
OPENING SUBMISSIONS ON BEHALF OF THE APPELLANT, ACCRUE (FORUM) 1 LLP

Introduction

1. This Inquiry is concerned with an application made by Accrue (Forum) 1 LLP ('the Appellant'), seeking outline planning permission for some 332 dwellings and associated development ('the Scheme') on a derelict brownfield site situated to the east of Great Stone Road, Trafford ('the Appeal Site').
2. The planning application ('the 2020 Application') was submitted to the local planning authority, Trafford Metropolitan Borough Council ('the Council'), in March 2020. The Council did not determine the 2020 Application within the requisite timeframe, and an appeal was lodged in respect of that failure of determination ('the Appeal'). It is on that basis that the Scheme now falls to be considered by the Inspector.

Summary Context

Evolution of Development Proposal

3. These opening submissions turn firstly to consider the background to the Appeal. In this regard the Inquiry will be aware that the Appellant has in fact been working to deliver the redevelopment of the Appeal Site since 2017. It was on this basis that, following a series of pre-application discussions between the Council and the Appellant in early 2018, and following also extensive technical work, the Appellant submitted an application for planning permission for the redevelopment of the site in July 2018 (Council's Ref: 94974/OUT/18 – 'the 2018 Application'). The 2018 Application sought permission to bring forward a mixed use, residential-led scheme, including 433 units of housing.

4. That application was rejected by the Council on the basis of nine reasons of refusal, by decision notice dated 29 March 2019.¹ Rather than appeal that decision, the Appellant set about addressing the Council's concerns as set out in its decision, working to produce a revised scheme that would deliver a reduced quantum of development on the site in a different architectural form. The ensuing 're-design' lasted over a year, and involved extensive further pre-application engagement with the Council. Notably, that engagement included presentation of a draft scheme design to RIBA North West's 'Places Matter' design review panel in November 2019 in order to inform the design development, of which the Inquiry will hear more later.

2020 Application

5. As noted above, the Appellant's revised application (that is, the 2020 Application) was submitted to the Council on 20 March 2020. The Appellant was aware that the Council had reservations in respect of the Scheme at the point of submission. However, what was not clear at that point was the lengths to which the Council would go in order to resist the Scheme notwithstanding the fact that:

(a) it does not resist the principle of residential development on the Appeal Site, and

(b) it accepts that it is unable to demonstrate a five year supply of housing land ('5YHLS'), and that there is a pressing need for housing in the borough.

Indeed, it is only in the following months/years that the mind-set of the Council has gradually become apparent.

6. Firstly in this regard, the Inquiry will have noted that for several weeks after submission the Council refused even to validate the 2020 Application, maintaining that a site specific financial viability assessment was required in order for the application to be validated. It was not until the Appellant provided Leading Counsel's Opinion demonstrating that no such assessment was required in order for validation to occur, that the Council finally proceeded with validation. (Council Ref: 100400/OUT/20).
7. Following that validation, in order to allow all consultees an opportunity to comment on the 2020 Application, the Appellant delayed the making of an appeal and continued to address such comments as it received from the Council. However, apprised of the Council's intention to refuse permission, the Appellant ultimately lodged the Appeal on 28 August 2020. It was following the

¹ The decision notice is at Appendix B to the Statement of Common Ground (CD-F103).

making of the Appeal, on 15 October 2020 the 2020 Application was put before the Council's planning committee ('the Committee') in order to determine the Council's position in respect of it.

8. The Committee accepted the recommendation of the Council's planning officers to resolve that planning permission would have been refused. In so doing however, the Committee resolved to adopt what may fairly be described as the 'kitchen sink' approach advocated by officers. In this regard, no less than seven putative reasons for refusal were identified. These encompassed an extremely wide spectrum of issues, ranging from architecture and design, impact on local character and appearance, impact on Lancashire County Cricket Club's ('LCCC') fine turf and non-turf training facilities at Emirates Old Trafford ('EOT'), impacts on EOT's cultural character, impact on daylight and sunlight levels, the overbearing nature of the development, heritage impacts, the extent of financial contributions in respect of education and sport, to affordable housing provision. In short, in almost every conceivable respect (although notably *not* in terms of noise), the Council's position was that the development would be unacceptable and unsatisfactory. Indeed, despite the 2020 Application seeking planning permission for a development that was materially smaller than that subject to the 2018 Application, the Council identified new issues that hitherto had not been the basis for refusal.²
9. However whilst this was the stance adopted by the Council, it has since become apparent that these putative reasons for refusal did not actually represent a considered opposition to the Scheme, as evidenced by the Council's subsequent attempts to 'develop' its case in the months since those putative reasons were identified.
10. Firstly in this regard, the Inquiry will have noted that in the course of the last year the Council has wholly surrendered two of those reasons; thus the Council no longer argues that the Scheme should be refused planning permission on the basis of:
 - any heritage impacts; or
 - any 'dominating' impact on LCCC, its setting, cultural character and identity.Further, the Council has also modified the wording of other reasons to reflect the fact that it is unable to substantiate with evidence the concerns which it had voiced regarding daylight and sunlight impacts on the amenity of existing and future occupiers.
11. Secondly, the Inquiry is of course aware that in an attempt to shore up its case notwithstanding these concessions, on 7 December 2021 (well over a year after the Committee adopted its putative

² In particular, the impact on LCCC and its fine turf and non-turf training facilities.

reasons for refusal, and only five weeks before the start of the Inquiry) the Council notified the Planning Inspectorate that it was seeking to add an additional putative reason for refusal based on noise. This is notwithstanding the fact that the Council had signed a Statement of Common Ground as recently as 27 October 2021 confirming that it did *not* object to the application on the basis of noise or vibration.³

12. In one sense, it might be said that it is irrelevant that the Council's case has shrunk/grown/metamorphosed in this way. The putative reasons for refusal stand in their current form, and it is for the parties to put their case at this Inquiry in respect of them. However, the Appellant respectfully submits that the 'background' to the cases now being put is indeed relevant; it is relevant because it goes to the relative credibility of those cases. The fact that the Council has sought to grasp at so many straws in resisting the Scheme, raising objections seemingly regardless of whether or not they can be defended on appeal and whether or not its position is consistent with that adopted in respect of the 2018 Application⁴, goes directly to the question of whether there is any real substance to the Council's case in respect of any of these issues. It is respectfully submitted that the evidence will show that there is not.
13. That the Council has elected to adopt this type of approach is regrettable. Further, it is also surprising in circumstances where the proposed development would deliver the regeneration of a derelict brownfield site in a highly sustainable location, which is currently standing empty and crying out for redevelopment. Indeed, it is particularly surprising that the Council would adopt this stance at a time of both recognised national housing crisis and identified local need; as noted above, the Council accepts that there is no 5YHLS within Trafford.
14. The Appellant suspects that the explanation on this particular point is to be found in the Council's evidence, and in particular the assertions of Ms Coley, which are broadly to the effect that the housing shortage in Trafford is not the responsibility of the Council, but instead the fault of everybody else (landowners and developers and so on). The Appellant will explore this somewhat remarkable position with Ms Coley in the course of her evidence, but the fact of its having been adopted goes some way to explaining why the Council is so little concerned by the fact of its historic and ongoing failure to deliver housing in line with national policy. Indeed, such position as regards housing supply is consistent the fact that in January 2020 the Council actually went so

³ [CD-F103], para 6.1.76: "... it is agreed that there are no reasons to refuse the appeal proposal on grounds of noise or vibration".

⁴ In particular, there was no reason for refusal based on the impact of the proposed development on LCCC's fine turf facility when the Appellant's previous planning application was refused. See Proof of Evidence of Doug Hann, para 7.1.9.

far as to secure authority for the exercise of compulsory purchase powers in respect of this site, with a view to building a leisure centre on it (that being then the proposed use of the Appeal Site in the Regulation 18 draft of the AAP). Indeed, although the wording of the AAP has since twice been re-drafted since that date, the authorisation for compulsory purchase for that leisure purpose still technically exists.

The Appeal

15. In any event, turning away from the background and turning back to the Scheme and the substance of the Appeal, the Appellant's evidence will demonstrate how the proposed development responds to the opportunity which the Appeal Site represents, making optimal use of it by delivering much needed housing in an architecturally interesting way, whilst providing appropriate living conditions for future occupiers. Not only is the principle of development consistent with the NPPF and local policy,⁵ the proposed development represents a balanced solution to the delivery of housing in a way that does not prejudice the interests of existing nearby and future occupiers.
16. The remainder of these opening submissions provide some background in relation to the Appeal Site, the proposed development, the policy context and the outstanding reasons for refusal, before addressing in turn each of the issues identified by the Inspector following the case management conference held on 3 November 2021 ('the CMC').

The Appeal Site and Scheme

17. As noted above, the Appeal Site is a brownfield site of approximately 1 hectare in size. It currently comprises a large, derelict former retail unit with surface level car parking and associated structures, which was previously occupied by B&Q.⁶ The retail unit has been vacant since January 2016.
18. To the north sits EOT, the home of LCCC. EOT comprises a main pavilion building, spectator seating around the field of play, as well as a number of more recently developed buildings including a hotel and hospitality and events building.

⁵ In particular, para 119 of the NPPF and LPCS Policy 1. See Statement of Common Ground, paras 6.1.20 to 6.1.26 (CD-F103).

⁶ A full description of the Appeal Site and its surrounds is set out in the Statement of Common Ground at paras 2.1.2 to 2.1.22 (CD-F103).

19. The Appellant seeks outline planning permission for the following development:

“The demolition of existing retail unit and associated structures; erection of buildings for a mix of use including: 332⁷ apartments (use class C3) and communal spaces ancillary to the residential use; flexible space for use classes A1, A3, D1 and/or D2; undercroft car parking; new public realm; and associated engineering works and infrastructure” (‘the Appeal Proposal’).

20. The only matter that is reserved is landscaping.

The Development Plan and principle of development

21. A detailed explanation of the policy context is set out in the respective proofs of evidence of the Appellant’s twelve expert witnesses.

22. By way of overview, the adopted development plan comprises the saved policies of the Unitary Development Plan 2006 (‘UDP’) and the Trafford Local Plan Core Strategy 2012 (‘LPCS’). The Appeal Site is located within the ‘Inner Area’ on the adopted LPCS policies map (2013), and within the wider area known as the Lancashire Country Cricket Club Quarter Strategic Location under policy SL3. It is not itself designated for any specific use or development, but its inclusion within the LCCC Quarter embodies the Council’s “brownfield-first approach”.⁸ Policy SL3 states that a major mixed-use development will be delivered in this strategic location to provide a high quality experience for visitors balanced with a new, high quality residential neighbourhood centred around an improved stadium at LCCC. The policy supports residential development of around 400 new properties in the LCCC Quarter, which is agreed to be neither a minimum or a maximum figure.⁹ Following a review of the housing land supply position in March 2020, this indicative figure has been increased to 2,800 albeit in a wider area now described as the ‘Civic Quarter’.

23. The Appeal Site also lies within the Old Trafford Priority Regeneration Area under policy L3, which is supported by strategic objective 2 (Regenerate).

⁷ The original application stated 333 units. This has since been corrected to 332 units.

⁸ Accepted: Proof of Evidence of Debra Harrison, para 3.11.

⁹ Statement of Common Ground, para 6.1.23.

24. Against this background, it is recognised by the Council that the redevelopment on the Appeal Site, as a matter of principle, assists with regeneration objectives by allowing the re-use of a derelict site in a location that has been recognised as sustainable¹⁰.
25. There are a number of emerging development planning documents that are relevant to development proposals on the Appeal Site, which are discussed in detail in the Proof of Evidence of Mr Hann.¹¹ Due to the stage that these emerging documents are at and the degree to which there are outstanding objections, the Appellant considers that they can only be attributed limited weight. In this regard it is notable that no policies of the emerging development plan are cited in the Council's putative reasons for refusal, even as amended.

Outstanding reasons for refusal

26. Of the seven putative reasons for refusal which were approved by the Council's planning committee in October 2020, two of those have since been withdrawn, two of those have been modified and one additional reason for refusal has been adopted.
27. The outstanding reasons for refusal are as follows:

"1. The proposed development would prejudice the use of the fine turf and non-turf training facility at Lancashire Cricket Club. The proposed development therefore conflicts with Strategic Objective OTO11, Policies SL3 and R6 of the adopted Core Strategy.

2. [Withdrawn]

3. The proposed development would represent poor design as its form, layout, height, scale, massing, density and monolithic appearance are inappropriate in its context and would result in a building which would be significantly out of character with its surroundings. This would have a highly detrimental impact on the street scene and the character and quality of the area. This would be contrary to Policies SL3 and L7 of the adopted Trafford Core Strategy and the National Planning Policy Framework

4. The proposed development would not provide a development plan policy compliant level of planning obligations in relation to affordable housing and education improvements to suitably and appropriately mitigate the impacts of the development. The applicant has failed to

¹⁰ Proof of Evidence of Debra Harrison, para 3.11.

¹¹ At paras 3.20 to 3.30.

demonstrate that there is a robust viability case to demonstrate that the scheme could not offer a policy compliant level of obligations. The proposed development is therefore contrary to Policies SL3, L2 and L8 of the adopted Core Strategy and the Council's adopted Revised Supplementary Planning Document 1 (SPD1) - Planning Obligations and the National Planning Policy Framework.

5. The proposed development by virtue of its height, massing, scale and layout would result in a poor level of amenity ~~and unacceptable living standards~~ for future occupiers of the development, by virtue of inadequate ~~daylight and~~ outlook in both apartments and amenity areas. The proposed development is therefore contrary to Policies SL3 and L7 of the adopted Core Strategy and the National Planning Policy Framework.

6. The proposed development by virtue of its height, massing, scale and layout would result in harm to the amenity of existing residential properties on Great Stone Road, and Trent Bridge Walk and other residential properties in the wider 'Gorses' area by virtue of ~~noticeable reductions in the amount of daylight and sunlight that they receive, and would also have an overbearing impact on these properties.~~ The proposed development is therefore contrary to Policies SL3, L3 and L7 and the National Planning Policy Framework

7. [Withdrawn]

8. Noise arising from concerts at Lancashire Cricket Club would have a harmful impact on the amenity of future occupants of the development and would likely lead to noise complaints, the consequence of which could be the curtailment of activities at Lancashire Cricket Club, contrary to the agent of change principle. An appropriate scheme of acoustic mitigation has not been properly investigated and would require significant and material changes to the design of the building. As such the development is contrary to Policies SL3, L5 and L7 of the adopted Core Strategy and the National Planning Policy Framework."

Issues identified by the Inspector

28. Following the CMC the Inspector identified the following nine main considerations for the inquiry:

- 1) Whether the proposed development would preserve or enhance the character or appearance of Longford Park Conservation Area;
- 2) The effect of the proposed development on the character and appearance of the area;

- 3) The effect of the proposed development on LCCC, a non-designated heritage asset¹² and an internationally significant visitor attraction, cultural and tourism venue;
- 4) The effect of the proposed development on the fine turf and non-turf training facility at Lancashire County Cricket Club;
- 5) The effect of the proposed development on the safety of vehicular and pedestrian users of the access to Lancashire County Cricket Club and Great Stone Road, and the Club's ability to use its existing access;
- 6) Whether future occupants of the proposed development would have satisfactory living conditions, with regards to sunlight, daylight, outlook, noise and vibration;
- 7) The effect of the proposed development on the living conditions of the occupants of residential properties on Great Stone Road and Trent Bridge Walk, with regards to sunlight and daylight; and
- 8) Whether or not the proposed development would make adequate provision in terms of affordable housing, a TRO review, a design certifier, and contributions for sports facilities and education, having regard to viability; and
- 9) The economic effect of the proposed development on LCCC.

29. These considerations reflected the Council's putative reasons for refusal, and the scope of the objections by LCCC, as at the date of the CMC. As explained in more detail below, some of these considerations are now subject to partial or total agreement. Further, in addition to the above, the Appellant volunteers that a further main consideration that falls to be addressed is the extent of 5YHLS within the Borough, in respect of which issue it relies on the evidence of Mr Matthew Hard, which establishes that when national policy in the NPPF is applied correctly – that is to say the definition of 'deliverable' housing sites is correctly applied – the Council can demonstrate only 2.9 years of supply.

30. These submissions now turn to address, in summary, each of the matters raised by the Inspector

¹² The Appellant's position is that the Pavilion, and not the whole of LCCC, is the relevant non-designated heritage asset.

Main Consideration 1: Heritage

31. This main consideration relates to putative reason for refusal 7, which alleged that the Scheme would cause harm to the setting of the Longford Park Conservation Area. This was considered, at the date of the officer's report, to provide "*a clear reason for refusal*".¹³
32. On 26 November 2021 the Council signed the Statement of Common Ground Addenda on heritage matters, confirming that its position is now that the Scheme would not be harmful to the Conservation Area and does not give rise to a reason for refusing planning permission for the development.¹⁴ This is entirely consistent with the evidence of Dr Batho, on behalf of the Appellant, who concludes that there will be no harm to the significance of the Conservation Area. This is primarily due to the fact that the Appeal Site does not contribute to the significance of the Conservation Area. The minor change to the setting that will be caused by the Appeal Proposal will be viewed in the existing mixed urban context of the area.
33. In respect of the two other heritage assets that share some intervisibility with the Appeal Site, Grade II Listed Trafford Town Hall and the LCCC Pavilion, a non-designated heritage asset, the evidence of Dr Batho demonstrates that there will be negligible harm arising from the Appeal Proposal by virtue of the loss of glimpsed views of the heritage assets.
34. It should be noted that the agreed position in respect of the level of harm to heritage assets means that the tilted balance under paragraph 11(d) of the NPPF is no longer considered by the Council to be disapplied.

Main Consideration 2: Effect on character and appearance of the area

35. This main consideration flows from putative reason for refusal 3, but is also relevant to reasons 5 and 6.
36. The Appeal Site and its buildings are currently vacant, derelict and unattractive. They contribute nothing positive to the street scene and detract from the appearance and character of the area.
37. As explained in section 7 the Proof of Evidence of Paul O'Connell, the Scheme is the product of a long process of analysis and design development. The design has been led first and foremost by the context of the Appeal Site, which is influenced by being adjacent to EOT and within an area identified for redevelopment and change.¹⁵ The design has also been led by the desire to create

¹³ Officer's Report (CD D15)

¹⁴ This is confirmed in the Proof of Evidence of Debra Harrison on behalf of the Council, para 1.5.

¹⁵ Proof of Evidence of Mr O'Connell, para 7.1.3.

a new neighbourhood, which will form the missing part of the LCCC Quarter (one of five strategic locations in Trafford), whilst being sensitive to the development on the opposite side of Great Stone Road.¹⁶

38. Crucial to the success of the Scheme in architectural and design terms is the creation of a new street scene. This enhances both the character of Great Stone Road and screens views into the backside of the EOT stadium. It assists in meeting the aim of providing an enhanced stadium sought by policy SL3.
39. The massing, scale, density and layout balance the need to respect the context of the site and character of the surroundings, with the need to make optimal use of a brownfield site in a highly sustainable location. The massing is the carefully considered result of seeking to provide a transition from the character of the LCCC Quarter towards the suburban housing area.¹⁷ The elevational treatment has been designed to provide articulation and variation in the roofline¹⁸
40. Overall, the Appellant's evidence will demonstrate how the Scheme is a high quality development, which respects and improves the existing street scene. It represents an architecturally interesting response to the task of making optimal use of unused brownfield land, whilst delivering much needed housing. The response from the Places Matter design review panel, which reviewed the emerging design in November 2019, endorsed the height of the Scheme¹⁹ whilst also providing a number of helpful suggestions that have since taken on board throughout the evolution of the design. The evidence of Mr O'Connell demonstrates this evolution and how it responds to the points raised by the panel.
41. In this regard, the Appellant's evidence will demonstrate how the Scheme is consistent with policies L7 and SL3 of the LPCS and paragraph 130 of the NPPF.

Main Consideration 3: Effect on LCCC

42. At the time of the planning committee's adoption of the putative reasons for refusal, the second reason related to the impact of the Scheme on LCCC, both in respect of its status as a non-designated heritage asset and as an internationally significant visitor attraction and tourism

¹⁶ See Proof of Evidence of Mr O'Connell, page 16, Figure 20.

¹⁷ Proof of Evidence of Mr O'Connell, para 7.1.3.

¹⁸ See Proof of Evidence of Mr O'Connell, page 12, Figure 4.

¹⁹ Proof of Evidence of Mr O'Connell, para 7.3.7.

venue. On 26 November 2021 the Council confirmed that it would no longer be seeking to rely on this alleged harm and that the putative reason for refusal would be withdrawn.²⁰

43. LCCC, however, apparently maintains an objection to the Scheme on the basis of this issue. There are two aspects of LCCC's case in this regard, namely, (i) that the Scheme will intrude into views of spectators within the ground and be detrimental to the spectator experience and the setting of the ground, and (ii) that the access to the proposal will conflict with access to LCCC and requires a road safety audit.
44. The Appellant's case is that the Scheme will not intrude into views of spectators to any significant degree who will, in any event, be focussed on the pitch itself, the crowd and the immediate surroundings. Spectators at EOT can already discern tall buildings in the backdrop of views from within the stadium. This is no surprise given that the location of the stadium is an urban one. Indeed, the area around the stadium has been identified as a strategic location for development and therefore will continue to experience change.
45. The immediate surroundings to the stadium are already characterised to some extent by LCCC's own new buildings, including a conference centre, hotel and media centre.²¹ Nor is the fact that development can be seen in the backdrop of views from within a cricket stadium by any means a novel or alien concept; spectators at Lord's, the Oval and Trent Bridge also experience views of existing buildings outside of the stadium from within it.²² The position that the existence of the Scheme will detract from the spectator experience is simply unfounded.
46. With regards to access, the Proof of Evidence of Mr Davis explains that the Scheme will have absolutely no impact on highway safety or the ability of LCCC to gain access to EOT, as explained further below.
47. Overall, the Appellant's evidence will demonstrate that LCCC's concerns are ill-founded and that the Scheme complies with policy SL3 and policy R6, which were identified in putative reason for refusal 2 prior to its withdrawal.

Main Consideration 4: Effect on turf and non-turf training facility

48. This main consideration stems from putative reason for refusal 1. The scope of this objection has narrowed somewhat since it was adopted by the Committee. It now relates solely to the alleged

²⁰ Confirmed: Proof of Evidence of Debra Harrison, para 1.5.

²¹ Proof of Evidence of Doug Hann, para 6.1.10.

²² Proof of Evidence of Doug Hann, para 6.1.14.

impact on the fine turf training facility at EOT, and not the non-turf elements.²³ This impact is said to arise from overshadowing caused by the Scheme, which will interfere with light and temperature, necessitating the use of growth lights.

49. What is striking about this objection to the Scheme, is the extent of evidence provided in support of it. In this regard, LCCC itself provides no evidence. As for the Council, the proof provided by Mr Musson of the England and Wales Cricket Board ('ECB') is limited. Similarly, the proof of Fiona Pudge of Sport England (who is unfortunately no longer able to appear), whilst criticising the evidence produced by the Appellant, contains no any technical analysis of its own.
50. The only substantive evidence to be given by a witness who is actually appearing at the Inquiry, is that provided by Mr Lee Collier on behalf of the Appellant, who will explain that the Scheme will not have an adverse effect on the fine turf facilities at EOT. Mr Collier is an expert in sports surface facility design and engineering whose evidence presents a technical analysis of the impact of the Scheme. The Appellant's evidence will show that the light levels and temperature experienced by the turf both *with and without the development* would provide sub-optimal growing conditions.²⁴ Further, and critically, it will demonstrate that overall the impact of the Scheme will be minimal and that the Scheme complies with Strategic Objective OTO11 and policies SL3 and R6 of the LPCS.

Main Consideration 5: Highways

51. A transport assessment was submitted with the Appellant's application for outline permission. On the basis of that assessment, the Council did not object to the Scheme on highways grounds and none of the Council's putative reasons for refusal relate to highways or transport issues. In the Statement of Common Ground dated 27 October 2021 the Council confirmed that it had no objection to the Scheme in respect of highways or access.²⁵ Thus this issue falls to be considered due only to LCCC's representations in respect of the Appeal.
52. In its representations, LCCC asserted that the Scheme would have an unacceptable impact on LCCC's ability to use its existing access and cause road safety issues.²⁶ As explained in the Proof of Evidence of Gareth Davis on behalf of the Appellant, LCCC's objection was based on a misunderstanding of the highway proposals in relation to the Scheme.²⁷ There is no proposal to construct raised kerbs that would hinder vehicle access to EOT, nor would the Scheme result in an

²³ Confirmed in an email from Debra Harrison to Matt Hard (WSP) on 17 November 2021).

²⁴ Proof of Evidence of Lee Collier, page 4, Table 1 and para 2.2.3.

²⁵ Statement of Common Ground, para 6.1.28 (highways) and 6.1.42 (access).

²⁶ LCCC Representations, section 8.

²⁷ Proof of Evidence of Gareth Davis, para 2.1.

adverse impact on safety. Indeed, the highway proposals, which are relatively minor in nature, will improve accessibility for pedestrians.

53. On this basis, the Scheme complies with policy L4 (to the extent that it is not agree out of date), and paragraph 110 and 111 of the NPPF.

Main Consideration 6: Whether future occupiers would have satisfactory living conditions

54. This consideration was identified on the basis of putative reason for refusal 5, together with LCCC's objections to the Scheme.

55. However, since the CMC the Council has modified the wording of reason for refusal 5 by removing reference to "*unacceptable living standards*" and retaining reference only to "*poor level of amenity*" for future occupiers. Further, the Council has also since adopted putative reason for refusal 8.

56. Following the adoption of that new reason for refusal, there are now three respects in which the Council contends that the Appeal Proposal would deliver a poor standard of living for future occupiers, namely, in respect of noise, outlook, and daylight and sunlight levels. However, the Council has confirmed that it does not intend to provide technical evidence on daylight and sunlight matters. It is unclear what weight the Council attributes this technical issue in circumstances where it is not able to/has chosen not to call appropriate evidence to substantiate its case.²⁸

57. The Appellant's evidence will demonstrate that the Scheme will deliver satisfactory living conditions and a good standard of amenity for future occupiers, compliant with policies SL3 and L7 and the NPPF. Its case in respect of each of these three issues is summarised in turn below.

Noise

58. The Council's objection to the Scheme on the basis of noise is now captured by putative reason for refusal 8. This objection first originated from LCCC in their response to the application dated 8 October 2020 (some 14 weeks after the application was validated); LCCC maintains its objection to the Scheme due to concerns about its continued ability to generate noise from the activities that take place at EOT once the development is occupied. Both LCCC and the Council argue that

²⁸ Proof of Evidence of Doug Hann, para 9.1.12.

under the 'agent of change' principle, the Appellant is responsible for mitigating the effect of noise from EOT on future residents.

59. As explained in the evidence of James Patterson, there are two main potential noise sources from activities at EOT to consider in respect of the future residents of the apartment blocks, namely cricket noise and concert noise.

60. With regards to the noise generated by various types of cricket fixture, this can be adequately mitigated through the use of suitable glazing to ensure that internal noise levels do not exceed the most applicable British Standard²⁹. With regards to noise generated by music concerts held at EOT, whilst it cannot be rendered inaudible by scheme design, the infrequency of the events means that a Noise Management Plan provides suitable mitigation.³⁰ In this regard it is of course highly relevant that quite apart from the fact that concerts have only been held historically in the order of once or twice a year, such events are also limited to a maximum of seven per year by the conditions on EOT's licence. The Appellant does not consider that the worries of either the Council or LCCC are in fact substantive or justified, but in order to allay the concern that concert noise from EOT will attract noise complaints from future residents, the Appellant has undertaken that future residents will enter into a deed of easement in respect of concert noise. The precise form of this deed of undertaking is a matter that will be the subject of agreement between the Appellant and LCCC and will be secured in the Appellant's section 106 unilateral undertaking.

Outlook

61. The Council identifies a very small proportion of the proposed flats that would, in its opinion, suffer from a poor outlook.³¹ As Mr Hann explains, it is inevitable that certain dwellings within a development will benefit from better outlook than others.³² However, Mr Taylor's evidence will demonstrate that the dwellings that the Council are concerned about would benefit from views of garden areas and the use of planting can effectively soften the views of the rear of LCCC's indoor cricket facility such that it would be satisfactory.³³

²⁹ BS8233:2014.

³⁰ Proof of Evidence of James Patterson, para 5.2.

³¹ Council's Statement of Case, paras 4.173 to 4.174.

³² Proof of Evidence of Mr Hann, para 9.1.19.

³³ Proof of Evidence of Mr Taylor, para 8.4.

Daylight and sunlight

62. The Appellant's evidence will demonstrate that 88% of rooms within the Appeal Proposal fully satisfy the BRE Average Daylight Factor ('ADF').³⁴ Only a small number of rooms fall short of the ADF criteria by more than a minor or negligible amount and around half of these are bedrooms. As explained by Mr Radcliffe in his Proof of Evidence, this level of amenity for future residents is acceptable and much better than comparable developments that have received planning permission.³⁵

63. In respect of amenity spaces within the Scheme, the proposed northern courtyard and all rooftop spaces meet the BRE guidelines. Only the southern courtyard falls short of the BRE guidelines. As explained by Mr Hann, the cumulative effect of the variety of amenity spaces means that no harm arises from this.³⁶

Main Consideration 7: Daylight and sunlight impact on existing occupiers

64. This consideration flows from the original wording of putative reason for refusal 6. Whilst the Council maintains that it is a harm to be weighed in the planning balance, the only technical evidence before the inquiry is that of Mr Radcliffe.

65. As that evidence will demonstrate, the Scheme will not adversely impact on the amenity of existing occupiers of properties on Great Stone Road and Trent Bridge Road. The residual daylight levels at all adjacent properties would pass the BRE criteria for Vertical Sky Component ('VSC'). As such, the Scheme would have a negligible effect on light enjoyed by adjacent windows.³⁷ The Scheme would also have a negligible effect on the daylight distribution within rooms of adjacent properties.³⁸

66. Putative reason for refusal 6 also alleges that harm arises by virtue of the 'overbearing' impact of the Scheme for residents of nearby dwellings as a function of the proximity and height of the proposed development. The evidence of Mr Hard will explain how the nearest properties are separated from the Appeal Proposal by a distance that exceeds that required by the Council's SPD4, which provides guidance on the Council's assessment of overbearing effects.³⁹ The Council's objections are partly based on its position that a maximum height of six storeys should

³⁴ Proof of Evidence of Mr Radcliffe, para 2.3.2.

³⁵ Proof of Evidence of Mr Radcliffe, para 2.3.2.

³⁶ Proof of Evidence of Mr Hann, para 9.1.18.

³⁷ Proof of Evidence of Mr Radcliffe, para 2.2.3.

³⁸ Proof of Evidence of Mr Radcliffe, para 2.2.4.

³⁹ SPD4: A Guide for Designing Housing Extensions and Alterations.

be adopted for the Appeal Proposal. As Mr Hard explains, this limitation is not justified by virtue of the architectural quality of the nearby six storey buildings,⁴⁰ and ignores the influence of the much greater scale of EOT.⁴¹ The concern about the ‘overbearing’ effect of the development must also be considered in the context of the satisfactory daylight and sunlight results presented by Mr Radcliffe.

67. As such, the Appeal Proposal complies with policies SL3, L3 and L7 as well as paragraphs 119, 125 and 130 of the NPPF.

Main Consideration 8: Planning obligations

68. This consideration stems from putative reason for refusal 4, in which the Council refers to a range of obligations that it states will not be delivered by the Scheme.

69. As set out in the Proof of Evidence of Mr Hann, to a large degree the matters listed in reason for refusal 4 have now been agreed between the Appellant and the Council.⁴² The matters that remain in dispute are the following:

- 1) The necessary contribution towards education provision;
- 2) The level of affordable housing that would comply with policy; and
- 3) To the extent that it affects the contributions sought, the viability of the development.

70. The Appellant’s position in respect of each of these issues is summarised in turn.

Education

71. As the evidence of Mr Powell will demonstrate, the Council’s position that full contributions are required in respect of both primary and secondary places is flawed and fails to meet the tests in regulation 122 of the Community Infrastructure Levy Regulations 2010 that apply to planning obligations.⁴³ The Appellant’s position is that for a number of reasons, including the need to use forecast numbers of pupils on roll and the approach to be adopted in respect of surplus school places, there is no necessity in planning terms to deliver further school places as a result of the Scheme.⁴⁴

⁴⁰ Proof of Evidence of Mr Hard, para 4.1.28.

⁴¹ Proof of Evidence of Mr Hard, para 4.1.30.

⁴² Proof of Evidence of Mr Hann, para 11.1.3.

⁴³ See Proof of Evidence of Mr Powell, section 6.

⁴⁴ Proof of Evidence of Mr Powell, para 5.2.8.

Affordable Housing

72. The Scheme will provide 10% affordable housing, which equates to 34 units. The first point of dispute between the Appellant and the Council in respect of the provision of affordable housing relates to the interpretation and application of policy L2 of the LPCS. Policy L2 identifies three market locations in respect of which different affordable housing contributions apply. For non-generic developments, however, the affordable housing contribution will be determined by a site-specific viability appraisal.
73. It is the Appellant's case that the Scheme is properly considered a 'generic' development in accordance with policy L2.12. On the basis that the Old Trafford location is a 'cold' market, and on the basis that market conditions are now 'good', this means that the Scheme attracts a 10% affordable housing contribution. If the Appellant is correct, then the policy 'caps' affordable housing provision at 10%, although the question of whether or not the full 10% should be required would fall to be considered by reference to viability evidence.

Viability and Costs

74. The evidence of Mr Miles presents an updated site-specific viability appraisal, informed by a revised costs plan prepared by Mr Latham. The updated viability appraisal, which reflects changes in the market since the viability appraisal submitted pursuant to the 2020 Application (prepared in June 2020), demonstrates that certainly no more than 10% affordable housing contribution could be sought in respect of the Scheme.⁴⁵ However, this calculation excludes the education contributions sought by the Council, which would further reduce the viability of the Scheme if it were to be required.

Main Consideration 9: The economic effect of the proposed development on LCCC

75. This consideration flows from LCCC's objections to the Scheme. However, it is to be noted that there is no reference to this consideration in its original representations in respect of the application, and of course this issue does not form any part of the Council's case (it is not referenced in any of the Council's putative reasons for refusal).
76. Any potential financial impact on LCCC could only arise from (i) LCCC's concerns relating to its ability to use its access to EOT, or (ii) limitations that may be placed on noise that can be generated from EOT. As Mr Hann will explain, the principle of residential on the Appeal Site is accepted by

⁴⁵ Proof of Evidence of Stephen Miles, para 6.2 and Table 6.1.

the Council, albeit this is not LCCC's position.⁴⁶ The delivery of housing on the Appeal Site is an important part of delivering a new residential neighbourhood within the LCCC Quarter. On the basis of the evidence of Mr Patterson in respect of noise and Mr Davis in respect of highways, there will be no impact from the Scheme that will have a significant adverse impact financially on LCCC. In any event, the financial situation of a landowner itself is not a material planning consideration in circumstances where it has been demonstrated that the proposed land use is consistent with policy.⁴⁷

Public benefits of the appeal proposal

77. Turning away from the issues identified by the Inspector, it is appropriate to close these opening submissions by reference not to the alleged harms, but to the agreed benefits which the Scheme will deliver. In this regard there is no dispute between the parties that the Scheme will deliver the following benefits:⁴⁸

- 1) The appropriate re-use and development of a derelict and vacant former retail brownfield site in a sustainable location;
- 2) The delivery of an increased supply of housing which would make a significant contribution towards reducing the deficit in the Council's housing land supply;
- 3) An appropriate mix of housing for this strategic location;⁴⁹
- 4) The provision of affordable housing units;
- 5) The delivery of a new active frontage along Great Stone Road;⁵⁰
- 6) Economic benefits to the local economy during construction and through increased household expenditure; and
- 7) Developer contributions towards off-site works.

78. In addition to the above matters, by way of preliminary observations at the outset of this Inquiry, the Appellant also points to the fact that the redevelopment of the Appeal Site will act as a catalyst

⁴⁶ Proof of Evidence of Doug Hann, para 12.1.13 and 12.1.15.

⁴⁷ Proof of Evidence of Doug Hann, para 12.1.24.

⁴⁸ Proof of Evidence of Debra Harrison, para 2.21.

⁴⁹ Accepted; Proof of Evidence of Debra Harrison, para 5.10.

⁵⁰ Accepted; Proof of Evidence of Debra Harrison, para 5.11.

for the ambitions of the emerging Civil Quarter Area Action Plan. It will boost the supply of housing whilst introducing planting and landscaping onto a sterile brownfield site.

79. There is no dispute that the Council cannot demonstrate a 5YHLS such that the tilted balance in paragraph 11(d) of the NPPF applies to the determination of the appeal. As explained by Mr Hard, the under-supply of housing within Trafford is a persistent and enduring characteristic.⁵¹ This contributes to the weight to be given to the delivery of a significant number of new dwellings.

80. Under paragraph 11(d) of the NPPF, planning permission should only be refused in respect of a development proposal if the adverse impacts of that proposal will *significantly* and *demonstrably* outweigh the benefits. In this case the harms arising from the Scheme are limited to the negligible impact on LCCC's fine-turf training pitch, and very minor harm arising from daylight and sunlight levels experienced by future occupiers within certain parts the development.⁵² The Appellant's evidence will demonstrate that the Scheme is in accordance with the development plan taken as a whole and that these limited harms are clearly outweighed by the very real planning benefits that will be achieved by making best use of a vacant brownfield site.

Conclusion

81. For the reasons summarised above, and set out more fully in the written proofs of evidence, it will be the Appellant's case that the appeal should be allowed and planning permission granted.

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11 January 2022

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⁵¹ Proof of Evidence of Matt Hard, para 3.1.1.

⁵² Proof of Evidence of Doug Hann, paras 13.1.21 to 13.1.22.

