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## Appeal Decision

Inquiry held on 4-6 August 2026

Site visits made on 3 and 5 August 2026

**by R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 17<sup>th</sup> September 2026**

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**Appeal Ref: APP/J4423/C/26/3378304**

**Steps Rehabilitation, 30 Troutbeck Road, SHEFFIELD, S7 2QA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
  - The appeal is made by Steps Rehabilitation Ltd & Gladman Retirement Ltd against an enforcement notice issued by Sheffield City Council.
  - The enforcement notice was issued on 26 February 2026.
  - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on planning permission ref 13/02019/OUTR, granted on 28 January 2014.
  - The development to which the permission relates is: Erection of retirement village, including nursing care home, EMI/dementia care home, sheltered accommodation for the over 65's, Special Needs Independent Living unit.
  - The condition in question is no 13 which states that:  
Prior to any development commencing on site full details of the proposed riverside walk/cycleway shall be been (sic) submitted to and approved in writing by the local Planning Authority. Such details shall include proposals for providing a link from the riverside walk/cycleway to the adopted highway and such link and riverside walk/cycleway shall be provided prior to the development being occupied.
  - The notice alleges that the condition has not been complied with in that:  
The details of the riverside walk/cycleway were submitted to and approved by the Council on 25 February 2016 under an approval bearing reference 13/02019/COND1. Notwithstanding this approval the development was occupied without the provision of the approved riverside walk/cycleway and remains occupied without compliance with condition 13 in relation to the requirement to provide the approved riverside walk/cycleway.  
Non-provision of the riverside walkway/cycleway constitutes a breach of Condition 13 of planning permission ref 13/02019/OUTR.
  - The requirements of the notice are to: i. Execute the works to form the riverside walk/cycleway, as approved under application reference 13/02019/COND1. ii. Remove any waste materials arising from compliance with paragraph 5(i), above from the Land.
  - The period for compliance with the requirement is: 18 months
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (d) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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### Decision

1. It is directed that the enforcement notice is corrected by the deletion of the word 'as' and replaced with the words 'in accordance with plan ref. 1393/10 Rev M as submitted and' in Section 5i.
2. Subject to the correction, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Application for costs**

3. An application for costs was submitted by Steps Rehabilitation Ltd and Gladman Retirement Living Ltd against Sheffield City Council. That application is the subject of a separate decision.

### **Procedural Matters**

4. Prior to the Inquiry, a Case Management Conference (CMC) was held with the main parties. No evidence was heard there, but the question of whether the appellants' evidence included a hidden ground (d) appeal was raised. Following some discussion at the CMC, I directed that the claim that Condition 13 no longer had effect due to the operation of principles established in *Hillside*<sup>1</sup> properly fell within ground (d). It is considered as such here.
5. Distinct to that, at the Inquiry, the appellants confirmed a contention that the riverside path was without planning permission following the grant of outline and reserved matters approvals was not pursued. As such, that part of the appellants' case as originally made out under ground (c) fell away. It was not considered further.
6. On 17 August 2026 the Government published a replacement version of the National Planning Policy Framework (the Framework). In the interests of fairness and openness, the main parties were invited to provide comments on any relevant national policy changes. I have had regard to those comments and the revised Framework in coming to my decision.

### **Background**

7. An outline planning permission (pp) with details of access for the 'Erection of retirement village, including nursing care home, EMI/dementia care home, sheltered accommodation for over 65's, Special Needs Independent Living Unit' was approved under ref. 09/02704/OUT on 14 September 2010 (the 2010 permission). This related to both the land identified in the Notice (the STEPS Rehabilitation Centre and bordering land) and the adjoining land to the south-west (the Gladman Retirement Living accommodation known as Jacob's Gate).
8. A replacement outline pp ref. 13/0219/OUTR was granted for the same description of development on 28 January 2014 (the 2014 permission). This was granted under the provisions of the Town and Country Planning (General Development Procedure) (Amendment No.3) (England) Order 2009. It replaced the earlier extant pp by an effective extension of the time for implementation.
9. That was followed by reserved matters application ref. 15/00144/REM for Block C – a nursing care facility (the STEPS Rehabilitation Centre). It was approved in May 2015 (the STEPS approval). This was implemented. Prior to the building's construction, an application to discharge conditions on the 2014 permission was submitted under reference 13/02019/COND1. This was partly approved, partly refused. Details for Condition 13 were confirmed in writing as approved by notice dated 3 October 2016.
10. On 20 December 2018, an application for full pp for the 'Erection of 4 storey building accommodating 65 apartments with communal facilities (Use Class C2 –

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<sup>1</sup> *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30

Residential Institution), car parking provision, associated amenity space, landscaping and additional parking for STEP's rehabilitation centre' was granted under pp ref. 18/00972/FUL (the 2018 pp). This was also built out.

### **Ground (b) and the Notice**

11. The appellants claim the Notice is a nullity and should be quashed. The appellants contend that Condition 13 is breached by occupation of the building in advance of the delivery of the riverside path. Accordingly, rather than allege the non-provision of the path, the appellants assert that the Notice should be directed at the occupation of the building as the 'sanction' within the phrasing of the Condition.
12. The purpose of Condition 13 is stated in the 2014 Decision Notice as 'In order to enable the provision of a riverside walkway'. The trigger for agreeing details was before commencement of the development and delivery of the path was required 'prior to occupation'. The purpose of the condition was to secure a walkway. The condition does not seek to regulate the occupation for any planning purpose, nor was it a condition preventing the occupation of the building. Nothing I heard at the Inquiry pointed to its purpose as a mechanism primarily to control occupation.
13. Notwithstanding, there was no dispute between the parties that an enforcement notice could have alternatively sought that the building be vacated. However, to achieve the delivery of the riverside path, any alternative enforcement notice would also need to specify a requirement for its delivery.
14. The appellants assert that a de-occupation of the building now would mean they were no longer in breach of the terms of the permission but would, nevertheless, be subject to potential prosecution because the Notice would remain in force. This was not disputed by the Council.
15. However, that is not correct. There is no dispute between the main parties that, on the day the Notice was issued, the riverside path had not been provided and the building was occupied. A subsequent de-occupation of the building is not required by the Notice, and it would **not** remedy the breach because it would not deliver the riverside path. If an enforcement notice had been phrased to require de-occupation of the building alone it would not resolve the breach and satisfy the purpose of the condition.
16. The building has been occupied, and, whether vacated or not, the terms of the condition cannot now strictly be complied with because occupation has occurred in the past. However, it is open to a local planning authority to under-enforce. Absent a requirement to vacate the building and to only seek delivery of the riverside path is the Council's prerogative. In my view, that was a legitimate approach to the enforcement and remedy of the alleged breach.
17. At the Inquiry I heard that the theoretical scenario of the Notice requiring de-occupation of the building would be unjust insofar as it would not be possible for Gladman to comply with such a requirement as it does not own or occupy the building. The Notice doesn't require it. However, that proposition does lend weight to the Council's approach to only require operational works on land under the control of the appellants rather than effect anything against occupation.
18. The appellants additionally contend that the Notice fails to comply with s173 of the Act because Para. 5i of the Notice is imprecise insofar as there is ambiguity as to

what the Notice requires. The case of *Miller-Mead*<sup>2</sup> held that the test is namely whether the enforcement notice tells the recipient fairly what they have done wrong and, with reasonable certainty, what steps had to be taken to remedy the alleged breach. In consideration of that case Upjohn LJ in the Court of Appeal stated a 'notice is not a nullity [where] on the face of it it appears good and it is only on proof of facts aliunde [from another place] that the notice is shown to be bad...and, therefore, it may be quashed'.

19. Paragraph 5i of the Notice refers to the details approved for Condition 13 under application ref 13/02019/COND1. The appellants contest that this is imprecise because the decision letter issued on that application only lists a single plan. The appellants assert that on fair reading of the document, only plan ref 1393/10 Rev L could be construed as being approved. That plan shows only the line of a riverside path of limited width.
20. The Town and Country Planning (Development Management Procedure) (England) Order 2015 does not specify a format or minimal content requirement for decisions relating to the approval/refusal of details required by condition, or their discharge. On review of the decision letter, a recipient of the Notice would not be clear on what was required of them based on that alone. At the Inquiry, the Council acknowledged that shortcoming.
21. On plain reading of the letter of 3 October 2016, the references to plan 1393/10 Rev L along with the punctuation, arrangement and wording appearing in the text patently relate to Conditions 24 and 26. Notwithstanding, the absence of references to any other documents or plans fails to provide clear detail of what was approved and what the Notice requires. The 'standard practice' of corresponding directly with a knowing applicant/agent is distinct from providing clarity by reference through an enforcement notice. Following *Miller-Mead*, the reference to the approved details as the remedy to the breach is sufficient to avoid a case for nullity. Nevertheless, the Notice is invalid because it is not sufficiently precise to lead a recipient to the exact detail that the Council is referring to.
22. However, the letter does refer to the application deposited with the Council. While there was no dispute that a later revision of the plan (1393/10 Rev M) was on file and showed a greater width to the riverside path and a detailed construction section, I heard conflicting evidence as to its accessibility within the submitted documentation. As the latest iteration of the plan before the Council, and the only one including the detail of construction of the path, I consider it to be the one most probably approved. Alongside numerous other documents which must have been submitted but are unreferenced in the decision letter, such as the highway improvement works, tree protection, drainage details and remediation reports, for example, and the absence of direction to any other construction detail for the path, it seems to me that the Rev M plan can be the only applicable detail.
23. Even if there were discrepancy within this, I consider correction of the Notice to explicitly refer to the Rev M plan would not lead to injustice in this instance and could be duly corrected using the powers available in section 176(1)(a) of the Act. This is because I heard that the appellants have been in discussion with the Council over several years which included the submission of alternative details for agreement under Condition 13<sup>3</sup>. Such details exceed those shown on plan

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<sup>2</sup> *Miller-Mead v MHLG* [1963] 2 WLR 225

<sup>3</sup> 13/02019/COND3

ref 1393/10 Rev L. Furthermore, reference to a 3m wide path was made in correspondence between the main parties as early as October 2022<sup>4</sup>. It is therefore clear that the appellants did not reasonably expect to deliver a path in accordance with the Rev L plan. If injustice could otherwise arise, this was not raised by the appellants.

24. For those reasons, I find the breach as alleged has occurred and the appeal on ground (b) fails; however, a correction is required to improve the precision of requirement 5i and this can be made because no injustice would arise to the main parties in the appeal if that were imposed. Subsequent to that correction, I find the Notice complies with s173 of the Act.

### **Ground (c)**

25. In breach of condition cases, an appeal on ground (c) may include contention that the Condition is invalid such that it cannot be complied with. Here the appellants question the validity of the Condition insofar as it seeks the detail and implementation of a link between the riverside path and the adopted highway.
26. On the appellants' contention, any such link lies outside of the outline permission site and outside of land under their control. As a pre-commencement condition, it is unclear to me if that *Grampian* style condition was unreasonably imposed. This is because there is little to demonstrate that it was not within the gift of the [then] applicant to meet its requirements at the time the outline permission was granted.
27. There is no dispute that because of changing land ownerships, the conditional requirement for a link element may not be within the gift to be provided by the appellants. However, the Notice does not require it. Moreover, the Council has received and approved details in conjunction with Condition 13. It did not include detail of anything more than the connection of the riverside path to the existing road and pedestrian link to Troutbeck Road. That was agreed in writing by the Council. As an approved proposal under Condition 13, there is nothing more on the face of the condition requirements, save the delivery of the riverside path, to be implemented by the owners. There is no requirement to provide anything more outside of the appeal site.
28. This is unsurprising given the established and well-worn route between the adopted highway and the site on which the main vehicular and pedestrian access relies. That much was implicit in the terms of the outline permission. Further, given the inability for a condition to provide for public access or adoption (reiterated in Policy DM6.2.b of the revised Framework) the approval of details under Condition 13 could not add anything of substance further to that existing link.
29. Accordingly, I cannot conclude that the Condition was unreasonably imposed or that it has been demonstrated to fail the policy or legal tests for conditions. I find that as the Condition is valid and, as the path has not been delivered in accordance with the approved details, the appeal on Ground (c) must fail.

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<sup>4</sup> GRL letter to 19 October 2022

### Ground (d)

30. An appeal on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any such breach. Here the appellants assert that the operation of the principles set out in *Hillside* serve to prevent the implementation of any further development approved under the outline planning permission. This is because the full planning permission granted in 2018 overlies a large part of the outline site and is said to be substantially at variance with it. It is contended that the later permission made it physically impossible and therefore unlawful<sup>5</sup> to carry out further development under the terms of the 2014 outline permission and the Notice cannot require it.
31. *Hillside* considered the situation where two or more planning permissions granted for development on the same site are, or are claimed to be, mutually inconsistent. The case established the following principles:
- that express words in the master permission can make individual components of the development severable
  - in a multi-unit development, part completion is not unlawful and not subject to enforcement
  - where implementing a later permission renders any of the earlier permission physically impossible, the earlier permission would then become unlawful for further development (unless the incompatibility is not material in the context of the scheme as a whole)
  - a permission which departed in a material way from that scheme would make it physically impossible and unlawful to carry out any further development
  - a later permission can be seen as authorising a variation of an earlier permission if it covers the whole site.
32. As an outline pp with matters reserved, the 2014 permission clearly had severable elements. Any of the buildings referred to in its description could be delivered in isolation through its terms and conditions requiring the submission of outstanding reserved matters. Such flexibility is facilitated by the nature of the outline/reserved matters regime. Furthermore, the severability is demonstrated by the delivery of the STEPS building in isolation.
33. The subsequent 2018 pp was necessarily a distinct full planning permission because the specified period for the operation of the outline permission was spent. Notwithstanding, *Hillside* requires a determination as to whether anything in that permission would prevent further implementation of anything specified in the 2014 outline permission and the reserved matters approved in conjunction with it.
34. There was little contention by the appellants that any conflict exists between the development granted reserved matters approval in 2015 and the later 2018 pp. Indeed, that later permission provided for parking enhancements in favour of the STEPS building beyond the self-imposed boundary of the STEPS reserved matters approval.
35. However, consideration of the 2014 outline permission included the details of access. I heard from the appellants that the development subject of the 2018 permission overlies and/or varied the approved means of access. As the

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<sup>5</sup> See *Pilkington v SSE* [1973] 26 P&CR 508

appellants highlight, means of access includes the 'means of accessibility to the site and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network'.

36. When comparing approved outline plan ref 1431 SK 01 C of the 2014 outline permission with the 2018 permission, there are conflicts between the footprint of the later approved building and garden footpaths. Although the internal road layout is similar, there are also variations including a truncation of the route close to the railway boundary.
37. However, that is not the full story. Approved plan 1431 SK 01 C is clearly stamped as 'For illustrative purposes only'. At the Inquiry, the significance of that was raised with the parties. Although little was made of it, the Planning Practice Guidance (PPG)<sup>6</sup> states that 'Where details have been submitted as part of an outline application, they must be treated by the local planning authority as forming part of the development for which the application is being made. Conditions cannot be used to reserve these details for subsequent approval. The exception is where the applicant has made it clear that the details have been submitted for illustration purposes only.' Accordingly, the plan explicitly stamped as such must be read in that manner. That PPG provision facilitates the valid imposition of Condition 13 and other conditions relating to matters associated with access to and about the site. Any validity of a condition relating to the approval of a detailed matter was not contested on that basis.
38. For the purposes of consideration of the outline development, the indicative details need only demonstrate that an acceptable scheme is capable of being accommodated at the reserved matters stage. As a plan marked illustrative, it should not at that time or thereafter be presumed that it represents the only way the site could be developed.
39. As highlighted by the Council at the Inquiry, flexibility in the position of garden paths, parking facilities and vehicular routes would generally be necessary and permissible between outline and detailed matters approvals. This is not least because the detail of building positions and the area and form of their footprints were not available at the outline stage.
40. Furthermore, against an 'illustrative' plan, there would be legitimate expectation to any further applicant for additional reserved matters to envisage the outstanding details of layout and landscaping could include associated variation to the internal layout of paths and vehicular routes.
41. Moreover, on fair reading of the 2014 permission, there is provision for variation of the details shown on plan 1431 SK 01C within Condition 2. It required completion in accordance with the approved plan unless otherwise authorised in writing by the Local Planning Authority. Comparison of the STEPS permission to the approved outline plan, shows some such degree of variance to be accommodated through the changes to road positions and alignments, re-sited parking areas and alternative path routing.
42. As an aside, it is notable there that the approved layout plan 1393/10 C includes suggestion of greater changes within the area identified as 'Phase 1 works'. This

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<sup>6</sup>PPG - Use of Planning Conditions Paragraph: 005 Reference ID: 21a-005-20190723

highlights that the applicant then envisaged notable changes to the internal access configuration while retaining the main access and connection points at the site limits. It also anticipated phased works.

43. In the absence of the submission of reserved matters for buildings other than the STEPS accommodation, and mindful that the outline time limit had expired by 2018, none of the other accommodation buildings described in the 2014 permission remained to be built out. While the 2018 permission overlies the outline permission area, there was nothing rigidly fixed that the later development could be described as materially different to, or physically conflicting with, in comparison. In effect, the only access details that were actually fixed were those provided through details required by condition. This includes the riverside path.
44. A riverside path has been delivered on the adjacent Jacob's Gate site which formed part of the outline site. Although the detail approved under Condition 13 shows a more sinuous alignment compared to the straight path delivered under the 2018 pp, it is difficult to conclude that there is any material difference there. A riverside path at, or close to, the break of slope to the riverbank has been provided on the remainder of the original site outside of the Land subject of the Notice. Largely absent a substantive claim otherwise, I see no incompatibility between the permissions in that respect and clearly no physical impediment to a riverside path.
45. It is a matter of note that, in accordance with *Hillside*, the development built out under the outline and reserved matters permissions should be considered lawful. If I was wrong about the status of the access details approved in 2014, it begged the question at the Inquiry as to whether any incompatible 'drop-in' permission could nullify conditions forming part and parcel of that earlier approval. The parties were not placed to answer that question; however, it would seem counter-intuitive if the appellants' position prevailed and a separate permission elsewhere could relinquish all conditional requirements on a development deemed otherwise lawful. Notwithstanding, I give little weight to that unresolved matter here.
46. In conclusion, I find the 2018 permission delivered development which did not materially depart from or prevent the delivery of anything fixed by the earlier outline permission or reserved matters. Moreover, there is nothing incompatible with the severable elements of the 2014 permission which makes completion of the requirements of Condition 13 undeliverable. It is not physically restricted. The principles in *Hillside* are not offended, and the appeal on ground (d) should therefore fail.

### **Ground (a) and the deemed application for removal of Condition 13**

47. Under s174(2) an appeal may be brought on ground (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case maybe, the condition or limitation concerned ought to be discharged. Here the appellants seek the discharge of the Condition 13 requirements.

### **Main Issue**

48. The main issue is whether or not Condition 13 is reasonable, necessary, precise and enforceable in the interests of securing any relevant beneficial planning purpose having regard to the development plan policies and other material considerations.

## Reasons

### *Development Plan Policy*

49. The extant development plan is the Sheffield Unitary Development Plan [1998] (the UDP). Saved Policy GE17 of the UDP was in force when the initial outline permission was granted and remains so. Despite pre-dating the Framework, the long-standing policy remains consistent with its recently reviewed aims and objectives. This includes encouraging sustainable modes of transport, promoting healthy lifestyles and provision of access to and recreational use of green infrastructure. Accordingly, having regard to Paragraph 2 of Annex A of the Framework, the policy is entitled to full weight.
50. Policy GE17 seeks development of the city's Green Network including the protection and enhancement of rivers and streams in the interests of wildlife and, where appropriate, for public access and recreation. Criteria (d) encourages the creation of a continuous public footpath along one bank of major rivers, except where this would conflict with important nature conservation interests or public safety.
51. The policies in the emerging Sheffield Plan Parts 1 and 2 remain the subject of potential modifications following previous rounds of consultation. They attract limited to moderate weight depending on the number and nature of representations made on the modified policies. The appellants suggest the absence of direct reference to a riverside path diminishes commitment to that in the emerging plan. However, at this stage, I understand that they also include provisions for fair access to the city's blue and green infrastructure as a fundamental part of the Council's vision to deliver environmental benefits and promote health and wellbeing. Notwithstanding, at this time, the weight of the existing development plan prevails until adoption of the emerging plan concludes.

### *Limitations*

52. The appellants' case highlighted that there is no requirement within Condition 13 to grant permissive rights for the general public, or indeed, for anyone to use the riverside path if it were constructed. They correctly state that a planning condition cannot require it. In that sense the Condition does not offend the principle in *DB Symmetry*<sup>7</sup> that a condition cannot impose access rights or derogation from the owner's property rights<sup>8</sup>. The appellants' state that, in the absence of public access, the Condition 13 requirements would not meet the aspirations of, and be contrary to, Policy GE17. They also asserted that the delivery of a constrained length of path would be of limited benefit as a 'route to nowhere'.
53. The Council accept the limitation of the Condition. Here the Condition only sought to 'enable provision of a riverside walkway'. It did not seek to create a public right of way or establish any right of access. The Council has since secured access rights through the use of planning obligations under s106 of the Act to achieve that benefit elsewhere.
54. The appellants' highlighted that, because there would be potentially adverse commercial implications, there would be no incentive for the landowners to grant access rights and the wider planning benefits of the path's delivery would thereby

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<sup>7</sup> *DB Symmetry Ltd & anor. v Swindon BC* [2022] UKSC 33

<sup>8</sup> See also Framework Policy DM6.2.b

be negligible. The appellants assert that in addition to the cost of delivery, the path would introduce costs associated with the liability for any permitted users, the path's maintenance, the need to install security and privacy measures to adequately protect the interests of existing residents, clients, visitors and/or staff, and to enable the owners' entitlement to peaceful enjoyment of their land. While there was little evidence to suggest delivery of a path would not be financially viable for the owners, I accept that there would be additional liabilities which would translate to financial burdens making it unattractive in that context.

55. However, at the Inquiry I heard that accessibility was not necessarily an immediate part of the delivery of the anticipated strategic linear route. Despite many of the rivers running through Sheffield having a high proportion of accessibility, it was not lost on the Council that delivery on the Sheaf was more problematic due to the amount and nature of past riverside uses. The Sheaf and Porters Rivers Trust highlighted that it was often a necessary approach to secure lengths of path as opportunities arose, even if these were not directly linked to others. This was with a view to establishing linkages and access at some point in the future.
56. The Council and the Rivers Trust were keen to highlight that access rights and links between individually delivered stretches of path had been achieved to enhance such use and continuity over a drawn-out timeframe following the introduction of Policy GE17 over 25 years ago. This was despite the inevitable multiple land ownerships, the limited windows of opportunity during site redevelopments, and practical difficulties. I heard that negotiations with landowners, which could include support from the Trust and activities of volunteer river rangers, for example, had delivered public access. The evidence at the Inquiry pointed to long-term incremental delivery.
57. The Council suggested that access may be granted where landowners have a change of heart. In addition to reputational standings, the operation of beneficial partnerships, or changes in owners/personnel might deliver greater use of paths on private land in the future. However, even if that were not the case and the path was only available to users of the site, the Council considered that this would be beneficial by the provision of outside access on the riverside. I find that a matter of some weight given the nature of the site's use and that STEPS expressed a desire for expansion at the Inquiry.
58. The route north-east of the site is interrupted by existing development about Troutbeck Road and the constraint of a tunnel under the adjacent railway line. This would make a direct riverside link to the next section of path impractical. Onward travel would require use of busy roads, including Abbeydale Road, to reach the next section of the riverside path. At the other end, the adjacent path provided on the Jacob's Gate site terminates at that site's southwestern boundary.
59. As an example of ongoing efforts to deliver a continuous path, the Rivers Trust stated that a provisional and conditional agreement had been established for the potential use of an adjacent park and ride site and a linkage could likely be established to the Jacob's Gate site. This could provide additional connection to existing path lengths continuing on to the nearby supermarket site and Millhouses Park. Some residents of the Jacob's Gate site submit that this would be a significant benefit if delivered. However, even if an onward route was secured, for the reasons above, I heard that through access was unlikely to be facilitated.

60. The necessity for digression from the riverside to the north-east is unsurprising. While the continuity of a linear riverside route would be most desirable, practical application in a suburban context could not reasonably expect to avoid departures from the fixed geography of the river. That would seem almost inevitable. However, that interruption between usable lengths would be far greater in the absence of the pathway subject of the Condition requirement. It would also necessitate significantly greater use of Abbeydale Road.
61. As emphasised by the Council, even when limited to hope value in terms of wider access, the actual physical delivery of the path would be a major gain in realising the policy aim. For whatever period the path might remain inaccessible to a wider public, it would remain part of the infrastructure necessary to deliver the policy aspirations. Those benefits are likely, in my view, to last equally as long as the development which was approved.
62. The appellants highlight that nearby stretches of the path include steps/inclines, uneven surfaces, or a more constrained width such that the benefit to some users would be limited. There was no dispute that was the case; however, shortcomings in the existing provision elsewhere are not a strong argument for removing the entire conditional requirement here.
63. In support of their position, the appellants also contended that the Council had previously envisaged a route on the opposite bank and had secured a financial contribution for that purpose. That could have provided a route on one side of the river as envisaged by the policy. However, I heard that constraints to delivery there has seen funds redirected elsewhere for enhancements to existing riverside facilities. Accordingly, the chance of any competing path there seem limited and there is no existing path to negate delivery on the appeal site.
64. Condition 13 cannot secure public access. This diminishes the planning benefit that could accrue following implementation of a riverside path. However, that must be weighed against non-delivery of a benefit anticipated when planning permission was granted. As delivery of a length of riverside path would provide the relevant infrastructure in a context of severely limited opportunity, I find that benefit alone of sufficient weight to justify the necessary and reasonable requirement of Condition 13 and is consistent with the aims and terms of policy GE17 of the UDP.

#### *Nature Conservation and Public Safety*

65. Policy GE17 provides an exception to delivery of a riverside path where this would conflict with important nature conservation interests or public safety.
66. There is no dispute between the main parties that the removal of trees could cause adverse effects on local ecology and wildlife. However, there is little evidence before me as to the comparable effects of the consented footpath scheme approved in 2016 and what is required by the Notice now, either in terms of tree loss or important nature conservation interests.
67. A recent site assessment for an alternative 2.0-2.8m wide path estimated that 14 trees would require removal from the riverbank. The appellants' submissions there claimed that number would be far fewer than the delivery of a 3m wide path. However, a figure for the necessity to remove 25 trees suggested by the appellants has not been verified through any further detailed assessment.

68. Some trees would clearly conflict with the line of the approved pathway shown on plan 1393/10 Rev M. However, the tree survey plan submitted in association with 13/02019/COND3 (the 2.0-2.8m wide path) shows tree positions outside the line of the approved footway and at some distance down the riverbank. Even when accounting for the agreed gabion construction, having observed similar examples of supported elements of the wider pathway built almost touching tree trunks elsewhere, without more, I find the appellants' claim that 'virtually all the trees along the embankment [...] would need to be removed' has not been duly substantiated.
69. While I accept the Council's position that the removal of unreplaced trees should be afforded limited to moderate weight, not least because it could diminish capacity for carbon storage and would have some conflict with Policy GE15, it cannot be ignored that a developer is already entitled to remove the trees through the agreed scheme. Such matters would have been considered on balance when permission was granted. Accordingly, based on the limited evidence demonstrating the extent of any additional requirement for tree removal since that was approved in 2016, I find the weight attributable to that matter can be no more than moderate.
70. Further, it has not been demonstrated that any specific or significantly 'important' nature conservation interests would be prejudiced sufficient to warrant a trigger to the exemption in policy GE17 on that basis. Without more information, I find the appellants' claims to that extent have not been substantively supported in evidence.
71. There is no dispute between the main parties that the delivery of the path could potentially give rise to flood risks. The appellants evidence demonstrates that parts of the path lie within or adjacent to Flood Zone 3. Areas close to the road bridge leading into the site and some surfaced areas immediately about the building are identified as lying within Flood Zone 2.
72. The presence of supporting gabions, fill, decking and fencing at the top of the channel cutting could all cause displacement effects and potentially affect flood flows in the channel. Although such effects may be offset by any necessary tree removal, the appellant highlights that this in turn could affect bank stability with knock-on issues for flood risks and safety. However, again, there is little by way of a detailed assessment to demonstrate any increased effects over and above that secured at the time the planning permission was granted or the path details agreed.
73. The appellants assert that there is little to show that the path could satisfy the sequential or exceptions tests set out in the Framework. As development already approved, it is not necessary to apply such tests retrospectively. Nevertheless, the Council accepted there were likely inherent risks because of updates to flood risk categorisation and the nature of the development Condition 13 seeks to secure.
74. However, as development designed to serve as recreational facilities and/or amenity space, the use is categorised as 'water compatible' by the Environment Agency. In the absence of a detailed assessment, there is little to demonstrate that delivery of the path would result in any materially greater harm than might have previously been anticipated, or is one now sufficient to engage the exception in Policy GE17. A formal assessment of potential effects on bank stability should

additional trees require removal is not before me. The claimed risks have not been duly quantified and therefore too can only be afforded moderate weight.

*Character and appearance*

75. As above, the extent of necessary tree removal is unclear. The appellants contend that the removal of trees from the south-eastern bank would remove beneficial screening of the STEPS and retirement buildings as viewed from Abbeydale Road. That was accepted in the Council's evidence. Tree removal would indeed increase the visibility of the buildings for road users.
76. However, mindful of the s197 duty in respect to trees, and that the Council did not see fit to impose a requirement for replacement tree planting on the outline or STEPS approval, I find that, even when allowing for seasonal variations, the effect would not be significant given the deeper concentration of established trees on the northwestern bank of the river alongside the elevated road. Again, if the effect would now be materially different to the consented scheme, or would cause material harm to the character and appearance of the locality, that has not been demonstrated on the evidence before me.

*Living conditions*

77. The appellants contend that delivery of the path would now result in potential adverse effects on existing users of the site and the adjacent accommodation at Jacob's Gate. However, as the paths on the respective sites formed part and parcel of the permissions for those premises, the owners and occupiers would have been aware of the requirement to provide for the path. While uncontrolled open access between the accommodation and footpath is likely to raise concerns to elderly or vulnerable residents and/or visitors, there is little to suggest that could not be managed by suitable security measures.
78. Views into the accommodation could similarly be mitigated by screening or by other measures. Those would doubtlessly have been factored in had the path been delivered prior to occupation of the building. Any loss of existing outside amenity space as a consequence of its encroachment onto the area intended for the delivery of the path is not a strong justification against delivery of the authorised development.

*Alternative provision secured by planning obligation*

79. The appellants contended that, compared to the delivery of a non-accessible path, a commuted sum for the delivery of publicly accessible facilities elsewhere would provide for a greater planning benefit than compliance with the requirements of the Notice. The appellants have submitted a unilateral undertaking (UU) as a deed and obligation under s106 of the Act. The obligation would secure the payment of £100,000 towards the provision of 'additional walkway/infrastructure adjacent to the River Sheaf for the benefit of the public'.
80. At the Inquiry, I heard that the commuted sum was calculated utilising a cost figure secured on a nearby site against an anticipated length of riverside path. That obligation was agreed on 16 April 2007. It is unclear from the evidence before me as to how the figure was derived at that time.
81. The appellants confirmed that a pro-rata calculation on the basis of the undelivered length of path on the appeal site had been rounded-up to the figure

proposed in the UU. However, the appellants were unable to confirm whether or not that would be an accurate assessment of current costs, and/or one which accounted for inflation in the years since the 2007 obligation.

82. Given the disparity with the appellants' suggested cost estimate of £500,000 for the delivery of the path on the appeal site, and absence of a specific project to attribute the funds to, I am unable to conclude that what would be provided through the undertaking would be an equal benefit to replace that envisaged when the conditional requirement was imposed by the Council. In effect, the undertaking has not been demonstrated to be fairly and reasonably related in scale and kind to the development<sup>9</sup>.

### **Other Matters**

83. I acknowledge that the appellants sought to resolve the breach of planning control through the submission of alternative details for Condition 13; however, that is not a benefit in favour of the discharge/removal of the Condition.

### **Planning Balance and Conclusion on Ground (a)**

84. The policy aim to deliver a riverside walkway remains consistent with the revised Framework on several strategic planning levels. It seeks to enhance accessibility, encourage sustainable forms of travel and promote healthy lifestyles through access to and recreational use of green infrastructure.
85. I am mindful that some of the potential effects associated with the delivery of the riverside path may have increased since the STEPS building was occupied in 2017. However, that is largely consequential of its non-delivery at the relevant time. Notwithstanding, the appellants have provided little evidence to demonstrate the extent of any additional harm against that which was anticipated when the decision was made and that a site developer remains entitled to do. Accordingly, those matters attract only limited to moderate weight.
86. The failing of Condition 13 to secure access for general use is a clear limitation to the planning benefit. Furthermore, although it could link with the adjacent site, it would only form part of a fragment of the overall route that the policy seeks to achieve. While the appellants describe the weight to the delivery of the footway as a notional benefit because of that, that ignores the circumstance where it could be accessible to clients, staff and visitors as the equivalent provision on the Jacob's Gate site. On delivery it could immediately provide the benefits the policy seeks to deliver, albeit to a limited extent.
87. Notwithstanding, the long-term riverside path aspiration is, by its nature, subject to geographical restrictions and limited opportunities for delivery. The policy is inherently reliant on opportunities which largely arise only through site redevelopments. The benefits of contributing elements must therefore be viewed in that extended timeframe and with regard to those limitations. Accordingly, I find the opportunity for the physical delivery of the footpath infrastructure remains a substantial benefit.
88. I am mindful that in the event the path was not delivered, then, in conjunction with the failure to provide a path on the opposite side in association with a large supermarket development close by, that would likely preclude this stretch of the

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<sup>9</sup> PPG Paragraph: 002 Reference ID: 23b-002-20190901

river from contributing to that aim in the short to medium term, if not longer. If there is no path there is no potential to deliver the wider policy aim in this locality regardless of access matters. Non-delivery here would jeopardise a much broader planning strategy. It would also fail to deliver a benefit balanced in consideration of the outline and reserved matters permissions for the appeal site.

89. I heard that in the locality there is existing potential for linkages to be achieved for some distance to the southwest providing access to various facilities. That adds weight in favour of the requirement of the condition as part of the planning permission for the site. It seeks to deliver benefits to both those in the immediate locality and in the wider city region.
90. Furthermore, wider access is not, in my view, insurmountable within the strategic timeframe of the policy aspiration. The sale of businesses, land or investments, changes of heart or personnel, funding/incentives, community support, or a legally imposed purchase or other order could all occur before an opportunity arises again for the securing of the physical works.
91. Taking all of the above together, I find the balance of the planning benefit remains with the delivery of the riverside path and, despite shortcomings arising from the limitations of what the condition can legitimately achieve, the delivery of the key infrastructure on this length of the river is a matter of substantial weight.
92. For those reasons, I find there is little justification and no compelling reasons to go behind what was required when the STEPS building was constructed as part of a sustainable development scheme, or to depart from policy provision which remains very much valid. While I accept some degree of harm would probably arise from the physical implementation of the path, this has not been shown to outweigh those strategic benefits. I find the Condition was precise, relevant, reasonable, necessary and enforceable, and discharge of Condition 13 would be contrary to the aims of Policy GE17 of the UDP and the development plan read as a whole. There are no other considerations, including the revised Framework, to indicate a decision otherwise. The appeal on ground (a) should therefore fail.

#### *Unauthorised development*

93. On consulting the main parties on any implications arising from the replacement Framework after closing the Inquiry, the Council highlighted the Government's policy requirement to consider whether, based on evidence, unauthorised development was intentional. If found to be intentional, that fact should be given substantial weight in considering whether to grant planning permission. Previously, this policy did not appear in any earlier iteration of the Framework but was effective following a Written Ministerial Statement in 2015<sup>10</sup>.
94. I heard evidence as to reasons why the footpath had not been delivered at the Inquiry. Changes in ownership and/or contractual responsibilities had clearly played a part in frustrating delivery. While the benefits of planning permissions inure with the land, as do their associated terms and conditions, the evidence heard was not given in any context of 'intent'. If that was an identified concern of the Council, it was open to them to champion the matter at the Inquiry. It didn't.

<sup>10</sup> Refs. UIN HCWS423 & UIN HLWS404 17 December 2015

95. It would be open to me to re-open the Inquiry to hear representations on that now fully incorporated policy provision. However, given my finding on the main issues, I need not consider that matter any further.

### **Overall Conclusion**

96. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

*R Hitchcock*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

|                              |                                                                              |
|------------------------------|------------------------------------------------------------------------------|
| Killian Garvey<br>he called: | Barrister, Kings Chambers                                                    |
| Jonathon Shepherd            | Director, Gladman Retirement Living Ltd.                                     |
| Jules Sheil-Bulger           | Director and owner, STEPS Rehabilitation Ltd.                                |
| Nicholas Willock MRTPI MRICS | Planning Consultant Robert Halstead<br>Chartered Surveyors and Town Planners |

### FOR THE LOCAL PLANNING AUTHORITY:

|                                   |                                                                         |
|-----------------------------------|-------------------------------------------------------------------------|
| Jack Smyth<br>he called:          | Barrister, No.5 Chambers                                                |
| Polly Johnson-Carton B.A. M.A-TRP | Enforcement Officer, Sheffield City Council                             |
| Jacob George B.A. M.Sc. MRTPI     | Team Leader, Development Management<br>Services, Sheffield City Council |

### INTERESTED PARTIES

|                                 |                                                                                              |
|---------------------------------|----------------------------------------------------------------------------------------------|
| Kevin Hanson                    | Resident of Jacobs Gate                                                                      |
| Andrew Sorsby                   | Business Growth Advisor                                                                      |
| Carol Armstrong                 | Resident of Jacobs Gate                                                                      |
| Richard Mills                   | Millhouses, Ecclesall and Carter Knowle<br>Community Group                                   |
| Cllr. Barbera Masters           | Councillor for Ecclesall                                                                     |
| Simon Ogden B.A., M.A. & Dip.TP | Chair of the Sheaf & Porter Rivers Trust<br>and convener of the Sheffield Waterways<br>Group |
| Vivien Thom                     | Trustee of Sheaf and Porter Rivers Trust,<br>local resident and volunteer river ranger       |

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

Opening Statement for the Appellants

Opening Statement for the Council

Statement of K Hanson

Statement of C Armstrong

Statement of R Mills

Statement of Cllr. Masters

Statement of S Ogden

Statement of V Thom

Unilateral Undertaking pursuant to s106 of the TCPA 1990

Land Registry Documents: For Title no. SYK637097

Closing Statement for the Council

Closing Statement for the Appellants

Costs Application by the Appellants

Costs Submission on Behalf of the Council