



## Report of the Chief Planning Officer

### SOUTH & WEST PLANS PANEL – SUMMARY OF APPEAL DECISIONS

Date: 4<sup>th</sup> March 2021

**Subject: 17/06933/FU - Demolition of existing dwellings and construction of 70 dwellings and associated infrastructure at Sugar Hill Close, Oulton Drive, Wordsworth Drive, Oulton, Leeds, LS26 8EP**

APPLICANT	DATE VALID	TARGET DATE
Pemberstone (Oulton Properties) Ltd	N/A	N/A

**Electoral Wards Affected:**

Rothwell

Yes Ward Members consulted (referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

**RECOMMENDATION: Members to note the report.**

#### INTRODUCTION:

1. This report provides a summary of two appeal decisions concerning the above stated development. The first relates to an appeal against the decision of the council to refuse planning permission and that appeal was allowed and planning permission granted. The second relates to an application for an award of costs made by Pemberstone, the appellants, against the council and this was refused. The appeal was heard at a Public Inquiry held over 8 days between the 6<sup>th</sup> and 16<sup>th</sup> October 2020. Each decision is summarised in turn.

#### BACKGROUND:

2. The planning application was determined at the South & West Plans Panel of 3<sup>rd</sup> October 2019 where Members resolved not to accept the officer recommendation

that planning permission be granted and that planning permission should be refused for the following reasons:

1. Given the particular circumstances of this application, and having specific regard to the Public Sector Equality Duty, it is considered that the adverse impacts of granting permission, namely the potential and disproportionate harm that would result to the existing local community, particularly to those with protected characteristics relating to age and disability, through the loss of their existing homes and the dissipation of the community, would significantly and demonstrably outweigh the benefits associated with the development contrary to the General Policy of the Core Strategy (as amended by the Core Strategy Selective Review 2019) and paragraphs 8(b), 9 and 91(a) of the National Planning Policy Framework (February 2019) which are material considerations that outweigh the Local Plan ("RR1").
2. The Local Planning Authority considers that the proposed layout and quantum of development has resulted in a number of gardens that are considered to be deficient in size and/or depth which will lead to poor amenity space provision when taking into account other factors such as orientation and tree cover. This will result in harm to residential amenity by failing to provide adequate private external space for families to use. This is contrary to policies GP5 and BD5 of the UDP, and to guidance contained within SPG 13 Neighbourhoods for Living ("RR2").
3. In the build up to the Inquiry the appellant submitted a revised layout plan to address concerns about garden sizes as expressed in the second reason for refusal. The Inspector noted that the revised plan only resulted in modest changes to the layout and that the consideration of the plan no prejudice would be caused to any party in considering the plan as part of the appeal. As a consequence reason for refusal 2 fell and was not considered at the Inquiry. Members will be aware that when such amendments can be made during the course of the appeal process it is important that parties act reasonably to achieve suitable compliance with the refusal reason in question. The agreement to RR2 was considered appropriate in these circumstances.
4. Members should also note that local residents who had a formal Rule 6 status during the course of the appeal "Save Our Homes"("SOH) took a full part in the proceedings of the Inquiry (SOH gave evidence to the Inquiry and employed a barrister to lead their case).

#### **SUMMARY OF PLANNING APPEAL DECISION:**

5. In considering the arguments posed against RR1, the Inspector considered the following to be the main issues in the appeal:
  - i. The effect on the local community of the loss of the existing homes on the appeal site;
  - ii. The effect of the proposed development on the significance of the non-designated heritage asset of the Airey houses;
  - iii. Whether the proposal would be consistent with the Development Plan;
  - iv. The effect of other considerations on the overall planning balance.

6. The Inspector considered each of the main issues in turn and a summary of his findings are set out in the following paragraphs.
  - i. Loss of Existing Homes
7. It was established that the community stretches beyond the red line on the plan that identified the extent of the land subject to the actual development, with residents using nearby facilities such as the sports centre, school and shops, and visiting friends in the local area. However, a more tightly defined local community with an identifiable culture could be recognised in respect of the appeal site.
8. The Inspector made the following observations about the occupation of the dwellings at the appeal site. That the properties are owned and let by the Appellant. At the date of the inquiry, 14 of the houses were unoccupied. There are three types of tenancy within the appeal site: regulated, assured and assured shorthold. Together there are 11 regulated and assured tenancies, which both offer the tenant statutory protection of the tenancy for life (the protected tenancies). The other 45 occupied houses are subject to assured shorthold tenancies (AST), which are arranged for a fixed term. A landlord may end such a tenancy by serving a section 21 notice: the period of notice required is normally two months, but is currently six months as a result of regulations introduced in response to the coronavirus outbreak<sup>3</sup>.
9. With regard to the Public Sector Equality Duty it was noted that at least 33 households were identified which include persons with one or more protected characteristic. A public authority must have due regard to the need to eliminate discrimination and to advance equality of opportunity between persons who share a protected characteristic and those who do not share it. The Appellant pointed out that there would be no discrimination in the loss of existing homes as all would be demolished and all tenants would be required to move irrespective of protected characteristics. However, the effects of this action are likely to have a greater impact on more vulnerable residents. The Inspector agreed with both equality witnesses that the displacement could have a disproportionate effect on the young, old and disabled residents and noted there were at least 16 households with these protected characteristics who only benefited from AST's and would likely have to move from the site. He commented that whilst those with other protected characteristics would also be affected by the redevelopment, there was nothing before him to indicate that such effects would be materially different from those experienced by residents who do not share those characteristics.
10. The 11 households with protected tenancies (i.e. non-AST) will be rehoused on site in better quality housing, although the Inspector acknowledged these individuals would be affected by the disruption of moving house and the weakening of networks built up with existing neighbours who would be unable to remain on site.
11. It was noted that council housing stock in the Rothwell area is limited and the area is an area of high demand. Private sector rented properties in the area are more costly than the appeal properties. Thus it is likely that many households being displaced would have to seek alternative accommodation away from the local area, dissipating the community in the Airey houses. The Inspector gave limited weight to the disruption caused to those on protected tenancies as they were to remain on site. As regards the other households, the Inspector remarked that, *"the dispersal of the greater part of the households from the appeal site would have a harmful effect upon that local community with its own culture"*.

12. The Inspector set out his conclusions on this issue at paragraph 23 of his decision letter with reference to the National Planning Policy Framework (NPPF):

*“The evidence before me is that the households on the appeal site comprise a strong, vibrant and healthy community: the social objective in paragraph 8b of the NPPF supports such communities: similarly, support in paragraph 91(a) of the NPPF for healthy, inclusive and safe places which support social interaction is applicable to the existing community. I conclude that the proposed development would have a damaging impact on the community of existing residents within the appeal site. Older residents, children and the disabled would be more susceptible to the change brought about by redevelopment, and there would be a significant adverse impact for those households unable to relocate into the new houses.”*

ii. Non Designated Heritage Asset

13. It was common ground between all parties that the existing Airey houses are a local non-designated heritage asset.
14. Whilst the Inspector went in to some detail as to the heritage value of the properties (paragraphs 24-26) he also noted that the structural condition of the houses was a factor that must be taken into account. A report prepared for the Inquiry which was not disputed concluded that structural intervention was required in all but two houses by March 2022. The Inspector considered that the work that would be required in a full refurbishment would erode the evidential and historic value of the houses. Further, an alternative solution involving the addition of structural cladding, would affect the historic and aesthetic value of the asset and lessen its significance to an extent.
15. The Inspector summarised his findings at paragraph 28 of his decision letter as follows:

*“The appeal proposal would result in the complete loss of a non-designated heritage asset, and it would conflict with Policy P11 of the Core Strategy, which requires that the historic environment, including locally significant undesignated assets and their settings, is to be conserved and enhanced. I conclude that redevelopment would inevitably cause considerable harm to the significance of the asset, notwithstanding that a record could be made. However the asset cannot be retained without works being undertaken which would have an adverse effect on its significance, and that is a consideration which I take into account in the planning balance.”*

iii. Consistency with Development Plan

16. It was the council’s case that the proposal breached the General Policy of the Core Strategy (which reflects the presumption in favour of sustainable development set out at paragraph 11 of the NPPF). There are therefore three strands – economic, social and environmental. The Inspector gave limited weight to the economic benefits of the proposal. In terms of environment, the Inspector agreed that there would be environmental benefits but that these were outweighed by the harm caused to the historic environment through the loss of the Airey homes. In terms of the social strand, the Inspector concluded that the disruption caused to residents and the dissipation of the community would cause significant damage to the extent that the proposal fails to comply with the social strand.
17. The Inspector then went on to assess other relevant policies in the Development Plan (paragraphs 33-42). He found, notwithstanding the non-compliance with the General

Policy, that the proposal would largely comply with policies concerning the principle of development and other policies concerning such matters as affordable housing, accessible housing, carbon emission reduction and water efficiency, housing mix, design and greenspace. Conflict was noted with heritage policy but referred to the conclusion he had reached at paragraph 28 of his decision (see paragraph 15 of this report above). Consequentially the Inspector concluded that the proposal complied with the development plan considered as a whole.

iv. Other Considerations

18. Addressing the condition of the Airey houses the Inspector found that action was needed to better the structural condition of virtually all of the existing houses in the near future. The Inspector was not convinced that refurbishment was a viable option – there had been no detailed assessment of the costs of applying structural cladding.
19. Turning to the issue of the sale of the site, at paragraph 56, the Inspector stated:

*“Consideration has been given to the sale of the site. A number of registered providers of social housing were approached about the prospect of a joint approach to bring the site forward for redevelopment, but none has subsequently sought to acquire the site with its present status. Nor has the Council pursued purchase of the site, although reference was made to such a possibility in a letter from the Director of City Development to SOH (CD 07.10). SOH has been critical of the nature and extent of this activity. Even if there were the prospect of sale of the appeal site, I agree with the Appellant that this alone would not provide a response to the problem of the condition of the existing housing stock.”*

20. The Inspector stated, at paragraph 58: *“On the evidence before me, I am firmly of the view that the appeal proposal to redevelop the site represents the most realistic option to address the deteriorating condition of the Airey houses at Sugar Hill Close and Wordsworth Drive, and it is a matter to which I give substantial weight.”*

21. The Inspector assesses the proposal against the NPPF (paragraphs 59-62), assesses the planning obligations in the S106 Agreement (paragraphs 63-66), and discusses necessary conditions (paragraphs 67-71). With regard to the NPPF the Inspector noted that the proposal would deliver a number affordable housing units, a proportion of adaptable and accessible dwellings, a mix of housing sizes, it would deliver an inclusive and balanced community, the quality of housing stock would be improved with greater energy efficiency and, over time, a reduction in carbon emissions. At paragraph 62 the Inspector concluded:

*“...Whilst the appeal proposal would make contributions in each of these areas, the dissipation of the existing community and the loss of a non-designated heritage asset are significant negative consequences. I have found, however, the proposed development would comply with the Development Plan considered as a whole. Therefore, it follows from paragraph 11(c) of the NPPF that the appeal proposal is a sustainable form of development.”*

**INSPECTOR’S CONCLUSIONS ON PLANNING APPEAL:**

22. The Inspector found that the proposal complied with the Development Plan considered as a whole.

23. In terms of adverse effects the Inspector considered the loss of the non-designated heritage asset and the dissipation of the community. The Inspector attached significant weight to these adverse effects, running counter to the environmental and social objectives of the NPPF.
24. In terms of benefits the Inspector took the view that the new houses would be built to modern standards and would be more energy efficient, providing a healthier living environment. There would be a proportion of adaptable and accessible dwellings and importantly would be secured affordable housing.
25. The condition of the Airey houses was a key consideration and the Inspector said the following (paragraphs 75 and 76):

*“A key consideration in the planning balance is that the proposed development represents the most realistic response to the deteriorating condition of the Airey houses. There is no doubt that action is required within a relatively short period of time. Refurbishment has not been demonstrated to be commercially viable, and both of the options discussed at the inquiry would reduce the heritage significance of the existing houses, which lessens my concern about the conflict with Core Strategy Policy P11. Moreover, refurbishment is expected to lead to a higher cost of accommodation in most cases, which would be likely to cause the dissipation of the community in any event. Taken together with the benefits of the proposal, these factors are sufficient to outweigh the harm which would be caused.*

*I acknowledge that the disturbance and uncertainty occasioned by the loss of their homes would be likely to have a greater impact on the elderly, children and the disabled, particularly those who would have to move away from this part of Oulton. However action is required to address the condition of the existing houses, and the appeal proposal itself, involving the demolition of all the existing houses, would not discriminate against those with a protected characteristic. The courts have held that the best interests of children should be a primary consideration. The data on protected characteristics indicates that all households with persons aged up to 16 would leave the site as they do not have protected tenancies. That is an undesirable outcome, but one which, for the reasons given earlier, I expect to occur irrespective of the decision on this appeal. The loss of their homes would represent an interference with the rights of existing residents under Article 8 of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1988. However, taking into account all material considerations, including the legitimate aim to address the structural problem of the existing houses, I am satisfied that that interference is necessary and proportionate.”*

#### **SUMMARY OF COSTS DECISION:**

26. The appellant made an application for an award of costs against the council on the following basis:
- The proposal accords with the development plan;
  - The council relied on a ‘General Policy’ that was unsuited to be used as reason for refusal;
  - Exceptionally limited weight was given to important benefits;
  - The council put no evidence on the viability of refurbishment and it was unreasonable that the council asserted that the appellant’s case on refurbishment was unproven;

- The council failed to substantiate its case and relied on vague, generalised or inaccurate assertions that the grant of planning permission would result in the dissipation of the community;
- A significant proportion of the appeal could have been avoided if the LPA had recognised that the decision on the appeal proposal could have no effect on the Appellant's ability to seek possession of the majority of the existing houses.
- Following the exchange of evidence, the Appellant gave the LPA the opportunity to reduce the costs associated with the appeal and to avoid this application by withdrawing its objection. That offer was not accepted, which was an unreasonable position to take.

27. A summary of the council's response is set out as follows:

- The application of planning policy is a matter of professional judgement. It was the professional view of the council's planning witness that the proposal offended the General Policy of the Development Plan.
- The evidence explained how the effects of the proposal would impact on those with protected characteristics and reflected the circumstances of the case.
- The Appellant's rights under housing law have been acknowledged, but the material issue is the weight to be given to the fallback position, which is a matter of planning judgement.
- As there was conflict with policy and planning harm would occur, the opportunity to avoid that harm by means of an alternative proposal should be considered.

#### **INSPECTOR'S CONCLUSIONS ON THE COSTS APPEAL:**

28. The Inspector came to the following conclusions:

- The General Policy was relevant to the appeal and the Inspector agreed with the council that the proposal failed to comply with that policy.
- That the evidence produced by the council was sufficient to substantiate the reason for refusal.
- The council's references to refurbishment amounted to generalised assertions, which were unsupported by objective analysis. That was unreasonable behaviour.
- SOH gave notice of its intention to submit evidence in support of its view that the existing houses were capable of satisfactory repair. The appellant engaged with SOH at the Inquiry. No additional evidence was required by the appellant to respond to the council on this matter and, consequentially no unnecessary expenditure was incurred by the appellant.

29. At paragraph 19 of his Costs decision the Inspector set out his overall conclusion on this matter:

*"I conclude that the LPA has not behaved unreasonably in respect of its consideration of the Development Plan and material considerations, the contested reason for refusal and the principle of referring to an alternative proposal. I also conclude that it was unreasonable for the LPA to make generalised assertions in respect of the refurbishment of the existing houses, but that this unreasonable behaviour did not cause the Appellant to incur unnecessary or wasted expense in the appeal process. Consequently an award of cost is not justified."*

#### **IMPLICATIONS ARISING FROM THE DECISIONS:**

30. This was a highly sensitive and difficult planning case in light of the likely consequences that flowed from the grant of planning permission and, specifically, the implications for an existing and well established local community. The circumstances of this case also appeared unique. In the run up to the appeal the council's appeal team analysed appeal decisions from across the country and could not find an appeal on a case with similar circumstances. SOH, the local residents and community group, were represented at the appeal and were able to set out their arguments and concerns to the Inspector. It is clear that SOH made a significant contribution in fighting the appeal and in persuading the Inspector that the reasons for the refusal of planning permission were justifiable.
31. The most significant implications that arise from this decision relate to the potential, and likely, impacts on the existing community. This is strictly now not a planning matter.

**Background papers:**

Planning application file 17/06933/FU.





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## Costs Decision

Inquiry opened on 6 October 2020

Site visits made on 21 October 2020

**by Richard Clegg BA(Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 15 January 2021**

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### **Costs application in relation to Appeal Ref: APP/N4720/W/20/3250249 Wordsworth Drive & Sugar Hill Close, Oulton, LS26 8EP**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Pemberstone (Oulton Properties) Ltd for a full award of costs against Leeds City Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for the demolition of the existing dwellings and the erection of 70 dwellings including associated infrastructure.
  - The inquiry sat for eight days: 6-9 & 13-16 October 2020.
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### **Decision**

1. The application for an award of costs is refused.

#### **The submissions for Pemberstone (Oulton Properties) Ltd**

2. The application was made in writing (Document O1): the gist of the submissions is as follows. The proposal accords with the Development Plan, and was recommended for approval by the Local Planning Authority's (LPA's) planning officers. It was accepted by the LPA's planning witness that the proposal complied with policies in the Development Plan other than the social aspect of the General Policy. This policy is unsuited to being used as a reason to refuse planning permission. Exceptionally limited weight is given to important benefits, due to consideration of a refurbishment option rather than the site as existing. Moreover the LPA put in no evidence on the viability of refurbishment, and it was unreasonable to assert that the Appellant's case on refurbishment was unproven.
3. The LPA failed to produce evidence to substantiate the reason for refusal remaining in issue. The witness on equalities impact focussed almost entirely on general community impacts. No reference was made to the application of the public sector equality duty by the LPA's officers, or why a different conclusion was justified. Nor was consideration given to the particular circumstances of the case concerning tenure and structural condition of the properties. The LPA had no evidence to show that existing tenants would require or be eligible for housing assistance from the Council.
4. The LPA's case rested on vague, generalised or inaccurate assertions that the grant of planning permission would lead to the dissipation of the community, with a disproportionate effect on those with protected characteristics, and that refurbishment was a viable option which would avoid that harm. The first

assertion ignored the legal rights of the tenants and the need for a solution to the condition of the houses. No evidence was presented in support of the refurbishment option.

5. In the absence of clear conflict with planning policy and/ or other harm, the relative advantages of alternative schemes were normally irrelevant. The LPA had relied upon a vague and unviable alternative proposal as a yardstick against which to measure harms and benefits, which was contrary to well-established case-law.
6. The Appellant was obliged to engage expert witnesses to respond to the unfounded assertions of harm. The position that refurbishment was a viable alternative strengthened Save Our Homes' (SOH) conviction on this matter, resulting in more evidence being submitted and more inquiry time taken. A significant proportion of the appeal could have been avoided if the LPA had recognised that the decision on the appeal proposal could have no effect on the Appellant's ability to seek possession of the majority of the existing houses. That would have avoided the need for evidence on the public sector equality duty, as the Inspector could have relied upon the consideration of this matter in the officers' reports. Following the exchange of evidence, the Appellant gave the LPA the opportunity to reduce the costs associated with the appeal and to avoid this application by withdrawing its objection. That offer was not accepted, which was an unreasonable position to take.

### **The response by Leeds City Council**

7. The response to the costs application was made in writing (Document O3): the gist of the response is as follows. The application of planning policy is a matter of professional judgement. It was the professional view of the LPA's planning witness that the proposal offended the General Policy of the Development Plan. He explained that the social implications were such that the conflict with the social limb of the policy was determinative regarding Development Plan compliance. The General Policy applies to all applications. The LPA's witness was entitled to weigh the benefit as he saw fit. Whilst he gave due consideration to the option of refurbishment, his overwhelming concern was about the social harm arising from the proposal.
8. The second submission is a complaint about disagreement with the LPA's equality and community impacts evidence. The reason for refusal refers to harm to the existing community, particularly those with protected characteristics. The evidence explained how the effects of the proposal would impact on those with protected characteristics. There was time to seek clarification of matters contained in the evidence, and a rebuttal could have been submitted in respect of the survey references. In any event no prejudice arose as the Appellant's evidence was that the proposal would not cause inequality, but would seek to address underlying issues. The public sector equality duty was a continuing requirement, and the position of officers was not to be accepted uncritically. It is possible that different decision-makers may arrive at different conclusions. The evidence of the LPA's equalities witness reflected the circumstances of the case, and addressed how people with protected characteristics would be affected by the development. Whilst benefits are acknowledged, the existing community will not be able to stay on the appeal site, with the exception of protected tenants and those who may secure affordable housing. Distinguishing between seeking planning

permission and evicting the tenants was a false dichotomy, since there was a strategy of obtaining planning permission, then evicting tenants, demolishing houses, and building the new development.

9. The Appellant's rights under housing law have been acknowledged, but the material issue is the weight to be given to the fallback position, which is a matter of planning judgement. Use could be made of the 14 vacant properties, and existing residents would not need to be displaced to facilitate development. Moreover, the sensitivity test indicated that refurbishment could provide a reasonable return.
10. As there was conflict with policy and planning harm would occur, the opportunity to avoid that harm by means of an alternative proposal should be considered. Matters relating to tenants were a material consideration, in view of Article 8 of the European Convention on Human Rights and the legal requirement that no other consideration should be regarded as more important than the best interests of any child.
11. In its statement, the Appellant had volunteered to provide evidence relating to structural integrity and the commercial acceptability of refurbishment. It was reasonable for the LPA to require the Appellant to establish its case. It is not the case that the only reasonable course of action for the LPA would have been to cease to defend its position at appeal.

### **Reasons**

12. Paragraph 16-028 of Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.

#### ***The Development Plan and material considerations***

13. In my appeal decision, I agree with the LPA that the proposal would fail to comply with the social limb of the General Policy in the Core Strategy, due to the disruption caused to existing residents, and the dissipation of the existing community. As paragraph 3.4 of the Core Strategy makes clear, this policy is relevant to all development proposals, and, that being the case, it is not a policy which, in principle, is inappropriate to refer to in a reason for refusal. The LPA acknowledges that the proposal would comply with other relevant policies of the Development Plan. I do not share the view of the LPA that, as a consequence of the failure to comply with the General Policy, there is conflict with the Development Plan as a whole. However, reaching a conclusion on this matter does not depend on a numerical assessment of the policies with which a proposal does and does not comply. It is a matter of planning judgement, and the LPA's planning witness explained why he gave significant weight to the conflict with the General Policy. Whilst reference was made to a refurbishment option, material considerations have been taken into account in respect of the appeal proposal, and reasons given as to whether or not these support the proposal.

#### ***The contested reason for refusal***

14. The contested reason for refusal refers to the public sector equality duty and to the harm that would result to the existing local community, particularly to those with protected characteristics. It is clear from this form of words that the objection to the proposal had a wider focus than simply the public sector

equality duty. Evidence was produced by the LPA's witness which considered a range of effects of the proposal on the existing community, specifically identifying groups with protected characteristics in relation to temporary and permanent adverse effects. I am satisfied that the evidence produced was sufficient to substantiate the reason for refusal.

### ***Effect on the community and refurbishment***

15. Proceeding with the appeal proposal would involve demolition of the existing houses, and, in reaching the view that the community would be dissipated, the evidence of the LPA's planning and equalities witnesses took into account the likelihood of existing residents being able to move into the new dwellings, having regard to their tenancies. It is open to the Appellant to give notice to the existing occupiers, subject to providing alternative accommodation for those who benefit from protected tenancies, but that course of action had not been pursued at the date of the inquiry, and it does not alter the position that dissipation of the community would follow from pursual of the appeal scheme.
16. In the evidence of the LPA's planning witness reference is made in general terms to refurbishment of the estate. The position taken is that the Appellant has not proven that refurbishment is not a viable alternative. Subsequently, in her closing submissions, the LPA's advocate drew on evidence from SOH to make the point that there was an alternative scheme before the inquiry. Whilst the LPA could properly expect the Appellant to make its case in respect of refurbishment and viability, it did not produce detailed evidence of its own to support a case for refurbishment, and made little contribution to the structural and viability round-table sessions of the inquiry. I consider that the LPA's references to refurbishment amounted to generalised assertions, which were unsupported by objective analysis. That was unreasonable behaviour, as indicated in paragraph 16-049 of PPG.
17. In its statement of case, SOH gave notice of its intention to submit evidence in support of its view that the existing houses were capable of satisfactory repair. It did so, with two witnesses addressing this matter. There was no such position in the LPA's statement, and it is clear from its representations that SOH had a long-held view firmly in favour of refurbishment which was unaffected by any stance taken by the LPA. The Appellant advised at the case management conference that witnesses would be called covering the structural condition of the houses and viability and it engaged on these topics with SOH at the inquiry. No additional evidence was required by the Appellant to respond to the LPA on this matter, and the limited references involving the LPA did not materially extend inquiry time. Consequently no unnecessary expenditure was incurred by the Appellant.

### ***An alternative proposal***

18. In most cases, the relative merits of an alternative scheme would not carry significant weight. In this case, the need to address the condition of the existing housing and the LPA's assessment of harm support the consideration of alternatives, an exercise which the Appellant's planning witness undertook in section 3 of his proof of evidence. It was not unreasonable, in principle, for the LPA to refer to the alternative of refurbishment, and I have already considered the way in which this was done (above, para 16).

## **Conclusions**

19. I conclude that the LPA has not behaved unreasonably in respect of its consideration of the Development Plan and material considerations, the contested reason for refusal and the principle of referring to an alternative proposal. I also conclude that it was unreasonable for the LPA to make generalised assertions in respect of the refurbishment of the existing houses, but that this unreasonable behaviour did not cause the Appellant to incur unnecessary or wasted expense in the appeal process. Consequently an award of cost is not justified.

*Richard Clegg*

INSPECTOR



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## Appeal Decision

Inquiry opened on 6 October 2020

Site visits made on 21 October 2020

**by Richard Clegg BA(Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 15 January 2021**

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**Appeal Ref: APP/N4720/W/20/3250249**

**Wordsworth Drive & Sugar Hill Close, Oulton, LS26 8EP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Pemberstone (Oulton Properties) Ltd against the decision of Leeds City Council.
  - The application Ref 17/06933/FU, dated 20 October 2017, was refused by notice dated 9 October 2019.
  - The development proposed is the demolition of the existing dwellings and the erection of 70 dwellings including associated infrastructure.
  - The inquiry sat for eight days: 6-9 & 13-16 October 2020.
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing dwellings and the erection of 70 dwellings including associated infrastructure at Wordsworth Drive & Sugar Hill Close, Oulton, LS26 8EP, in accordance with the terms of the application, Ref 17/06933/FU, dated 20 October 2017, subject to the conditions in schedule 1.

### Application for costs

2. At the Inquiry an application for costs was made by Pemberstone (Oulton Properties) Ltd against Leeds City Council (the Local Planning Authority – LPA). This application is the subject of a separate Decision.

### Procedural Matters

3. Save Our Homes LS26 (SOH) had served a statement of case in accordance with Rule 6(6) of The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 in respect of the appeal, and it took a full part in the proceedings of the inquiry.
4. The planning application, as originally submitted, proposed the erection of 71 dwellings. Prior to determination by the LPA, the proposal was amended by a reduction in the number of dwellings proposed to 70 (shown on plan ref P11:4519:02- I). Subsequently, during the appeal process, the Appellant submitted a further revised site plan (P11:4519:02-J) to address concerns about garden size expressed in the second reason for refusal. A revised landscape plan (P11:4519:100 revision G) reflects the site plan. Revision J involves only modest changes to the layout, and in the statements of common ground with the LPA (CD 05.03) and SOH (CD 05.05) it is made clear that there is no objection to the garden sizes shown on the revised site plan. I am

satisfied that no prejudice would be caused to any party by consideration of the revised plans, and I have taken them into account in determining the appeal.

5. A planning agreement has been submitted in connection with the appeal proposal (Document O6). It contains obligations concerning the provision of affordable housing, contributions towards greenspace and passenger information display, and a travel plan.
6. A set of core documents (CDs) was prepared for the inquiry. Core documents and other documents submitted after the inquiry opened are detailed in the lists appended to this decision.

### **Main Issues**

7. Two reasons were given for the refusal of planning permission. The second objected to the proposal on the ground that a number of gardens would be deficient in size and/ or depth. The LPA has acknowledged that the garden sizes on the revised site plan would provide residents with acceptable private amenity space (above, para 4), and it did not pursue this reason for refusal at the inquiry. Similarly, SOH do not object to the garden sizes on the revised plan.
8. Having regard to the position reached in respect of garden size, I consider that the main issues in this appeal are:
  - i) The effect on the local community of the loss of the existing homes on the appeal site.
  - ii) The effect of the proposed development on the significance of the non-designated heritage asset of the Airey houses.
  - iii) Whether the proposal would be consistent with the Development Plan.
  - iv) The effect of other considerations on the overall planning balance.

### **The Appeal Site**

9. The appeal site comprises 70 houses on Sugar Hill Close and Wordsworth Drive. They are constructed from pre-cast reinforced concrete columns and concrete panels, to a design known as Airey houses. The properties are owned and let by the Appellant. At the date of the inquiry, 14 of the houses were unoccupied<sup>1</sup>. There are three types of tenancy within the appeal site: regulated, assured and assured shorthold. Together there are 11 regulated and assured tenancies, which both offer the tenant statutory protection of the tenancy for life (the protected tenancies). The other 45 occupied houses are subject to assured shorthold tenancies, which are arranged for a fixed term<sup>2</sup>. A landlord may end such a tenancy by serving a section 21 notice: the period of notice required is normally two months, but is currently six months as a result of regulations introduced in response to the coronavirus outbreak<sup>3</sup>.

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<sup>1</sup> Table on page 3 of CD 05.31, a further vacancy was expected to occur.

<sup>2</sup> The differences between the three types of tenancy are summarised in CD 05.19, Appendix 5, paras 2-9.

<sup>3</sup> CD 05.19, Appendix 5, footnote 22.



## Reasons

### ***The loss of the existing homes***

#### *The community*

10. The 70 houses on the appeal site are the remaining part of a larger estate built by the National Coal Board (NCB) in the 1950s to provide accommodation for mineworkers and their families. The original estate comprised some 210 houses, extending to the north of the appeal site<sup>4</sup>. This northern part of the estate has been redeveloped, and that land is now occupied by modern housing.
11. SOH explained that many residents of the appeal site work, shop, use nearby facilities such as the sports centre and school, and have friends in the local area. Having regard also to the proximity of other housing, it is clear that the local community can be understood as extending beyond the red line on a plan which defines the appeal site, a point acknowledged by both SOH and the LPA. However a more tightly defined local community with an identifiable culture can be recognised in respect of the appeal site, where residents have, in common, occupation of the remaining part of the former NCB estate and are tenants of the same landlord.
12. There is evidence of a range of activities and support networks associated with the community on the appeal site. There have been social events such as a Christmas party and gatherings at the nearby sports club, and heritage open days have been organised to provide an opportunity to visit Airey houses. A survey undertaken by Mrs Readman of SOH in August 2020 provides an insight into caring responsibilities. Of the 36 households responding, 12 provided care for a relative in the local area and 15 relied on help from relatives who live locally<sup>5</sup>: these figures may involve some overlap. Reference has also been made to more informal support and assistance provided to neighbours, such as shopping, collecting prescriptions, and looking after pets. All of these activities contribute to community cohesion.

#### *Protected characteristics*

13. The first reason for refusal refers to the public sector equality duty (PSED), set out in section 149 of the Equality Act 2010, and the effect on those members of the local community with protected characteristics relating to age and disability. Information presented to the inquiry by the Appellant and the LPA indicates that, in January 2019, at least 33 households included persons with one or more protected characteristics<sup>6</sup>. There were 12 households with persons aged 65 or over, 3 households with persons aged up to 16, and 17 households which included someone with a disability.

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<sup>4</sup> Dr Usher refers to 210 houses (CD 05.20, para 2.213), Mr Kitchen refers to 214 houses (CD 05.08, para 16). The extent of the original estate can be seen on figure 9 of CD 05.20.

<sup>5</sup> CD 05.18, table 8.

<sup>6</sup> CD 05.43; the information is based on equality monitoring forms compiled by the LPA. SOH commented that they could not verify the information, and it was not agreed by them.



*Implications of the appeal proposal*

14. The proposal would result in the loss of all 70 existing houses within the appeal site. Housing legislation requires that the 11 households with protected tenancies (above, para 9) are rehoused in homes of equivalent quality, and new houses would be made available for them as part of the redevelopment.
15. Rents charged for the existing houses are described by SOH as affordable, and the Group claimed that many residents could not afford to rent privately elsewhere in the area. None of the housing is affordable as defined in the National Planning Policy Framework (NPPF), and the Appellant referred to it as low-cost market housing, which is affordable by virtue of its condition. That circumstance would change with the erection of new market dwellings, and would make it difficult for residents who rely on the less expensive cost of the existing accommodation to acquire a property in the redevelopment scheme.
16. Those households with protected tenancies would be affected by the disruption of moving house, and networks of close contact with existing neighbours on the appeal site would be likely to be weakened, but they would be able to remain on the site, in better quality housing (the condition of the Airey houses is considered in paras 43-46, below), and to maintain their links within the wider community. Eleven of the households identifying with protected characteristics have protected tenancies, including seven with persons over 65 and five with disabled persons. It is likely, however, that most households would have to leave the appeal site.
17. Oulton lies within the Rothwell (housing) management area. It was the LPA's undisputed evidence that this is an area of high demand, where the average waiting time for a property for someone in the highest band on the housing register is 99 weeks. In Oulton itself, the waiting time is likely to be longer due to the small size of the stock.
18. The inquiry also received evidence on private rental accommodation in the Oulton area. It is the Appellant's evidence that the monthly rent for two bedroom houses starts at about £550 and for three bedroom houses at about £650<sup>7</sup>. SOH gives an example of a two bedroom terrace house with a monthly rental of £650, and refers to rents of £900 or more<sup>8</sup>. In contrast, the average monthly rent for a two bedroom house on the appeal site is £364-500 and for a three bedroom house the average monthly rent is £391.90-511.32<sup>9</sup>.
19. Due to the demand for social housing in Rothwell and the higher cost of market housing in the area compared with that on the appeal site, it is likely that many households who would be displaced would have to seek alternative accommodation away from the local area. That would dissipate the community in the Airey houses. Given that the households with protected tenancies would be able to remain on the site, I give limited weight to the disruption which would be caused to them by the redevelopment. Insofar as the other 45 households are concerned, I note that 20 (46%) have been resident on the site for up to three years<sup>10</sup>. With the exception of the single household which had been present for less than one year, that does not seem to me to be too short a period for residents to have established links with neighbours and to have

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<sup>7</sup> CD 05.07, para 60.

<sup>8</sup> CD 05.09, para 21 & appendix 3.

<sup>9</sup> CD 05.07, table 4.

<sup>10</sup> CD 05.39.

become involved in community activities. The dispersal of the greater part of the households from the appeal site would have a harmful effect upon that local community with its own culture.

20. The public sector equality duty requires, amongst other matters, that a public authority must have due regard to the need to eliminate discrimination, and to advance equality of opportunity between persons who share a protected characteristic and those who do not share it. As the Appellant has pointed out, there would be no discrimination in the loss of existing homes: all would be demolished, and all tenants would be required to move irrespective of protected characteristics. However the effects of this action are likely to have a greater impact on more vulnerable residents. The Appellant's equality witness acknowledged that displacement could have a disproportionate effect on the elderly and those with a disability, referring to the break in their connection with the local environment, routines and support networks. A similar position was taken by the LPA's equality witness, and he also referred to stress induced by the process of finding a new home, and an impact on security, as having permanent adverse effects on children. I share these views about the effect of the appeal proposal on the young, older residents and the disabled. At January 2019, there were at least 16 households with these protected characteristics in assured shorthold tenancies, and who would be likely to face a move away from the appeal site. Whilst those with other protected characteristics would also be affected by the redevelopment, there is nothing before me to indicate that such effects would be materially different from those experienced by residents who do not share those characteristics.
21. It is recognised that there are problems with the structure of the Airey houses (para 45, below), and they were not built to meet modern standards for accessible and adaptable dwellings. The proposed dwellings would perform better in terms of ventilation and energy efficiency; 34 dwellings (48.6%) would comply with Part M4(2) of The Building Regulations in terms of accessibility and adaptability, and a further 2 (2.8%) would be suitable for wheelchair users, complying with Part M4(3), exceeding the requirements in Policy H10 of the Core Strategy. These improvements can be expected to be beneficial to health, and of particular importance to older and disabled residents. However whilst the redevelopment would, in this respect, result in an upgrading of the housing stock on Sugar Hill Close and Wordsworth Drive, that improvement would only benefit those older and disabled residents able to move into the new houses, expected to be those with protected tenancies.
22. In accordance with Policy H5 of the Core Strategy, it is proposed that 15% (11) of the new dwellings would be affordable in NPPF terms, and secured as such by a planning obligation. It was suggested by the Appellant that the Council could have agreed to a local lettings policy, whereby 11 of the existing households would have been given preference in respect of the affordable units, increasing the number of residents able to remain on the site. I note that a local lettings policy must be the subject of consultation, as required by section 166A(13) of the Housing Act 1996, that it is not known who the registered provider of the affordable dwellings would be, and that there is no guarantee that the Council's Housing Department would adopt such a policy. Although this was a matter which was suggested in the second report on the planning application in October 2019<sup>11</sup>, there could not be a commitment to a

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<sup>11</sup> CD 07.02, paras 4.3 & 4.4.

local lettings policy in a planning obligation. Moreover circumstances have subsequently changed, since an emergency amendment to the lettings policy is currently operative as a response to the covid-19 pandemic (CD 05.11.1), and in this situation there is no certainty that priority would be given to existing residents. Accordingly, I do not consider that, at the present time, a local lettings policy would have provided an opportunity for more households to remain on the site.

23. The evidence before me is that the households on the appeal site comprise a strong, vibrant and healthy community: the social objective in paragraph 8b of the NPPF supports such communities: similarly, support in paragraph 91(a) of the NPPF for healthy, inclusive and safe places which support social interaction is applicable to the existing community. I conclude that the proposed development would have a damaging impact on the community of existing residents within the appeal site. Older residents, children and the disabled would be more susceptible to the change brought about by redevelopment, and there would be a significant adverse impact for those households unable to relocate into the new houses.

### ***The non-designated heritage asset***

24. It is common ground between the three main parties that the existing Airey house are a local non-designated heritage asset<sup>12</sup>. Airey houses are a prefabricated form of construction, which were part of a response to the housing shortage after the Second World War. About 26,000 Airey houses were built nationwide between 1946 and 1955. They were assembled from concrete posts and panels which could be handled on site with relative ease. This system was developed by the Leeds firm, William Airey & Sons, and Airey houses were commissioned by local authorities and other bodies. Those on the appeal site were part of a larger estate built by the NCB for mineworkers and their families in connection with the nearby Rothwell Mine. The development was undertaken to aid the recruitment of miners from older to newer more productive collieries.
25. The remaining 70 Airey houses at Oulton have evidential value as examples of one of the methods of prefabricated construction employed in the post-war years. They are illustrative of the response to the housing shortage, involving methods of mass-production, and in layout drawing on the garden city movement: as such they display historic value. Due to their origin as housing for the mining community, an association recalled in heritage open days, the houses have communal value. This factor is emphasised as the houses are the product of a Leeds firm. The Appellant's heritage witness acknowledged that the houses have some aesthetic value. I agree: the houses are restrained, but there is some variety in roof form, and their layout, set in gardens along Sugar Hill Close and Wordsworth Drive contributes to a pleasant appearance. Some changes have been made: the Appellant drew attention to the replacement of original doors and windows and the alteration of landscaping, road finishes and paving. Those detailed changes have not, however, altered the overall form of the buildings, nor the spacious layout of the estate.
26. The greater part of the original estate has already been redeveloped. However that part which remains is more than a remnant, being of sufficient size to demonstrate the form and arrangement of this type of housing. Whist Airey

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<sup>12</sup> CD 05.03 para 7.44 & CD 05.05 para 3.23.

houses remain elsewhere, that does not diminish the local significance of those on the appeal site, particularly given the development of this house-type by a Leeds firm, and the association of the estate with the local mining industry. I heard that a group of four Airey houses is to be preserved as representative examples at the Beamish Museum in the North-East of England. Such a small number of houses would not display the layout evident at the appeal site, nor would it retain a local connection with the place for which the houses were built. That consideration does not weigh against the importance of the remaining Airey houses at Oulton.

27. The structural condition of the houses is, however, a factor which must be taken into account. A report prepared by Michael Dyson Associates (MDA, CD 08.42), consultants experienced in assessing non-traditional housing, considers each of the houses on the site. The report finds that structural intervention is required in all but two houses by March 2022, and there is no equivalent professional evidence before me to dispute this view. Full refurbishment, as described by the Appellant's structural witness, would involve the replacement of the concrete posts and cladding panels with conventional walls<sup>13</sup>. That work would involve the loss of the prefabricated elements of the houses, and although the form of the dwellings would be essentially the same, and their layout unchanged, their evidential and historic value would be considerably eroded. An alternative approach, involving the addition of structural cladding around the buildings, was advanced by SOH<sup>14</sup>. I heard that the existing panels could be removed or retained. Even if retained, those panels and the posts would be concealed by the new cladding. That would affect the historic and aesthetic value of the asset and lessen its significance to an extent. A photographic and narrative record of the estate could be required by condition, but paragraph 199 of the NPPF makes clear that the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.
28. The appeal proposal would result in the complete loss of a non-designated heritage asset, and it would conflict with Policy P11 of the Core Strategy, which requires that the historic environment, including locally significant undesignated assets and their settings, is to be conserved and enhanced. I conclude that redevelopment would inevitably cause considerable harm to the significance of the asset, notwithstanding that a record could be made. However the asset cannot be retained without works being undertaken which would have an adverse effect on its significance, and that is a consideration which I take into account in the planning balance (below, para 75).

### ***Consistency with the Development Plan***

29. The Development Plan comprises the Core Strategy (as amended by the Core Strategy Selective Review 2019), the Site Allocations Plan, the saved policies of the Leeds Unitary Development Plan, and the Natural Resources and Waste Local Plan. The appeal site is unallocated in the Site Allocations Plan: the provisions of other components of the Development Plan are considered below.

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<sup>13</sup> CD 05.15 section 3.

<sup>14</sup> CD 05.21 para 5, & CD 05.17 appendix A.

## The Core Strategy

### *(i) The General Policy*

30. The General Policy reflects the presumption in favour of sustainable development in paragraph 11 of the NPPF, and seeks to secure development which would improve the economic, social and environmental conditions of Leeds. The construction activity would provide certain economic benefits in the provision of jobs and the purchase of materials. The development would also generate a new homes bonus payment, a community infrastructure levy payment, and following occupation of the houses there would be additional council tax receipts. These are generic benefits which would apply similarly to other housing schemes. Insofar as council tax receipts and the new homes bonus are concerned, I am mindful that paragraph 21b-011 of Planning Practice Guidance (PPG) advises that it would not be appropriate to make a decision based on the potential for the development to make money for a local authority. Overall, I consider that the economic benefits of the proposal carry limited weight.
31. The provision of affordable housing and a number of adaptable and accessible dwellings represent social improvements. New dwellings built to modern standards can also be expected to provide better and healthier living conditions. However the disruption caused to existing residents, all of whom would have to leave their homes (although some would be able to move into a new dwelling on the site, above paras 14 & 16), and the dissipation of the strong community within the appeal site would cause significant damage. Overall, I consider that the proposal would fail to comply with the social limb of the General Policy.
32. I agree with the Appellant that environmental benefits would ensue from the provision of more energy efficient housing and, over time, a reduction in carbon emissions. Harm would, though, be caused to the historic environment by the loss of the Airey houses which are a non-designated heritage asset. The total loss of the asset carries greater weight than the environmental benefits arising from redevelopment.

### *(ii) Housing policies*

33. Spatial Policy 6 (SP6) provides for a target of 3,247 additional dwellings per year between 2017 and 2033. As the proposal involves 70 replacement houses, it makes no contribution to the number of additional dwellings required. Whilst it would be broadly consistent with the considerations to take into account in respect of the distribution of new housing in SP7, I note that that policy is concerned with the distribution of housing allocations and specifically excludes windfalls. The appeal site is unallocated. On such land, Policy H2 supports the principle of housing subject to compliance with a series of criteria, two of which are relevant to the appeal proposal. As the proposal would involve no change in the number of dwellings on the site, there would be no additional burden on infrastructure, and, although the location does not fully meet the accessibility standards in the Core Strategy, this is an established housing site which is on a bus route. A planning obligation includes a contribution towards the provision of real-time passenger information at the bus stop between Sugar Hill Close and Wordsworth Drive, which would enhance accessibility.



34. A level of 15% affordable housing would be provided as part of the appeal proposal, compliant with Policy H5. SOH referred to the need for affordable housing within Leeds and the Outer Southern Housing Zone, which includes Oulton, and argued that redevelopment of the site would involve the loss of de facto affordable housing. The Appellant has explained that the existing housing provides low-cost rental accommodation, due to its age and condition. Other than the regulated tenancies (of which there are only seven), there is no rent control, and, if the existing houses were refurbished, it is likely that that improvement would be reflected in higher rental charges (below, paras 52 & 55). The main parties agree that there is no affordable housing, as defined by the NPPF, on the appeal site at present, whereas the proposal would include the appropriate amount.
35. The development would comply with the standards in Policy H10 for accessible housing (above, para 21), and the inclusion of accessible and adaptable dwellings in the scheme would make a contribution to supporting independent living, in accordance with Policy H8. There is no dispute that the proposal would comply with the minimum density sought by Policy H3 and the mix of dwelling sizes set out in Policy H4.

*(iii) Heritage*

36. Because of the total loss of the non-designated heritage asset of the Airey houses, the proposal would conflict with Policy P11.

*(iv) Energy and natural resources*

37. SOH made reference to Policies EN1 and EN6 concerning carbon dioxide reduction and waste management respectively. Policy EN1 refers to developments of 10 dwellings being zero carbon by 2016. That date has passed, and the Appellant's carbon assessment calculates that the development would become carbon neutral within around 20 years<sup>15</sup>. SOH suggests that an alternative refurbishment scheme would achieve this position in a much shorter time. That claim is not supported by any equivalent assessment. The policy also seeks provision of a minimum of 10% of predicted energy needs of the development from low carbon energy. A report identifying the means of achieving that target could be the subject of a condition, and in this respect the proposal would comply with Policy EN1.
38. Policy EN6(i) says that development will be required to demonstrate measures to reduce and re-use waste during construction and throughout its life. It is SOH's position that a refurbishment scheme would produce less waste, and would comply with this part of the policy. However the policy is entitled *Strategic Waste Management*, and the accompanying text explains that it sets out a broad strategy for managing waste in Leeds. As such it is not directly applicable to an individual development of 70 dwellings.

*(v) Other policies*

39. Several other policies of the Core Strategy have been referred to in the representations. There is no dispute that the development is in an accessible location (Policy T2), that it would provide a good quality of design appropriate to its location (P10), and that the character of the townscape and landscape would be conserved. Similarly, the function of the greenspace between Sugar

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<sup>15</sup> CD 05.19 appendix 4 table 3.4.

Hill Close and Wordsworth Drive would not be impaired (G1), and the contribution towards greenspace in the planning agreement would comply with Policy G4.

*The saved policies of the Unitary Development Plan*

40. Policy GP5, which requires detailed planning considerations to be resolved, and Policy BD5, which is concerned with the effect of new buildings on amenity were referred to in the second reason for refusal of planning permission. Following the revisions made to the size of gardens (above, para 7), there would be no adverse effect on the living conditions of future occupiers, and there is no conflict with these policies.

*The Natural Resources & Waste Local Plan*

41. SOH drew attention to tables 2.1 and 4.1 of the Plan. Table 2.1 sets out a hierarchy of intent which applies to each of four topic areas: in the first instance, efforts should be made to reduce the use of resources or the production of waste. Table 4.1 gives details of waste arisings, and shows that construction, demolition and excavation is the largest waste stream. Neither of these tables forms part of a policy in the Local Plan, and SOH refers to them in conjunction with Policies EN1 and EN6 of the Core Strategy. I have considered these policies earlier (paras 37 & 38).

*Conclusions on the Development Plan*

42. I find that the proposal would conflict with the General Policy of the Core Strategy because of its harmful social and environmental effects. However, there is a large measure of compliance with policies concerning housing development, including the principle of development on this unallocated site and the type of housing proposed. The proposal would also comply with other policies, excepting Policy P11 of the Core Strategy which is concerned with the conservation and enhancement of the historic environment. However, insofar as that policy is concerned, the houses cannot be retained without works being undertaken which would detract from their significance. I conclude that the proposed development would comply with the Development Plan considered as a whole.

**Other considerations**

*Condition of the Airey houses*

43. The Airey house type was designated defective under the Housing Defects (Prefabricated Reinforced Concrete Dwellings) (England and Wales) Designations 1984 (CD 05.38). Studies carried out by the Building Research Establishment (BRE) had identified problems with some of the methods of non-traditional house-building used in the post-war period. Designation relates to a scheme of financial assistance for purchasers of designated defective properties which is not relevant in this case, but it also gave recognition to a design problem in Airey houses.
44. In the case of Airey houses, the defect is the potential for corrosion of the steel reinforcement due to insufficient concrete cover in the load-bearing posts which provide the frame for the building<sup>16</sup>. Corrosion of the reinforcement can lead to

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<sup>16</sup> CD 07.37 section A; CD 08.42 section 1.

cracking and spalling of the posts. A BRE report has advised that where three or more adjacent posts are significantly cracked or spalled, the cladding which is attached to them may become unstable, and the structural integrity of the building is at risk<sup>17</sup>.

45. A survey of all 70 Airey houses within the appeal site was undertaken by MDA on behalf of the Appellant between January and March 2020 (CD 08.42, para 27, above, refers). Repair work had been undertaken at some houses, but the MDA report found that overall this work had been poorly executed, and referred to instances of cracks projecting above the repairs. At those properties where no repair work had been carried out, the majority of posts were assessed as being in poor condition. Over 50% of external posts inspected, and 29% of internal posts, were found to be cracked<sup>18</sup>. Properties have been categorised on the basis of the post inspections<sup>19</sup>. In fifteen properties there were three or more significantly cracked posts in a row. These are considered to be at the limit of structural stability, with intervention required by one year from the date of survey. Most houses (53) were less severely damaged, but intervention would nevertheless be required within a relatively short period of two years. Only two of the existing houses were judged not to require remedial work by March 2022, but bi-annual surveys were recommended to monitor their condition. The LPA accepts the findings in the MDA report, and both the witnesses covering this topic for SOH acknowledged that they were not in a position to dispute the findings of the MDA report.
46. On the evidence before me, I accept that action to respond to the structural condition of virtually all of the existing houses is needed in the near future. I turn next to consider the option of refurbishment as an alternative to the Appellant's proposal for redevelopment.

### *Refurbishment*

47. The Appellant's structural witness suggested that significant intervention would be required to address the defects in the condition of the existing houses, involving replacement of the prefabricated posts and cladding with conventional walls. Such major work would preclude the existing residents remaining in their homes, and even if works were carried out sequentially the disruption would be significant. At the very least, it would seem necessary to carry out such work on a rolling programme, making use of the existing vacancies, to enable residents to stay on the site. Such extensive works would retain only a limited part of the original structure, calling into question the value of such an approach to refurbishment.
48. A less drastic approach to refurbishment, involving structural cladding, was put forward by SOH. The new cladding panels would be added as an envelope around the building, providing additional structural support. The system would also improve thermal efficiency, and the Structherm system discussed at the inquiry is guaranteed for 30 years. I heard that Structherm had been fitting structural cladding since the 1980s, and on only one occasion (which did not involve an Airey house) had it been necessary for occupiers to move out. Examples have been provided of various schemes where structural cladding

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<sup>17</sup> CD 08.42 section 3.2.

<sup>18</sup> CD 08.42 section 3.5.4.

<sup>19</sup> CD 08.42 tables on pages 17 & 18.



has been fitted to Airey houses<sup>20</sup>, and I have no reason to doubt that this approach can be an effective means of addressing the problems associated with non-traditional post-war housing. The concrete posts would be inspected and repaired, if necessary, before the cladding was added to the houses. SOH explained that Structherm had never found a situation where external cladding could not be applied, but no assessment of the Airey houses on the appeal site has been carried out with a view to undertaking this from of refurbishment. Bearing in mind the relatively high proportion of damaged external posts (above, para 45), there is inevitably some uncertainty as to the suitability of structural cladding to provide a remedy for the defects of the existing houses in this case.

### *Viability*

49. Evidence was presented to the inquiry on the viability of the appeal proposal and refurbishment. The Appellant's residual valuation for redevelopment produces a profit of £2,889,136, representing a return of 17.04% on gross development value (CD 05.07.01). That level of return is within the range of 15-20%, which paragraph 10-018 of PPG suggests as suitable to establish the viability of plan policies.
50. The Appellant's equivalent exercise for refurbishment and sale of the existing houses indicated a loss of £732,581<sup>21</sup>. That is based, not just on the replacement of the concrete posts and panels with new external walls, as previously recommended by MDA<sup>22</sup>, but it also includes the cost of extensive refurbishment work to the properties. The Appellant argues that a commercial concern would wish to go beyond the minimum renovation necessary to provide improved dwellings which would be attractive to the market, achieve a mortgageable standard, and which would have an economic life of at least 60 years.
51. The costs of repair and refurbishment used in the Appellant's valuation exercise are up to £119,902 for a two bedroom house and up to £123,681 for a three bedroom house<sup>23</sup>. These figures are significantly higher than the costs of up to £28,000 per dwelling given by SOH for refurbishment using structural cladding and including window replacement. Calculations were submitted demonstrating that reductions in the cost of repair and refurbishment of £33,366, and £35,351 would enable profit levels of 15% and 16.3% respectively to be achieved<sup>24</sup>. SOH suggested that the cost of various items included in the cost of refurbishment (for example window replacement and fitting external doors) was high, but acknowledged that where properties were being refurbished for sale, it would be appropriate to do additional works. Moreover, not only does the SOH figure exclude the extent of internal work envisaged by the Appellant, it also excludes any allowance for repair to the concrete posts and the cost of a structural engineer's report. Allowing for internal refurbishment and the repair of posts would reduce the headroom for a reduction of the scale advanced by SOH.

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<sup>20</sup> CDs 05.22-24.

<sup>21</sup> CD 05.07 Appendix 2.

<sup>22</sup> MDA's summary report August 2018, Appendix G of CD 08.42.

<sup>23</sup> The average cost per dwelling would be somewhat lower than these figures, as it is assumed that central heating replacement, electrical repairs and external area improvements would only be required in 50% of dwellings.

<sup>24</sup> CDs 05.32 & 05.33.

52. The Appellant's residual valuation for refurbishment is based on the dwellings being sold and not rented. Although no detailed exercise has been undertaken, the Appellant's viability witness considered that even if rents rose to £600-750 per month, the resultant yield of less than 5% gross would be unattractive to a commercial operator.
53. There is no dispute that redevelopment of the appeal site would be a viable proposition. The position concerning refurbishment is less certain. There is no detailed assessment to demonstrate that the full costs of an approach using structural cladding as advocated by SOH, and including certain internal works, would be profitable, whether the refurbished dwellings were made available for sale or rent.

*Options for the appeal site*

54. It is clear from the evidence submitted to the inquiry, that a response is required to the condition of the Airey houses. Structural intervention is required on all but two of the properties within a short period of time. If no scheme for the existing houses is put in place, I anticipate that the dwellings would become unsafe to occupy. In this situation, it is reasonable to expect that the Appellant would give notice to the existing occupiers, subject to providing alternative accommodation for those who benefit from protected tenancies. That would dissipate the community on the appeal site. It would also result in an inefficient use of land, contrary to paragraph 122 of the NPPF, due to the increasing number of vacant dwellings.
55. A refurbishment scheme involving replacement of the concrete panels and posts with conventional walls, together with internal works, as referred to by the Appellant, would require the houses to be vacated, and the evidence before me indicates that this option would not be viable. The alternative approach put forward by SOH, involving the use of structural cladding, may be capable of implementation, but there is uncertainty about its viability. If, nevertheless, properties were refurbished for sale, or made available to rent at market prices, it is likely that the existing community on the appeal site would still be broken up, given the importance of the low-cost accommodation to residents. In any event, the Appellant is clear that a commercial decision has been taken not to pursue refurbishment. That decision may, as SOH suggests, have been taken in the absence of advice about the practicality and viability of a solution involving structural cladding. However the evidence submitted to the inquiry does not demonstrate that that option, which, as SOH acknowledged, has in the case of Structherm usually been carried out for local authorities and bodies such as housing associations, would be commercially viable.
56. Consideration has been given to the sale of the site. A number of registered providers of social housing were approached about the prospect of a joint approach to bring the site forward for redevelopment, but none has subsequently sought to acquire the site with its present status<sup>25</sup>. Nor has the Council pursued purchase of the site, although reference was made to such a possibility in a letter from the Director of City Development to SOH (CD 07.10). SOH has been critical of the nature and extent of this activity. Even if there were the prospect of sale of the appeal site, I agree with the Appellant that this alone would not provide a response to the problem of the condition of the existing housing stock.

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<sup>25</sup> Details of marketing are given in CD 05.34.

57. The Appellant has stated that in the absence of an approved masterplan for the site, it would either make small planning applications for individual replacement of blocks or wait until the houses fall down. The former simply represents an alternative approach to redeveloping the land, whilst the latter reflects the first option considered above.
58. On the evidence before me, I am firmly of the view that the appeal proposal to redevelop the site represents the most realistic option to address the deteriorating condition of the Airey houses at Sugar Hill Close and Wordsworth Drive, and it is a matter to which I give substantial weight.

*The NPPF*

59. There is a need for affordable housing in Leeds, and the proposal would provide this on-site, in accordance with paragraph 62 of the NPPF. In including a proportion of adaptable and accessible dwellings, and a mix of house sizes, the development would also be consistent with the intention of paragraph 62 to provide housing for different groups in the community.
60. Paragraph 93 of the NPPF makes it clear that planning decisions should consider the benefits of estate regeneration. I have no reason to doubt that the appeal proposal could produce a sustainable, inclusive and balanced community. That consideration is tempered by the dissipation of the existing sustainable, inclusive and balanced community as a consequence of redevelopment. A similar assessment applies in respect of paragraph 91 which supports the creation of healthy, inclusive and safe places. Replacing the defective buildings would improve the quality of the housing stock, and would represent physical regeneration of the estate. The new housing would be more energy efficient than the existing properties, and over a period of time would result in a reduction in carbon emissions, thereby contributing to the transition to a low carbon future as required by paragraph 148 of the NPPF.
61. Paragraph 192 refers to the desirability of sustaining and enhancing the significance of heritage assets, whereas the proposal would involve the loss of all of the Airey houses. In accordance with paragraph 197, that is a matter which I take into the balance in my overall conclusions. Construction of 70 new houses on what would be previously-developed land would make an efficient use of that land, in accordance with paragraph 122. Certain generic economic benefits would flow from redevelopment, and paragraph 80 refers to support for economic growth.
62. Paragraph 8 of the NPPF refers to economic, social and environmental objectives which are each important in achieving sustainable development. Whilst the appeal proposal would make contributions in each of these areas, the dissipation of the existing community and the loss of a non-designated heritage asset are significant negative consequences. I have found, however, the proposed development would comply with the Development Plan considered as a whole. Therefore, it follows from paragraph 11(c) of the NPPF that the appeal proposal is a sustainable form of development.

*Planning obligations*

63. A planning obligation concerns affordable housing, which is required by Policy H5 of the Core Strategy. In the first instance the affordable dwellings are intended to be provided within the appeal site, but if no offers are received for

any of the affordable units, the obligation provides for a financial contribution which would be used towards off-site provision in the locality: the Core Strategy provides for that arrangement at paragraph 5.2.17.4.

64. The agreement contains an obligation providing for a contribution towards off-site greenspace. Although the proposed scheme comprises the same number of dwellings as are already present on the site, it introduces 20 four-bedroom properties, which could accommodate larger households leading to more pressure on existing public open space. I also heard that there is a deficiency in open space in Rothwell Ward. There is no opportunity for provision of greenspace within the site, and I agree that a contribution for off-site provision is, therefore, necessary, in accordance with Core Strategy Policy G4.
65. The other provisions of the planning agreement concern a contribution towards a passenger information display at the bus stop between Sugar Hill Close and Wordsworth Drive, and a travel plan. These measures are intended to reduce car dependency and to encourage the use of more sustainable modes of transport, an objective which is in accord with Policy T2 of the Core Strategy and paragraph 102(c) of the NPPF. As such they would be necessary to make the development acceptable in planning terms.
66. I find that the statutory tests in Regulation 122 of the Community Infrastructure Levy Regulations are met, and that the provisions of the planning agreement are material considerations in this appeal.

### **Conditions**

67. I have already referred to conditions concerning low carbon energy and recording of the non-designated heritage asset. A condition specifying the relevant drawings would be important as this provides certainty. In order to ensure that existing residents are aware of the timescale of the development and the rehousing programme, a phasing scheme and a tenants' forum should be put in place. In view of the history of mining in the area, it would be important for a condition to require an assessment of ground conditions and a scheme of any remedial work. Similar requirements would be necessary concerning contamination as this is a brownfield site. Conditions concerning the importation of soil materials and the provision of electric vehicle charging points, would need to be imposed to minimise the effect of the development on the environment.
68. To safeguard the living conditions of existing residents on the site and nearby, restrictions would be necessary on the times of construction work and deliveries. For the same reason, and in the interest of highway safety, a statement of construction practice is necessary. Conditions concerning provision of the parking spaces and waiting restrictions at the junction of Oulton Drive and the A642 are important for reasons of highway safety and ease of traffic movement. In order to ensure that the development would be in keeping with its surroundings, conditions would be required concerning tree protection measures, landscaping, the approval of materials, and the reinstatement of footway crossings.
69. To protect bats, work should be carried out in accordance with measures specified in the Bat Emergence Survey and Report (CD 01.40). Details of bird nesting features and other measures to enhance biodiversity should be included in the development in accordance with Policy G9 of the Core Strategy.

To ensure that the site would be satisfactorily drained, schemes for the disposal of foul and surface water should be submitted for approval. In line with Policy T2 of the Core Strategy and paragraph 102(c) of the NPPF, cycle parking should be provided to encourage the use of sustainable mode of transport.

70. It was suggested that permitted development rights be removed in respect of additions to roofs and hardsurfacing. Paragraph 21a-017 of PPG explains that area-wide or blanket removal of freedoms to carry out small-scale domestic alterations that would not otherwise require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. The LPA considered that a restriction on roof additions would assist in retaining the character of the area. That character, however, would be markedly changed by the redevelopment scheme, and I do not consider that the removal of permitted development rights would be necessary to ensure that the new housing would maintain an appropriate built form in this location. In my experience the formation of additional hardsurfaced areas usually occurs at the front of dwellings where it is used to provide parking space. However parking provision is included in the scheme, and there are limited opportunities available to increase hardsurfacing at the front of the new houses. I do not consider that the removal of permitted development rights would be necessary in this case.
71. Conditions concerning phasing, investigations in respect of mining activity and contamination, a statement of construction practice, safeguarding bats, biodiversity features, tree protection, drainage, recording of the heritage asset, a renewable energy and low carbon report, electric vehicle charging points, footway crossings, and a tenants' forum would be pre-commencement conditions. The Appellant has agreed to conditions on these matters (Document O5).

## **Conclusions**

72. I have found that the appeal proposal would comply with the Development Plan, considered as a whole. That is not the end of the matter, as other material considerations must also be taken into account, and paragraph 197 of the NPPF requires that a balanced judgement takes account of the effect on the significance of the non-designated heritage asset of the Airey houses.
73. The proposal would result in the total loss of the Airey houses, a non-designated heritage asset whose local significance is emphasised by the construction of the properties in connection with the former Rothwell mine and their association with the Leeds firm of William Airey & Sons. As a consequence of the loss of the houses, the existing community there would be dissipated, and those households without protected tenancies would face an uncertain future. These adverse effects, to which I attach significant weight, run counter to the environmental and social objectives of the NPPF.
74. There is a number of important housing benefits which would be provided by the appeal scheme. The houses would be built to modern standards and be more energy efficient, providing a healthier living environment, a consideration of particular relevance to those eleven households who would be able to move into the new accommodation. The scheme would include an appropriate proportion of adaptable and accessible dwellings, and importantly would provide secured affordable housing. These factors align with policies in the

NPPF, as do the economic benefits, although the latter only merit limited weight (above, para 30).

75. A key consideration in the planning balance is that the proposed development represents the most realistic response to the deteriorating condition of the Airey houses. There is no doubt that action is required within a relatively short period of time. Refurbishment has not been demonstrated to be commercially viable, and both of the options discussed at the inquiry would reduce the heritage significance of the existing houses, which lessens my concern about the conflict with Core Strategy Policy P11. Moreover, refurbishment is expected to lead to a higher cost of accommodation in most cases<sup>26</sup>, which would be likely to cause the dissipation of the community in any event. Taken together with the benefits of the proposal, these factors are sufficient to outweigh the harm which would be caused.
76. I acknowledge that the disturbance and uncertainty occasioned by the loss of their homes would be likely to have a greater impact on the elderly, children and the disabled, particularly those who would have to move away from this part of Oulton. However action is required to address the condition of the existing houses, and the appeal proposal itself, involving the demolition of all the existing houses, would not discriminate against those with a protected characteristic. The courts have held that the best interests of children should be a primary consideration. The data on protected characteristics indicates that all households with persons aged up to 16 would leave the site as they do not have protected tenancies. That is an undesirable outcome, but one which, for the reasons given earlier, I expect to occur irrespective of the decision on this appeal. The loss of their homes would represent an interference with the rights of existing residents under Article 8 of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1988. However, taking into account all material considerations, including the legitimate aim to address the structural problem of the existing houses, I am satisfied that that interference is necessary and proportionate.
77. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

*Richard Clegg*

INSPECTOR

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<sup>26</sup> Apart from the dwellings for households with regulated tenancies.



### **Schedule 1 - Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the plans listed in schedule 2.
- 3) No development shall commence until a phasing plan and statement have been submitted to, and approved in writing by, the local planning authority. Details to be included in the phasing scheme shall include: heritage recording; areas to be developed; timeline for demolition and development; and arrangements for the movement of regulated and assured tenants.
- 4) No development shall take place on any phase until schemes for the foul and surface water drainage of that phase have been submitted to, and approved in writing by, the local planning authority. The surface water scheme shall be based on sustainable drainage principles, and surface water discharges from any part of the site shall be restricted to greenfield rates of runoff. The approved foul and surface water drainage schemes shall be implemented prior to the first occupation of that phase, and they shall be retained thereafter.
- 5) No development shall take place on any phase until the following information regarding past coal mining activity on that part of the site has been submitted to and approved in writing by the local planning authority:
  - a) A scheme of intrusive site investigations to assess the ground conditions and potential risks posed to the development as a result of past mining activity.
  - b) Submission of a report of findings arising from the intrusive site investigation including the results of any gas monitoring.
  - c) A scheme of any proposed remedial works and a timetable for their implementation.
  - d) Details of any programme for the prior extraction of surface coal resources.

All remedial works on that part of the site shall be undertaken as approved in accordance with the approved timetable.

- 6) No development shall take place on any phase until a phase II site investigation report for that part of the site has been submitted to, and approved in writing by, the local planning authority.

Where remediation measures on that part of the site are shown to be necessary in the phase II report, and/or where soil or soil forming material is being imported onto the site, development shall not commence until a remediation statement demonstrating how that part of the site will be made suitable for the intended use, including a timetable for implementation, and arrangements for the provision of verification reports, has been submitted to, and approved in writing by, the local planning authority. Any remediation measures shall be carried out in accordance with the approved statement and timetable.

- 7) No works shall begin on any phase until a statement of construction practice for that phase has been submitted to, and approved in writing by, the local planning authority. The statement of construction practice shall include details of:
- a) The methods to be employed to prevent mud, grit and dirt being carried onto the public highway from the development site.
  - b) Measures to control the emissions of dust and dirt during construction.
  - c) The location of the site compound and plant equipment/storage; and
  - d) Arrangements to publicise and review the statement of construction practice.

The approved details shall be implemented at the commencement of work on each phase, and shall thereafter be retained until their completion. The statement of construction practice shall be made publicly available during the construction of the phase in accordance with the approved arrangements for publicity.

- 8) No development shall take place on any phase, until a scheme providing details of bird nesting features (to include swift features, a minimum of 16 house sparrow features, and 12 starling features) within buildings on that phase has been submitted to, and approved in writing by, the local planning authority. The scheme shall include the number, specification and location of the bird nesting features on that phase, together with a timetable for implementation. All of the approved features for that phase shall be installed in accordance with the approved scheme and timetable, and they shall be retained thereafter.
- 9) No development shall take place on any phase, until a scheme of mitigation measures to safeguard bats has been submitted to, and approved in writing by, the local planning authority. The scheme shall be prepared in accordance with paragraphs 34, 42 & 43 of the Bat Emergence Survey and Report by Brooks Ecological dated June 2018 (ref R-3184-03), and shall include a timetable for implementation. All of the approved features for that phase shall be installed in accordance with the approved scheme and timetable, and they shall be retained thereafter.
- 10) No works, including demolition, shall take place on any phase until a written arboricultural method statement for that part of the site, including a tree care plan during construction in accordance with British Standard BS5837:2012 Trees in relation to design, demolition and construction, has been submitted to and approved in writing by, the local planning authority. This should include details of access, scaffolding, storage, contractors' parking, service runs and changes in levels, and protective fencing to safeguard all existing trees, hedges and bushes shown to be retained on the landscape masterplan ref P11:4519:100 revision G. Within the protected areas no equipment, machinery or materials shall be used, stored or burnt, ground levels shall not be altered, and no excavations undertaken including the provision of any underground services. The measures in the approved method statement shall be retained for the duration of the demolition and construction period.
- 11) No demolition shall take place until heritage recording of the Airey homes on Sugar Hill Close and Wordsworth Drive has been undertaken, in accordance with a scheme to be submitted to, and approved in writing



by, the local planning authority. The scheme shall include the timescale for recording, the methodology to be used, and details of how the record will be maintained.

- 12) No development shall take place on any phase until a renewable energy and low carbon report for that phase has been submitted to and approved in writing by the local planning authority. The report shall identify how the following will be provided:
  - a) A minimum of 10% of the predicted energy needs of the completed development being obtained from decentralised and renewable or low carbon energy.
  - b) Achievement of minimum Band B energy efficiency for each dwelling.Any approved renewable or low carbon energy equipment, connection to de-centralised or low carbon energy sources or additional energy efficiency measures shall be installed before that phase of the development is occupied. A post-installation report shall be submitted within 3 months of installation to demonstrate that the approved measures have been installed. Thereafter the approved equipment, connection or measures shall be retained in use and maintained for the lifetime of the development.
- 13) No development shall take place on any phase until details of electric vehicle charging points to be provided for each dwelling in that phase, have been submitted to, and approved in writing by, the local planning authority. The charging point for each dwelling shall be provided in accordance with the approved details prior to the first occupation of that dwelling, and thereafter retained in accordance with the approved details.
- 14) No development shall take place on any phase until construction details of the proposed footway crossings and the reinstatement of any redundant existing crossings have been submitted to, and approved in writing by, the local planning authority. The footway crossings and reinstatements at each residential plot shall be constructed in accordance with the approved details prior to the first occupation of the dwelling on that plot.
- 15) No development shall take place on any phase until a scheme of measures designed to achieve biodiversity net gain, including a timetable for implementation and details of the long-term maintenance of approved measures, has been submitted to and approved in writing by the local planning authority. All of the approved measures shall be implemented in accordance with the approved scheme and timetable, and retained thereafter.
- 16) No development shall take place until details of a tenants' forum have been submitted to, and approved in writing by, the local planning authority. The details shall include the terms of reference, the timescales for frequency of meeting and the membership of the forum. Membership invites will be limited to one Ward Member, 2 tenants (or their representatives) and 2 representatives of the developer. The matters to be considered by the forum shall comprise the programme and phasing of works, the programme for any evictions arising as a result of the commencement of any phase of development in the approved phasing plan, and the rehousing of eligible tenants. The tenants' forum shall be

operational from the commencement of the first eviction proceedings in relation to dwellings on the site until demolition of the final property on the site.

- 17) If remediation is unable to proceed in accordance with the approved remediation statement for that part of the site, or where significant unexpected contamination is encountered, the local planning authority shall be notified in writing immediately and operations on the affected part of the site shall cease. An amended or new remediation statement for that part of the site shall be submitted to, and approved in writing by, the local planning authority prior to any further remediation works which shall thereafter be carried out in accordance with the revised approved statement.
- 18) On completion of remediation works on any part of the site, a verification report shall be submitted to the local planning authority in accordance with the approved programme. That site or part of the site shall not be brought into use until such time as all verification information for that part of the site has been approved in writing by the local planning authority.
- 19) Any soil or soil forming materials brought to any part of the site for use in garden areas, soft landscaping, public open space or for filling and level raising on that part of the site shall be tested for contamination and suitability for use. A methodology for testing these soils shall be submitted to, and approved in writing by, the local planning authority prior to these materials being imported onto site. The methodology shall include information on the source of the materials, sampling frequency, testing schedules and criteria against which the analytical results will be assessed. Testing shall then be carried out in accordance with the approved methodology. Relevant evidence and verification information shall be submitted to, and approved in writing by, the local planning authority prior to these materials being imported onto the site.
- 20) No construction work, including deliveries, shall take place outside the following times: 08:00 to 18:00 Mondays to Saturdays; and no work shall take place at any time on Sundays and bank and public holidays.
- 21) No part of the development hereby permitted shall be occupied until full details of both hard and soft landscape works, including an implementation programme and timetable, for that part of the development have been submitted to and approved in writing by the local planning authority. All hard and soft landscaping works shall be carried out in accordance with the approved details, approved implementation programme and British Standard BS 4428:1989 Code of Practice for General Landscape Operations. The developer shall complete the approved landscaping works and confirm this in writing to the local planning authority prior to the date agreed in the implementation programme.
- 22) A landscape management plan for any part of the site, including long term design objectives beyond the first 5 years, management responsibilities and maintenance schedules shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development. The landscape management plan for that part of the site shall be carried out as approved.

- 23) Construction of external walls and roofs to any building or phase subject of this permission shall not take place until:
- a) Details and samples of the external walling and roofing materials;
  - b) Details of cladding including materials, colour and locations; and
  - c) Details of doors and windows including materials, colour and reveals;
- for the relevant building or phase have been submitted to and approved in writing by the local planning authority. Samples shall be made available on site prior to the commencement of building works, for inspection by the local planning authority which shall be notified in writing of their availability. The building works shall be constructed from the materials thereby approved.
- 24) No dwelling in any phase shall be occupied until all areas shown on the approved plans to be used by vehicles for that dwelling have been fully laid out, surfaced and drained such that surface water does not discharge or transfer onto the highway. These areas shall not be used for any other purpose thereafter.
- 25) No dwelling shall be occupied until cycle storage has been provided in accordance with a scheme which has been submitted to and approved in writing by the local planning authority. The cycle storage shall be retained thereafter.
- 26) None of the dwellings hereby permitted shall be occupied until a traffic regulation order to restrict parking at the junction of the A642 Wakefield Road with Oulton Drive, has been implemented in accordance with a scheme which has been submitted to and approved in writing by the Local Planning Authority.

END OF CONDITIONS

## **Schedule 2 – plans referred to in condition No 2**

Location plan P11:4519:01  
Site plan P11:4519:02 revision J  
Landscape masterplan P11 4519 02 revision G  
Details of housetype 2N gabled (AS/OP/OP) P11:4519:11 revision D  
Details of housetype 3A (AS/OP) gabled P11:4519:13 revision F  
Details of housetype 4M (AS) P11:4519:14 revision C  
Details of housetype 4M (OP) P11:4519:15 revision C  
Details of housetype 4K (AS-OP) P11:4519:16 revision C  
Details of housetype 3H (OP) P11:4519:23 revision D  
Details of housetype 3H+ (AS) P11:4519:34 revision C  
Details of housetype 2N gabled (AS/OP) P11:4519:36 revision D  
Details of housetype 3H (AS)-2N (OP) gabled P11:4519:37 revision C  
Details of housetype 3H+ M4(3) (AS) P11:4519:40 revision A  
Details of housetype 2N hipped (AS/OP/OP) P11:4519:41  
Details of housetype 3H (AS)-2N (OP) hipped P11:4519:42  
Details of housetype 2N (AS/AS)-3H(OP) hipped P11:4519:43  
Details of housetype 2N hipped (AS/OP) P11:4519:44  
Details of housetype 3A detached (AS) P11:4519:45  
Details of housetype 2N (AS)-3H(OP) hipped P11:4519:46  
Details of housetype 2N (AS)-3H(OP) gabled P11:4519:47  
Details of housetype 3H(AS) P11:4519:48 revision D  
Details of housetype 3H+ (OP) P11:4519:49  
Details of housetype 3H+ (AS) special P11:4519:50  
Boundary treatment – 1800mm brick wall P11:4519:03  
Boundary treatment – 1800mm timber fence P11:4519:04  
Boundary treatment – 450mm knee high rail P11:4519:05  
Garage details P11:4519:08

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Ms C Bell of Counsel	Instructed by Mr M Hills, Solicitor with the City Council
She called	
Mr G Tinsdale	Head of Housing Support, Leeds CC
Mr M Teasdale	Senior Director, Temple Group
MA(Oxon) MIED	
Mr J Brooks BSc(Hons)	Director, WSP
MTP MRTPI	
Ms V Hinchliff Walker	Team Leader, South & West Planning Services, Leeds CC

### FOR THE APPELLANT:

Mr S White QC & Ms K Ziya of Counsel	Instructed by Sheppard Planning
They called	
Dr R Usher BA(Hons)	Historic Buildings Consultant
MSc DipPG PhD MIHBC	
Mr M Askew BSc(Hons)	Associate Director, Walker Ingram Associates
MSc(Eng) MICE MISE	
Mr A W Wells BSc MBA	Registered Valuer & Chartered Surveyor, Allsop LLP
FRICS	
Dr A Buroni PhD MSc	Director, RPS
BSc(Hons) FRSM FRSPH	
Mr M Sheppard	Director, Sheppard Planning Ltd
BSc(Hons) MA MRTPI	

### FOR SAVE OUR HOMES LS26:

Ms J Wigley of Counsel	Instructed by Mr Lynch
She called	
Mr C Kitchen	General Secretary, National Union of Mineworkers, & General Secretary of the NUM Yorkshire Area
Mr T Lawton	Technical Sales Manager, Structherm Ltd
Mr J Rogers	Westdale Services
Mrs L Readman	Chairperson, Save Our Homes
Ms K Bruce	Former city councillor for Rothwell Ward
Mr J Lynch MRTPI	Lynch Planning Consultancy Ltd

## CORE DOCUMENTS SUBMITTED AT THE INQUIRY

05.07.1	Revised appendix 4 to Mr Wells's proof of evidence.
05.20.1-3	Appendices to Dr Usher's proof of evidence.
05.28	Ms Bell's opening statement on behalf of the LPA, with bundle of caselaw.
05.29	Ms Wigley's opening statement on behalf of SOH.
05.30	Mr White's & Ms Ziya's opening statement on behalf of the Appellant, with bundle of caselaw.
05.31	Mr Teasdale's supplementary note.

- 05.32 Sensitivity test calculation. Submitted by Ms Wigley.
- 05.33 Email dated 7 October 2020 from Ms Wigley concerning CD 05.32.
- 05.34 Inquiry note on marketing of the appeal site. Submitted by Mr Sheppard.
- 05.35 Section 528 of the Housing Act 1985.
- 05.36 Extract from the Encyclopedia of Housing Law and Practice concerning CD 05.35.
- 05.37 House of Commons Library Note, Housing: construction defects.
- 05.38 Extract from Hansard Volume 67 concerning the Housing Defects Act 1984.
- 05.39 Table – length of AST tenancies. Submitted by Mr White.
- 05.40 Minutes of the South & West Plans Panel, 30 May 2019, concerning the planning application for the proposed development. Submitted by Mr White.
- 05.41 Minutes of the South & West Plans Panel, 3 October 2019, concerning the planning application for the proposed development. Submitted by Mr White.
- 05.42 Justification for S106 matters, 15 October 2020. Submitted by Ms Hinchliff Walker.
- 05.43 Note – response to Inspector’s request concerning households with protected characteristics. Submitted by Dr Buroni and Mr Teasdale.
- 05.44 Travel Plans SPD.
- 05.45 Street Design Guide SPD – Main Report.
- 05.46 Street Design Guide SPD – Appendices.
- 05.47 Note on VAT. Submitted by Mr Wells.
- 05.48 Justification for S106 matters, 16 October 2020. Submitted by Ms Hinchliff Walker.
- 05.49 Ms Wigley’s closing submissions on behalf of SOH.
- 05.50 Ms Bell’s closing submissions on behalf of the LPA.
- 05.51 Mr White’s & Ms Ziya’s closing submissions on behalf of the Appellant.
- 05.52 Local Lettings Policies – A Note on the Law. Submitted by Ms Bell.
- 05.53 Extracts from the Housing Act 1996. Submitted by Ms Bell.
- 05.54 Allocation of Housing (Procedure) Regulations 1997. Submitted by Ms Bell.

#### **OTHER DOCUMENTS**

- 01 Costs application on behalf of the Appellant.
- 02 List of possible conditions, 16 October 2020. Submitted by Ms Hinchliff Walker.
- 03 The LPA’s response to Document 01.
- 04 Regulation 2(4) notice.
- 05 The Appellant’s response to Document 04.
- 06 Planning agreement concerning the appeal proposal.