



**WHALEBACK**

**STATEMENT OF CASE**  
on behalf of  
**MID SUSSEX DISTRICT COUNCIL**  
as  
**LOCAL PLANNING AUTHORITY**

**For Appeal APP/D3830/W/24/3344121**  
**At 68 and 70 Keymer Road**

Following the appeal for non-determination of planning application  
DM/23/3114 on 10/05/2024 under Section 78 of the Town and Country  
Planning Act 1990

**DATE**

5<sup>th</sup> July 2024

**REVISION**

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# I. Introduction

1.1 This is the Statement of Case on behalf of Mid Sussex District Council (“the Council”) as Local Planning Authority in the appeal brought by Churchill Retirement Living Ltd (“the Appellant”). The appellant has appealed against ‘non-determination’ of planning application DM/23/3114 at 68 & 70 Keymer Road, Hassocks, West Sussex, BN6 8QP.

1.2 This Statement sets out the Council’s case, responds to the Appellant’s Statement of Case and notes the documents that will be referred to in evidence.

1.3 Application DM/23/3114 was submitted with the following description:

*Redevelopment for retirement living accommodation for older people comprising 41no. apartments including communal facilities, access, car parking and landscaping.*

1.4 The design was subsequently amended on 10<sup>th</sup> April 2024 through alterations of the plans to allow revised fenestration, internal layout and additional plans and sections of boundary treatments.

1.5 The application was presented to the Design Review Panel on 17<sup>th</sup> January 2024 and notes are enclosed within the Planning Committee Report. Following the Design Review Panel, the Council actively engaged with the Appellant, seeking additional information and amendments to the scheme. However, the Appellant refused to agree to an extension of time to facilitate further negotiation, amendments, and re-consultation, and confirmed their intention to submit an appeal for non-determination.

1.6 Following notification of the non-determination appeal, Council planning officers presented the application to Planning Committee on 13<sup>th</sup> June 2024 with a recommendation (amended as set out in an Agenda Update Sheet dated 13<sup>th</sup> June 2024) that it should have been refused had the Council had the opportunity to determine the application, for the following three reasons:

- 1. The proposal is considered to be an over development of the site and due to the footprint, scale and mass of the proposed building, it is considered that the development would harm the character and appearance of the area by reason of the overdevelopment of the site in conflict with the predominant positive characteristics of the area. The proposal therefore does not comply with Policy DP26 of the District Plan, Policy 9 of the Hassocks Neighbourhood Plan and the design principles set out in the Design Guide SPD.*
- 2. It is considered that the proposed development would result in an unneighbourly form of development and would give rise to a perceived impact on privacy to the rear gardens of adjoining properties from habitable windows. In addition, it is considered that the location of the parking area and scooter storage in close proximity to the rear garden of 66a Keymer Road would be unneighbourly and likely to lead to noise and disturbance, and light pollution, from their use, and would cause unacceptable harm to their residential amenity. The proposal would therefore not comply with Policy DP26 of the District Plan, Policy 9 of the Hassocks Neighbourhood Plan and the residential amenity principles set out in the Design Guide SPD.*
- 3. The proposal does not satisfy the requirements of Policy DP20 of the District Plan in respect of infrastructure requirements, including affordable housing to service the development as supplemented by the Council's Supplementary Planning Documents, 'Development Infrastructure and Contributions' SPD (2018). The proposal*

*therefore would also not satisfy the requirements of Policy DP31 of the District Plan in respect of the provision of any offsite contribution towards affordable housing.*

- 1.7 The Planning Committee accepted the officers' recommendation (as stated on the Agenda Update Sheet) and resolved that it would have refused the application had it had the opportunity to do so for the reasons given.
- 1.8 A Statement of Common Ground (SoCG) is being progressed between the Council and the Appellant

## 2. Planning Policy Framework

- 2.1 The Council can demonstrate a 5-year housing land supply, the Mid Sussex District Plan (2018) and Hassocks Neighbourhood Plan (2020) are consistent with the NPPF, and the policies that are most important for determining this appeal are up to date.
- 2.2 The District Plan was adopted more than 5 years ago and so is under review in accordance with national guidance. The Council considers that the policies relevant to this appeal are fully compliant with the NPPF and therefore continue to have full weight.
- 2.3 The policies relevant to this appeal are set out in the Statement of Common Ground.
- 2.4 The Planning Committee Report specifically mentions the following policies and guidance documents in the reasons for refusal:
  - Mid Sussex District Plan Policies DP20, DP26 and DP31
  - Hassocks Neighbourhood Plan Policy 9
  - Mid Sussex Design Guide SPD
  - Mid Sussex Development Infrastructure and Contributions SPD

## 3. Case for the Local Planning Authority

- 3.1 The Council will present evidence at the Inquiry to support the reasons for refusal agreed by Planning Committee.
- 3.2 The Council's case is that the appeal should be dismissed because the proposed development would overdevelop the site, harming the character and appearance of the area in conflict with its predominant positive characteristics.
- 3.3 The proposal is also harmful to the residential amenity of neighbours through noise and disturbance, light pollution and a perceived impact on privacy due to the introduction of a large number of windows to habitable rooms.
- 3.4 The Appellant has also failed to provide the necessary financial contribution towards affordable housing and infrastructure to support the scheme and make it acceptable in planning terms.

- 3.5 The District Plan, Neighbourhood Plan and National Planning Policy Frameworks support decision making that aims to deliver development proposals that are sympathetic to local character in terms of design, layout and scale whilst avoiding significant harm to neighbouring amenity. The primary questions, therefore, are whether the development would harm the character and appearance of the area and whether it can be accommodated without causing significant or unacceptable harm to neighbouring amenity.
- 3.6 The Mid Sussex District Plan, Site Allocations DPD and the Hassocks Neighbourhood Development Plan are up to date, and the Council has a 5-year housing land supply. The Council's evidence will clearly demonstrate how the proposals fail to comply with the District Plan policies. Furthermore, the Planning Committee Report upon which the Council's reached its decision to refuse the application, offers a comprehensive analysis in support of these policies.

### **OVERDEVELOPMENT OF THE SITE AND HARM TO LOCAL CHARACTER AND APPEARANCE**

- 3.7 Policy DP26 in the District Plan seeks to ensure a high standard of design in all new development and requires proposals to demonstrate a sensitive approach to urban design by respecting the character of the locality in which they take place requiring, amongst other things, for new development to create a sense of place, address the character and scale of the surrounding buildings and landscape and to protect valued townscapes and the separate identity and character of towns and villages.
- 3.8 Policy 9 of the Hassocks Neighbourhood Plan states development will be supported where it has regard to the Hassocks Townscape Appraisal and its design respects the character and scale of the surrounding buildings and landscape and positively responds to the local vernacular character of the defined Local Townscape Character Area.
- 3.9 The Council's adopted Design Guide sets out a number of design principles to ensure new development responds appropriately to its context with support for architectural integrity and a sense of place within principles DG38 and DG39 which, amongst other things, requires the scale of new buildings to relate to their context.
- 3.10 The Council's evidence will demonstrate how the appeal scheme fails to achieve the standards set by these design policies and principles in particular in relation to its excessive footprint, scale and mass relative to the predominant positive characteristics of the area.
- 3.11 The Planning Committee Report (paragraph 12.19) notes one such characteristic as the occurrence of relatively large properties with long rear gardens, concluding that the overall scale and mass of the proposed building, in particular its large footprint and the depth of its southern extent, is harmfully out of character with that local context.
- 3.12 The existing houses at 68 and 70 Keymer Road as well as their neighbours at 66a and 72 Keymer Road are relatively large detached dwellinghouses positioned roughly in alignment along Keymer Road and with open gardens behind. Houses in The Minnells sit to the east of the appeal site and behind 72 and 74 Keymer Road although again are formed of detached houses with footprints positioned to address their respective roads and surrounded by their gardens. Dwellings to the south of the appeal site on Dale Avenue, albeit smaller in scale, also front their respective road with open rear gardens behind. By contrast, the appeal scheme respects

the alignment of the frontage onto Keymer Road, in part by mimicking the character of two houses through its elevational design, but has an excessively large footprint which extends uncharacteristically far south into the plot, at 55m deep, taking up much of the current open garden land. The three-storey height of this rear extension, in combination with its substantial footprint and depth creates an overall visual bulk and mass that is out of character with the surrounding area and in excess of what could be accommodated on the site in a manner that would respect the character and appearance of the surrounding buildings and townscape.

- 3.13 The Appellant at paragraph 5.7 of their statement claims positive engagement with the Council's Design Review Panel (DRP) with changes made to the design following receipt of its comments. The Council contends that the DRP in fact objected to the scheme and only minor adjustments were made to the design between receiving the DRP comments and submitting the appeal. These were namely improvements to the internal layout, the introduction of the Juliet balconies on the front elevation, lowering of some of the eaves and changes to the building entrances. The Council contends that these changes have not overcome the concerns of the DRP including the site coverage and massing of the building extending deep into the south part of the site.
- 3.14 In fact, the DRP and Urban Designer objected to the application with fundamental concerns about the design representing an overdevelopment of the site with its large footprint and depth within the site, which were not addressed with the revised plans. The Council still considers the scale and mass of the building to be in excess of what could be accommodated on the site in an acceptable design. The Appellant has provided examples of other development in the area such as Fitzjohn Court. That building has a frontage width of 26m (compared to 40m width of the appeal scheme) and Fitzjohn Court also has a total depth of 26m (compared to the 55m depth of the appeal scheme) which extends only slightly beyond the front or rear building lines of the intervening 66a Keymer Road.
- 3.15 The Council's evidence will set out the predominant positive characteristics of the area and show why the appeal scheme fails to respect them.

#### **HARM TO NEIGHBOURING AMENITY AS A RESULT OF OVERLOOKING, NOISE AND DISTURBANCE**

- 3.16 District Plan Policy DP26 requires that all new developments must avoid causing significant harm to the amenities of existing nearby residents and future occupants. This includes considering the impact on privacy, outlook, daylight, sunlight, and noise.
- 3.17 Similarly, Policy 9 of the Hassocks Neighbourhood Plan stipulates that developments should not result in unacceptable harm to the amenities of existing nearby residents and future occupants. This encompasses considerations of privacy, outlook, daylight, sunlight, and security.
- 3.18 The Council's case is that the proposed development is unneighbourly and will give rise to unacceptable impacts on the rear gardens of adjacent properties by way of harm to privacy and noise and disturbance. Specifically, the proposed windows on the eastern and southern elevations will create an unacceptable perception of overlooking of the gardens at 72 Keymer Road, 9, 10 and 11 The Minnells and the rear gardens of houses in Dale Avenue to the south. These gardens are all currently private and free from overlooking, but the appeal scheme would introduce a large number of new windows at elevated levels up to three storeys

in height and across a depth of 55m. The deciduous trees along the respective boundaries do not provide sufficient mitigation by way of screening particularly in the winter months without leaf.

- 3.19 The proposed parking area and scooter storage adjacent to the rear garden of 66a Keymer Road is also unneighbourly and will cause noise disturbance and light pollution, leading to unacceptable harm to residential amenity. Consequently, the proposal fails to comply with Policy DP26 of the District Plan, Policy 9 of the Hassocks Neighbourhood Plan, and the residential amenity principles in the Design Guide SPD.
- 3.20 The Council's evidence will demonstrate that the proposals would result in significant harm to neighbouring amenity.

### **THE LACK OF AFFORDABLE HOUSING AND CONTRIBUTION TO COMMUNITY INFRASTRUCTURE**

- 3.21 Policy DP31 of the District Plan requires all residential developments providing 11 dwellings or more or with a maximum combined gross floorspace of more than 1000m<sup>2</sup>, to provide 30% affordable housing. DP31 sets out that affordable housing should be provided on site however in this case, due to the nature of the development, the Council indicated agreement to a commuted sum towards the provision of off-site affordable housing.
- 3.22 A viability appraisal was submitted by the Appellant which suggested that the scheme could not viably provide any affordable housing contribution (and made no allowance for the other contributions which the Council contends are necessary to make the development acceptable). The Council's position is that the development should be required to make contributions to Local Community Infrastructure, Formal Sport, Community Building, Libraries and TAD. The Council obtained an independent review of the Appellant's viability assessment which demonstrates that, even taking those other financial contributions into account, the scheme could viably support the payment of an affordable housing contribution.
- 3.23 The parties have continued to engage with one another with a view to resolving, or at least narrowing the issues between them as to the quantum of the financial contribution required. At the date of submitting this Statement, no agreement has been reached between the parties about the viable level of financial contributions and so this remains a matter for the Inquiry, although negotiations continue and agreement will be sought through the Statement of Common Ground.
- 3.24 The Appellant has also disputed the Council's requirement for a Viability Review. The practice of Viability Review to ensure that proposals are based on an accurate assessment of viability at the point of delivery, has become increasingly well established. This is because it is recognised that the financial viability of a scheme will change over time, due to the prevailing economic climate and changing property values and construction costs. It may also be notably different at the time of delivery, as a result of uncertainties at planning application stage. As a result, reviews to reassess a scheme's viability are now common practice at later stages in a project, in order to enable greater policy compliance to be achieved if viability is found to have improved. At such a stage, actual or updated predictions of build costs and achieved values will be able to be provided and any changes from the estimates provided at the date of the original Viability Assessment (often several years previously), can be assessed.
- 3.25 The Council relies on Viability Reviews as standard practice for non-policy compliant schemes on the sale/letting of 75% of the units. The requirement for a Viability Review is included in both the Council's

Development Viability SPD and the Affordable Housing SPD which were adopted in July 2018, along with the Development Infrastructure & Contributions SPD. Viability Reviews are also a clear requirement of the Council's new draft Viability Policy, and are detailed in the policy and its background text. Both form part of the current District Plan Review documentation, which has been through Reg 18 and Reg 19 Consultation and will shortly be submitted for examination. As a result, the Council believes that it is acting in accordance with Para 009 of the NPPG, and notes that the NPPG states that *'Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project.'*

3.26 If no agreement is reached on these viability matters before the Inquiry, the Council will present evidence in support of its position that the appeal scheme fails to accord with District Plan policies DP31 and DP20 and the Development Infrastructure and Contributions SPD.

### OTHER MATERIAL CONSIDERATIONS

3.27 It is acknowledged that at the point of submitting the appeal the Appellant was not aware of the decision that the Council would have made, had it had the opportunity to determine the application. As such, some of the Appellant's case is not in contention and the Council will agree these matters in the Statement of Common Ground.

3.28 The Appellant's statement at paragraphs 5.2 and 5.14 makes reference to the specialist need for housing for older people within Mid Sussex and specifically refers to Site Allocation Development Plan Document Policy SA39 at paragraph 4.6.

3.29 Site Allocation DPD Policy SA39 is not relevant to this appeal as that policy explicitly refers to housing within the C2 use class whereas the appeal scheme is for C3 market housing with an age restriction.

3.30 Nevertheless, the Council accepts that there is a need for market housing for older persons. The 2021 Mid Sussex Strategic Housing Market Assessment (SHMA) identifies a need for 801 market units for *Housing with Support* to 2038; the District Plan Review (currently at Regulation 19 stage) will address this identified need through Policy DPH4: *'Older Persons' Housing and Specialist Accommodation'* by allocating four sites with the stated purpose to *"ensure that enough older persons' housing and specialist accommodation is delivered to meet identified needs"*. The Council will demonstrate that the weight given to the potential contribution of the appeal site to the supply of this particular type of housing to meet the identified need is assessed in light of the emerging District Plan Review Policy DPH4 that will address that need. Otherwise, so far as C3 market housing is concerned, the Council can demonstrate a 5 year supply of housing, as set out above.

3.31 The Appellant's statement also suggests at paragraph 5.14 that *"development of vacant previously developed land"* is a benefit weighing in favour of the appeal scheme. The Council accepts that the scheme would make use of previously developed land but contends that the land is not vacant and contains two C3 residential dwellings capable of occupation even if currently unoccupied or rendered unoccupied by the Appellant.

3.32 The Council accepts that the site is in a sustainable location and that it would bring about some economic benefits.

3.33 The Council's evidence will address these other matters in more detail.

## WITNESSES

3.34 The Council will present evidence to defend the reasons for refusal with the following witnesses:

- Planning witness, to address reasons for refusal (1) and (2), matters of planning policy and planning balance;
- Development viability witness to address reason for refusal (3).

## SUGGESTED CONDITIONS

3.35 The Council will provide a schedule of suggested conditions within the Statement of Common Ground to be agreed with the Appellant shortly, and will be issued to the Inspectorate ahead of the Case Management Conference on 23<sup>rd</sup> July 2024.

## INSPECTING DOCUMENTS

3.36 All appeal documents are available digitally on the council's planning register at this link:

<https://pa.midsussex.gov.uk/online-applications/applicationDetails.do?activeTab=relatedCases&keyVal=S57CYOKT04L00>

3.37 Interested parties may also view paper copies of the appeal documents by appointment at Mid Sussex District Council, Oaklands, Oaklands Road, Haywards Heath, RH16 1SS.

# 4. Conclusion and Planning Balance

4.1 Section 38 (6) of the Planning & Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

4.2 The Council can demonstrate that it has a five-year housing land supply and considers that the most important policies in the development plan for the determination of the appeal hold full weight and accord with the NPPF.

4.3 This Statement of Case sets out that the appeal scheme is contrary to the development plan for the following reasons:

- The proposal is an overdevelopment and would result in harm to character and appearance of the area. The proposal therefore conflicts with Policy DP26, Hassocks Neighbourhood Plan Policy 9, and Design Guide SPD.
- The proposed development is unneighbourly, impacting privacy, causing noise, disturbance and light pollution, in conflict with District Plan Policy DP26, Hassocks Neighbourhood Plan Policy 9, and Design Guide SPD principles.
- The proposal fails to meet Policy DP20 on infrastructure and affordable housing and Policy DP31 on offsite affordable housing contributions, per the Council's 2018 SPD.



- 4.4 The Council accepts that the scheme would contribute towards meeting an identified need for a particular type of housing for older people and that there would be economic benefits as a result of the scheme. The Council will present evidence on the weight to be accorded to the benefits of the scheme.
- 4.5 However, the Council will demonstrate that, in view of the conflicts with an up-to-date development plan, the benefits of the scheme noted above do not outweigh the harm identified and so the appeal should be dismissed.

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