The Planning Inspectorate

# Appeal Decision

Inquiry held on 25-26 July 2023 and virtually on 28 July 2023

Site visit made on 26 July 2023

**by Helen Hockenhull BA (Hons) B.Pl MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18th August 2023**

**Appeal Ref: APP/J4423/W/23/3318273**
**Land bounded by Rockingham Street and Wellington Street and Trafalgar Street, Rockingham Street, Sheffield, S1 4NN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Lewis of Code Living against the decision of Sheffield City Council.
- The application Ref 22/02430/FUL, dated 27 June 2022, was refused by notice dated 23 September 2022.
- The application sought planning permission to remove reference to affordable housing on the floor plans (Application under Section 73 to vary condition 2 (approved plans)) imposed by planning permission Ref 21/05354/FUL, dated 19 April 2022.- Application for alterations to elevations and layout (Application under Section 73 to vary condition 2 (approved plans) and remove condition 21. (Dutch Ramp)), imposed by application 20/04572/FUL - Application to revise the housing mix and change of window material (in places) to UPVC (Application under Section 73 to vary condition 2 (approved plans), 12 (energy needs) & 34 (UPVC windows) (Amended Plans)) imposed by planning permission 19/03779/FUL - Demolition of existing buildings and erection of mixed use building up to 12/17/38 storeys to form residential units with ancillary amenities including gymnasium, cinema, common rooms and raised external deck, associated cycle and bin storage and ground floor retail unit (Use Class A1) (Development Accompanied by an Environmental Statement as amended 19th December 2019)'.
- The condition in dispute is No. 2 which states that: The development must be carried out in complete accordance with the following approved documents: Site Plan – P02 Rev AB, Proposed Plans – P03 Rev AF, Proposed Plans – P04 Rev Q, Proposed Elevation 1 – P101 Rev k, Proposed Elevation 2 – P102 Rev J, Proposed Elevation 3 – P103 Rev I, Proposed Elevation 4 – P104 Rev J, Proposed Elevation 5 - P105 Rev I, Proposed Elevation 6 – P106 Rev I, Proposed Stret elevation – P107 Rev J, Contextual Street Elevation - P108 Rev L, Illustrative Views – P201 Rev K, Illustrative Views – P202 Rev J, Illustrative Sections and Bay Details – P303 Rev J, Landscape Masterplan – k1537_P401 I.
- The reason given for the condition is in order to define the permission.

## Decision

1. The appeal is allowed and planning permission is granted to remove reference to affordable housing on the floor plans (Application under Section 73 to vary condition 2 (approved plans)) imposed by application 21/05354/FUL - Application for alterations to elevations and layout (Application under Section 73 to vary condition 2 (approved plans) and remove condition 21. (Dutch Ramp)), imposed by application 20/04572/FUL - Application to revise the housing mix and change of window material (in places) to UPVC (Application

under Section 73 to vary condition 2 (approved plans), 12 (energy needs) & 34 (UPVC windows) (Amended Plans)) imposed by planning permission 19/03779/FUL - Demolition of existing buildings and erection of mixed use building up to 12/17/38 storeys to form residential units with ancillary amenities including gymnasium, cinema, common rooms and raised external deck, associated cycle and bin storage and ground floor retail unit (Use Class A1) (Development Accompanied by an Environmental Statement as amended 19th December 2019) on Land bounded by Rockingham Street and Wellington Street and Trafalgar Street, Sheffield, S1 4NN without compliance with condition 2 set out in planning permission Ref 21/05354/FUL, dated 19 April 2022 subject to the conditions set out in the attached Schedule.

## Preliminary matters

2. Following discussion at the Inquiry, the appellant submitted revised plans (Proposed Plans – P03 Rev AJ and Proposed Plans – P04 Rev Y) to remove cooking facilities from units in the 2, 3 and 4 bed apartments. I am satisfied that these minor amendments do not cause any prejudice to any party, and I have taken them into account in my consideration of this appeal.

3. During the Inquiry, a change was made to Planning Practice Guidance (PPG) in relation to section 73 applications and how conditions attached to a planning permission can be amended. All parties were aware of this revision and able to have regard to it in the presentation of their respective cases.

4. A revised addendum Statement of Common Ground providing a list of agreed conditions and a final signed and dated Unilateral Undertaking were received, at my request, after the event.

## Main Issues

5. The main issues raised by this appeal were discussed at the Case Management Conference and also at the Inquiry. In light of those discussions, the main issues are set out below:

    - Whether the proposal to remove affordable housing from the scheme would result in a fundamental variation of the development permitted by planning permission ref 21/05354/FUL and if so whether it would be appropriate to consider this through an application under section 73 of the Town and Country Planning Act 1990 (the Act).

    - Whether a section 73 application can be approved which would necessitate a variation to an existing section 106 agreement, given section 106A.

    - Whether the proposal can make provision for affordable housing having regard to viability and if not should planning permission be granted.

6. The first two issues form technical or legal matters on which I heard legal submissions from both parties. The third issue, relating to viability was the subject of a round table discussion at the Inquiry.

## Reasons

*Background*

7. The appeal site forms a cleared, vacant site bounded by Wellington Street,

Rockingham Street and Trafalgar Street in the city centre of Sheffield.

8. Planning permission was granted in July 2020 for the erection of three adjoining residential tower blocks of 12, 17 and 38 storeys in height with ground floor retail use and ancillary amenities including a gym, cinema and common rooms. The development provided a total of 1,235 apartments with a mix of self-contained studios and 1 and 2 bed apartments in a co-living accommodation scheme for students and non-student young professionals and affordable private rented accommodation. The approval was subject to a section 106 agreement which provided a mechanism to secure the affordable housing.

9. After the original planning approval, two section 73 applications and a section 96a application were submitted to amend the scheme. These changes included a slight increase in height, amendments to the housing mix, elevation and layout changes and revisions to the proposed materials. The first section 73 application granted in 2021, ref 20/04572/FUL included the addition of notation on the proposed plans to indicate the units to be provided as affordable housing.

10. This notation was carried forward in the second section 73 application ref 21/05354/FUL granted on 19 April 2022. This appeal seeks to amend condition 2 of this approval to remove the reference to affordable housing on the floorplans.

*Fundamental variation and scope of section 73*

11. The Council argues that to remove affordable housing from the approved plans results in a fundamental variation of the development permitted which would not be appropriate to consider under section 73 of the Town and Country Planning Act 1990.

12. I note that reference to affordable housing was not shown on the plans approved in the original planning permission. This notation was added later in a subsequent section 73 application. Logic would suggest that if a section 73 application could be used to add this notation, then a subsequent section 73 application could also be used to remove it.

13. The provision of affordable housing is secured by the section 106 agreement. This requires the submission of an affordable housing scheme which would set out the type, tenure, mix and distribution of affordable units. The Council stated in their Proof of Evidence that the notation on the approved plans was indicative only and not binding on the Council. The removal of the notation on the plans cannot therefore constitute a fundamental variation.

14. I acknowledge that the appellant at the application stage, stressed the positive benefits of the scheme in providing affordable housing. This matter was a material consideration given weight by the Council in the determination of the application. In practice, the units to be offered at an affordable private rent, would be no different to the other units in the scheme. They would be controlled and managed by the same landlord, only that the rent would be set lower. Therefore, in my view, there would be no change in the character of the use to the extent that it could be described as a fundamental variation.

15. Both parties brought my attention to a range of caselaw relevant to this debate. The Council referred to the case of Barnett[1], where it was concluded that the plans and drawings describing the building works are as much a part of the description of what has been permitted as the permission notice itself. In this case, the removal of the affordable housing notation on the approved plans, does not alter the building works themselves.

16. The appellant referred to a number of cases[2] which have grappled with the scope of a section 73 application. In the most recent case of Armstrong,[3] it was held that the only restriction in law on section 73 was whether a fundamental alteration created conflict between the operative part of the permission and the conditions imposed upon it.

17. During the Inquiry an amendment to the PPG[4] was made by the Secretary of State which is helpful to set out the position following the above judgment. It states that 'There is no statutory limit on the degree of change permissible to conditions under section 73, but the change must only relate to conditions and not to the operative part of the permission'. The following paragraph 17a-014 goes on to state that 'Planning permission cannot be granted under section 73 to extend the time limit within which a development must be started or an application for approval of reserved matters must be made. Section 73 cannot be used to change the description of the development'.

18. Given the above, whether or not the appeal proposal forms a fundamental variation, is not relevant to the consideration of whether the change is within the scope of a section 73 application. What is relevant is whether the change relates to the operative part of the permission. In this case, the description of development in the original permission, does not refer to affordable housing. The removal of affordable housing from the plans as proposed does not alter the description of development, a position agreed by both parties. Accordingly, it creates no conflict with the operative part of the permission. It is my view therefore, that there is no restriction in law as to whether the appeal proposal can be considered under section 73 of the Act.

*Relationship of a section 73 application and an existing section 106 agreement*

19. Planning obligations are legal obligations entered into to mitigate the impacts of a development proposal. The Courts[5] have held that, by definition, a section 106 obligation is a freestanding legal instrument. It does not form part of the planning permission and in this sense is not analogous to conditions imposed on the grant of a permission.

20. The appellant brought my attention to the case of Batchelor Enterprises Ltd v North Dorset District Council [2003] EWHC 3006 (Admin), where an existing section 106 agreement was inconsistent with the planning permission granted by the Secretary of State. The Secretary of State concluded that the existing section 106 agreement was a legal matter between the Council and the developer and did not prevent the granting of planning permission for the development.

[1] Barnett v Secretary of State [2010] 1 P&CR 8 at [17]-[22]
[2] R v Coventry City Council ex p Arrowcroft Group Plc [2001] PLCR 7, R9Vue) Entertainment Ltd) v City of York Council [2017] EWHC 588 (Admin) and Finney v Welsh Ministers {2019] EWCA Civ 1868.
[3] Armstrong v Secretary of State [2023] P.T.S.R. 1148
[4] 013 Reference ID: 17a-013-20230726
[5] Norfolk Homes v North Norfolk DC and Norfolk CC [2010] EWHC 2265

21. It follows that the existing section 106 agreement is not before me. As the appeal proposal and the section 106 agreement are separate independent entities, I can see no legal or procedural barrier preventing me from making a decision.

22. I acknowledge that allowing this appeal, would lead to an inconsistency between the planning permission and the section 106 agreement. The appellant may have the benefit of planning permission to build the scheme without affordable housing but the provisions of the section 106 requiring such provision would still be enforceable. The modification of the section 106 would be a separate legal matter between the appellant and the Council. It is common ground between the parties that the appeal decision cannot oblige the Council to modify or discharge the existing section 106 agreement. Clearly my decision could not necessitate any such modification, though it would of course be a material consideration.

23. Should the appeal be allowed, there could be two potential ways forward. Firstly, that the parties agree a Deed of Variation to the existing agreement. If that cannot be achieved, the second option would be for the appellant to make an application under section 106A of the 1990 Act. This provides for an application to modify or discharge an obligation after a period of 5 years has lapsed since the date on which the obligation was entered into. This would not be until July 2025 and would result in the site remaining vacant and implementation of the scheme being delayed.

24. In summary, I conclude that a section 73 application can be approved which would necessitate a variation to an existing section 106 agreement, given section 106A.

*Viability*

25. There is dispute between the parties as to whether the appeal scheme can provide affordable housing having regard to viability.

26. In the Viability Statement of Common Ground, it is set out that there are four areas of disagreement. These relate to gross annual residential rental income, construction costs, developer profit and debit interest rate. At the Inquiry I was advised that a figure of 8% for the debit interest rate had been agreed. I do not therefore need to consider this parameter any further and I concentrate on the three remaining areas of dispute.

i. Residential market rental income.

27. The residential accommodation schedule for the scheme includes the provision of studio apartments and 2 bed, 3 bed and 4 bed units. It is the weekly rental income for the studio apartments where the parties cannot agree. The appellant argues that an average weekly rental income of £185 per week is achievable whilst the Council suggests the local market is achieving £215 per week.

28. By way of supporting evidence, the appellant refers to two schemes in Coventry and Leicester that they operate which are also achieving a rental income of the level put forward in this case. However, it is not clear whether these schemes provide the same level of facilities and in any event, I have no evidence that the rental markets in these locations are comparable to Sheffield. I therefore give them limited weight in my decision.

29. I am advised that the figure of £185 per week was agreed between the parties up until March 2023. At this time the Council undertook a reappraisal of the local market. The Council refers to two schemes in very close proximity to the appeal site, Telephone House and Fenton House which have studio apartments of similar size to those proposed, advertised for rent in the 2023/24 academic year at £215 per week and above, depending on the standard of accommodation. The Council argues this rent level is indicative of the market in the local area of the appeal site.

30. However, this is only two schemes out of several other Purpose-Built Student Accommodation (PBSA) schemes in the vicinity and out of all the student accommodation in the city. It is difficult to make a clear comparison of rental incomes because of the differences in accommodation provided, for example room sizes, facilities, age and condition of the buildings and also incentives offered to attract renters. This suggests to me that it is reasonable to take account of the rental incomes being achieved in the wider student housing market.

31. A market study of PBSA schemes prepared by Cushman and Wakefield for the City Council in December 2021 found that at that time the average rent for a studio was £172. This figure is similar to the finding of the Whole Plan Viability Report for the emerging Local Plan which found average rents for studios in May 2022 to be just under £179 per week. Clearly rents have increased since then. A Student Property Report produced by Knight Frank in 2023 considered the national picture and found that average studio rents for the regions outside London was just over £200 per week. Whilst this is indicative of the rents being achieved, it forms an average figure and does not demonstrate the wide regional variations.

32. In order to provide up to date local comparison evidence, in July 2023 in preparation for the appeal, the appellant instructed Knight Frank to provide a PBSA rental analysis report for Sheffield. This study looked at 123 schemes and concluded that for the academic year 2022/23, the average rental income for a studio was £156 per week, the range being a lower quartile figure of £122 and an upper quartile figure of £206 per week.

33. Notably the report states that high end luxury private operators are contributing to the upper quartile rental levels, which includes the Telephone House scheme quoted by the Council as an appropriate rental comparator. In terms of where the appeal scheme fits within the market, the appellant stated at the Inquiry that it would sit above the median but below the upper quartile schemes. I have no evidence before me to suggest this is an inaccurate assessment.

34. In this context, the appeal scheme would be expected to achieve a rental income between the median figure of £159 per week and the upper quartile figure of £206, in the region of £185 per week. This supports the appellant's assessment.

35. However, the Knight Frank report looks at rental incomes in the last academic year 22/23 and all parties agree that rents have risen in the last year. As an example, the Council refer to the Fenton House scheme, where the rent has risen from £199.75 per week for a 48-week term in August 2022 to £215 per week in June 2023. The Knight Frank Student Property report suggests that rental growth in 2023 could be in excess of 5%. Even allowing for such an

increase, the rental income of the appeal scheme would be around £195 per week, well below the £215 per week level suggested by the Council.

36. Given the above, I consider the rental income likely to be achieved is somewhere between the two figures quoted by the parties, at around £195 per week.

ii. Block Construction Costs

37. The differences between the parties in terms of build costs stem from different approaches to their calculation. The appellant uses a build cost figure that the Council agreed for the construction of a scheme at Milton Street Car Park in March 2023. In contrast the Council suggest that the cost assessment for the appeal scheme produced in 2019 should be used as a starting point, increased by inflation based on the BCIS General Building Cost Index.

38. Both approaches have their flaws. Firstly, in the Milton Street scheme, the build costs were based on a bespoke costs plan for the development. There is no evidence that this is compatible to the appeal scheme or whether there are specific circumstances that meant this scheme would be more or less costly than the appeal scheme. The Milton Street scheme is 26 storeys in height while the appeal scheme is 38 storeys. It is accepted that a higher building has higher build costs.

39. Using the 2019 build cost estimate uplifted by inflation provides consistency in the approach to viability taken so far by the parties but it is also problematic. Firstly, applying indexation reduces accuracy. Secondly the original cost estimate was based on a different scheme of 32 storeys and furthermore the design and materials to be used have changed.

40. It was agreed at the Inquiry that the differences in build costs do not make that much difference in terms of overall viability. Nevertheless, based on the evidence before me, I take the view that the higher build costs put forward by the appellant are to be preferred.

iii. Developer Profit

41. PPG states that developer profit is appropriate within the range of 15-20% of Gross Development Value. The Whole Plan Viability Assessment which forms part of the evidence base to the emerging Local Plan, uses a figure of 17.5% in its assessment of viability to demonstrate that allocations within it will be viable and policy compliant.

42. It is not unreasonable that the developer profit on a build to rent scheme as proposed here, would be lower than the profit level suggested by the PPG. In fact, the PPG in paragraph 019 recognises that the economics of a build to rent scheme are different to a build for sale scheme as they depend on a long term income stream.

43. Against this background, the appellant suggests a developer profit of 15% would be appropriate while the Council suggests a figure of 10%.

44. The appellant agreed the 10% figure up until June 2022. However, since then market conditions have changed with significant increases in interest rates, increase in inflation, increased treasury yields and increased insolvencies in the

construction sector. Developer profit is an indication of risk and as risk is increasing, it is reasonable for-profit levels to also increase.

45. I note that the Council has consistently used a figure of 10% for viability testing and provides examples of four schemes that they have assessed during 2021, 2022 and 2023, including the Milton Street scheme. It is notable that the Milton Street scheme does not include affordable housing and the appellant advises that none of the other three schemes have yet been delivered. This may suggest deliverability issues.

46. Whilst respective developers may have accepted the Council's 10% profit level during the appraisal process, the economic climate has changed significantly over that period. Furthermore, the acceptance of a 10% profit level is a matter for the individual developer and will vary due to a range of factors including the design of the scheme, the business model, and the availability and cost of finance.

47. Given the above, I find 10% developer profit to be too low. It is reasonable for the developer profit level to be set at 15%, at the lower end of the range suggested by the PPG.

*iv. Overall conclusions on viability*

48. The Council has helpfully undertaken sensitivity testing for the scheme's viability. This takes account of different rental income levels between £190 to £210 per week and assesses both the higher and lower build costs suggested by the respective parties. This work concludes that 10% affordable housing is still viable at a rental income of £197.96 per week assuming the 10% profit level and the appellant's higher build costs.

49. Based on my conclusions, that rental levels are likely to be just below that figure and that a reasonable developer profit would be 15%, it is highly likely that the scheme would be unviable and unable to deliver 10% affordable housing.

**Planning Obligation**

50. The appellant has submitted a Unilateral Undertaking (UU) capable of securing planning obligations pursuant to section 106 of the Town and Country Planning Act 1990 which provides a viability review mechanism. This would ensure that any increase in the profitability of the scheme and the ability of the proposal to contribute towards affordable housing could be assessed at different stages in the development. It is proposed that should the scheme remain below ground level at the end of 12 months or below eaves height within 3 years, a viability review should be undertaken. These trigger points are in line with the Council's CIL and Planning Obligations Supplementary Planning Document (SPD). The UU also provides that should the Council and the appellant be unable to agree scheme viability, then an independent assessor be appointed to resolve any dispute.

51. The terms of the obligation were discussed at the Inquiry at length which culminated in a revised version being submitted after the event. In addition to the review mechanism, the UU obligates the appellant to pay a fee to the Council for monitoring compliance with the UU and to pay their costs in appointing an external consultant to assess any submitted viability appraisal as well as their legal costs. As the appeal proposal is a build to rent scheme, the

obligation also requires that the developer offers a tenancy term of at least 3 years.

52. The obligation proposes that if it is determined that the scheme is viable, a financial contribution towards affordable housing be provided, rather than on site provision. The Council would prefer the latter as in practical terms a greater number of units could be provided on site for the same level of contribution.

53. Guideline GAH3 of the Council's CIL and Planning Obligations SPD sets out the circumstances in which a commuted sum in lieu of on-site provision would be acceptable. I have no evidence before me to suggest that the scheme would meet any of these criteria. However, I would argue that as the scheme is for a specialised residential use, there are exceptional circumstances that in this case, would make off site provision a more appropriate option.

54. I consider that the obligations are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development. I am satisfied that they meet the requirements of the Community Infrastructure Levy Regulations 2010 and I have therefore take the UU into account in my decision.

**Planning balance**

55. In light of my findings above, I must now consider whether the appeal scheme is acceptable without the provision of affordable housing having regard to the development plan.

56. Policy CS40 of the Sheffield Core Strategy 2009 requires new housing developments to contribute towards the provision of affordable housing where this is practicable and financially viable. As I have determined that the appeal scheme would not be viable, there is no conflict with this policy.

57. Policy CS41 is also relevant. This policy seeks to create mixed communities by encouraging housing developments to meet a range of housing needs including a range of prices, size and tenure. Part a) of the policy requires the provision of housing for a broad range of smaller households in the City Centre, where no more than half the new homes in larger developments should consist of a single housetype.

58. The above policy pre-dates the National Planning Policy Framework (the Framework). It is not entirely consistent with paragraph 60 of the Framework in that it does not address the needs of groups with specific housing requirements, in this case students and young professionals seeking co living opportunities. Furthermore, the Council cannot demonstrate a five-year supply of housing. Accordingly, Policy CS41 is out of date and the parties agree that it should be attributed very limited weight. I concur with this view.

59. The Council's emerging plan has reached Regulation 19 stage but has not as yet been submitted for examination. Draft Policy NC5 seeks to create mixed communities. Whilst it has similar objectives to Core Strategy Policy CS41, in light of the stage of preparation the emerging plan has reached, it can only attract minimal weight.

60. The Council's concern with the submitted scheme stems from the predominance of studio units. The consented scheme includes just over 84% studios and therefore already exceeds the policy requirement.

61. The accommodation mix in the approved scheme included 3 bed and 4 bed cluster units. The appeal scheme as submitted proposed to remove these from the mix, by providing kitchenettes within the individual bedrooms as well as communal kitchen space. In effect the design of these bedrooms was the same as for studios. This resulted in just over 98% of the units being studio apartments, the remainder being 2 bed apartments.

62. To address this issue, the appellant suggested a condition be imposed so that notwithstanding the approved layout, no cooking facilities shall be installed in the bedrooms of the two, three and four bed cluster flats but the communal facilities would remain.

63. Following discussion about a potential condition at the Inquiry, at which the Council raised concern about enforcement issues, the appellant offered to submit revised plans to address the matter, removing the cooking facilities. These were accepted by the Council. As these very minor amendments do not prejudice any party, I take account of them in my consideration of this appeal.

64. Based on the revised plans, the housing mix remains the same as that approved, with the exception of the provision of affordable housing.

65. I accept that the lack of affordable housing degrades the accommodation mix in the scheme. However, the proposal would provide a mix of accommodation types not just for students but also for young professionals through a co living product. The co living concept is relatively new and can be described as a hybrid between PBSA and build to rent. It has a similar format to student accommodation, in that there is communal internal and external space. It promotes a community focused lifestyle which many new graduates and young professionals may prefer particularly as the product is more affordable than the traditional private rent. The Council has accepted, in one other co living scheme in the city, that the proposal may not necessarily assist the policy aims of creating mixed communities but overall would add variety to the housing market.[6]

66. I note that the Council has approved several other PBSA schemes[7] and has recognised that they are aimed at specific user groups with the inability of schemes of this type to attract a mix of types and tenures. The Council recognised in the Officer Report for the original application that a departure from Policy CS41 whilst not being ideal, would not harm an existing community which could be imbalanced or adversely affected by the lack of mix.

67. Given the above, I conclude that whilst there is conflict with Policy CS41, it is very limited. With the exception of the provision of affordable housing, the appeal proposal continues to provide the social, economic and environmental benefits of the consented scheme. Given the very limited weight attributed to Policy CS41, I find that the scheme complies with the development plan taken as a whole. Section 38(6) of The Planning and Compulsory Purchase Act 2004 states determination must be made in accordance with the plan unless material considerations indicate otherwise. Accordingly, as I have found the appeal

[6] Officer report - planning application ref 22/01621/FUL CD 7.6
[7] 19/02484/FUL and 20/00873/FUL

scheme accords with the development plan, and as material considerations do not indicate otherwise, the appeal should be allowed.

**Conditions**

68. Decision notices for the grant of planning permission under section 73 are also required to restate the conditions imposed on earlier permissions that continue to have effect. A decision maker also has the power to not attach conditions which were previously imposed, or to attach modified versions of them.

69. The parties provided a revised agreed list of conditions after the event in an addendum Statement of Common Ground. Condition 1 provided a time limit for the commencement of development. It was discussed at the Inquiry that its imposition was an error, as the scheme had already commenced. I therefore delete it.

70. Condition 2, the subject of this appeal, is further amended to take account of the revised plans submitted during the course of the appeal. The schedule takes account of all the changes made under subsequent section 73 applications including the deletion of conditions 21 and 34 and the replacement of condition 34 with condition 41. Condition 15 is no longer necessary as it required the submission of Highway Improvement Works which has been complied with. The attached schedule of conditions also reflects the numerous applications made to approve details reserved by conditions and amends them accordingly to require compliance with the approved details.

71. I have renumbered the conditions in the attached schedule to take account of the deletions.

**Conclusion**

72. For the reasons given above and having had regard to all other matters raised, I allow this appeal and grant a new planning permission without the disputed condition 2 but substituting it with a new plans condition and subject to the revised conditions in the attached schedule.

*Helen Hockenhull*

INSPECTOR

## APPEARANCES

FOR THE APPELLANT:

Counsel:

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|---|---|
| Paul G Tucker KC | Instructed by Chris May of Howes Percival LLP |
| Stephanie Hall | |

Witnesses:

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| Nigel Burdett BSc (Hons) | Director, Intali |
| Andrew Bickerdike BA (Hons) MSc MRTPI | Director, Turley |

FOR THE LOCAL PLANNING AUTHORITY:

Counsel:

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| Stephen Whale | Instructed by Legal Services, Sheffield City Council |

Witnesses:

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| David J Newham MRICS | CP Viability Ltd |
| Michael Eaglestone BA (Hons) MA MRTPI | Principal Planning Officer, Sheffield City Council |

DOCUMENTS SUBMITTED AT THE EVENT

1. Opening submissions on behalf of the appellant
2. Opening submissions on behalf of the Council
3. Closing Submissions by the Council*
4. Closing submissions by the appellant *

*Submitted electronically before virtual sitting on Friday 28 July 2023

DOCUMENTS SUBMITTED AFTER THE EVENT

1. Final agreed Addendum to SoCG with proposed conditions.
2. Certified copy of Unilateral Undertaking dated 2 August 2023.

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan - P02 Rev AC, Proposed Plans - P03 Rev AJ, Proposed Plans - P04 Rev Y, Proposed Elevation 1 - P101 Rev K, Proposed Elevation 2 - P102 Rev J, Proposed Elevation 3 - P103 Rev I, Proposed Elevation 4 - P104 Rev J, Proposed Elevation 5 - P105 Rev I, Proposed Elevation 6 - P106 Rev I, Proposed Street Elevation - P107 Rev J, Contextual Street Elevation - P108 Rev L, Illustrative Views - P201 Rev K, Illustrative Views - P202 Rev J, Illustrative Sections and Bay Details – P303 Rev J and Landscape Masterplan–Sk1537–P401 I.

2) The development is a phased planning permission which shall be carried out in accordance with the following phases:

   a) Phase one shall comprise the demolition of existing buildings, including the removal of existing ground slabs.

   b) Phase two shall include all other construction works, including but not limited to enabling, engineering and preparatory works.

3) The development shall be carried out in accordance with the Employment and Development Plan approved by the Council on 26 May 2021 pursuant to application reference 19/03779/COND3.

4) The development shall be carried out in accordance with the archaeological Written Scheme of Investigation approved by the Council on 11 August 2021 pursuant to application reference 19/03779/COND7 subject to the further submission of a detailed post-excavation report to allow a detailed understanding of the site to be gained as well as associated publication and archiving. This further report shall be submitted to and approved by the Local Planning Authority before any works on site re-commence.

5) The development shall be carried out in accordance with the Construction Environmental Management Plan approved by the Council on 28 September 2021 pursuant to application reference 19/03779/COND4.

6) The Surface Water Drainage scheme shall be implemented in accordance with the details approved by the Council on 23 July 2021 pursuant to application reference 19/03779/COND9.

7) The reduction in surface water peak flow shall be in accordance with the Drainage Design approved by the Council on 23 July 2021 pursuant to application reference 19/03779/COND9.

8) The development shall be carried out in accordance with the contamination and remediation report and details approved by the Council on 20 September 2021 pursuant to application reference 20/04572/COND1.

9) The development shall be carried out in accordance with the Phase 2 Ground Investigation Report and the Coal Mining Grouting Specification Drawing approved by the Council on 28 May 2021 pursuant to application reference 19/03779/COND5.

10) The development shall be carried out in accordance with the Phase 2 Ground Investigation Report, Terra97 ref. C21374G Issue 1.1; 17/06/2021 and Remediation Strategy Report, Terra97 ref. C21374RS

Issue 1.2; 17/06/2021 approved by the Council on 20 September 2021 pursuant to application reference 20/04572/COND1.

11) The development shall be carried out in full accordance with the 'Wellington Street Co-Living Scheme Fabric First 10% DFEE Report - Rev J'. The measures to achieve a minimum 10% reduction in energy requirements through the fabric first approach, shall have been installed/incorporated before any part of the development is occupied, and a report shall have been submitted to and approved in writing by the Local Planning Authority to demonstrate that the agreed measures have been installed/incorporated prior to occupation. Thereafter the agreed measures shall be retained in use and maintained for the lifetime of the development.

12) The development shall be carried out in accordance with the vehicular ingress and egress details approved by the Council on 28 September 2021 pursuant to application reference 19/03779/COND4.

13) The development shall be carried out in accordance with the details of site accommodation including an area for delivery/service vehicles to load and unload, the parking of associated site vehicles and the storage of materials approved by the Council on 28 September 2021 pursuant to application reference 19/03779/COND4.

14) The Highway Improvement Works listed within the Section 278 (Highways Agreement) shall be carried out before the development is brought into use, as approved by the Council on 18 November 2021 pursuant to application reference 20/04572/COND2.

15) The development shall be carried out in accordance with the details relating to effective cleaning of wheels and bodies of vehicles leaving the site approved by the Council on 28 September 2021 pursuant to application reference 19/03779/COND4.

16) The development shall not be used unless all redundant accesses have been permanently stopped up and reinstated to kerb and footway, and any associated changes to adjacent waiting restrictions that are considered necessary by the Local Highway Authority including any Traffic Regulation Orders are implemented.

17) The co-living accommodation shall not be occupied until details of a scheme have been submitted to and approved in writing by the Local Planning Authority to ensure that, with the exception of disabled persons, the future occupiers of the residential units will not be eligible for resident parking permits within the Controlled Parking Zone. The future occupation of the residential units shall then occur in accordance with the approved details.

18) Prior to occupation of the development, or an alternative timeframe to be agreed in writing by the Local Planning Authority, a Detailed Travel Plan based on the submitted Interim Travel Plan shall have been submitted to and approved in writing by the Local Planning Authority. The Detailed Travel Plan shall include:

    a) Clear & unambiguous objectives to influence a lifestyle that will be less dependent upon the private car;

b) A package of measures to encourage and facilitate less car dependent living;

c) A time bound programme of implementation and monitoring in accordance with the City Councils Monitoring Schedule;

d) Provision for the results and findings of the monitoring to be independently validated to the satisfaction of the Local Planning Authority;

e) Provisions that the validated results and findings of the monitoring shall be used to further define targets and inform actions proposed to achieve the approved objectives and modal split targets.

Prior to occupation of the development, or an alternative timeframe to be agreed in writing by the Local Planning Authority, evidence that all the measures included within the approved Detailed Travel Plan have been implemented or are committed shall have been submitted to and approved in writing by the Local Planning Authority.

19) The development shall be carried out in accordance with the details of the cycle parking approved by the Council on 11 August 2021 pursuant to application reference 19/03779/COND7.

20) The residential accommodation hereby permitted shall not be occupied unless a scheme of sound insulation works has been installed and thereafter retained. Such scheme of works shall:

a) Be based on the findings of approved noise assessment report ref 03409- 730103 (19/09/19).

b) Be capable of achieving the following noise levels:

Bedrooms: LAeq (8 hour) - 30dB (2300 to 0700 hours);

Living Rooms & Bedrooms: LAeq (16 hour) - 35dB (0700 to 2300 hours);

Other Habitable Rooms: LAeq (16 hour) - 40dB (0700 to 2300 hours);

Bedrooms: LAFmax - 45dB (2300 to 0700 hours).

c) Where the above noise criteria cannot be achieved with windows partially open, include a system of alternative acoustically treated ventilation to all habitable rooms.

Before the scheme of sound insulation works is installed full details thereof shall first have been submitted to and approved in writing by the Local Planning Authority.

21) Before the use of the development is commenced, Validation Testing of the sound insulation and/or attenuation works shall have been carried out and the results submitted to and approved by the Local Planning Authority. Such Validation Testing shall:

a. Be carried out in accordance with an approved method statement.

b. Demonstrate that the specified noise levels have been achieved. In the event that the specified noise levels have not been achieved then, notwithstanding the sound insulation and/or attenuation works thus far approved, a further scheme of works capable of

achieving the specified noise levels and recommended by an acoustic consultant shall be submitted to and approved by the Local Planning Authority before the use of the development is commenced. Such further scheme of works shall be installed as approved in writing by the Local Planning Authority before the use is commenced and shall thereafter be retained.

22) All development and associated remediation shall proceed in accordance with the recommendations of the approved Remediation Strategy. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy, or unexpected contamination is encountered at any stage of the development process, works should cease and the Local Planning Authority and Environmental Protection Service (tel: 0114 273 4651) should be contacted immediately. Revisions to the Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority. Works shall thereafter be carried out in accordance with the approved revised Remediation Strategy.

23) Upon completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. The development shall not be brought into use until the Validation Report has been approved in writing by the Local Planning Authority. The Validation Report shall be prepared in accordance current Land Contamination Risk Management guidance (LCRM; Environment Agency 2020) and Sheffield City Council's supporting guidance issued in relation to validation of capping measures and validation of gas protection measures.

24) No externally mounted plant or equipment for heating, cooling or ventilation purposes, nor grilles, ducts, vents for similar internal equipment, shall be fitted to the building unless full details thereof, including acoustic emissions data, have first been submitted to and approved in writing by the Local Planning Authority. Once installed such plant or equipment shall not be altered.

25) The development shall be carried out in accordance with the detailed landscaping scheme approved by the Council on 18 June 2021 pursuant to application reference 19/03779/COND10.

26) The approved landscape works shall be implemented prior to the development being brought into use or within an alternative timescale to be first approved by the Local Planning Authority. Thereafter the landscaped areas shall be retained, and they shall be cultivated and maintained for a period of 5 years from the date of implementation and any plant failures within that 5 year period shall be replaced.

27) The development shall be carried out in accordance with the ecological enhancement details approved by the Council on 18 June 2021 pursuant to application reference 19/03779/COND10.

28) Details of all proposed external materials and finishes, including samples when requested by the Local Planning Authority, shall be submitted to and approved in writing by the Local Planning Authority before that part of the development is commenced. Thereafter, the development shall be carried out in accordance with the approved details.

29) A sample panel of the proposed masonry shall be erected on the site and shall illustrate the colour, texture, bedding and bonding of masonry and mortar finish to be used. The sample panel shall be approved in writing by the Local Planning Authority before any masonry works commence and shall be retained for verification purposes until the completion of such works.

30) Large scale details, including materials and finishes, at a minimum of 1:20 scale of the items listed below shall be approved in writing by the Local Planning Authority before that part of the development commences:

a) Windows and doors

b) Window reveals

c) Metal detail to windows

d) Ground floor glazing

e) Commercial unit shop front

f) Detail and cross section of window bays

g) Canopy

h) Louvers

i) Parapet

j) Service entrance doors

Thereafter, the works shall be carried out in accordance with the approved details.

31) The development shall be carried out in accordance with the service yard signage details approved by the Council on 11 August 2021 pursuant to application reference 19/03779/COND7.

32) No customer shall be permitted to be on the premises of any commercial use adopted within the building outside the following times: 0700 hours to 2330 hours Monday to Saturday and 0800 hours to 2300 hours on Sundays and Public Holidays.

33) No amplified sound or live music shall be played within the commercial use(s) hereby permitted at above background levels, nor shall loudspeakers be fixed externally nor directed to broadcast sound outside the building at any time. The specification, location and mountings of any loudspeakers affixed internally to the building shall be subject to written approval by the Local Planning Authority prior to installation.

34) Movement, sorting or removal of waste materials, recyclables or their containers in the open air shall be carried out only between the hours of 0700 to 2300 Mondays to Saturdays and between the hours of 0900 to 2300 on Sundays and Public Holidays.

35) Commercial deliveries to and collections from the building shall be carried out only between the hours of 0700 to 2300 on Mondays to Saturdays and between the hours of 0900 to 2300 on Sundays and Public Holidays.

36) No doors/windows shall, when open, project over the adjoining highway.

37) Prior to that part of the development commencing a sample of the UPVC window frame shall be submitted to and approved in writing by the Local

Planning Authority. Thereafter the development shall be constructed in accordance with the approved details.