Royd Farmhouse and Barn, 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[[8]](#footnote-8). 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.
3. 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[[9]](#footnote-9).
4. 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*”[[10]](#footnote-10). This represents the Government’s up-to-date interpretation of the threshold. As made clear in Bramshill[[11]](#footnote-11) the degree of harm and the approach to its assessment is a matter for the decision-maker. Mr Bourn refers to the Bedford case[[12]](#footnote-12) 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. If appropriate more detailed submissions can be made in closing.
5. 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.

1. These opening submissions do not rehearse the evidence of Ms Masood in any detail, which will be heard shortly. It seems clear 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[[13]](#footnote-13). 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. 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[[14]](#footnote-14).
2. The scale of the effect on this agricultural setting is obviously 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 a rural, farmhouses, barns and outbuildings in a historic agricultural field pattern. The interest in the fabric would remain – but little else – these being simply, functional buildings explained by their setting. The device within the amended scheme to allow for some public open space and 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 change in character of the fields. This is not mitigated by the planting proposals and means of enclosure of gardens, which are at odds with the historic appearance and use of the site.
3. 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.
4. 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).

**Issue 3. Planning Balance**

Decision-making structure

1. All planning applications have to be determined under s28(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[[15]](#footnote-15), and in the planning statement of common ground[[16]](#footnote-16). 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.
2. 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:
3. 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
4. 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).
5. 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.
6. Mr Chapman has considered the most important policies for the determination of the application. Whether or not a policy is out of date involves an assessment of the policies as a basket for their degree of consistency against the Framework (paragraph 213)(Wavendon). It is not a question of age, but substantive consistency, and involves a judgment as a matter of degree. Mr Chapman’s assessment is set out in his proof of evidence, and summarised in the planning statement of common ground and is not repeated here. Mr Chapman concludes that the most important policies are not out of date.
7. 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.
8. 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

1. 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.
2. 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. This is also the effect of CS47 of the Core Strategy which prevents the loss of open space of high quality landscape value (open space being specifically to include private areas predominantly open in character[[17]](#footnote-17)). 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 takes a forensic approach to policy wording in order 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[[18]](#footnote-18). 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).
3. 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 UDP and BE19 CS 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.
4. There are, of course, 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.
5. Further, in this context, the Council’s position is that the appropriate HLS figure taking a base date of 1 April 2020 is 5.4 years.
6. Succinctly, 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. It is important to remember that the essential test for deliverability includes availability and suitability – which do not appear to be in real dispute – and achievability. The touchstone for achievability is a “realistic prospect that housing will be delivered on the site within 5 years”. For Category A sites this is the case unless there is clear evidence homes will not be delivered for 5 years. For Category B sites, there should be clear evidence that completions will begin within 5 years. That provides a realistic prospect of housing – demonstrating achievability. The Council maintains all the sites included are deliverable in these terms. The Appellant relies on information that relates to events post-dating the base date. That is inappropriate as conversely additions to the supply have not been included. The Council maintains the Appellant’s exclusion of deliverable student units is inconsistent with the PPG. It is also wrong in principle to seek unilaterally to increase the requirement beyond 17th June 2021 to reflect an urban uplift without providing a robust up-dated supply figure. The appropriate time for this to be addressed is through next year’s AMR, which should be available by the end of next month. The uplift provision in the PPG does not override the discretion as to the identification of the most appropriate base date in all the circumstances. This is a question of interpretation of the PPG – a matter of law.
7. 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[[19]](#footnote-19).
8. In this context, Mr Chapman assesses the benefits deriving from the contribution of 85 units to the housing stock to be of moderate weight, and the additional 8-9 affordable units of limited weight. There are other benefits but nothing which attracts significant weight. There will be short-term construction jobs and the provision of some open space – although there is no evidence that this is needed in the area. 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.
9. 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.
10. 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.
11. In event, considered collectively the harm does significantly and demonstrably outweigh the benefits of the scheme so that the tilted balance is not met.
12. Accordingly, planning permission should be refused.

**Landmark Chambers, GUY WILLIAMS**

**180 Fleet Street,**

**London EC4A 2HG 22 June 2021**

1. Decision Notice at CD 1.9 [↑](#footnote-ref-1)
2. 127(c) [↑](#footnote-ref-2)
3. NPPF 170(b) [↑](#footnote-ref-3)
4. CD7.2 [↑](#footnote-ref-4)
5. CD7.5 [↑](#footnote-ref-5)
6. See RA Appendix C [↑](#footnote-ref-6)
7. CD1.10 [↑](#footnote-ref-7)
8. Heritage SoCG at 1.23 [↑](#footnote-ref-8)
9. NPPF 193-194. [↑](#footnote-ref-9)
10. PPG 18a - 1017 [↑](#footnote-ref-10)
11. CD 5.7 [↑](#footnote-ref-11)
12. CD5.5 [↑](#footnote-ref-12)
13. See e.g. the 1855 OS – RM fig 6. [↑](#footnote-ref-13)
14. Proof 5.4 [↑](#footnote-ref-14)
15. Para 6.1 [↑](#footnote-ref-15)
16. In section 6 [↑](#footnote-ref-16)
17. CS para 9.26 [↑](#footnote-ref-17)
18. NPPF 117/118. [↑](#footnote-ref-18)
19. Laura Stephens proof of evidence at 3.6 [↑](#footnote-ref-19)