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Our ref: 16/01134/FULM & 17/00357/FULM

23<sup>rd</sup> November 2018

Dear Sir/Madam,

**Re: Town and Country Planning Act 1990**

**Appeals by Avant Homes (England) Ltd - Midlands Division**

**Site Address: Highfields School, London Road, New Balderton, NEWARK, Notts, NG24 3AL**

This letter contains an update to the Council's current position with respect to both pending appeals for the above site, which for the avoidance of doubt are:

- Appeal A (as referenced in the Inspectors original hearing agenda). Appeal Ref 3188864 for "Residential development comprising 95 no. dwellings and associated infrastructure, including the removal 26 No. TPO trees." **'The 95 unit scheme'**
- Appeal B (as referenced in the Inspectors original hearing agenda). Appeal Ref 3188871 "Residential development comprising 89 dwellings and associated infrastructure, including the relocation of the school access, car parking area and sports pitches, the provision of a Multi-Use Games Areas (MUGA) and the removal of 8 TPO trees. **'The 89 unit scheme'**

The purpose of this statement is to furnish the appointed Inspector with an updated position on matters not covered as part of the original hearing sitting days, namely viability. The Council does not seek to re-rehearse its case beyond these matters, noting that the Council has already made clear that it considers the 89 unit scheme should be dismissed for issues associated with the proposed MUGA.

For the avoidance of doubt this letter represents the view of Council Officers (and advisors) given the lack of ability to present the updated position to Members given the timescales involved in Planning Committee cycles and the timings of exchanges of evidence between the parties. Officers will be presenting an update on the matters captured in this letter at the Planning Committee meeting on the 4<sup>th</sup> December 2018. Any updated position (including confirmation if the Planning Committee agree with the contents of this letter and appendices) will be reported

to the Inspectorate and appellant as a matter of urgency after 4<sup>th</sup> December in order to ensure ample time for parties to digest and respond to any issues.

#### Update on Discussions.

Following the adjournment of the hearing in September 2018 the Council and appellants have, as instructed, worked jointly to produce viability evidence. The chronology of the debate between the parties and the Council's stance on this matter is best understood by reference to the following schedule, which form Appendices to this letter.

#### **Viability Evidence Schedule**

1. Appendix 1 - NSDC Appeal Statement on Viability prepared by AMK Planning, 1 November 2018
2. Appendix 2 - NSDC 95 Unit Scheme Viability Appraisal, 1 November 2018
3. Appendix 3 - NSDC 89 Unit Scheme Viability Appraisal, 1 November 2018
4. Appendix 4 - NSDC Avant Homes Web Site Sale Prices October 2018
5. Appendix 5 - Appellant Viability Report Update prepared by Devvia, 22 October 2018
6. Appendix 6 - Appellant Musson Liggins Existing Site Valuation Report, 22 October 2018
7. Appendix 7 - Appellant Viability Report Update Rev 1 prepared by Devvia, 26 October 2018
8. Appendix 8 - NSDC Appeal Statement on Viability Addendum prepared by AMK Planning, 19 November 2018
9. Appendix 9 - NSDC 95 Unit Scheme Viability Appraisal – Reduced Sale Values, 19 November 2018
10. Appendix 10- Appellant Viability Report Update Rev 2 prepared by Devvia, 31 October 2018

Following a 6 week period post the adjournment of the hearing the appellants, on the 26<sup>th</sup> October 2018, submitted an Appellant Viability Report Update Rev 1 (as detailed in Appendix 7). After a clarification discussion and agreement, a new Viability Report Update Rev 2 (as detailed in Appendix 10), with different figures and assumptions, was submitted by the appellants on 31<sup>st</sup> October 2018 (3 working days later).

The Council and its professional advisor retains a number of fundamental concerns with the appellants current position, as captured in the Councils Viability evidence (Appendix 1 and 8) to such a degree that it would strongly recommend to the appointed Inspector that both appeals are dismissed on the ground of an inability to reasonably (in viability terms) provide an appropriate and policy compliant level of affordable housing.

Aside from conclusions on the professional advice the Council has received, it is noted that the NPPG is clear that any viability process should now be "... simple, transparent and publicly available" (Paragraph: 010 Reference ID: 10-010-20180724). The statements submitted by the appellants do not provide this comfort and confidence, given the clear change in figures and conclusions. Irrespective, it is the Council's position, in attaching weight to the advice of its

independent Viability assessor (AMK) that both appeal schemes are sufficiently viable to provide for a 30% off-site affordable housing contribution. Indeed, the Council's advisor in the addendum report (see Section 3.0, Appendix 8) is of the opinion that both schemes generate a residual value which is greater than the off-site affordable value that would be required by the Council as an equivalent 30% policy compliant scheme.

For the avoidance of any doubt the Council's position at the original hearing did not challenge viability evidence at that time. Indeed, the Council's case was that even if viability dictated that affordable provision could not be provided for financial reasons, paragraph 64 of the NPPF, was nevertheless clear that on major housing schemes (such as is the case for both appeals) a minimum of 10% affordable housing should be provided for. In other words, viability must not in itself, be a reason to not meet a clear national policy requirement and there must be a point at which the lack of ability of a scheme to meet needed contributions means that a development as a whole is unsustainable.

As a result of the viability exercise following the adjournment it is the Council's position that not only does the evidence confirm that 10% affordables can and should be provided, but that the schemes are capable, and should therefore provide, the policy requirement of 30% affordable housing. Officers are minded to support the principle of an off-site affordable housing contribution in this instance given that the scheme has been designed for some considerable time. That said, should the appointed Inspector wish to explore on-site provision relevant plots capable of providing an overall affordable housing mix could be identified.

**However for absolute clarity the Council's position is that based on the new viability evidence presented, a policy compliant 30% affordable housing offer would be appropriate and viable and officers should therefore not accept the latest 15% offer as submitted via email to the Council on 21<sup>st</sup> November 2018 which forms Appendix 11. This position is to be presented to Members and the position will be ratified as soon as possible.**

With regard to planning conditions, the Council has already provided a list of possible conditions for each appeal to be considered in the event that the appeals are allowed. The appellant has also now made clear that they intend to prepare Obligations for each appeal to reflect both their position and the Council's position. The Council agrees that this is a sensible approach and we shall continue to assist alongside our legal advisors in this regard.

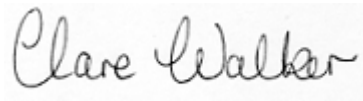
The Councils planning balance for each appeal has already been presented but to summarise;

- In respect of Appeal A it is considered that there are some clear benefits of the 95 unit scheme. However weighing against the scheme is the loss of 26 protected trees, inadequate ecological protection or enhancement together with the new viability evidence which shows in the Council's submission, the failure of the scheme to provide for needed and policy compliant affordable housing provision despite the scheme being able to do so in viability terms. This harm is not outweighed and the appeal should be dismissed.
- In respect of Appeal B it is considered that the 89 unit scheme causes harm as a result of the MUGA; through its 2.4m high solid boundary treatment which is the only means of mitigating unacceptable noise levels which is considered to cause visual harm and prevents the ability to provide natural surveillance of the MUGA which is likely to give rise to anti-social behaviour (actual or perceived). Furthermore, in the Councils submission, based on the new viability evidence the proposal fails to provide for needed and policy

compliant affordable housing provision despite the scheme being able to do so in viability terms. Whilst there are clear benefits with the proposal and it is acceptable in other regards, such harm is not outweighed and the appeal should be dismissed.

I trust that this letter is clear. I will endeavour to provide as soon as I am able to the Report to Committee and the relevant Minutes for this after 4<sup>th</sup> December 2018 Planning Committee Meeting.

Yours faithfully

A handwritten signature in cursive script that reads "Clare Walker". The signature is written in dark ink on a light-colored background.

Clare Walker  
Growth & Regeneration

Encs – Appendices 1 to 11