

BARNSLEY METROPOLITAN BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY MR AND MRS PHIL MULLINS

LAND SOUTH OF NEW SMITHY AVENUE, THURLSTONE

**HEARING STATEMENT SUBMITTED
ON BEHALF OF THE LOCAL PLANNING AUTHORITY**

**LPA REF: 2017/0088
INSPECTORATE REF: APP/R4408/W/17/3188501**

1. INTRODUCTION

- 1.1 This appeal is against the decision of Barnsley Metropolitan Borough Council to refuse planning permission for a residential development of 21 dwellings (Outline including means of access)

The application was refused planning permission on the 30th June 2017 for the following reasons:

1. *In the opinion of the Local Planning Authority, due to the site's current allocation as Safeguarded Land, which is due to be carried forward within the Local Plan Publication Draft, and it's location outside of Urban Barnsley and the Principle Towns, the proposal for residential development would be contrary to the Core Strategy Policy CSP8 which states that development in villages will only be allowed if it is consistent with Green Belt policy or is necessary for the viability of the settlement and to meet local needs. In addition the site is considered to be in an unsustainable location and is therefore contrary to Paragraph 14 of the NPPF.*
2. *In the opinion of the Local Planning Authority the development of this land is considered to be piecemeal development, which would restrict access to and prejudice the potential comprehensive development of the larger area of Safeguarded Land should it be allocated in a future plan period, contrary to the SPD Designing New Housing Development and Saved UDP Policy H7.*
3. *In the opinion of the Local Planning Authority the access to the site is constrained and narrowed by existing on street parking. In addition the applicant has failed to demonstrate that the impact of vehicular movements associated with a residential development of the scale proposed would not add to highway safety problems and detrimentally impact on the efficiency of the highway for all road users. On this basis the scheme is contrary to Core Strategy policy CSP 26.*

2. SITE LOCATION AND DESCRIPTION

- 2.1 The appeal site comprises a rectangular shaped 0.9ha area of land set to the immediate south of New Smithy Avenue and to the north of High Bank / Manchester Road within the village of Thurlstone. The Thulstone Conservation area runs along the eastern boundary of the site. The site previously formed part of a larger agricultural land holding, known as White House Farm.
- 2.2 The site currently has a gated access directly off New Smithy Avenue and access is provided via a pedestrian gate located in the south-east corner, which serves the adjoining White House Farm. The site is surrounded by residential properties on three sides to the north, east and south and to the west is further agricultural land separated by an existing Public Right of Way which runs between High Bank and Westfield Avenue/Westfield Lane. The site rises from the south-east to the north west.
- 2.3 The application was in outline form and proposed a development of up to 21 dwellings. All matters of detail had been reserved apart from means of access which is proposed via New Smithy Avenue. An indicative site layout plan was submitted showing a mixture of detached and semi-detached houses. The properties are arranged around a single cul-de-sac road which features a turning area adjacent to plots 10, 11 and 12. A

pedestrian link is proposed through to the existing public footpath along the west. The plans did not show an access through to the remaining safeguarded land to the west.

- 2.4 Whilst the application was in outline, the planning statement states that all dwellings proposed would be two storeys in height. The indicative layout shows a range of house types, ranging in size from 2 to 5 beds. Six of the dwellings are proposed to be set aside for affordable housing purposes.

3. PLANNING HISTORY

- 3.1 No previous planning applications have been made on the land.
- 3.2 A pre-application enquiry was submitted to the Council in August 2016 for a residential development of the site with up to 16 no. dwellings. Pre-application advice may form a material consideration but it does not constitute a formal or guaranteed outcome in the determination of a future planning application or other form of submission. Any views or opinions expressed are given in good faith, without prejudice to the formal consideration of any planning application, which will be subject to a period of public consultation and as in this case, was ultimately decided by Members of the Planning Regulatory Board rather than at Officer level. As such the advice given at pre-application stage is not binding on the Local Planning Authority.
- 3.3 The appellant has noted a number of applications approved by the Local Planning Authority for residential developments on Safeguarded Land. Each application should be considered on its own individual merits and these applications had been approved some time ago. Following the grant of permission of these applications, and the submission of this planning application, the Council submitted the emerging Local Plan to the Secretary of State and it is now in the examination process. The document is a material consideration and represents a further stage forward in the progression towards adoption of the Local Plan. As such increasing weight was given to the policies contained within the document.

4. PLANNING POLICY CONTEXT

- 4.1 Planning decision should be made in accordance with the development plan unless material considerations indicate otherwise and the NPPF does not change the statutory status of the development plan as the starting point for decision making. The development plan consists of the Core Strategy and the saved Unitary Development Plan policies. The Council has also adopted a series of Supplementary Planning Documents and Supplementary Planning Guidance Notes, which are other material considerations.
- 4.2 The Council submitted our emerging Local Plan to the Secretary of State for examination in December 2016 and we are, at the time of writing, at the fourth stage of examination hearings following a period of examination consultation between Jan and March 2018. This consultation included a range of issues, most pertinent to the appeal being the proposed housing site allocations in some of the western villages but with no allocations shown in Thurlstone. There are no further hearings programmed. The Local Plan establishes policies and proposals for the development and use of land up to the year 2033. The document is a material consideration and represents a further stage forward in the progression towards adoption of the Local Plan. As such increasing weight can be given to the policies contained within the document although, in accordance with paragraph 216 of the NPPF, the extent of this will depend on:

The extent to which there are unresolved objections to relevant policies. In relation to this particular case there are unresolved objections to a number of relevant policies including in particular:

- Substantial objections to the emerging strategy and allocations in the Local Plan. In the vicinity of the appeal site there are objections to the scale of allocations shown in Penistone and in surrounding villages;
- Objection to the failure to allocate the planning appeal site;
- Objections to the objectively assessed housing need figure – both that it is too high and that it is too low and;

The degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF

- We consider that our plan strategy, policies and allocations (as amended by the 2018 consultation) are highly consistent with NPPF policies.

Saved UDP Policies

UDP Penistone Community Area Proposals Map: Safeguarded Land

The site is also located adjacent to the Thurlstone Conservation Area Boundary

Saved UDP Policy GS10 'In areas shown as safeguarded land on the proposals map existing uses shall normally remain during the plan period and development will be restricted to that necessary for the operation of existing uses. Otherwise planning permission for the permanent development of such land will only be granted following a review of the land in question'.

Saved UDP Policy H7 'new residential development should safeguard access and service opportunities for adjacent land which is allocated for housing or protected under policy GS10 or GS11.'

Local Development Framework Core Strategy

CSP3 'Sustainable Drainage Systems

CSP4 'Flood Risk'

CSP8 'The Location of Growth'

CSP9 'The Number of New Homes to be Built'

CSP10 'The Distribution of New Homes'

CSP14 'Housing Mix and Efficient Use of Land'

CSP15 'Affordable Housing'

CSP26 'New Development and Highway Improvement'

CSP29 'Design'

CSP30 'Historic Environment'

CSP36 'Biodiversity and Geodiversity'

CSP39 'Contaminated and Unstable Land'

CSP40 'Pollution Control and Protection'

CSP43 'Education Facilities and Community Facilities'

SPD's

Designing New Residential Development

Parking

Open Space Provision on New Housing Developments

Other

South Yorkshire Residential Design Guide

Planning Advice Note 22 'Financial Contributions to School Places'

Publication version of the Draft Local Plan

Proposed allocation: Safeguarded Land: SAF21

Policy GB6 – The Council shall only grant planning permission on sites allocated as safeguarded land that is needed for the operation of existing uses, or alternative uses where the development will protect the open nature of the land, and will not affect the potential for future development of the site. The permanent development of safeguarded land will only be permitted following the adoption of the replacement Local Plan which proposes development on the land in question.

NPPE

The National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied. At the heart is a presumption in favour of sustainable development. Development proposals that accord with the development plan should be approved unless material considerations indicate otherwise. Where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole; or where specific policies in the Framework indicate development should be restricted or unless material considerations indicate otherwise.

Paragraph 14 states –

At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

For plan-making this means that:

- Local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted.

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or

- specific policies in this Framework indicate development should be restricted.

5. THE COUNCIL'S CASE

- 5.1 **Reason for refusal 1** - *In the opinion of the Local Planning Authority, due to the site's current allocation as Safeguarded Land, which is due to be carried forward within the Local Plan Publication Draft, and it's location outside of Urban Barnsley and the Principle Towns, the proposal for residential development would be contrary to the Core Strategy Policy CSP8 which states that development in villages will only be allowed if it is consistent with Green Belt policy or is necessary for the viability of the settlement and to meet local needs. In addition the site is considered to be in an unsustainable location and is therefore contrary to Paragraph 14 of the NPPF.*
- 5.2 The site forms part of an area allocated as safeguarded land in the saved policies of the Unitary Development Plan (UDP). The Safeguarded Land allocation (site ref SAF21) has also been carried over to the Publication version of the Draft Local Plan which establishes policies and proposals for the development and use of land up to the year 2033.
- 5.3 This appeal site is not located in a priority area intended to accommodate new housing growth in the adopted Core Strategy. The site is not located within Urban Barnsley, nor is it located in a Principal Town. As the site is located in a village, the proposal was considered to be contrary to the spatial strategy set out in the Adopted Core Strategy 2011. Core Strategy CSP8 'The Location of Growth' states that development in villages will only be allowed if it is consistent with Green Belt policy or is necessary for the viability of the settlement and to meet local needs. The spatial strategy for the Borough is aimed at accommodating the majority of new housing growth in Urban Barnsley and the Principal Towns. This was reflected in the proposals maps accompanying the Publication Version of the Local Plan, which did not propose any housing development allocations in the villages and this application site was proposed to remain Safeguarded Land through to the year 2033. Allowing this site to be developed would have been contrary to the aims of the spatial strategy for new housing development in the Borough as set out in the adopted Core Strategy and the emerging Local Plan.
- 5.4 The Council cannot currently demonstrate a supply of specific, deliverable sites sufficient to meet the boroughs housing requirement. A recent Supreme Court Judgment has confirmed that for the purposes of paragraph 49 of the NPPF relevant policies for the supply of housing are limited to those dealing only with numbers and distribution of new housing. Therefore policy GS10 'Safeguarded Land' is not considered to constitute a policy for the supply of housing.
- 5.5 However, the judgment goes on to clarify that '....The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14..."
- 5.6 Therefore, given that the council cannot currently demonstrate a five year supply of housing, it is considered that applications on safeguarded or ULTRU land, where it can be demonstrated that they are in a sustainable location, will now be determined in line with the NPPF Presumption in Favour of Sustainable Development (paragraph 14 of the NPPF), relevant development plan policies and any other material considerations. Any

adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Sustainability

5.7 The NPPF paragraph 7 sets out that there are three dimensions to sustainable development: economic, social and environmental:

- The economic role relates to building a strong, responsive and competitive economy by ensuring sufficient land of the right type is available at the right time to support growth.
- The social role includes the provision of the supply of housing to meets the needs of present and future generations by creating high quality built environment, with accessible local services.
- The environmental role relates to protection and enhancement of our natural, built and historic environment, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, adaption to climate change and moving to a low carbon economy.

The three dimensions had been assessed as part of the application proposal:-

5.8 In terms of economic benefits, the development would create jobs in the short term, and additional resident's spending money within the locality and the development of 21 units could be considered to provide some economic benefit. The appeal proposal would also improve the choice of homes within the area.

5.9 In terms of the social impact, the appellant has provided a section 106 package which includes A Section 106 package including a contribution of £56,408 towards secondary school provision; a contribution of £38,807.35 towards public open space and a £20,000 contribution towards the provision of a lay-by on New Smithy Avenue. The appellant would provide 6 affordable housing units (which is 5% above that required by policy) this is a small amount, however would provide some benefit to affordable housing needs. Again the provision of a contribution to secondary school places and public open space is of some benefit. The contribution of £20,000 towards the provision of the of a lay-by on New Smithy Avenue would only provide 3 parking spaces and is not considered to be of significant social benefit. The section 106 package provided does not go significantly beyond what would be expected of any other residential development.

5.10 At the time the application was considered the site was assessed as part of the Local Plan Housing Site Selection process (Site Ref: 255 – Copy Attached at Appendix A) and was rejected as it scored poorly against a number of sustainability indicators. The site is located in a village, is greenfield, is not well served by public transport, shopping facilities and is remote from a Doctor's surgery, which is a key service. Consequently, residents of the proposal would have to travel to the Penistone to access these essential services. Given the nature of the roads and the public transport links, the journeys are likely to be made by car. The application documents indicated that the site is within a 5 minute walk from bus stops and some services, however walking to these services may be difficult given the steep sloping nature of the village and the long route which would be taken by pedestrians to the main road.

5.11 In terms of the environmental impacts, the council are satisfied that the proposal would not have any significant impact upon flood risk, ecology or contamination. At the time the application was assessed, the appeal site was not considered to be a sustainable location and has therefore been rejected as it is within a village location, at the bottom of the settlement hierarchy, in a location that is not sustainable and future occupiers would need to rely on the use of private motor vehicles. As such, due to the sites location it would have resulted in an increased reliance on the private motor vehicle and as such, it would have conflicted with the social and environmental roles of sustainability.

- 5.12 Since the refusal of planning permission, the Council received the Local Plan Inspector's interim findings on 15 August 2017 (copy attached at appendix B). Relevant to this appeal the Inspector finds that
- 'I am concerned that the approach to the 34 villages in the settlement hierarchy lacks clarity, is not sufficiently justified by the evidence and contributes towards an approach to safeguarded land which is inconsistent with the NPPF'. (para 23)
 - 'The plan does not identify sites for new housing in the villages...' (para 24)
 - 'the evidence on which the sustainability of the villages has been assessed dates from 2007 and at the hearing sessions the Council accepted that a selective update of the Settlement Assessment could be provided.' (para 26) and
 - 'my view is that if the plan is to be found sound it should have a more positive approach to the future of the Borough's villages' (para 28).
- 5.13 In response the Council has produced a selective update, extracts from which are attached at appendix C. The selective update concludes that Thurlstone is one of the more sustainable of the Borough's villages with a score of 15 and sites in Thurlstone were reassessed for their suitability for residential allocation. None of the villages that scored 14 or less have been considered to display sufficient sustainability credentials to justify residential allocations. As a result of the selective update, Thurlstone is now considered to be a sustainable village.
- 5.14 On reconsideration of the application site, it was concluded that the site was rejected as 'there are serious access issues that cannot be resolved in the plan period. The site is proposed Safeguarded Land reference SAF21 in the Local Plan.' The Evidence Base is attached at appendix D. The site was therefore considered to have serious access issues and the impact of vehicular movements associated with a residential development of the scale proposed would potentially add to highway safety problems and detrimentally impact on the efficiency of the highway for all road users. More detail of this is provided within the highways statement. If access issues could have been resolved, part or all of the Safeguarded allocation may have been considered as a housing allocation but it would have remained essential that any allocation (or planning permission) of only part of the safeguarded site does not sterilise or prejudice the development of the remainder of the safeguarded site which turns to the reason for refusal number 2.
- 5.15 In conclusion, given that the council cannot currently demonstrate a five year supply of housing, applications on safeguarded or ULTRU land, where it can be demonstrated that they are in a sustainable location, are to be determined in line with the NPPF Presumption in Favour of Sustainable Development (paragraph 14 of the NPPF), relevant development plan policies and any other material considerations. As detailed above, following the refusal of planning permission Thurlstone is now considered to be a sustainable village, however, the appeal proposal raises significant concerns with regard to access and highway safety as detailed within the highways reason for refusal it is determined that the adverse impact of the proposal would significantly and demonstrably outweigh the benefits contrary to paragraph 14 of the NPPF.
- 5.16 **Reason for refusal 2** - *In the opinion of the Local Planning Authority the development of this land is considered to be piecemeal development, which would restrict access to and prejudice the potential comprehensive development of the larger area of Safeguarded Land should it be allocated in a future plan period, contrary to the SPD Designing New Housing Development and Saved UDP Policy H7.*

- 5.17 Saved UDP Policy H7 states that new residential development should safeguard access and service opportunities for adjacent land which is allocated for housing or protected under policy GS10 or GS11. The site forms a small part of a much larger area of Safeguarded Land which is set to the west of the site. The plans submitted with the application did not show an access through to the remaining safeguarded land, nor had consideration been made to the impact of this development on the adjacent Safeguarded Land. The purpose of Safeguarded Land is to retain land on the edge of settlements which may be required for future development needs. It is important to protect areas designated as Safeguarded Land from being constrained in the future by access/development difficulties.
- 5.18 Alternative access arrangements and a comprehensive development of the whole area of safeguarded land had not been explored as part of the application. It is appreciated that the site layout could be amended to show an access through (as shown on the amended layout plan submitted with the appeal documents). However, allowing the development of this appeal site would jeopardise the potential of the wider safeguarded land allocation to accommodate development and to provide overall solutions to the sites complex challenges, in particular relating to highways. The development of this land is considered to be piecemeal development which would prejudice the potential comprehensive development of the larger area of land if it was allocated as such, in the future contrary to Policy H7 and the SPD Designing New Housing Development.
- 5.19 **Reason for refusal 3** - *In the opinion of the Local Planning Authority the access to the site is constrained and narrowed by existing on street parking. In addition the applicant has failed to demonstrate that the impact of vehicular movements associated with a residential development of the scale proposed would not add to highway safety problems and detrimentally impact on the efficiency of the highway for all road users. On this basis the scheme is contrary to Core Strategy policy CSP 26.*
- 5.20 Please see the separate highways statement prepared by AECOM dated the 26th March 2018.

6. CONCLUSION

- 6.1 The Council cannot currently demonstrate a five year supply of housing, applications on safeguarded or ULTRU land, where it can be demonstrated that they are in a sustainable location, are to be determined in line with the NPPF Presumption in Favour of Sustainable Development (paragraph 14 of the NPPF), relevant development plan policies and any other material considerations. Thurlstone is now considered to be a sustainable village, however, as the proposal raises significant concerns with regard to access and highway safety as detailed within the highways reason for refusal it is determined that the adverse impact of the proposal would significantly and demonstrably outweigh the benefits contrary to paragraph 14 of the NPPF.
- 6.2 The development of this land is also considered to be piecemeal development, which would prejudice the potential comprehensive development of the larger area of Safeguarded Land contrary to The SPD Designing New Housing Developments and contrary to Saved UDP Policy H7.
- 6.3 In addition to the above, the access to the site is constrained by existing on street parking. The proposal fails to suitably address this issue and does not provide a suitable and safe access. Significant concerns have also been raised with regard to the suitability of the highway network to facilitate safe vehicular and pedestrian access to/from the proposed development. The applicant has failed to demonstrate that the impact of

vehicular movements associated with a residential development of the scale proposed would not add to highway safety problems and detrimentally impact on the efficiency of the highway for all road users. On this basis the scheme is contrary to Core Strategy policy CSP 26.

- 6.4 It is for the above reasons that the Inspector is respectfully requested to support the Council's decision and dismiss the appeal.

Appendix

- A – Housing Site Assessment
- B – Local Plan Inspectors Interim Findings
- C – Village Settlements Assessment Summary, 'Thurlstone Settlement Scoring'.
- D – Evidence Base – Rejected Sites List and Plan