

APPEAL BY HILL RESIDENTIAL LIMITED  
LAND WEST OF LYTTON WAY, STEVENAGE, SG1 1AG

---

**OPENING STATEMENT BY THE LOCAL PLANNING  
AUTHORITY**

---

**Introduction**

1. These are the opening submissions by Stevenage Borough Council (“the Council”) in its response to the appeal by Hill Residential Limited (“the Appellant”) brought under section 78 of the Town and Country Planning Act 1990 against the refusal by the Council’s Planning Committee on 6<sup>th</sup> March 2020 to grant consent for the appeal scheme.

2. The reasons for the refusal of permission were as follows:

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.*

3. The third reason for refusal is no longer in issue as a basis for refusal as the requisite planning obligations have been secured in the new draft section 106 agreement prepared by the parties. Therefore, as recognised in the the CMC Note dated 23 March 2022, there is a single substantive planning issue in the case, namely the effect of the proposal on the character and appearance of the area. There is also a further issue, namely whether whether the council can demonstrate a sufficient 5 year housing land supply.

### **The relevance of the previous Inspector's decision**

4. Since this is a re-determination inquiry following the quashing of the previous Inspector's decision dated 27 August 2021, it is important at the outset to understand the relevance of that decision. It is common ground that the previous Inspector's decision is a material consideration, at least in relation to his reasoning on the planning merits of the Scheme (which was not the specific subject of the legal challenge which led to the quashing of the Inspector's decision by consent, which related to his approach to the 5YLS when considering the planning balance).
5. The correct legal approach was set out in Davision v Elmbridge Borough Council [2019] EWHC 1409: those principles have been summarised in the Council's Updated Statement of Case. Paragraphs 55-56 are the key paragraphs. The basic proposition is that a previously quashed decision is capable in law of being a material consideration and that the decision maker may need to analyse the basis on which the previous decision was quashed and take into account the parts of the decision unaffected by the quashing.
6. This inquiry is of course not bound by Mr Clark's previous findings in relation to the design of the scheme, but they are a material consideration and need to be considered carefully. The Council agrees with the Inspector's analysis at DL44 – 45 and in his overall conclusions on design as set out in paragraphs 66 to 74 of his decision and that significant weight can be attached to his conclusion i.e. that he considers that the scheme would have an adverse effect on the character and appearance of the area in terms of the proposals height, design,

appearance and intensity. In particular his key finding at DL74 was right i.e that the scheme would:

*“be contrary to those elements of policy SP8 which require substantial improvements to the image and quality of the town’s built fabric and preservation of the most important characteristics of Stevenage and to those elements of policy GD1 which, amongst other matters, require development; to make a positive contribution to its location and surrounds”*

7. However, the Council is not suggesting that this inquiry is bound to his decision in every respect, so long as there is justification for doing so. Both parties in this appeal have differing views to those presented in some parts of the Inspector’s analysis. For example, the Council considers that it would be open to this inquiry to go further than the Inspector’s conclusions in particular respects, and in particular where he considered the flaws with the scheme were mere “disappointments” and not actual harm (at DL112) – that conclusion does not marry up with his earlier analysis at DL44-45. The Council also notes that the Inspector went further than the Council now does as part of its case before this inquiry in respect of the impact on residential amenity over and above visual amenity. As far as the Council is concerned (and as confirmed in agreeing to the Statement of Common Ground) it is common ground that there would be no harm to residential amenity over and above the visual harm experienced by both the occupiers of the proposed development and those experiencing the development in its wider context.
8. But either way, and at the very least, the Council’s position is that the analysis by the Inspector shows that there are real question marks over the appropriateness of the design of
9. this scheme. In particular the previous Inspector’s findings lend further support and indeed vindicate the Council’s case (presented previously at the last inquiry and again today) that the Appellant’s assertions (both in submission and in evidence) as to the high quality of the scheme’s design credentials should not be followed.
10. As to the previous Inspector’s findings regarding the Primary Education Contribution, there are material considerations which would entitle this inquiry to take a different view from his analysis. First and foremost, that contribution is no longer in dispute between the parties and is included in the section 106 agreement, so it is now common ground that such a contribution is justified. More substantively, the Council has explained in its Updated

Statement of Case and CIL Compliance statement why the Inspector's concerns in that respect were misplaced. None of that is now challenged by the Appellant.

### **Impact on character of the area**

11. As set out in the Council's updated Statement of Case dated 20 January 2022, the Council continues to resist the appeal essentially for on the grounds of poor design of this development and its consequent negative impact on visual amenities and the immediate and wider character of the area.
12. Turning to the design of this particular proposal, contrary to what the Appellant will no doubt assert, this is not a good scheme. Ultimately, its effect, whether harmful or otherwise, is largely down to the sculptural form of the development overall and its consequent effect on the skyline of the town. This is of course largely a matter judgement.
13. The concern of the Council, which is set out in Mr Colligan's evidence, relates essentially to its height, design and appearance of this development and its impact in townscape terms. In essence, the Council considers that the consequent harm to the character of area that would result by the incongruous form of development renders the proposal contrary to both the development plan (in particular policies Policies SP8 and GD1 of the Local Plan) and national policy.
14. The Council's case that the scheme also fails the fundamental principles of design as set out in the NPPF (2021) in terms of the creation of high quality, beautiful and sustainable buildings and places which is fundamental to what the planning and development process should achieve (Paragraph 126. The NPPF states under paragraph 134 that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance. The Council submits that this is the case here and Mr Colligan will address this in detail in his evidence.

### **5YLS and the tilted balance**

15. There is an updated SoCG on 5YLS which sets out the respective parties' positions.

16. At the previous inquiry, it was common ground that the tilted balance should apply, based on the Council's failure (as of July 2021) to pass the Housing Delivery Test ("HDT") test score of 75% of the housing requirement over the previous three years.
17. Circumstances have clearly changed: the Council now meet that test. The updated Housing Delivery Test results published on the 14th January 2022 indicated that the delivery of housing in Stevenage was 79%. The tilted balance under paragraph 11(d) of the NPPF therefore no longer should be applied on the basis of a failure to meet the HDT.
18. On the question of whether the Council can demonstrate a 5 year land supply ("5YLS"), the parties clearly differ on the inclusion of particular sites in the 5YLS. That will be discussed at the round table session but the Council is confident in its calculations demonstrating that it has a sufficient 5YLS. In terms of methodology, the Inspector was right in his endorsement of the application of the *Liverpool* approach used by the Council.

#### **Other benefits of the scheme and the planning balance**

19. As is set out in the Statement of Common Ground, there is a considerable degree of common ground between the Council and the Appellant in respect of the benefits of this scheme and its compliance - in other respects - with the development plan. There is for example no dispute that the site is in a highly sustainable location, and that redevelopment of the site for residential uses accords with the local development plan. A vacant brownfield site would be brought back into use. The scheme would of course deliver a substantial quantity of homes, including affordable homes, and with attendant economic benefit to the town centre. All these benefits are fully acknowledged by the Council, and, as explained in the evidence of Gemma Fitzpatrick, weight should be attached to them.
20. However, the Council will seek to demonstrate during this inquiry that the deficiencies in the scheme design are all matters which still weigh heavily against the scheme, and render the scheme non-compliant with important policies in the development plan and in national policy. Those breaches of policy are matters to which significant weight can and should be attached, and are not outweighed by any of the acknowledged benefits of the scheme.

**JAMES NEILL**

**Landmark Chambers**

**6 June 2022**