

Land west of Lytton Way, Stevenage, SG1 1AG;

Appeal ref APP/K1935/W/20/3255692;

Redetermination Inquiry;

Appellant's closing statement.

Introduction

1. These submissions do not rehearse the evidence that has been presented to the Inquiry. Rather, they set out a route-map to a lawful decision and explain why the Appellant's position remains that the right decision – indeed the only sensible decision - is to allow the appeal.

Section 38(6) of the 2004 Act

2. The starting point here is of course s.38(6) of the 2004 Act which mandates that the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise.
3. Whilst there is a dispute as to whether the scheme complies with policies SP8 and GD1 of the Local Plan it is common ground that the scheme complies with every other relevant policy (as to which see paragraph 5.02 of the Statement of Common Ground)¹.
4. As to policies SP8 and GD1: it is common ground that they are consistent with the NPPF; and that compliance with SP8 is achieved by compliance with GD1.
5. It is also common ground that in assessing whether the scheme comprises high quality design (as per SP8 / GD1 / NPPF) it is necessary to look at all the criteria set out in policy GD1 and that the Council only alleges a breach of GD1(a) and (e). In the context of this case criterion (e) adds nothing to criterion (a)². On any analysis the Council's case against the scheme in terms of its design quality is very narrow indeed.

¹ NB The Council accepts that the scheme would comply with Policy SP7 – see Ms Fitzpatrick's Addendum Proof at paragraph 6.7

² Council's closing paragraph 8: the "visual" amenities of people visiting the site adds nothing to the question of impact on character and appearance of the area

6. Importantly, Policies SP8 and GD1 need to be considered and applied in the context of the Plan’s clear ambition to deliver a fundamental re-energising of Stevenage, see e.g. paragraph 4.4 of the Local Plan, which confirms the aim to deliver:

“**transformational physical, social and economic regeneration** of the original new town. This will be twinned with housing and employment growth **Regeneration and growth** will bring benefits to all. Together, these will help to break the cycle of low aspirations, low skills and deprivation that characterise parts of the town.”³

7. It is also important to assess the scheme’s compliance with SP8 and GD1 by reference to the recognition in the Council’s *Design Guide* that the architecture of the town centre is negatively monotonous (see page 29) and its call for:

- Taller buildings at nodal points and in easily accessible locations throughout the town (both of which apply to the appeal site), in which circumstances a gradual increase in height will not be necessary (p.28, cf Mr Colligan’s position to the contrary) and
- Higher densities in easily accessible areas and where space has previously been used ineffectively, see page 29 (again, both apply here).
- [Contrary to 19b of the LPA’s closings there was no attempt by Mr Campbell to downplay the SPG – he was referring simply to the fact that it was produced against a previous local plan]

8. It is also important to assess the scheme’s compliance with SP8 and GD1 by reference to the Council’s *Stevenage Central Framework*, which calls for higher density development generally and which aims to make the station the centre of Stevenage Central (see e.g. paragraph 2.2.4). That is of course highly relevant given the appeal site’s very close proximity to the station.

9. As can be seen, the redevelopment of the Site with higher density tall buildings fully accords with the principles established in the Local Plan, the Design Guide and the Town Centre Framework.

³ See also the additional references provided by Colin Campbell in his evidence in chief.

10. Finally, as Mr Campbell explained in his evidence in chief, it is important to remember that the Town Centre is ultimately a planning designation which (as per the NPPF) is designed to ensure that town centre uses (e.g. leisure, offices, retail) are directed to the most accessible locations. There is nothing in the Local Plan or the NPPF that seeks to limit the amount of residential development outside of the Town Centre – rather the strong emphasis is on maximising the use of previously developed land in sustainable locations see e.g. Local Plan Policy SP6(b) and paragraph 5.61 and NPPF paragraph 105 and paragraph 130 (e). As set out above, the appeal site is in a more sustainable location than much of the town centre given its proximity to the train station, the cycle and pedestrian network and Gunnels Wood the town's main employment area.
11. It is clear therefore that the appeal site is a pre-eminent location for a scheme comprising high density tall buildings.
12. It is also common ground that the scheme is policy compliant in terms of all relevant policies relating to issues arising on-site, e.g. privacy distances, open space provision, cycle and car parking – as per Policy GD1. In other words this high density development will be a very comfortable place to live.

The Council's remnant objection to the scheme

13. The Council's opposition to the scheme has narrowed very considerably since the first inquiry. In particular, the Council has now abandoned the majority of the points that Mr Buckle took against the scheme: see Mr Colligan's proof of evidence at section 2 and Ms Fitzpatrick's proof at section 6.
14. In the light of the Council's abandonment of so many of Mr Buckle's myriad of points, and given the Council's final acceptance that the scheme complies with all relevant policies and standards governing on-site issues, the Council's case against the scheme ultimately boils down to a single issue: what the scheme would look like and whether it would be acceptable in terms of its impact on the character and appearance of the area.

15. The SoCG sets out the full range of matters that are agreed but for the record, it is now common ground⁴ that:

- (i) The scheme complies with national and local policies in relation to heritage. Nb Millenium Gardens is in the Old Town Conservation Area and it is common ground that there would be no impact on the significance of the CA as a heritage asset.
- (ii) The scheme (not just the site) is highly sustainable in terms of its accessibility by non-car modes, complying with all relevant development plan and national policy.
- (iii) The scheme would provide sufficient amenity space for future residents, and would accord with Policy NH7⁵, i.e. on-site provision is made in accordance with the standards set out in the Council's Green Space strategy, and that the provision results in useable and coherent areas of an appropriate size, and that they are provided in a suitable location and are usable by all members of the community.
- (iv) The scheme would be healthy, inclusive and safe (see NPPF 92) – including in terms of its compliance with all policies concerned with designing out crime, see - see NPPF 92(b) and 130(f) and Local Plan Policy SP2;
- (v) The scheme would not have any adverse impact on the residential amenities of existing occupiers;
- (vi) The scheme would not have any adverse impacts on the residential amenities of future occupiers;
- (vii) The landscaping scheme provides more than adequate mitigation for the loss of the category B and C trees that are to be removed, and would result in an enhanced environment in accordance with Policy GD1;

Good Design – context

⁴ In addition to all the other points set out in the Statement of Common Ground (CD 6.3).

⁵ RBxx; DA's evidence on this issue was not challenged in cross examination.

16. Good design starts with a proper understanding of context. In this regard, it is important to note that it was common ground at the last inquiry that the Appellant's assessment of context was entirely appropriate (other than one minor error), see Mr Buckle's proof at paragraph 3.1.85. The Inspector also upheld the Appellant's assessment, see e.g. DL paragraphs 14, 66 and 119. It was very surprising therefore to find that Mr Colligan thought the analysis in the D&AS was "weak". In the end though this boiled down to the suggestion (made repeatedly in cross examination of the Appellant's witnesses) that the Appellant had looked only looked at the site rather than its wider context. This is repeated at the LPA closings paragraph 27, and is, with respect, utter nonsense. As both Mr Kelly and Mr Coleman patiently explained, the site's immediate context is important but careful consideration was of course given to the site's wider context too. It is clear that the Appellant's analysis was entirely sound and Mr Colligan's criticism of it should be entirely rejected. Sound analysis enables good design, and that is what has happened here.
17. It is also important to note that the Council made no substantive criticism of the methodology used Appellant's TVIA, which as Ms Ede explained fully accorded with GLVIA 3. In response to LPA Closings para 13ff wrongly criticises Ms Ede's measured and sensible response to the Inspector's previous decision.

Good Design – the Council's remnant points

18. Mr Colligan argued that the scheme would have a harmful impact on the town's parks, referring in particular in his proof to Millenium Gardens. But that conclusion was based on his obviously untenable assertion that the scheme's skyline would be monotonous in this view (just look at the VVI); it pays insufficient regard to the fact that the Gardens are already obviously in an urban context; and his overall conclusion as to harm to character is entirely inconsistent with the Council's acceptance that the scheme would not adversely affect the character and appearance of the Old Town Conservation Area, of which Millenium Gardens forms an part.

19. Mr Colligan next asserted that the scheme would harm the town's Greenways, by which it seems he meant that the scheme would appear above the tree line when seen in the context of the pedestrian / cycle way running along the west side of Lytton Way. As he accepted in cross examination however, there is no requirement in any of the design guidance that new buildings should (to use his word) "nestle" amongst the trees. Indeed, that would run counter to the clear imperative in the design guidance for tall buildings at key nodal points in order to increase the legibility of the town. Mr Colligan's position is also impossible to square with the Council's recent decisions in respect of the Station MSCP and 11 the Forum. It is clear that is a complete non-point.

20. Mr Colligan next asserted that the scheme would cut off important views of the countryside to the west of Stevenage. That was a remarkable assertion given that the countryside in question forms part of HO2, a housing allocation for more than 1000 new homes. Mr Colligan had not done his research properly and he belatedly abandoned this point under cross examination.

21. Finally, Mr Colligan argued that the scheme would distort the legibility of the Town Centre, particularly highlighting how the scheme would appear from public viewpoints near Langley, some 2.6km to the west of the town. This was another complete non-point: the legibility of the town centre is not an important consideration from this distance; in any event the scheme would not undermine anyone's sense of the town's core areas; and it is impossible to square with the design guide's call for taller buildings at key nodes / sustainable locations throughout the town. Mr Colligan also pointed to some closer viewpoints, suggesting that people going about their lives in Stevenage might mistake the scheme for the town centre. The suggestion is farcical. The scheme would very clearly read as a residential scheme and there is no basis for the suggestion that people would think it was somehow was the town centre, or that it would in some way "compete" with the town centre, or would detract from the legibility of the town. It is notable that the Council made no attempt to challenge the Appellant's evidence that there are plenty of examples up and down the country of taller buildings outside town centres which do not read as the town centre or detract from it – e.g. Cambridge and Sheffield – and as set out above the Council itself is calling for taller buildings at key nodes and in sustainable locations – this site is the very epitome of that and this is why officers supported and encouraged the approach.

22. Mr Colligan also raised some points about the detailed design of the scheme. His suggestion that the scheme's use of symmetry was inappropriate was wildly inappropriate and ultimately unjustified by any objective analysis. His suggestion that the design approach was "bizarre" is impossible to square with the fact that in the long history of the scheme no one else has ever thought the point was even worth mentioning. It brings Mr Colligan's judgement into serious issue, and fundamentally undermines his credibility as a witness. The suggestion that the entrance "just" leads to Block 7 (LPA closing para 30) is a non-point given that the Council raises no issue as to the quality of the entrance square.
23. In contrast to Mr Colligan's truly hyperbolic and unjustified assertions, the Appellant's evidence calmly explains how the scheme relates to its context, both in terms of its slightly unusual immediate "island" context but also in terms of its wider context, including of course the town's important heritage assets. As set out above, Mr Kelly's site context analysis is entirely sound and he gave a clear and compelling explanation as to why he designed the scheme in the way that he has, from very first principles in terms of site layout down to the detailed and delightful use of the County flower on the balconies. Mr Coleman – with all his experience and without any of Mr Colligan's excesses – explained why the scheme will work so well. Mr Kelly and Mr Coleman's evidence is clearly to be preferred to Mr Colligan's.
24. Finally, LPA closings 31 is (very regrettably) a very partial reading of what the Inspector actually said ("surprisingly open feel")
25. In conclusion, the scheme would create a beautiful new residential scheme, a great place to live for its new residents, responding appropriately to its immediate and wider context and according precisely with the Council's vision for energising and enhancing Stevenage as a whole.

The scheme's benefits

26. It is beyond sensible argument that the Council has never properly considered the scheme's benefits properly: Ms Fitzpatrick sought to address some of the benefits in a little more detail for the first time in her examination in chief, having never before thought it appropriate to set her views out in writing. With respect, it became clear under cross examination that Ms

Fitzpatrick's approach was confused and confusing. The Council's analysis of the benefits, such as it is, should be given no weight.

27. The appeal scheme proposes the redevelopment of a highly sustainable **brownfield site**: this on its own carries substantial weight in favour of the grant of permission: see NPPF 120(c).
28. Next, as Mr Campbell explains, the site's proximity to the town centres of Stevenage means the site's **sustainability credentials** can be maximised: residents will be able to walk and cycle from their front doors to a wide range of services including the bus and train stations, which in turn allows car parking to be less than a third of the maximum allowed. The scheme's sustainability credentials should be given substantial weight: avoiding the use of the private car is critical to our climate change response and the fact that all residents would have such good access to non-car modes is clearly a very significant benefit of this scheme.
29. Then we come to the **new homes** themselves. The appeal scheme will provide 576 much needed new homes (including 52 affordable homes). Substantial weight should be given to the delivery of this number of new homes, regardless of whether the Council can show a 5 year housing land supply.
30. Development would support the Government's objective to significantly boost the supply of homes (para. 60 NPPF) and the fundamental aim of the Local Plan is to revitalise and regenerate the town. Policy SP7 proposes "at least" 7,600 homes, i.e. this is not a ceiling. Critically, there has been persistent under delivery to date across the plan period. Over halfway through the plan period only 30%⁶ of the Local Plan requirement has been delivered and a shortfall of 1,826 homes has accrued against the planned rate⁷. In order to meet needs, development will need to average 586 homes a year until the end of the plan period⁸. But only 69 were delivered in 2021/22 and the Council says it is expecting just 195 next year. So, the first 12 years plan will have delivered max of 2,520 (33%) in 60% of the time. That leaves at least 70% to do in 40% of the time, i.e. 5,080 at 635 homes a year. This level of provision has been achieved only once and is three times the annual average, Further, as Mr Campbell explains, the Council is going to fail the HDT again and again in the coming years, another highly relevant factor in deciding what weight to give to this issue.

⁶ $(2,325/7,600)*100$

⁷ $((7,600/20)*11) = 4,180 - 2,534$

⁸ $(7,600 - 2,354)/9$

31. With regard to **Affordable Housing**, the provision of 52 Affordable Rent homes where there is agreed to be a critical and urgent need for more affordable housing⁹ should plainly attract substantial weight. The homes will be Affordable Rent, reflecting the greatest need within Stevenage and reflecting the Council's priority tenure.
32. Ms Martins explains at paragraph 7.2 of her rebuttal that from the start of the plan period until 2021 just 295 affordable homes had been delivered at annual average of just 27 homes a year. The Council has not published data for 2020/21 or 2021/22. In the Updated Statement of Common Ground¹⁰ the Council advises that a further 395 affordable homes are expected to be delivered by 2027 (see paragraph 6.01.20). Appendix D of Ms Martins' proof includes a list of sites. Assuming they all delivered, when added to the 295 homes delivered to date, that would mean 685 affordable homes had been delivered in the first 16 years of the plan period, against a minimum target of 1,520, leaving 835 to be delivered in just 4 years to meet the minimum Local Plan requirement, which itself does not aim to meet the Borough's full OAN for Affordable Housing (viability issues resulted in the lowering of the amount of affordable housing sought).
33. Schemes recently granted permission/with resolutions to grant are not coming close to achieving policy ambitions, except on greenfield sites. The Matalan permission provides for just 26 (5.6%) as affordable homes. The SG1 scheme does not guarantee the delivery of any affordable homes. The scheme at 11 The Forum (resolution to grant February 2022) is a Build to Rent (BtR) scheme providing 10% affordable. The BHS scheme for 250 homes provides an off-site financial contribution of £1,466,988, which the committee report (Annex CC3) advises equates to 23 homes/9.2%.
34. The delivery of 52 affordable homes on a single site equates to **200%** of the annualised average achieved across the whole Borough in 11 years since 2011, or 17.6% of what has so far been delivered in 10 years of the Plan period. It represents a very substantial contribution to meeting needs and should be accorded substantial weight given the chronic and persistent under delivery of affordable housing since the start of the plan period.

⁹ Ms Fitzpatrick xx

¹⁰ RD 6.1

35. In terms of **carbon reduction** the Local Plan contains no policies requiring carbon reductions. In combination the measures proposed by this development would save 430 tonnes of carbon dioxide per year compared to a policy compliant scheme. That represents a 66% carbon saving against the Building Regulations. The increased carbon savings are a very significant benefit to which substantial weight should be attached. They can be secured through a suitably worded condition.

36. In terms of **Biodiversity Net Gain**, the scheme will result in biodiversity net gain of 22.3% in terms of habitat units and a gain of 4,790 hedgerow units (from 0) measured using DEFRA Metric 2. This is significantly in excess of what can be required under either local or national policy¹¹, and significantly in excess of the new Environment Act's 10% (which is due to become mandatory in late 2023). The biodiversity enhancements should be considered a significant benefit and accorded substantial weight.

37. In addition, the scheme would generate

- Direct, indirect and induced jobs – the HBF's research paper *The Economic Footprint of House Building, July 2018* (CD3.28) identifies (page 13) that for every dwelling built between 2.4 and 3.1 jobs are supported. The development will support in the range of 1,400 to 1,800 jobs;
- Increased footfall for the town centre and increased expenditure - *The Economic Footprint of House Building, July 2018* (CD3.28) identifies (p16) that the average household expenditure per week was £503 in 2017, meaning that the development would generate over £15m of expenditure each year. That is expenditure available to support the regeneration of Stevenage Town Centre. In addition, new homes generate significant additional one-off spending on items such as furnishing and decorating. Based on the report, that would equate to around £5.36m.
- Generate c£17.61m of household expenditure each year (at 2019 values), available to support the regeneration and revitalisation of the town and town centre. ONS data for 2020 (RD4.1.5, Annex CC5) confirms that average weekly household expenditure in 2019 had increased to £587.90.

¹¹ Local Plan policies SP5 seeks "reasonable on-site provision", SP12 d) requires development to "Mitigate...for the loss of...assets of biodiversity importance", GD1 "Creates, enhances, or improves access to... biodiversity". NPPF para. 174 d seeks the "minimising" of impacts and "providing for net gains".

38. The NPPF states at para 81 that significant weight should be placed on supporting economic growth. These benefits are all significant and *given their extent* should be accorded very substantial weight.

Flat v Tilted Balance

39. Plainly, it would be necessary to identify some very substantial harm to justify refusal of a scheme that delivers so many so substantial benefits. The Appellant's position is that the tilted balance is engaged by reason of the Council's inability to show a 5 year housing land supply: see NPPF paragraph 11(d). On this basis, permission should be granted unless the scheme would cause harm that would significantly and demonstrably outweigh the benefits it would deliver. The Appellant's position is that the scheme would deliver very substantial benefits without causing any significant harm and that the tilted balance therefore falls decisively in favour of the grant of permission.

40. If, contrary to Mr Campbell's evidence, the Inspector concludes that the Council can demonstrate a 5 year housing land supply, and the tilted balance would therefore not be engaged, the Appellant's position remains that permission should be granted apply on the basis that the scheme complies fully with the development plan.

41. As to whether the titled balance is engaged, this will ultimately turn on the Inspector's assessment of the competing evidence in on the points raised at yesterday's round table session. These are not repeated here, but I make four overarching points:

42. First, in relation to *Liverpool v Sedgefield*, the fact that the EiP Inspector considered that the Council was not in a position to deal with its (then smaller) shortfall within the first five years of the plan is not determinative of whether in deciding the same approach should be taken now. There has been continuous market failure since the EiP closed and the extent of the unmet need for new houses now clearly justifies the use of *Sedgefield*, so that the titled balance is engaged and permission is granted for new housing schemes unless the adverse impacts would significantly and demonstrably outweigh the benefits. Importantly, it is for you to choose in the circumstances of the case: see *Bloor Homes v Secretary of State for Communities & Local Government* [2014] EWHC 754 (Admin).

43. Second, again in relation to Liverpool v Sedgefield, Mr Campbell was plainly right to rely on what the plan actually says. It does not include a stepped trajectory and there is nothing in the plan itself which justifies Liverpool over Sedgefield.
44. Third, Mr Campbell was right to stress the need for evidence in accordance with the approach set out in the NPPG to test whether a site is deliverable / developable. Rigour is required, and reference must be made not just to the planning position (such an approach would self-evidently be self-defeating) but also to the commercial and legal realities. Mr Campbell's experience in this field and his clear and compelling evidence as to how developers act in the real world should be given the utmost respect when assessing the competing arguments as to likely delivery rates.
45. Fourth, and with respect to Inspector Clark, his analysis did not come close to the level of detail that is required in this situation. The approach set out in the Sonning Common decision letter is clearly correct and there is a need to engage with the detail of each site before a rational and reasoned (i.e. legally sound) conclusion can be reached.
46. Finally, the suggestion in LPA closings 45 that the LPA has produced robust evidence is (with respect) patently misguided, when in the case of at least some of the sites the LPA has produced no evidence at all!

Harm?

47. Given that the scheme will deliver such substantial benefits, and regardless of whether the tilted balance is engaged, the scheme would have to be very harmful indeed in terms of its impact on the character and appearance of the area before refusal could be justified. As set out above, properly analysed, no such harm arises, the scheme comprising high quality design in line with all relevant policies and guidance.
48. The scheme was worked up through close co-operation with the Council's professional officers. It is a good scheme, well designed, a carefully considered response to the site's somewhat unusual characteristics and context. Officers agree – that is why the scheme was presented to Committee with a clear recommendation for approval.

49. Finally, as to the Council's generic assertion that the scheme would harm the character and appearance of the area, it is important to stress again that the Council accepts that the scheme would not adversely affect the character and appearance of the Conservation Areas, the town's most historically important assets. At best then, the Council's case must be that the scheme would adversely affect the character and appearance of *part* of the area, but the Council never explained which part it had in mind.

Previous appeal decision.

47 The position is as per my opening submissions. Inspector Clark's decision is relevant, but it is not a starting point, nor is it in any way determinative, particularly given it is common ground that he was wrong to conclude that the scheme would be in any way harmful in privacy terms. It is also common ground that the Inspector did not conclude that the scheme would contravene the development plan as a whole¹². In short, you are free to reach of your own views in the light of the evidence now before the inquiry and in doing so it will no doubt be clear where and why you disagree with Inspector Clark.

Conclusions

48 Even applying a flat balance, it is clear that the scheme accords with the development plan and that there are no material planning considerations that would indicate the scheme should be determined other than in accordance with the plan. Applying the tilted balance the case in favour of the grant of permission becomes even more overwhelming: it could not sensibly be said that the scheme would cause harm that would significantly and demonstrably outweigh the benefits it would deliver. It follows that the appeal should be allowed and planning permission be granted, so as to allow the Appellant to deliver this much needed and high quality scheme. The Appellant is a housebuilder with a very high reputation for the qualities of its schemes, as can be judged from the fact that two of its schemes feature in the national design guide. It remains rightly proud of this scheme and wants to build it as soon as it can notwithstanding that it will not make the level of profit that it is entitled to expect in terms of scheme viability.

¹² Ms Fitzpatrick xx; and the point was rightly not pursued in xx of Mr Campbell by Mr Neill.

Reason for refusal 3

49 Reason for refusal 3 has been overcome by the s.106 Obligation that has been agreed between the Appellant, the Council and HCC.

Rob Walton QC

Landmark Chambers

15th June 2022