



## Appeal Decision

Hearing held on 18 October 2017

Site visit made on 18 October 2017

**by Daniel Hartley BA Hons MTP MBA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 23 October 2017**

---

**Appeal Ref: APP/R4408/W/17/3170851**

**Land off Lowfield Road, Bolton upon Dearne, Barnsley S63 2TF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Steve Gamble (Gleeson Developments Limited) against the decision of Barnsley Metropolitan Borough Council.
  - The application Ref 2015/0725, dated 4 June 2015, was refused by notice dated 22 November 2016.
  - The development proposed is the erection of 97 houses with garages and/or car parking spaces together with the provision of open space and associated roads and sewers.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. As part of the appeal, the appellant submitted an amended layout plan (Drawing No 449/3E) which shows a "landscape buffer" between the area of approved public open space on the south western boundary of the appeal site and the adjacent Bolton Dearne Waste Water Treatment Works (WWTW). I do not consider that this amendment constitutes a significant variation to the original plans from a public consultation point of view. Furthermore, the Council has been afforded time to comment on it as part of the determination of this appeal. There was no dispute between the main parties about accepting this plan as part of the hearing discussion. I have therefore considered this amended layout plan for the purposes of determining this appeal.
3. The Council confirmed at the hearing that the Barnsley Local Plan (LP) had already been the subject of examination and that a further round of examination was scheduled for next year. Copies of Policies H8 (Affordable Housing), H9 (Housing in Regeneration Areas) and LG2 (The Location of Growth) of the LP were handed to me at the hearing and I have taken these policies into account as part of the determination of this appeal.

### Main Issues

4. The main issues are (i) whether or not the proposal includes the requisite amount of on-site affordable housing and other planning obligation financial contributions and, if not, whether this is adequately justified from a financial viability point of view; (ii) the effect of the proposed driveway surfacing upon the safe and convenient use of pavements and roads; (iii) the effect of the

proposed driveway surfacing upon the character and appearance of the area; (iv) the effect of the proximity of the proposed development to the neighbouring waste water treatment works in respect of odour and the on-site rising main/sewer in terms of required easements and odour and (v) whether or not the release of the designated Safeguarded Land for housing purposes is justified in respect of the delivery of a sustainable form of development.

## Reasons

### *Site and proposal*

5. The appeal site is undeveloped and comprises a field which is located to the south of dwellings at Lowfield Grove and Crane Well View and immediately to the north east of the WWTW. The site is adjacent to land to the east which has the benefit of planning permission for the erection of 60 dwellings (phase 1<sup>i</sup>) and 58 dwellings (phase 2<sup>ii</sup>). In essence, the proposal constitutes phase 3 of the Gleeson Homes estate of houses.
6. It is proposed to erect 97 dwellings which would be two storeys in height and would include both detached and semi-detached properties. There would be 27 two bedroom, 60 three bedroom and 10 four bedroom dwellings. Access to the site would be from a 'T' shaped junction at Lowfield Road which leads from a humpback railway bridge. Internally, the access would be from the main spine road associated with the approved phases 1 and 2 developments.

### *Affordable housing and planning obligation financial contributions*

7. It was confirmed at the hearing that the appellant had entered into a conditional contract to purchase the site. There was no dispute between the parties in respect of a land valuation of £600,000.
8. I recognise that Gleeson Homes propose to offer some of the properties at a low cost sale price and that the Government has proposed a potential change to the definition of affordable housing, as outlined in the Government's Housing White Paper "fixing our broken housing market" 2017, which if it became policy may mean that such properties were by definition affordable. However, the White Paper is not national planning policy. Whilst it has been the subject of public consultation, it can only be afforded very limited weight as a material planning consideration.
9. Whilst there is some evidence that the Gleeson product does include some homes which are relatively low cost (utilising for example the Government's Help to Buy money), the proposal does not include any affordable dwellings on site that would meet the definition of affordable housing as contained in annex 2 of the National Planning Policy Framework (the Framework). Furthermore, and, in any event, there is no mechanism in place to ensure that any such properties remain affordable in perpetuity.
10. Policy CSP15 of the adopted Barnsley Local Development Framework Core Strategy 2011 (CS) states that for schemes of 15 dwellings or more 15% affordable housing will be expected "*unless it can be demonstrated through a viability assessment that the required figure would render the scheme unviable*". I note that emerging policy H8 of the LP would require 10% affordable housing, but this policy is not yet adopted and so I afford Policy CSP15 of the adopted CS more weight in decision making terms.

11. The appellant submitted updated financial viability assessments as part of the appeal which were appraised by the Council. The appellant contends that these reflect more up to date sales and construction costs (accounting for inflation). It includes an appraisal based on the developer realising a profit equivalent to 20% of GDV. At the hearing, the appellant confirmed that they were prepared to work on the basis of a 20% profit margin which differed from the original submission of 22%. The updated financial appraisals included revised build costs (to reflect build cost inflation), updated sales prices and sales incentives sheets. I consider that it was appropriate to request updates given the passage of time and as Page 19, Box 14 of the RICS Guidance Note Financial Viability in Planning 2012 (RICS Guidance) states that "*viability assessments may occasionally need to be updated due to market movements or if schemes are amended during the planning process*".
12. Further consultation with the Education Authority has revealed that there is a shortage of primary school places in the area and hence there is a request for £147,504. This is in addition to the requested financial contributions of £210,000 for the provision of traffic signals and signage on the humpback bridge over the railway on Lowfield Road and £162,345 for public open space (POS). There is no disagreement between the parties in respect of the amount of the financial contributions. I am satisfied that such requests would meet the tests as laid out in paragraph 205 of the Framework and the Council confirmed at the hearing that, in respect of the highways and POS contributions, there had not been five or more obligations for the said projects since 6 April 2010.
13. The appellant's position is that at a profit level of 22% the development would result in an overall deficit of £400,971. At 20% the deficit would be £244,920 and at 17.5% the deficit would be £49,857. Accordingly, the appellant's view is that no affordable housing could be provided at any of the above profit margins and furthermore, only part of the financial contributions could be supported. Notwithstanding the appellant's views about viability, at the hearing I was provided with two planning obligations (undated) one of which included the payment of £210,000 for the railway bridge highway works and £162,345 for public open space and the second of which included the payment of £210,000 for the railway bridge highway works, £147,504 for education and £14,841 for public open space. In essence, the appellant's position is that in the event that I was to allow the appeal I could effectively choose one of the planning obligations.
14. The Council considers, based on the most up to date appraisals, that at a 17.5% profit margin the proposed scheme could support at least 5% affordable housing together with the full financial sums for public open space, the bridge highway works and education. The appellant does not consider that any affordable housing can be provided on the site, but nonetheless has not sought to dispute the Council's position that a profit margin of 8% is reasonable for affordable homes on the site.
15. The appellant has referred me to an appeal decision<sup>iii</sup> for phase 1 of the wider site relating to the modification of the associated planning obligation by way of the removal of affordable housing requirements. In allowing the appeal, the Inspector commented that "*there are various 'rules of thumb' which are quoted when discussing developer profit, and these generally vary between 15% and 25%. However, in general, it is reasonable to assume that on more marginal sites, profit expectations would be higher*". For the phase 1 development, the

Inspector gave weight to the appellant's view that sales had been very slow and the reasons why the site had not been mothballed. He commented that "*this background tends to support a figure in the upper part of the 'normal range'*". Consequently, and recognising the appellant's use of in-house professionals, the Inspector accepted the appellant's profit shown in the viability appraisal at 22%.

16. Notwithstanding the above appeal decision, it does not automatically follow that the same level of developer profit should be applied in respect of the appeal development (i.e. phase 3). This is a greenfield site and I have not been provided with any compelling evidence from the appellant to indicate that there are significant risks associated with developing this site for housing. Furthermore, I have not been provided with any indication that sales are likely to be very slow on this site. At the hearing, I learnt that most of the phase 2 dwellings had now been built and that there was now one dwelling left to sell. The Council also indicated that they had information from a Gleeson sales representative that there was a waiting list for properties on the phase 3 appeal site.
17. At the hearing, the appellant did not dispute the comment made about the waiting list, but nonetheless felt that it would still be difficult to market the properties for sale and that most of the interested purchasers from the local catchment area had already bought a dwelling on phases 1 and 2. Furthermore, and notwithstanding the fact that the appeal site is greenfield, the appellant's view was that there may be some unforeseen development issues such as land contamination from previous agricultural activities. I am not persuaded that the appellant has reasonably demonstrated that there are any abnormal risks associated with the development of the appeal site for housing and, in any event, the Council has applied a 2.5% contingency for such eventualities. The evidence before me suggests that the recently built houses are selling well and the existence of a waiting list for the phase 3 site indicates to me that there is demand for the proposed new dwellings. Furthermore, I have not been provided with any objective evidence to indicate that it is likely that there would be any significant abnormal or unforeseen development costs arising out of the development of this greenfield site.
18. I note that the appellant has indicated that the Board would not accept a level of developer profit at 17.5% for the private market houses, but I do not consider that this in itself represents reasonable justification for opting for 20%. The appellant has not reasonably substantiated the reasons why the Board would not accept a profit margin of 17.5% for the market dwellings. I acknowledge that a previous Inspector did consider that a higher profit margin was justified for the phase 1 site, but I am bound by such a decision. I have determined this appeal upon the evidence that is before me and I have not found that there is any reasonable evidence of significant risk to justify opting for a higher profit margin. In reaching this conclusion, I have considered Policy H9 of the LP which states that Bolton upon Dearne is an area of "*low housing demand*", but the evidence before me indicates that there continues to be demand for new build dwellings in the locality. I therefore conclude that the development could reasonably operate at a profit margin of 17.5% for the market dwellings.
19. The appellant contends that sales incentives (for example legal fees paid, carpets laid, curtain and light package etc) should be taken into account and

that the sale price as shown by the land registry should not be solely considered. However, I agree with the Council that land registry sales information should be used to inform financial appraisals and note the advice in the RICS Guidance which states on page 14, Box 10 that *"in undertaking scheme specific viability assessments, the nature of the applicant should normally be disregarded as should benefits or disbenefits that are unique to the applicant. The aim should be to reflect industry benchmarks having regard to the particular circumstances in both development management and plan making viability testing"*. I acknowledge that the incentives do in fact represent a cost to the developer, but I cannot be sure whether such incentives will actually be needed for the phase 3 site. Furthermore, and, in any event, I cannot see why such costs (if needed) could not reasonably be paid for out of the identified marketing budget (4%) shown in the financial appraisals or indeed from company profits.

20. On the evidence that is before me, I am persuaded by the Council who conclude that a viable scheme does exist at a profit level of 17.5% and with the provision of some affordable housing. I am satisfied that the Council's approach to assessing the viability of the proposal is reasonable and that it accords with the RICS Guidance in terms of industry benchmarks. At the aforementioned profit level, and accounting for the other reasonable and necessary financial contributions for POS, education and highway safety matters, it would be possible to provide at least 5% affordable homes on the site (10% if based on a blended profit rate of 17.5% for market housing and 8% for affordable housing). As no affordable homes would be secured on the site by means of the completion of a planning obligation, I conclude that the proposal would fail to accord with the affordable housing aims of Policy CSP 15 of the CS, Policy H8 of the LP and the Framework.
21. The appellant has indicated that they would not be in a position to offer all of the required financial contributions for POS, bridge works and education. However, all such financial contributions would be needed in full in order to mitigate the adverse impacts of the development. Indeed, at the hearing it was confirmed that there was no disagreement between the main parties about the amount of financial contributions being sought. The main parties agreed that the financial contributions were needed to make an essentially unacceptable scheme acceptable in planning terms. Whilst Policies CSP 15 of the CS and H8 of the LP do allow the level of affordable housing to be reduced subject to viability testing, the same approach does not apply to financial contributions which are needed to mitigate unacceptable planning impacts.
22. Consequently, even if I had found that the absence of affordable housing was acceptable in viability terms, I would have still concluded that the proposal was unacceptable as the appellant's submitted planning obligations make no provision for the full payment of the necessary financial contributions. In this regard, I conclude that the proposal also conflicts with the Framework which is clear that where safeguards are necessary to make a particular development acceptable in planning terms, and these safeguards cannot be secured, planning permission should not be granted for unacceptable development.

*Driveways – highway / pedestrian safety*

23. The appellant proposes that each private driveway would include a bitumen apron for the first 1.5 metres and thereafter would be constructed from gravel. The appellant has submitted a specification drawing for the private drives and in respect of the gravel section of driveway it states that it would have "38mm of 15-20mm angular crushed aggregate to BS EN 13242 rolled and compacted on cement dust layer (dust evenly to light grey finish) on 250mm Type 1 stone sub base". The bitumen surface would have a "50mm single coat tarmac surface (14mm aggregate)" with a "250mm Type 1 stone sub-base". Timber edge restraints are also proposed.
24. I have carefully considered the evidence submitted by the Council including photographs of driveway surfaces and juxtaposed highways for the existing Lowfield Park housing development as well as photographs relating to other Gleeson housing developments elsewhere (i.e. Barnborough Lane, Goldthorpe, Moorlands Avenue, Barnsley and Parsons Green in Sheffield) where similar driveway surfaces have been created. The latter photographs have been sent by the Council and have formed the basis of four recent planning appeals<sup>iv</sup> where the issue of the same driveway surface has been a determining factor. I have taken these photographs into account as material planning considerations as part of the determination of this appeal. At the hearing, I was informed that no decisions had been made in respect of the aforementioned appeals.
25. I note that the appellant issues a manual (Gleeson Manual) to each house purchaser and that this includes advice on how to maintain the driveways. This includes advice relating to both raking and weeding. I do not doubt, that when the driveway surface is first laid, the gravel remains quite firmly attached to the sub layer of driveway. However, the evidence before me suggests that over time the gravel does become loose as the various photographs that I have seen indicate gravel on the bitmac apron, pavements and highway.
26. I note that the appellant has provided photographs which show that where there have been problems things have improved. However, I am not sure if all residents have swept stones back onto the driveways as at least one interested party has commented that "Gleeson Homes are sending their staff around the estate sweeping the stones off the footways and carriageway back into the residents driveways". Indeed, at the hearing a local resident commented that this had happened the day before the hearing: the appellant did not dispute this and put this down to an "over eager" site manager. In any event, I visited the area on 2 October 2017 and noticed that there was quite a lot of gravel on the highway including at Smithy Croft.
27. Whilst the manual would go some way in helping to keep stones off the highway, and I do not doubt that some residents would conscientiously sweep/rake when any gravel were displaced onto the highway, I am not persuaded that all residents would do this. I am sure that even the conscientious ones would tire of such a routine. In addition, I do agree with the comment made at the hearing by Ms Bilton who indicated that gravel clearance would be very unlikely in the winter months when residents returned from work during hours of darkness. I acknowledge the appellant's comment that it would essentially be a "Saturday job", but for the reasons outlined above I do not consider that all residents would routinely do this or that this would be a satisfactory arrangement.

28. When considered in isolation, the amount of gravel being displaced onto the highway (including pavement) may be sometimes relatively small. However, it is proposed that all driveways would be finished in this surface and I note that such an arrangement already exists in terms of the phase 1 site. When the site is considered as a whole, the evidence before me suggests that there is potential for significant amounts of gravel to be displaced on large parts of the estate roads. Not only would this be an unsatisfactory arrangement in terms of the longevity of the surface of the highway, but it would also result in an unsafe environment for cyclists and pedestrians alike. I acknowledge that there are no recorded accidents associated with gravel on highways from driveways which have been formed using the proposed surface, but that does not mean that such accidents would be unlikely in the future. Furthermore, the sort of accidents associated with loose gravel such as skidding and slipping would be unlikely to be reported to the police. However, that does not mean that it is acceptable to tolerate the potential for such accidents.
29. I recognise that motorised vehicle speeds are quite low in this residential environment. I was able to witness this as part of my site visit. Hence, I doubt that gravel on the road would give rise to significant motorised vehicle skidding and hence accidents. However, a lot would depend upon the magnitude of any future issues and that cannot be totally predicted. Notwithstanding the above, even a small amount of gravel on the pavements or roads could result in a serious accident for a pedestrian (i.e. tripping or slipping) or a cyclist (i.e. skidding).
30. The appellant has put together a video which aims to demonstrate that the driveway surface does not impede use by wheel chair and push chair users and people with mobility difficulties. I acknowledge that this does seem to indicate that the surface does not impede accessibility, although I cannot be certain whether this would change overtime as the driveways age and the gravel becomes dislodged. In any event, this is not the reason why the Council had concerns about the proposed surface. The evidence provided by David Pearson at paragraph 4.11 on page 46 does state that *"it is accepted that on occasion small amounts of crushed aggregate can be dislodged from the surfacing through general wear and tear and this can be transported onto adjacent areas, including the publicly adopted footway"*. The evidence before me indicates that there is potential for gravel to be dislodged both on the pavement and road leading to accidents.
31. I note that the appellant does not consider that South Yorkshire Residential Guide 2011 (SYRG) should be afforded significant weight as they consider that it is *"best practice guidance and therefore it cannot be accorded the same weight as development plan or national policy"*. However, the SYRG which states that *"private single and shared driveways should be surfaced with bound materials to prevent any stones, gravel or similar items being deposited on the adoptable area"* is specifically referenced in the adopted Barnsley Parking Supplementary Planning Document 2012 (SPD) which supplements the CS in so far that it states *"developments will be expected to meet the standards for parking design set out in the South Yorkshire Residential Design Guide considering cycle, motorcycle and car parking as an integral part of the design of residential development"*. As the proposed driveways would not include a bound material to stop gravel from being deposited on the adoptable area, there would be conflict with the SYRG and hence the SPD.

32. For the reasons outlined above, I conclude that the proposed driveway surface is unacceptable and that it would have a severe impact upon matters of highway safety. Therefore, this part of the development would not accord with the highway safety aims of the Framework; Policy CSP 26 of the CS which states that new development will be expected to be designed and built to provide safe, secure and convenient access for all road users, and the SPD. I acknowledge that some Councils and indeed Inspectors have allowed such driveway surfaces in other parts of the country. However, I have not been provided with full details or the exact circumstances which led to these developments being allowed. In any event, I have determined this appeal on the evidence that is before me including photographs provided by the Council and what I was able to see as part of my site visit on 2 October 2017. Consequently, the existence of planning permissions for similar driveway surfaces elsewhere in the country does not outweigh my conclusion on this issue.

*Driveways – character and appearance*

33. I have already found that the proposed driveway surface is unacceptable for highway safety reasons. However, I do also have concerns about the appearance of the surface. I was able to view the proposed surface on my site visit as it had been used in the phase 1 development. I acknowledge that it would provide a contrast to the material used for the highway. However, I consider that the surface would look very temporary in appearance to the extent that the estate looked like it had not been finished. The displacement of gravel on the apron, pavement and roads would look untidy and would depart from what would otherwise be a well-designed residential environment.
34. The above adverse impact would be compounded by the fact that the evidence before me indicates that weeds can/do grow through the surface. Whilst the Gleeson Manual indicates that occupiers of the dwellings should apply a weed killer, I am not persuaded that all residents would do this. Over time there is real potential for the driveways to look unkempt and unsightly and this would be to the detriment of the character and appearance of the estate of houses. Indeed, I visited the site on 2 October 2017 and noticed that some of the driveways (for example at Smithy Croft) did include a lot of weeds.
35. I note that the Council has not always raised character and appearance issues in terms of determining other planning applications relating to the proposed driveway surface. However, the Council did not appear to have the same evidence about the issue previously. In any event, I have determined this planning application on its individual planning merits. I acknowledge the appellant's comment that the provision of tarmac driveways would cost more (about £2,315 per property) taking into account the material and the need for increased storage capacity from surface water run-off. However, this is not a matter which would outweigh my identified concerns relating to the adverse highway safety and design issues.
36. For the reasons outlined above, I conclude that the proposed driveway surface would have a significantly detrimental impact upon the character and appearance of the area. Therefore, the proposal would not accord with the design aims of Policy CSP 29 of the CS and the Framework.

## Odour

37. Both the Council and Yorkshire Water accept that the odour report submitted by the appellant is sound and robust. Indeed, on 20 July 2015 Yorkshire Water commented that *"whilst we accept that the document is robust it reflects the existing layout of the works. Yorkshire Water will be undertaking a complete refurbishment of the WWTW and in all likelihood altering the technology that is used, converting from a filter works to an activated sludge plant"*. Furthermore, and, in any event, there are currently no detailed plans for a sludge plant by which an assessment of the proposal can be made. Yorkshire Water suggests that improvement works are likely to commence in 2018 and that a tendering process is underway. However, there is nothing to suggest that such improvement works will definitely take place and, in any event, at the hearing both Yorkshire Water and the Council confirmed that any changes to the WWTW would at worst have a neutral impact in odour terms.
38. At the hearing, I heard that there had been no material changes to the type, management and treatment of waste water at the WWTW. As there are no details or indeed guaranteed plans in place relating to possible improvement works at the WWTW, I cannot see how the appellant can reasonably undertake an updated or altered odour assessment. On the basis of existing environmental conditions, I have not been provided with any reasonable explanation as to why the conclusion reached in the appellant's odour assessment should be disregarded. Such an assessment concludes that the *"amenity of residents of the Gleeson development would not be witness to any significant detrimental impact"*.
39. Notwithstanding the above, the Council considered that the appellant has not reasonably taken into account the proximity of proposed plots 203-208 to the WWTW. At the hearing, Yorkshire Water commented that given the relatively close proximity of such dwellings to the boundary of the WWTW, the odour report should have also taken into account the perception of odour and hence the potential for complaints from the occupiers of such properties. As part of the site visit, I was able to consider the position of these proposed dwellings and the relationship with the WWTW. Whilst only a snap shot in time, I did not witness any odours when standing in this area. However, I cannot be certain of the actual wind direction at this time.
40. As part of the site visit, it was evident that there was already some established boundary landscaping around the edges of the WWTW which would have the effect of screening it from the ground floor windows of the proposed dwellings. Following discussions between the main parties, it was agreed that it would be possible to increase the landscaped buffer shown on amended planning layout to encompass the entire area annotated as "public open space". The use of quick growing trees was discussed. In addition, the appellant agreed to include a minimum ten metre wide landscape buffer on the southern boundary of the phase 2 site (in the ownership of the appellant) where it meets the boundary with the WWTW. Subject to the imposition of the two aforementioned tree planting areas, I am satisfied that any perceived adverse odour / psychological effects arising out of the proximity of proposed dwellings 203-208 to the WWTW could be suitably mitigated.
41. In reaching the above view, I have also taken into account the agreement between Yorkshire Water and the appellant at the hearing where it was stated

that the most offensive / mal-odours emanating from the WWTW was some 150 metres to the south of the aforementioned dwellings.

42. I am satisfied that with landscaping mitigation the proposed dwellings would not be too close to the WWTW or to the rising main from an odour impact point of view and I do not agree with the Council or Yorkshire Water that a new odour assessment is necessary. I acknowledge that in respect of plot Nos 203-208 the odour contour is on the margin of acceptability, but this reflects the agreed position in the earlier phases of development (i.e. 50 cubic metres plus 10 metres).
43. I conclude that the proposal would be acceptable in terms of (i) the position and orientation of the proposed dwellings to the WWTW (including dwelling Nos 203-208) and (ii) that actual and perceived levels of odour, subject to further tree planting to be secured planning condition, would be acceptable for the occupiers of the proposed dwellings. On this basis, the proposal would suitably accord with the amenity and odour aims of Policy CSP 29 and CSP 40 of the CS; paragraph 120 of the Framework and the Institute of Air Quality Management - Guidance on the Assessment of Odour for Planning 2014.

#### *Sewer Easements and Rising Main*

44. As part of the appeal, the appellant has provided an additional plan which shows the position of the sewer and the rising main. At planning application stage, concerns were raised by Yorkshire Water and the Council respectively about the position of dwellings relative to the sewer which runs alongside the eastern and southern boundaries of the site. Such concerns related to easements and odour, but nonetheless did not specifically form the basis of the Council's reasons for refusal. However, given such concerns it was necessary for me to ask the parties for comments about these matters both before and at the hearing.
45. I have not been provided with any evidence to suggest that the position of the sewer as shown on plan No 449/3E is incorrect. Furthermore, the Council has commented that "*Yorkshire Water are content that the position of the rising main indicated on layout plan 449/3E correlates with their own mapping records*". However, the Council have commented that Yorkshire Water have said that the location of such apparatus on mapping records "*does not necessarily accurately reflect what is beneath the ground*". Nonetheless, neither the Council nor Yorkshire Water has provided me with any information to indicate that the position of the rising main or the sewer is not as shown on the mapping records. The apparatus falls on land that is not in the ownership of the appellant and at the hearing Yorkshire Water commented that it would not be appropriate to undertake investigatory works on such land. On this basis, I am satisfied that the appellant has provided enough information in respect of this issue. This is a view which was eventually shared by Yorkshire Water at the hearing.
46. On the evidence that is before me, I am satisfied that a minimum 5 metre easement either side of the sewer could be retained and that the position of the proposed dwellings (including gardens and fences) would not interfere with the maintenance or repair of this infrastructure. The rising main would be located quite some distance to the west of plot No 206. I do not consider that there is any compelling evidence before me to suggest that the development would lead to maintenance/repair issues in respect of either the sewer or rising

main or that the proximity to such infrastructure would reasonably give rise to any significant odour. In respect of the proposed landscaped buffer, I am satisfied that any planting could be done in such a way as to ensure an appropriate easement to the rising main. This is a matter that could be secured by means of the imposition of a planning condition.

47. I therefore conclude that the proposal would be acceptable in terms of its impact upon the sewer and rising main and that the living conditions of the occupiers of the proposed dwellings would not be adversely affected from any odour associated with such infrastructure. In this regard, the proposal would accord with the amenity and infrastructure aims of the CS and the Framework.

#### *Safeguarded Land and Sustainability*

48. The appeal site falls within land designated as Safeguarded Land under saved Policy GS10 of the adopted Barnsley Unitary Development Plan 2000 (UDP). The policy states that "*in areas shown as safeguarded on the proposals map existing uses will normally remain during the plan period and development will be restricted to that necessary for the operation of the existing uses. Otherwise planning permission for the permanent development of such land will only be granted following a review of the UDP which proposes that development on the land in question*". Policy GS10 of the UDP covers the plan period of 1986 to 2001. In this regard, I consider that the policy is out of date and hence I afford it very limited weight in decision making terms. Nonetheless, the Council has not yet adopted a new development plan which includes housing allocations for the area and to this extent the proposal conflicts with Policy GS10 of the UDP.
49. The Council has started work on preparing the new Local Plan for Barnsley (LP) and issued it for Examination in December 2016. The LP, once adopted, will replace both the UDP and the CS. The LP proposals map shows the appeal sites as being a proposed Housing Allocation and is referenced as Site AC26 under Policy H3. It indicates that about 86 dwellings would be erected on the site although the Council confirmed at the hearing that this was simply an indicative number.
50. The above policy states that the development would be expected to provide traffic signals at the railway bridge on Lowfield Road, to provide an odour report and to incorporate any appropriate mitigation measures including a landscaped buffer. This draft allocation has been the subject of representations and hence will need to be considered as part of the LP Examination process. Therefore, I can only afford the proposed housing allocation limited weight in decision making terms. Nonetheless, the proposal does accord with the emerging planning policy position relating to the allocation of the appeal site for housing and this is a matter which weighs in favour of the proposal. Indeed, and notwithstanding any representations made by other interested parties in respect of LP Examination (including Housing Allocation AC26), the Council raises no objection to the proposal in land use principle terms.
51. Given the weight that I afford to the aforementioned development plans, it is also necessary for me to determine the appeal against paragraphs 7 and 14 of the Framework. Paragraph 7 of the Framework states that there are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform an

economic, social and environmental role. I deal with each of these matters as follows.

52. I have no doubt that the occupiers of 97 dwellings on the site would assist in supporting existing facilities and services in the area and hence that there would be some economic benefits associated with the proposed development. Furthermore, the proposal would lead to some employment at construction stage, albeit that it would be relatively short lived. The appellant has also referred to the local planning authority's receipt of Homes Bonus if the appeal were to be allowed. These economic matters weigh in favour of the proposal.
53. There is no dispute between the main parties that the local planning authority cannot currently demonstrate a deliverable five year supply of housing sites. Indeed, I have been provided with a copy of the Council's housing land supply note dated August 2017 for the period April 2017 to March 2022. Such a note concludes that the Council can currently demonstrate a deliverable supply of only 4.01 years of housing sites. There is no dispute between the parties about this shortfall. I acknowledge that the housing land supply position may change in the event that the emerging LP were to be adopted. However, the LP has not been adopted and so I must determine this appeal on the basis that the local planning authority cannot currently demonstrate a deliverable five year supply of housing sites.
54. In the context of the above, the delivery of 97 dwellings would make a significant contribution to the supply of housing in the area, at a time when there is a shortfall against a five year housing land supply requirement. This is a social matter which weighs positively in the planning balance. In reaching this view, I note that at the hearing the Council did not dispute the appellant's comment that the local planning authority has for many years failed to achieve its annualised completion rate targets. However, I have found that the proposal could support some affordable housing (at least 5%) and there is no mechanism in place to secure such provision. This is therefore a social matter which weighs against the proposal.
55. Weighed against the above social and economic matters are a number of environmental considerations. I have considered the appellant's Transport Assessment prepared by Westgate Consulting (Leeds) Limited and note that there a number of bus services and a railway station within convenient walking distance of the site. Furthermore, the site is close to a significant number of day to day facilities and services and a Travel Plan is proposed. I acknowledge comments made by other interested parties about the frequency of some of the identified public transport services, but nonetheless I consider that the site is sustainably located and that occupiers of the proposed dwellings would not be reliant upon the use of the private motor vehicle for all day to day living and employment purposes. The Council shares this view.
56. In design terms the proposed dwellings would suitably reflect the appearance and scale of those that have already been built/consented for phases 1 and 2 and overall I am satisfied that the plot sizes would be acceptable. I have considered the separation distances between each of the residential properties as well as from existing dwellings which surround the site (including houses at Lowfield Grove, Crane Well View, Lowfield Meadows and the phase 2 development) and I am satisfied that the proposal would not have a

- significantly detrimental impact upon the living conditions of existing or future occupiers of dwellings in respect of light, outlook and privacy.
57. I acknowledge concerns raised by other interested parties about the existing humpback bridge over the railway on Lowfield Road which has poor forward visibility. I also note the concerns raised about the existing difficulties exiting the junction between Station Road and the B6098, Angel Street. However, and given that Network Rail do not look likely to provide traffic signals on the humpback bridge, the appellant has submitted a planning obligation which would include a financial contribution of £210,000 for the provision of traffic signals on the bridge. I have no reason to disagree with the conclusion reached by the Highway Authority that such a contribution would be both necessary and acceptable in terms of mitigating the highway impacts of both this proposal and the approved development on phases 1 and 2 of the wider site. Therefore, and subject to this financial contribution, the proposal would be acceptable in terms of its effect upon the off-site highway network in traffic generation and highway safety terms. However, this is an environmental matter which has neutral weight in the planning balance.
58. I have found that the proposed driveway surface would be unacceptable in terms of both its effect upon the character and appearance of the area and matters of highway safety. These are environmental matters which weigh significantly against the proposal.
59. In conclusion, and for the reasons outlined above, the proposal would have some economic and social benefits and these are positive matters to weigh in the planning balance. Given the number of dwellings proposed, the proposal would make a very positive contribution towards the supply of market housing at a time when the Council cannot demonstrate a deliverable five year supply of housing sites. Furthermore, the appeal site is sustainably located with convenient access to good public transport provision and day to day facilities and services and there does not appear to be any physical impediment to the development of the site for housing. These are environmental matters to which I afford positive weight.
60. Weighed against the above, is the fact that the proposal does not include any on-site affordable housing which would meet the affordable housing definition in the Framework. Indeed, for the reasons outlined in this decision, I consider that a financially viable development could proceed with some on-site affordable housing. The absence of affordable housing is a social matter which weighs significantly against the proposal. In addition, I am satisfied that the proposal could viably support the full financial contributions for POS, highway bridge works and education. The appellant does not agree with this view and hence I do not have a completed planning obligation which secures these necessary and full mitigation payments and the provision of affordable housing. Finally, significant harm would be caused to the character and appearance of the area and to matters of highway safety as a result of the proposed driveway surface. Collectively, these adverse environmental and social matters significantly and demonstrably outweigh the aforementioned benefits of the proposal. On balance, I therefore conclude that the proposal would not deliver a sustainable form of development.

## Other Matters

61. I have taken into account comments made by other interested parties. Some of the comments made have already been addressed in the reasoning above.
62. I note concerns raised about the highway width (including pavements) of Lowfield Road, but planning permission has already been approved for phases 1 and 2 of the Lowfield Park site. I have no objective evidence before me to indicate that further use of Lowfield Road, and other roads in the locality, would be significantly adverse taking into account highway widths, volumes of traffic, queuing or conflict with parked cars. That said, had the proposal been acceptable in all respects, I would have sought further information from the Council's Highway Authority in terms of whether or not it was proposed to include double yellow lines on part of Lowfield Road as a parked car close to the bridge was impairing vehicular sightlines and making it difficult for vehicles to pass on what is a relatively narrow road.
63. I note the concerns raised by other interested parties, including Ms Bilton and Mr Rawlinson, about the possible use of the access track which leads to the fisheries business. However, both the Council and the appellant confirmed at the hearing that there was no access proposed from either Lowfield Meadows or along the track located on the far eastern edge of the site.
64. Comments have been made that the site is at risk of flooding and that there has been some flooding in the past. However, the site is not in an area of high flood risk and surface water and foul drainage are matters that could be addressed by way of the imposition of a planning condition.
65. Whilst the proposal would result in a change to the otherwise open and undeveloped site, I do not have any objective evidence that the proposal would cause direct harm to the nearby fisheries business. Development of the site for housing would change the open character and appearance of the area, but this has to be considered in the context that the Council cannot demonstrate a deliverable five year supply of housing sites and has allocated the site for housing in its emerging LP. Furthermore, Policy LG2 of the LP states that priority will be given to development in "*Goldthorpe (Dearne Towns)*".
66. I have not been provided with any specific/objective evidence that the proposal would adversely affect nearby septic tanks, that water pressure is particularly low or that broadband speeds would reduce if the proposal were to be allowed. I do note that a number of local residents have raised these issues. However, these are not in themselves reasonable grounds to justify refusing planning permission. Low water pressure and broadband infrastructure are matters to be addressed separately by the relevant utilities companies. Furthermore, potential harm to private land/infrastructure would be a civil matter.
67. I acknowledge that the site is currently used for equestrian purposes and that the proposal would result in the loss of such a recreational activity. However, I have not been made aware of any policies which would specifically protect the site for equestrian use and, in any event, I have found that the proposal is unacceptable for other reasons.
68. I have considered the appellant's habitat survey and have no detailed evidence to support the claim that the proposal would give rise to any significant impacts upon matters of bio-diversity. I have not been provided with any evidence to

indicate that the proposal would lead to the loss of the best and most versatile agricultural land and, in any event, I have afforded weight to the fact that (i) the emerging development plan is proposing that this site is allocated for housing and (ii) the local planning authority cannot demonstrate a deliverable five year supply of housing sites.

69. I have considered the position and separation distance from the site to the WW2 scheduled ancient monument to the east of the site. I am satisfied that the proposal would not have an adverse impact upon its setting.
70. Comments have been made that the proposal would lead to a loss of views. The Courts have held that the loss of a view is not a material planning consideration. I have considered the scale and position of the proposed properties and do not consider that the development would lead to any material loss of privacy, light or outlook for the occupiers of existing surrounding dwellings.
71. None of the other matters raised outweigh or alter my overall conclusion on the main issues.

### **Conclusion**

72. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal would not deliver a sustainable form of development. Therefore, it should be dismissed.

*Daniel Hartley*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mark Eagland – Peacock and Smith  
Jolyon Harrison – Chief Executive, Gleeson Homes  
Steve Gamble – Group Land Director, Gleeson Homes  
Matt Smith – Group Planning Manager, Gleeson Homes  
David Pearson – Westgate Consulting  
Graeme Blacklock – SLR Consulting  
Anthony Lee – Group Technical Director, Gleeson Homes

### FOR THE COUNCIL:

Andrew Burton BA Hons, Dip TP MRTPI – Group Leader, Development Management, Barnsley Metropolitan Borough Council  
Caroline Petty – Regulatory Services, Barnsley Metropolitan Borough Council  
Barbara Wilson – Highways, Engineering and Transportation, Barnsley Metropolitan Borough Council.  
Jason Field – Legal Services, Barnsley Metropolitan Borough Council  
Cecilia Reed – DVS / Valuation Office Agency  
Stephanie Walden – Yorkshire Water

### INTERESTED PERSONS:

Carol Bilton – 4 Lowfield Grove, Bolton upon Dearne  
Philip Rawlinson – 4 Lowfield Meadows, Bolton upon Dearne

## **DOCUMENTS SUBMITTED AT THE HEARING**

Doc 1: Refusal notice 2015/0005/02/RVC – Saint Anthonys CE Primary School House, Pottery Bank, Newcastle upon Tyne, NE6 3SU.  
Doc 2: Policies H8, H9 and LG2 of the Barnsley Local Plan Consultation Draft 2014.  
Doc 3: Barnsley Local Plan Regulation 19 Statement of Representations - Publication 2016.

- 
- i Planning permission Ref No 2011/0963.
  - ii Planning permission Ref No 2013/0960.
  - iii Appeal Ref App/R4408/Q/14/2216971
  - iv Appeals Ref Nos APP/R4408/W/17/3170205; APP/R4408/W/17/3170210; APP/R4408/W/17/3170209 and APP/R4408/W/17/3170208.