

## **Stevenage Borough Council**

### **Statement of Case**

Appeal by Hill Residential Ltd under S78 of the Town and Country Planning Act 1990 (as amended) against the decision of Stevenage Borough Council to refuse planning permission in respect of the Full application for the proposed demolition of existing office building (Use Class B1) and structures, and the construction of seven apartment buildings comprising 576 dwellings (Use Class C3) together with internal roads, parking, public open space, landscaping, drainage and associated infrastructure works.

**Land West of Lytton Way, Stevenage, Hertfordshire, SG1 1AG**

**PINS Ref: APP/K1935/W/20/3255692**

LPA Ref: 19/00474/FPM

5 March 2020

**Stevenage Borough Council**

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## **1.0 INTRODUCTION**

1.1 This statement of case sets out the Council's reasons for resisting the planning appeal made under s.78 of the Town and Country Planning Act 1990 by Hill Residential Limited against Stevenage Borough Council's ("the Council") decision of to refuse planning permission for the above development.

## **2.0 SITE DESCRIPTION**

2.1 The appeal site is located close to the roundabout junction of Lytton Way and Fairlands Way. It comprises the former office building known as the Icon, which is a 7/8 storey high, primarily glazed building. The site is bordered to the west by the East Coast Main Line railway line, beyond which are residential properties in Kilby Road/Watson Road and to the east adjoins Lytton Way, from where the vehicular access is taken. The northern boundary of the site adjoins Trinity Road which forms the roundabout linking it with Lytton Way and the southern boundary abuts Lytton Way.

2.2 The site is relatively flat, although an embankment slopes down toward Lytton Way on the eastern boundary of the site. This leads to a cycle way and footpath which runs north south along this eastern boundary of the site continuing in either direction. The existing building is a large office building constructed in the 1980's and is a prominent and recognisable feature in Stevenage due to its clear visibility from many parts of the town as well as its unique design. The building footprint is multi-angled and is constructed with large glazed elevations which step-in as the building rises. The building features a large ground floor reception and full height atrium area. It is served by undercroft car parking as well as additional open parking areas and small green spaces.

## **3.0 POLICY CONTEXT**

3.1 Section 38 (6) of the Planning & Compulsory Purchase Act 2004 requires that, when making a determination on development proposals, the decision shall be made in accordance with the Development Plan unless material considerations indicate otherwise. For Stevenage the statutory development plan comprises:

- The Stevenage Borough Council Local Plan 2011-2031 adopted May 2019
- Hertfordshire Waste Development Framework 2012 and Hertfordshire Waste Site Allocations Development Plan Document (adopted 2012 and 2014); and
- Hertfordshire Minerals Local Plan 2002 – 2016 (adopted 2007)

3.2 The following policies of the adopted Local Plan are considered relevant to this appeal:

Policy SP1: Presumption in favour of sustainable development;  
Policy SP2: Sustainable development in Stevenage;  
Policy SP5: Infrastructure;  
Policy SP6: Sustainable transport;  
Policy SP7: High quality homes;  
Policy SP8: Good design;  
Policy SP9: Healthy Communities  
Policy SP11: Climate change, flooding and pollution;  
Policy SP12: Green infrastructure and the natural environment;  
Policy SP13: The historic environment;  
Policy IT3: Infrastructure;  
Policy IT4: Transport assessments and travel plans;  
Policy IT5: Parking and access;  
Policy IT6: Sustainable transport;  
Policy IT7: New and improved links for pedestrians and cyclists;  
Policy HO7: Affordable housing targets;  
Policy HO8: Affordable housing tenure, mix and design;  
Policy HO9: House types and sizes;  
Policy GD1: High quality design;  
Policy HC8: Sports facilities in new developments;  
Policy FP1: Climate change;  
Policy FP2: Flood Risk in Flood Zone 1;  
Policy FP5: Contaminated land;  
Policy FP7: Pollution;  
Policy FP8: Pollution sensitive uses;  
Policy NH5: Trees and woodland;  
Policy NH7: Open space standards;  
Policy NH10 – Conservation Areas.

It should be noted that the Stevenage Local Plan was adopted less than 2 years ago. It should be afforded full weight.

### 3.3 Supplementary Planning Documents

Parking Provision and Sustainable Transport SPD October 2020.  
Stevenage Design Guide SPD January 2009.

3.4 Other relevant material considerations include:

- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (PPG)
- National Design Guide

## **4.0 PLANNING CONSIDERATIONS**

4.1 Council Officers delivered a report on the application to the Planning Committee in March 2020 with a recommendation for approval. Having considered the report and heard from a number of objectors to the proposal, Members decided to refuse the application for the following reasons:

1. The proposed development by virtue of its height, design and appearance would result in an incongruous form of development which would be harmful to the visual amenities of the area. The proposal would, therefore, be contrary to policies SP7, SP8 and GD1 of the Stevenage Borough Local Plan 2011-2031 and the advice in the National Planning Policy Framework 2019 and the Planning Practice Guidance 2014 relating to high quality design.
2. The proposal comprising 576 dwellings in 7 flatted blocks on this constrained site would result in an overdevelopment of the site which would be harmful to the character and appearance of the area. The proposal would, therefore, be contrary to policies SP7, SP8 and GD1 of the Stevenage Borough Local Plan 2011-2031 and the advice in the National Planning Policy Framework 2019 and the Planning Practice Guidance 2014 relating to high quality design.
3. The proposal would fail to provide the necessary mitigation required to deal with the impact that the proposed development would have on the demand on the infrastructure required to support the proposed development. The proposal would, therefore, be contrary to policy SP5 of the Stevenage Borough Local Plan 2011-2031.

## **5.0 CHANGES SINCE THE APPLICATION WAS REFUSED**

5.1 The application was refused on 6th March 2020. On the 1st April 2020 Stevenage Borough Council introduced the Community Infrastructure Levy. The appeal proposal, if granted planning permission, would therefore liable to pay CIL.

5.2 In October 2020 the Council adopted a new Parking Provision and Sustainable Transport SPD and revoked the Parking Provision SPD (adopted 2012). The appeal proposal, when assessed against the revised standards for cycle parking would fail to provide sufficient parking for the range of cycle needs.

5.3 At the time the application was considered by the Planning Committee the applicant had provided a detailed financial viability assessment which demonstrated that the proposal was unable to provide the policy compliant position of 25% affordable housing. The applicant then proposed two options in relation to affordable housing. These were:

Option1: The provision of 98 affordable homes all as Affordable Rent. The applicant considered that this best met the need for Affordable Homes within the Borough. That would equate to 90% of the required level (allowing for vacant building credit). This would be provided as follows:

35 x 1 bed

45 x 2 bed (4p)

10 x 3 bed (5p)

8 x 1 bed modular homes, to be delivered on the Council's development at Hertford Road. Should that not prove achievable, a financial contribution of £65,000 per modular home to enable delivery elsewhere on council land.

Option 2:

A policy compliant version (allowing for VBC) of 109 affordable homes on site, comprising:

76 affordable rented homes (35 x 1 bed, 39 x 2 bed, 2 x 3 bed) (70%)

33 shared ownership homes (10x1 bed, 15x2 bed, 8 x3 bed) (30%)

This latter option resulted in 76 rented homes being provided rather than 98.

5.4 In light of the introduction of CIL, the appeal proposal now includes an updated Viability Assessment which has been evaluated by the Council's Independent Viability Consultants. This demonstrated that the now proposed development, with the reduced provision of 52 affordable rented homes, residualises a profit of 12.43% on GDV, below the benchmark profit of 16.98% (i.e. 17.5% on private and 6% for affordable housing).

The appellant concludes that the proposed development of 52 dwellings, all for affordable rent, is policy compliant.

5.5 The Housing Delivery Test, published in January 2021, indicated that the delivery of housing in Stevenage was substantially below (less than 75% of) the housing requirement over the previous three years. It is therefore acknowledged that paragraph 11 (d) Footnote 7 of the Framework is engaged. As a result, the relevant test for decision makers in this circumstance is whether any adverse impacts of granting planning permission "would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole".

5.6 In summary the Council has reviewed the changed circumstances since permission was originally refused and in particular the requirement in national policy to apply the titled balance. The Council considers that the adverse impacts of granting planning permission for this proposal do not significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

## **6.0 MAIN ISSUES**

6.1 In line with PINS Guidance this Statement of Case set out the Council's case in support of the Council's reasons for refusal of the proposal. The main issues for consideration now are:

- Whether the proposed development would comprise high quality design that would enhance the visual amenities of the surrounding area.
- Whether the proposal would result in an overdevelopment of the site which would be harmful to the character and appearance of the area
- Whether the proposed development would result in an unacceptable demand on infrastructure for which no mitigation is provided.
- Whether the Council can demonstrate a 5 Year Housing Land Supply

### **Impact upon the character, appearance and visual amenities of the Area**

6.2 Paragraph 124 states that the achievement of high quality buildings and places is fundamental to what the planning and development process should achieve and 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.

6.3 Paragraph 127 stipulates that planning decisions should ensure development functions well and adds to the overall quality of the area, not just in the short term but over the lifetime of the development. It also sets out that development should be visually attractive as a result of good architecture, layout and appropriate and effective landscaping is sympathetic to local character and history, including the surrounding built environment and landscape setting. In addition, the NPPF sets out that development should establish or maintain a strong sense of place, using arrangements of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit. It also stipulates that development should optimise the potential of the site to accommodate and sustain an appropriate mix of development and finally, create places that are safe, inclusive and accessible.

6.4 Policy SP7 of the adopted Local Plan sets out that the Local Plan supports significant growth in and around Stevenage to help meet needs across the market area. Policy SP8 states that new development will be required to achieve the highest standards of design and sustainability.

Policy GD1 of the adopted local plan requires all forms of development to meet a high standard of design which includes form of built development, elevational treatment and materials along with how the development would integrate with the urban fabric, its relationship between buildings, landscape design and relevant aspects of sustainable design.

These policies are part of the recently adopted development plan and should be afforded full weight.

6.5 Reason for Refusal 1 relates to the design of the proposed development and the harm to the visual amenities of the area. The excessive height of the proposed blocks, the poor design and appearance of the buildings and the failure to support the policy objectives of good place making are considered in more detail in the Supplementary Statement on Urban Design which is attached at **Appendix 2**. That statement sets out how the proposal is contrary to Policies GD1, SP7 and SP8 and national planning policy and guidance on design.

#### Reason for Refusal 2

6.6 Reason for Refusal 2 relates principally to the harm that would be caused to the character and appearance of the area as a result of overdevelopment. It is accepted that this reason for refusal is dependent on Reason for Refusal 1. Whilst the primary concern of the Council in refusing the appeal proposal is linked to design, the issues of overdevelopment and the impact of that on the character and appearance of the area are closely inter linked.

6.7 The Supplementary Statement on Urban Design also sets out the Council's position as to the harm to the character and appearance of the area that would be caused by this proposal.

6.8 The characteristics of the area comprise a combination of commercial premises including the appeal premises and a mixture of low, medium and high rise residential developments. The general feeling as you travel along Lytton Way, with its wide green embankment with mature trees, is one of spaciousness and openness. The appeal site represents an "island" site between the railway and the dual carriageway of Lytton Way. The constrained shape, noise contours and banked frontage of the site means that the area of the site which can be built upon is considerably less than the overall area of the site. This means that, after making provision for the buildings themselves, as well as the hardstanding needed for parking and turning, the amount of space "left over" for both the buildings and amenity space is severely constrained. Furthermore, the close proximity to the existing railway line would require additional security fencing to be placed within the appeal site. Buildings would occupy a high proportion of the developable site leaving little room for the open space and landscaping that could help to soften the overall bulk of the built form.

#### Overdevelopment

6.9 It is considered that the appellant has overestimated the developable area in coming to a density of 209dph (para 5.69 of the Appellants' Statement of Case). It is considered that the area available for development, having taken account of the above as well as the noise contours that surround the site, is more likely to result in a much higher density of around 350dph. However this is only one measurement which can be used to assess

overdevelopment. The Council has recently approved Reserved Matters for the Matalan site (LPA reference 20/00643/RMM) referred to by the Appellant for 526 flats in a town centre location. This demonstrates that the Council is not averse to high density developments, provided that the quality of design and the amenities for future residents is of a very high standard. That development included a 20 storey landmark building with a series of lower buildings around perimeter courtyards, which enclosed high quality amenity spaces, roof gardens and significant improvements to the public realm. Another key aspect of that development was a parking provision of around 10% (which is policy compliant in the town centre location) but also that the parking was arranged in an undercroft such that it did not detract from the open amenity space. In the case of the appeal site, the parking and circulation areas dominate the layout. While attempts to introduce variety in hard surface materials could help to provide interest, the need to provide car parking (which could be reduced and still be policy compliant) has resulted in soft landscaping being pushed to the margins rather than being focal points which could help to soften the tall buildings and making them more human in scale.

6.10 Looking at the proposed layout the impression is that the design of the appeal scheme was dictated by the number of units and the consequent size of the buildings needed to provide them rather than any consideration of the outside space. The large footprint of built development is exacerbated by large areas of dominant hardstanding which give an unduly cramped appearance and is indicative of poor design and overdevelopment. The outlook from the rear of Blocks 1-6 and the front, rear and northern side elevation of Block 7 would be over extensive areas of hardstanding and car parking.

6.11 The gaps between the frontage blocks would provide four wedge shaped areas of amenity terraces for future occupiers. While these areas would include tree planting they would be mainly hard surfaced. Their position between tall buildings would inevitably mean the area would be in shade for considerable parts of the day. Combined with their close proximity to a busy railway line would severely constrain their beneficial use as amenity space. Limited semi-public space in front of the proposed buildings would be narrow, congested and over powered by the buildings themselves.

6.12 While the "Arrival Square" would provide an opportunity for statement trees, as a two way hard surfaced street with parking leading to "Area 2 – Shared Surface lanes" which would consist of parking spaces and circulation area, the overall impression is one of a hard surface dominated by car parking. This would be a failure to meet the requirements of Policy GD1 (d) which requires development that "creates, enhances, or improves access to areas of public open space, green infrastructure, biodiversity and other public realm assets.

6.13 The principal amenity space, "The Sunken Garden" would need to function as flood attenuation, formal playspace as well as an access to the western car park. The Council's Parks and Amenity Officer raised concerns at the application stage about the need to elevate play equipment to avoid submersion in water and also had concerns about the need

to provide inclusive access (for limited mobility and disabilities) to the sunken garden and play features. This is a requirement of Policy GD1 (b) which states that permission will be granted where the proposed scheme improves the overall ease of movement for all users.

6.14 With regard to amenity space, the Council's Design Guide recommends that 50 sqm of amenity space plus an additional 10sqm per unit over 5 units is required. This also states that where there is no communal space, effort should be made to provide balconies or roof gardens. It is proposed to provide approximately 900 sq m of amenity space within the development which includes an equipped play area in the amenity space along with sculptural play within the courtyard spaces between the buildings and in the equipped amenity space. In addition, all of the buildings would be provided with balconies of approximately 5 sqm which would provide an area of open space for the occupiers. This provision would be below the standards recommended in the Design Guide providing approximately only 65% of the requirement.

6.15 An improved overall design could have addressed some of the issues which are highlighted above. For example, no attempt has been made to include sustainable roof infrastructure. This could have provided opportunities for the use of the roofs of the proposed buildings for a combination of amenity space for future residents, improved biodiversity in the form of green or blue roofs as well as improved overall drainage management. This could have been provided to meet the requirements of Policy GD1 (d) which requires development that "creates, enhances, or improves access to areas of public open space, green infrastructure, biodiversity and other public realm assets.

#### Summary on overdevelopment and impact on character and appearance of the area

6.16 In summary, the reasons set out above are symptoms of the poor design of the appeal proposal. It follows that the poor design amounts to an over development of the site which would be harmful to the character and appearance of the area.

6.17 Whilst acknowledging the policy imperative to deliver housing and make the most effective use of brownfield urban land it is considered that the appeal proposal would result in an overdevelopment as almost the entire site would be covered by built form. This would be contrary to Policies SP8 and GD 1 of the adopted local plan, the guidance contained within the NPPF and the PPG and the advice in the National Design Guide.

## Impact of the appeal proposal on Infrastructure and mitigation

6.18 Refusal Reason 3 refers to the Appellant's failure to provide the necessary mitigation required to deal with the impact that the proposed development would have on the demand on the infrastructure required to support the proposed development.

Policy SP5 states that:

This plan will ensure the infrastructure required to support its targets and proposals is provided. New development will be required to contribute fairly towards the demands it creates. We will:

- a. Permit permission where new development
  - i. Makes reasonable on-site provision, off-site provision or contributions towards (but not limited to) the following where relevant:  
affordable housing; biodiversity; childcare and youth facilities; community facilities; community safety and crime prevention; cultural facilities; cycling and walking; education; flood prevention measures; Gypsy and Traveller accommodation; health care facilities; leisure facilities; open spaces; passenger transport; play areas; policing; public realm enhancement; road and rail transport; sheltered housing; skills and lifelong learning; sports; supported housing; travel plans; utilities and waste and recycling.
  - ii. Includes measures to mitigate against any adverse impact on amenity or the local environment where this is appropriate and necessary; or
  - iii. Meets any specific requirements relating to individual sites or schemes set out elsewhere in this plan;
- b. Use developer contributions, legal agreements, levies or other relevant mechanisms to make sure that the criteria in (a) are met;
- c. Deliver a major reconfiguration of the road network in and around the Town Centre to catalyse regeneration;
- d. Work with Hertfordshire County Council, Highways England, the NHS, the Local Enterprise Partnership and other relevant service providers and agencies to deliver additional highway, education and health capacity as well as new and enhanced open spaces and community and leisure facilities; and
- e. Co-operate with other utilities and service providers to ensure that appropriate capacity is available to serve new development.
- f. Ensure new development does not have an adverse effect on the Lee Valley Special Protection Area (SPA). New development post 2026 will only be permitted if the required capacity is available at Rye Meads STW, including any associated sewer connections.

6.19 The Council's case in support of this reason for refusal is set out in the Supporting Statement from Hertfordshire County Council which is attached as **Appendix 3**. The Council entirely endorses the position set out by Hertfordshire County Council as to why a specific contribution via a section 106 planning obligation towards primary school provision is required. In summary, the failure of the appeal scheme to provide a financial contribution towards the provision of a new primary school renders the scheme contrary to Policy SP5 of the Stevenage Borough Local Plan.

## HOUSING LAND SUPPLY

6.20 A Supplementary Statement setting out the Council's updated position on the Five Year Housing Land Supply, the proposal for an Action Plan following the publication of the most recent Housing Delivery Test, as well as further details on Deliverable Sites is attached as **Appendix 1**.

6.21 In summary, the Council considers that it can demonstrate a 5.04 year housing land supply, with a surplus of 25 dwellings for the five year period ending 31 March 2025. The Council's position will be updated shortly following the County Council's annual housing survey which will be completed by the end of March 2021.

6.22 It should be noted that although the delivery of housing in Stevenage is below (less than 75% of) the housing requirement over the previous three years (thus triggering the presumption under NPPF paragraph 11(d), that this shortfall is only likely to be temporary. The evidence from the Council's housing team at Appendix 1 shows that it is in essence a "one off". The evidence at Appendix 1 is that "as a result of the Council's efforts to promote house building and the fact that the 2017/18 figure won't be part of next year's score, the Council expects the low result of the 2020 HDT to be a one-off and that the 2021 HDT score will ensure the Council will not have to apply the presumption for a prolonged period".

6.23 The fact that the shortfall is likely only to temporary (and the fact that the Council can demonstrate a 5YLS) is relevant to the weight to be attached to the benefits of the scheme in the form of delivery of housing. The approach set out by the Court of Appeal in *Hallam Land Management Ltd v SSCLG* [2018] EWCA Civ 1808 is relevant here. The Court of Appeal confirmed that:

*"The weight given to the benefits of new housing development in an area where a shortfall in housing land supply has arisen is likely to depend on factors such as the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet." (at [51]).*

That case pre-dated the introduction of the Housing Delivery Test in the 2019 NPPF, and was only addressing a situation where there is a shortfall in housing land supply. However, by analogy, the principle set out above at [51] of the judgment applies equally where delivery of housing has fallen short of the 75% target.

6.24 As the Council's evidence shows, the shortfall is not significant, is not likely to persist. That reduces the weight that the Appellant will seek to attribute to the delivery of housing in circumstances where the Council has not met the 75% housing delivery target.

## 7.0 RESPONSE TO THE APPELLANT'S STATEMENT OF CASE

7.1 In response to the Appellant, the Council would highlight the following areas where there is no dispute between the parties:

- The site constitutes Previously Developed Land(PDL)
- The principle of redevelopment of the site for residential use;
- The site is located in a sustainable location with easy access to town centre facilities, transport hubs and leisure facilities;
- all of the dwellings accord with the floorspace requirements set out in the adopted local plan
- Impact of the development on Air Quality
- Sustainable construction and Climate Change subject to conditions
- Impact of development on Noise
- Overall mix of 1,2 & 3 bedroom dwellings is in accordance with Policy
- No objection has been raised by the County Highway Authority, subject to conditions, to the proposed development on highways and transportation issues.
- The proposed development is considered to be acceptable from a sustainable drainage viewpoint.

7.2 The Appellant claims, at paragraphs 5.173 to 5.176 of their Statement of Case, that because of an earlier under provision of affordable housing, their proposed contribution now should be given substantial weight in the overall planning balance. The Council disagrees.

7.3 The latest AMR is 2018/19 was published in 2019; this gives a figure of 247 affordable units completed. The AMR for 2019/2020 has not yet been published but indications are that completions have increased by 35 to 282 units as of 31 March 2020. The running total to 4 March 2021 is 390 dwellings completed. Therefore, whilst the earlier undersupply is acknowledged, the increasing reliance on large sites to deliver housing in the Borough will also mean that affordable housing will increase significantly when compared to past delivery. It is also worth pointing out that the Council is itself delivering 295 additional units for social rent under construction as part of SBC-led schemes.

7.4 Furthermore, the targets included in the Plan were determined taking account of previous undersupply which contributes to the significant demand for future affordable housing provision. It is also worth noting that the Local Plan was adopted some eight years into the plan period. The earlier undersupply has helped inform the affordable housing requirements in Policy HO7. The Plan already reduces the affordable housing target for sites on Previously Developed Land (such as the appeal site) down to 25% to allow for lower levels of viability. Regardless of previous undersupply, any amount below 25%, such as that proposed in the appeal scheme, would not provide the benefit that the Local Plan policy is

intended to generate. Therefore, very little additional weight should be attributed to the limited affordable housing in the appeal scheme in the overall planning balance.

## **8.0 PLANNING BALANCE**

8.1 It is acknowledged that the appeal site is suitable and available for the delivery of a substantial quantity of residential development, including affordable homes. It is therefore acknowledged that some weight should be attached to the benefit of the provision of new housing, particularly in circumstances where the Council (at least in the most recent Housing Delivery Test) is not meeting the 75% target referred to in the NPPF. However, for the reasons set out above, the weight given to the delivery of new housing as part of this appeal proposal in circumstances where the failure to meet the HDT target is likely to be a “one-off” is not so significant as to outweigh the conflict with the development plan taken as a whole.

8.2 The Council acknowledges that there are a number of other benefits arising from the appeal scheme. These include the economic activity and jobs that construction would bring as well as benefits that the additional residents would contribute to the economy of the town centre. The redevelopment of the site would bring a vacant site back into beneficial use. These all benefits which carry weight in favour of the proposal. Paragraph 118 of the NPPF requires that substantial weight be given to the reuse of suitable brownfield land for homes and other identified needs.

8.3 However, it is considered that the benefits above do not outweigh the conflict with a number of the policies in the development plan identified above. The need for high quality design is set out in a wide range of development plan policies and guidance. Policies SP7, SP8 and GD1 of the adopted Local Plan require new development to be of an appropriate design and scale that respects the character, appearance and visual amenity of the site and its surroundings and the appeal proposal’s failure to comply with these policies attracts significant adverse weight. Additionally, significant weight should be attributed to the harm that would arise as a result of the failure of the appeal proposal to mitigate the impact of the appeal proposal on the demand on the infrastructure contrary to Policy SP5 of the adopted Local Plan. The Framework promotes good design as a means of creating better places in which to live and work. It advocates development that will add to the overall quality of the area, which is sympathetic to local character and which aim to achieve healthy, inclusive and safe places. The Council considers that the appeal proposal fails to achieve this.

8.4 Due to the housing land supply situation, paragraph 11d(ii) of the NPPF is engaged. This requires the adverse impacts of the proposal and its benefits to be considered against the Framework policies, taken as a whole.

8.5 The approach to the application of the NPPF and its place as a material consideration has very recently been summarised thus by the Court of Appeal in Gladman Developments Limited v SSCLG at [33]:

(1) The NPPF is one of the "other material considerations" to which the decision-maker must have regard in performing the statutory duties under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act (see Hopkins Homes Ltd. , at paragraphs 21 and 75).

(2) The policies in the NPPF are predicated on the primacy of the development plan in the "plan-led" system. It was pointed out by the Supreme Court in Hopkins Homes Ltd. (at paragraph 21), and by this court in East Staffordshire Borough Council (at paragraph 13), that the NPPF must be interpreted and applied – as it recognises itself – consistently with the statutory scheme, within which it takes its place as a material consideration.

The Court of Appeal also confirmed (at [34]) that:

*“(1) The "presumption in favour of sustainable development", now in paragraph 11 of the 2019 version of the NPPF, is not a statutory presumption. It is a presumption of national planning policy (see East Staffordshire Borough Council, at paragraph 35(1)).*

*(2) The presumption itself is not irrebuttable, and is not automatically decisive of any particular outcome for an application for planning permission. The policy in paragraph 11(c) and d) provides guidance on decision-making, under the statutory duties in section 70(2) of the 1990 Act and section 38(6) of the 2004 Act, in specified circumstances. It does not purport to be prescriptive (see East Staffordshire Borough Council, at paragraph 35(3)).*

8.6 Importantly, and critically, the Court of Appeal has confirmed (at [42]) that:

*“decision-makers are not legally bound to disregard policies of the development plan when applying the “tilted balance” under paragraph 11(d)(ii).*

The Council considers that adverse impacts identified in this Statement demonstrably outweigh the benefits of the appeal proposal when assessed against the policies in the Framework, taken as a whole, and when taking into account the significant conflict with the relevant development plan policies referred to above.

## **9. CONCLUSION**

9.1 The Council considers that that the appeal proposal would significantly harm the visual amenities of the area and would result in an overdevelopment of the site which would be harmful to the character and appearance of the area contrary to Policies SP8 and GD1 of the adopted Local Plan. In addition, the proposal fails to provide the necessary mitigation required to deal with the impact that the proposed development would have on the demand on the infrastructure required to support the proposed development. The proposal would, therefore, be contrary to Policy SP5 of the adopted Local Plan.

9.2 Overall the proposal fails to accord with the development plan taken as a whole, and no material considerations of sufficient weight have been identified to outweigh this conflict. The Inspector is respectfully requested to dismiss the appeal.

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