Dacres
COMMERCIAL

APP/R4408/A/09/2099328/NWF

APPEAL BY GREEN ROAD DEVELOPMENTS
LAND OFF GREEN ROAD, DODWORTH, BARNSLEY, S75 3RR.

APPELLANT STATEMENT

APRIL 2009

CONTENTS

1.0 Introduction

2.0 Location and Site Description

3.0 Site History

4.0 National and Local Planning Policy Guidance

5.0 The Case on Behalf of the Appellant

Appendices

1. *Photographs of the Appeal Site*

2. Listed Building Description – The Traveller's Inn.

3. Barnsley Council 5 Year Housing Land Supply 2008 – 2013 Report

4. SHLAA Sites Consultation Extracts (October 2008)

5. Appeal Decision 1 June 2007 (APP/F4410/A/06/2025536 & APP/F4410/A/07/2038100) and Judgement by Ouseley J from George Wimpey UK Limited v First Secretary of State (2005)

1.0 INTRODUCTION

1.1 My name is Mark Thomas Johnson and I will be representing the appellants, Green Road Developments, at the Informal Hearing.

1.2 I am a member of both the Royal Institute of Chartered Surveyors and the Royal Town Planning Institute. I have 19 years experience in the Planning profession working mainly in the private sector and more recently as the North of England Regional Policy Manager for the Home Builders Federation. I joined Dacre, Son & Hartley January 2006 and was appointed as a Director and Head of Planning Unit in May 2006.

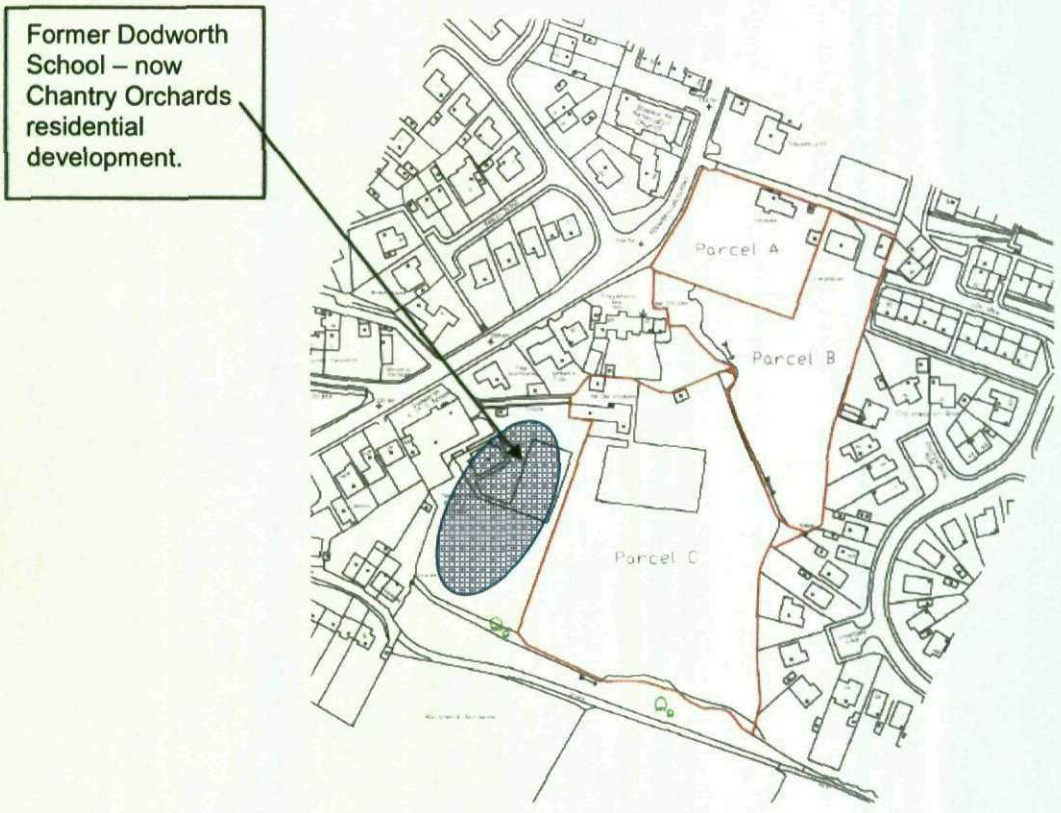
1.3 This appeal statement relates to the outline application for residential development on land off Green Road, Dodworth, refused by Barnsley Metropolitan Borough Council on 12 February 2009. The sole reason for refusing the application to which this appeal has been lodged relates to the Council's judgement that the site; includes Greenfield land and therefore PAN30 applies; that the site is not needed to meet housing targets; and that the development would contribute negatively towards meeting targets for developing new housing developments on brownfield land.

1.4 I was instructed by the Appellant to Appeal the Council's decision having been involved in the planning application by the submission of a Sequential Approach and Sustainable Assessment report and a later Brownfield Statement.

1.5 This statement presents; a location and site description, outlines the planning history and correspondence between the various parties, considers the relevant policy context and advances the comprehensive planning case in support of the proposed development.

2.0 LOCATION AND SITE DESCRIPTION

2.1 The Appeal Site is in three ownerships (see below plan) and comprises existing housing and garden land to the east of Dodworth Green Road. The existing structures of Hillside (within Parcel A), Field House (within Parcel B) and The Old Stables (within Parcel C) are shown as being removed on the indicative layout that forms part of the Appeal.



2.2 Parcel A – This part of the Appeal Site is 0.34 hectares and contains Hillside property with its clearly defined residential curtilage. The proposed single access off Green Road to serve the Appeal Site runs through this portion of the site. There is no dispute that this part of the Application Site is 100% brownfield.

2.3 Parcel B – This part of the Appeal Site is 0.62 hectares and contains Fieldhouse property. The garden area is all lawned, edged with trees and maintained by a ride-on mower. Clearly the land that contains the dwelling and its immediate surroundings are brownfield. The southern part of this parcel has no previous use other than rough garden land and has no alternative access, with the only available point of entry being via Fieldhouse. The land is partly covered in trees and the topography is too steep in places for any realistic agricultural or equestrian use, and can only realistically and practically be used as an extended garden area to Fieldhouse or other residential uses. There is no

clearly defined boundary to the residential curtilage of Fieldhouse other than the character change as the land slopes down to the south and the land is more rough and untreated in character around the edges.

2.4 Prior to the current land ownerships of Parcels A and B, both A and B were within the same ownership. This collective part of the site has always been associated with the two properties of Hillside and Fieldhouse.

2.5 Parcel C – This is the largest part of the Appeal Site (1.23 hectares) and contains The Old Stables, which is a detached two storey brick house with detached garages and an outbuilding which is used to store garden equipment. This property sits within a large area of land. There is a flat area of lawn to the south east of the dwelling which appears in an almost tennis court like delineation on above ownership plan. Due to the topography of this part of the Appeal Site, which slopes down to the south, the flat lawn is surrounded by a retaining wall but only to ground level [this retaining wall is in a state of disrepair in parts]. There are no other boundary features. The southern part of this portion of the Appeal Site is landlocked and it has not been used for any use other than as part of the garden area to the property. There are no boundary features or defensible boundaries to suggest the land is anything other than garden. In our opinion, Area C is 100% brownfield.

2.6 There are a number of photographs of the Appeal Site including an aerial image at Appendix 1.

2.7 The Appeal Site is surrounded by development on three of its four sides. The recently completed residential development at Chantry Orchards runs along the southern part of the western boundary. Chantry Orchards is a recently completed housing development of 19 dwellings (comprising detached and semi-detached properties). This site was previously the Local Authority owned Dodworth C of E School and playground, and prior to that` part of the School grounds, to the south of the playground was in the same ownership of Parcel C.

2.8 The Travellers Inn public house and garden also lie to the west of the Appeal Site. This is a Grade II Listed Building, the description of which is enclosed at Appendix 2.

2.9 The rear gardens of properties on Low View, Chatsworth Rise and Strafford Walk back onto the eastern boundary of the Appeal Site.

2.10 Dodworth is a village located some 3 kilometers to the south west of Barnsley Town Centre. The village is a former coal mining village with a population of approximately 5,800. There are a number of services and facilities within Dodworth, including a variety of local shops (including a Somerfields supermarket) a number of pubs, a Post Office, Library, a Medical Centre, Restaurants/take-aways, a Bannatynes Health Club and three Churches.

2.11 There are two primary Schools in Dodworth, the St John the Baptist Church of England (Voluntary Aided) Primary School, and Keresforth Primary School. There are two nearby Secondary Schools, the Kingstone School on Broadway and Penistone Grammar School which are within 3 km and 9km of the site respectively.

2.12 There is employment within Dodworth at Dodworth Business Park and Fall Bank Industrial Estate. The recently completed alterations to Junction 37 of the M1 which incorporate a bypass has resulted in the development of a new Business Park called Capitol Park, which also includes a new Encore Hotel. There are a number of hotels within Dodworth, which take advantage of the proximity of Dodworth to the M1, with easy links to Barnsley, Sheffield, Manchester and Leeds.

2.13 Given the proximity to the M1 Junction 37, Dodworth is popular for commuters to the nearby employment centres of Barnsley, Sheffield, Manchester and Leeds. The public transport links are also good, with direct services to Barnsley and Huddersfield from Dodworth Railway Station, which is approximately 0.64km from the Appeal Site. Furthermore, buses run along both Green Road and High Street with a number of services, all of which stop at Dodworth Railway Station and at Barnsley Interchange.

3.0 SITE HISTORY

3.1 The Archaeology Report and Preliminary Site Investigation Report that form part of the Appeal Application reveal the history of the Appeal Site. In the 1850's the Appeal Site, like most of Dodworth was open fields. There was on Old Coal Pit shown in the centre of the site and a Well is shown in the central area of the site. A spring is shown on the 1906/07 map. Therefore prior to the current three residential properties on the Appeal site, the site historically comprised fields. The development of Hillside, Fieldhouse and The Old Stables were built between 1956 and 1962 according to historic OS maps.

4.0 PLANNING POLICY

4.1 Collectively the planning policy referred to in the Planning Statement (part of the Design and Access Statement) and the planning policy referred to in the Sequential Approach and Sustainability Statement that form part of the Appeal application remain the relevant national, regional and local policy. Since the Appeal application was submitted to the Council, the LDF has been progressed and housing and employment led 'Growth Point' status has been awarded to Barnsley.

4.2 A summary of the relevant planning policy referred to in the Appeal documentation is as follows:

National Policy:

PPS3 Housing – November 2006.

4.3 Paragraph 69 states that in deciding planning applications LPA's should have regard to:

- Achieving high quality housing
- Ensuring developments achieve a good mix of housing reflecting the accommodation requirements of specific groups, in particular, families and older people
- The suitability of a site for housing, including its environmental sustainability
- Using land effectively and efficiently
- Ensuring the proposed development is in line with planning for housing objectives e.g. addressing housing market renewal issues.

4.4 There is increased emphasis in PPS3 on ensuring that housing is developed in suitable locations in terms of sustainability. Paragraph 36 states:

> "The Government's policy is to ensure that housing is developed in suitable locations which offer a range of community facilities and with good access to jobs, key services and infrastructure. This should be achieved by making effective use of land... The priority for development should be previously developed land, in particular vacant and derelict sites and buildings."

4.5 PPS3 requires local authorities to identify sufficient specific deliverable sites to deliver housing in the first five years. Paragraphs 54 – 55 states that in order for sites to be considered deliverable they should be 'available', 'suitable', and 'achievable'. The guidance also advices LPA's to identify a further supply of developable sites for years 6 – 10, and where possible for years 11 – 15. If local planning authorities cannot demonstrate an up-to-date five year supply of deliverable sites paragraph 71 states that authorities

should "consider favourably planning applications for housing" having regard in particular to the considerations in paragraph 69.

PPG13 Transport – March 2001

4.6 This PPG requires Local Planning Authorities to:

> "Place the needs of people before the ease of traffic movement in designing the layout of residential development; and seek to reduce car dependence by facilitating more walking and cycling, by improving linkages by public transport between housing, jobs, local services and local amenity and by planning for mixed uses."

Regional Policy:

Yorkshire and the Humber Regional Spatial Strategy – May 2008

4.7 The Yorkshire and Humber Plan (RSS) was adopted in May 2008. This provides a new spatial policy framework for the Region to 2026 and sets an increased annual housing provision in Barnsley of 1135 (gross) from 2008 – 2026.

4.8 The RSS takes a different spatial approach to that outlined in RPG12 in that the RSS adopts a 'City Region' approach as advised by the Northern Way Growth Agenda. This City Region approach seeks to generate additional employment growth in the main centres of population and aims to locate new homes to match those growing economies.

4.9 Barnsley is identified in both the Leeds City Region and South Yorkshire sub region key diagrams. Barnsley itself is identified as a Sub Regional Town, and Dodworth is identified in the 2004 Regional Settlement Study as a Local Service Centre (more specifically a linked settlement, with a tourist centre function and stable in terms of prosperity). It is in my opinion, this description is out of date. While the settlement is linked to the Main Urban Area of Barnsley Town, the function of the settlement has moved towards being a centre of employment.

4.10 The spatial distribution of growth (including housing) is focused on Regional Cities and Sub Regional Cities and Towns, then to Principal Towns and finally to Local Service Centres. In terms of locating development for plan making purposes within the region, RSS Policy YH7 states that:

> "A) After determining the distribution of development between cities and towns in accordance with policies YH4, YH5 and YH6, local planning authorities should allocate sites by giving:

i) First priority to the re-use of previously developed land and buildings and the more effective use of existing developed areas within the relevant city or town; (underlining my emphasis)
ii) Second priority to other suitable infill opportunities within the relevant city or town;
iii) Third priority to extensions to the relevant city or town.

B) In identifying sites for development, local planning authorities should adopt a transport-orientated approach to ensure that development:

i) Makes the best use of existing transport infrastructure and capacity;
ii) Complies with the public transport accessibility criteria set out in Tables 13.8 and 13.9 and maximises accessibility by walking and cycling;
iii) Maximises the use of rail and water for uses generating large freight movements."

4.11 Policy YH4 is relevant in this Appeal, given the Council's LDF preparation, which includes the settlement of Dodworth within the Barnsley Urban Area. In doing so, the Appeal Site falls within a higher settlement hierarchy (a sub regional town), whereby in accordance with Policy YH4, housing is targeted. Policy YH4 deals with regional cities and sub regional cities and towns. The prime focus for housing, employment, shopping, leisure, education, health and cultural activities and facilities is directed to Sub Regional Cities and Towns. Figure 2.3 identifies Barnsley as a sub regional town.

4.12 RSS Policy YH6 deals with Local Service Centres and states that:

"Local Service Centres and rural and coastal areas will be protected and enhanced as attractive and vibrant places and communities, providing quality of place and excellent environment, economic and social resource. Plans, strategies, investment decisions and programmes should:

1. Achieve a high standard of design that protects and enhances settlement and landscape diversity and character;
2. Support innovate means of accessing and delivering services;
3. Retain and improve local services and facilities, particularly in Local Service Centres;
4. Support economic diversification;
5. Meet locally generated needs for both market and affordable housing."

4.13 Section 12 of the RSS outlines the Housing approach. Policy H1, Table 12.1 seeks an annual average net addition to the dwelling stock in Barnsley of 840 dwellings between 2004 and 2008, increasing to 1,015 dwellings between 2008 and 2026.

4.14 The RSS sets a regional target in Policy H2 of prioritising housing development on brownfield land and through conversions to contribute to a regional target of at least 65%. Policy H2 also states that LPA's should adopt a "flexible approach to delivery by not

treating housing figures as ceilings whilst ensuring that development is focussed on locations that deliver the Plan's Core Approach and Sub-Area policies." (my underlining).

Leeds City Region New Growth Points – Programme of Development 2008 – 2016/17 (October 2008)

4.15 Three new Growth Points (Local Authority areas) are identified within the Leeds City Region where additional growth will be focussed above the RSS housing requirement. The three Local Authority areas are **Barnsley**, Calderdale and Wakefield.

4.16 The rationale for the New Growth Point Programme is to facilitate faster delivery of housing pre 2016/17 that would otherwise be the case. Barnsley is programmed to deliver a 20% increase above the RSS housing requirement (which is a net of 1015 per annum) between 2008 and 2016/17.

Local Policy:

Barnsley Unitary Development Plan – December 2000

4.17 The Barnsley UDP was adopted in December 2000, and although it is the current development plan for the Borough, it is to a certain extent dated, as it pre-dates PPS3 Housing (2006) and the RSS (May 2008). The UDP covers a plan period of 1986 – 2001.

4.18 Within the UDP, Dodworth is located within the Barnsley Central Housing Strategy Area along with. Diagram 4 of the UDP (see below) identifies 'Main new housing locations' and Dodworth is identified as one of 5 main new housing locations where over 200 dwellings are planned (the other 4 locations being Darton, Royston, Shafton and Monk Bretton). There are a number of other settlements where between 100 and 200 dwellings are planned.

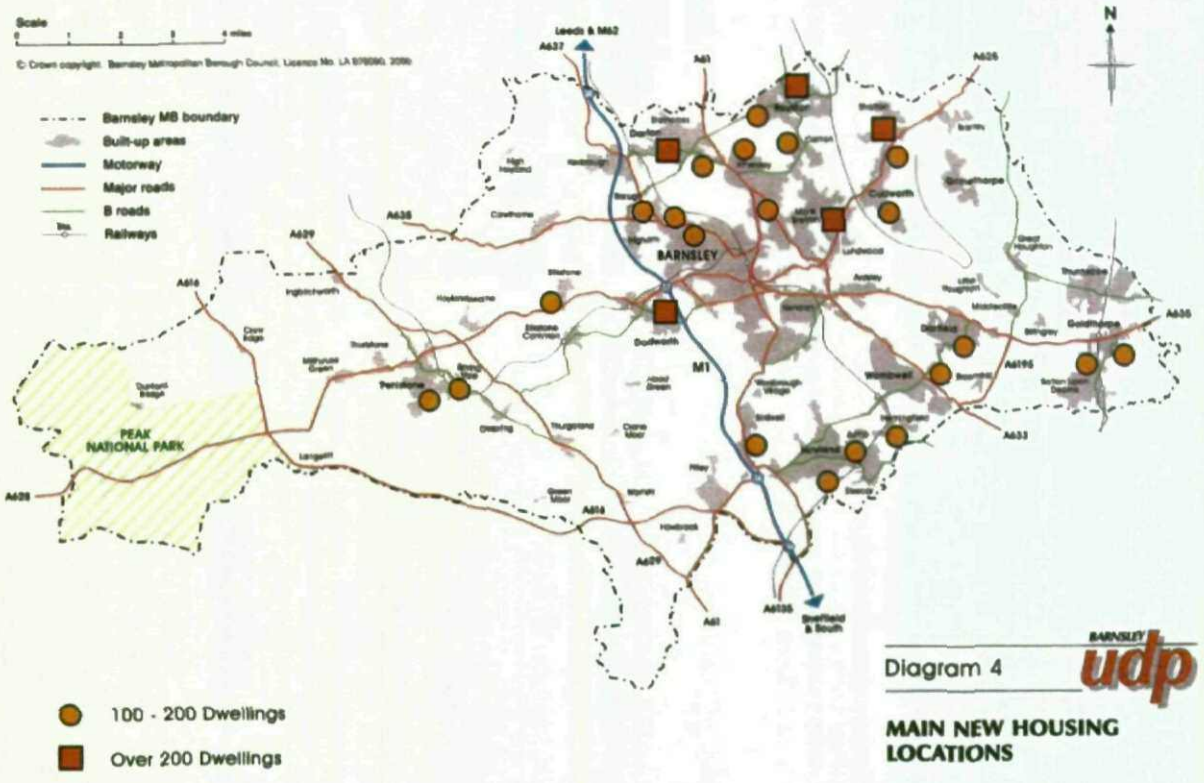
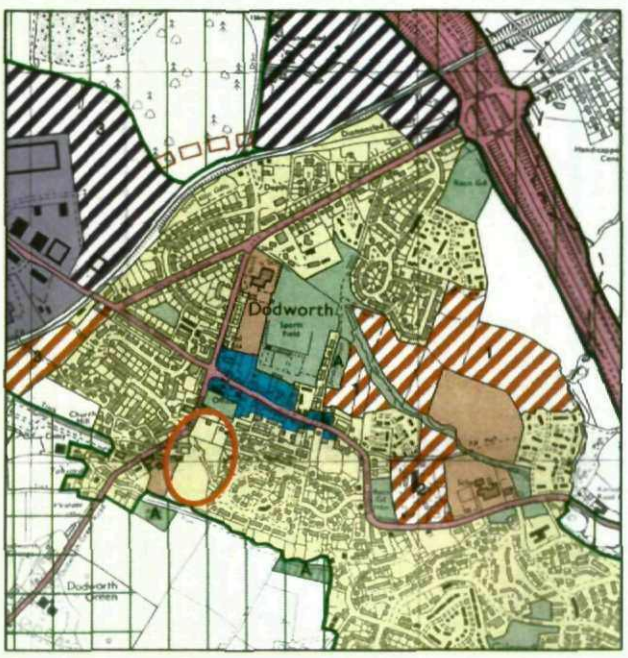


Diagram 4

MAIN NEW HOUSING LOCATIONS

4.19 *The Appeal Site is designated as a Housing Policy Area within the development boundary of Dodworth. The extract below from the UDP proposals map highlights the Appeal Site in Red.*



4.20 Policy H8 deals with Housing Policy Areas and states that:

> "Areas defined on the proposals map as housing policy areas will remain predominantly in residential use. Other uses will only be permitted where they are compatible with a residential area and other policies of the plan."

4.21 The transport related policies referred to in the Planning Statement are not relevant to the consideration of this Appeal, given that the application is an Outline, and there are no highway or transport related issues that the Council have highlighted in the consideration of the application.

Planning Advice Note (PAN) 30 – 'Sequential Approach to Determining Planning Applications for Residential Development' – 2004.

4.22 This document is relevant given the reference to it in the sole reason for refusal of this Appeal application. However, the weight that can be attached to PAN30 in light of the national and regional policy that has been published after PAN30 is questionable.

4.23 PAN30 was prepared prior to the publication of PPS3 and therefore is based on the predecessor to PPS3 – PPG3 Housing (2000). The sequential approach to the release of land for housing in PPG3 no longer forms part of national housing policy. Instead PPS3 promotes sustainable development for locating housing schemes, taking into account PPS1 and prioritising the re-use of previously developed land with emphasis on the sustainability of a location.

4.24 PAN30 remains an interim statement of policy prior to the adoption of the LDF. The aim of PAN30 is to ensure that an adequate level of housebuilding is maintained while giving appropriate focus to the development of sustainable, previously-developed sites and that where appropriate, to release sustainable greenfield sites. PAN30 explains that "the Sequential Approach aims to ensure that priority is given to residential development on sustainable, previously-developed land within urban areas." The application of a PAN30 Assessment applies to any application for residential development on a greenfield/part Greenfield site, including the renewal of planning permission, on sites of 0.4 hectare or more such sites will be subject to the Sequential Approach and assessed against available sites meeting the criteria. PAN30 specifically states that previously developed sites over 0.4ha in any location within the district do not require a sequential approach to be undertaken (page 4).

4.25 In terms of the sustainability of sites, PAN30 requires the completion of a checklist for all Greenfield and brownfield housing developments on sites of 0.4hectares or above. A sustainability assessment was undertaken and was included within the Sequential Approach and Sustainability Assessment that formed part of the application. The checklist revealed that the Appeal Site is classed as a sustainable location.

4.26 Given that the Appeal Site is a brownfield site according to the PPS3 definition of previously developed land, and is within the settlement limit of Dodworth, a PAN30 sequential approach was not required. That said, an assessment of other sites within the district with permission and their sustainability was undertaken and formed part of Application. Rather than repeat the information within this Appeal Statement, the information is within the Sequential Approach and Sustainability Assessment that formed part of the application documents.

Local Development Framework

4.27 The preparation of the LDF has commenced. The Draft Barnsley Core Strategy Preferred Options, and draft Barnsley Housing Sites Preferred Options were both published in October 2005, prior to the publication of PPS3. A Housing Background Paper (October 2005) was also published, which refers to a Barnsley Settlement Assessment, which was undertaken in 2003. The Settlement Assessment supports further residential development in Dodworth. The assessment of Dodworth states:

> "Although a small town, Dodworth is well served by public transport. It has a railway station, which provides services to Huddersfield, Barnsley, Meadowhall and Sheffield and is also within the A628 bus corridor, which has frequent and reliable services to Barnsley. There is also the potential to walk to urban Barnsley, although the motorway junction represents a considerable physical barrier.
>
> The town has a local retail centre, although it does not have any foodstore provision. It has 2 primary schools, which are forecast to have a rising surplus of spaces, but it does not have a secondary school. It has a reasonable level of health provision although it does not have a dentist. A 'Living Well' leisure centre is located in the town but this is only available to private members. It has a reasonable level of outdoor recreation provision.
>
> The town has a good range of existing employment opportunities particularly in relation to the size of the settlement. This includes Dodworth Business Park and the Fall Bank and Elmhirst Industrial Estate."

4.28 In terms of the potential benefits of growth, the 2003 Settlement Assessment Report states at paragraph 5.85 that:

> "the growth of the settlement could, however, help to maintain the vitality of the local centre and help to sustain the viability of existing primary school provision, which currently has a rising surplus of spaces. As the settlement has an increasing role as a location for employment and has experienced recent housing growth, it may also be appropriate for further growth to upgrade the general service role of the settlement for example to sustain a foodstore, provide a district rather than a local centre or improve the existing range of health provision." (underlining my emphasis)

4.29 Since this assessment was undertaken Dodworth has a foodstore on High Street (Somerfield), the 'Living Well' leisure centre is now a Bannatynes Health Centre and the Dodworth Bypass is now operational, which has resulted in the development of Capitol Park employment park.

4.30 Paragraph 5.87 of the 2003 Settlement Assessment goes on to state that "Dodworth is not within Urban Barnsley or the DVDZ and is not a priority for growth. Additional development may, however, be justified through the contribution that this could make to improving the existing sustainability of the settlement." This 2003 statement has been superseded by later LDF development, which now places Dodworth within the Barnsley Urban Area.

4.31 The Draft Housing Sites 'Preferred Options' (2005) identifies 3 housing sites in Dodworth, which is identified as a small town with a medium level of housing growth. All three of the identified sites are Greenfield; one is an existing housing allocation (which has planning permission) and the other two are located on the edge of Dodworth outside the designated Housing Policy Area. The Housing Sites Preferred Options document also highlights an estimated contribution of a further 110 dwellings from non-allocated (windfall) sites between 2005 and 2018.

4.32 As part of the LDF monitoring process and the PPS3 and RSS requirement of identifying a 5 year supply of housing sites the Council produced a Housing Land Availability Assessment in 2007, looking at a 5 year housing land supply from 1st April 2007 to 31st March 2012. This has been updated in draft for years 2008 – 2013. The Council conclude in their draft 5 year supply that they have more than a 5 year supply at the RSS rate plus the Growth point mark up. The supply comprises dwellings under construction; dwellings with full and outline planning permission; and UDP allocated sites. A copy of the draft housing land supply report for 2008 – 2013 is enclosed at Appendix 3.

4.33 The Council published a SHLAA Sites Consultation in October 2008. The Appeal Site was put forward for consideration and is included within the Council's schedule of sites.

The SHLAA was published in March 2009 and the site is included within the SHLAA, and is assessed and stated to be Greenfield, (which is incorrect), and it is on that assumption that the Appeal Site is not given the highest category for the site allocation process. Instead, the Appeal Site scores 'Amber' in the overall site assessment, which are sites classed as for potential delivery during the later period of 2016 – 2026. The March 2009 SHLAA Summary Document, an extract from the SHLAA List and Site Assessment, and the SHLAA for Barnsley Urban Area are enclosed at Appendix 4. Based on the fact it is considered the SHLAA site assessment of the Appeal Site incorrectly categorises the site as Greenfield, we believe that the Appeal Site should fall into the 'Green' category of sites for delivery in the 'Early' SHLAA period of 2011 – 2016.

4.34 The SHLAA is the most recent LDF document to be published, and the plans indicating the SHLAA sites includes reference to the Barnsley Urban Area. The Urban Area as defined on this map extends beyond the UDP Urban Area and includes the settlement of Dodworth (see SHLAA Sites Plan for Barnsley Urban Area at Appendix 4).

5.0 THE CASE ON BEHALF OF THE APPELLANT

5.1 The sole reason for refusal for this outline application relates to the difference of opinion between the Appellants and the Council regarding the status of the Appeal Site. The Appellants consider the whole site to be previously developed whereas the Council consider that part of the site is Greenfield.

5.2 The status of the Appeal Site has a direct bearing on the consideration of the appropriateness of the site for residential development, bearing in mind the relevant National, Regional and Local policy. Therefore, the principle issue of the Appellants case is justifying the previously developed status of the site.

5.3 As explained in Section 2 of this statement, the Appeal Site is in three ownerships. The area of contention lies with part of Parcels B and C, where the Council consider part of these parcels are Greenfield. There is no dispute regarding brownfield status of Parcel A (Hillside).

5.4 The definition of previously developed land within PPS3 states:

> "Previously-developed land is that which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure.
>
> The definition includes defence buildings, but excludes:
>
> - Land that is or has been occupied by agricultural or forestry buildings.
> - Land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures.
> - Land in built-up areas such as parks, recreation grounds and allotments, which, although it may feature paths, pavilions and other buildings, has not been previously developed.
> - Land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time (to the extent that it can reasonably be considered as part of the natural surroundings).
>
> There is no presumption that land that is previously-developed is necessarily suitable for housing development nor that the whole of the curtilage should be developed."

5.5 The Appeal application has already referred to two decisions, an Appeal in Kirklees District and a recent Local Authority Decision in Leeds whereby where a garden associated with a dwelling is not a formally kept garden, it does not necessarily mean that it is not part of the curtilage and it can therefore be classed as Brownfield land. Both

these examples are where the Application Sites effectively had an inner and outer boundary. The Inspector in the Kirklees case stated that "it seems to be from my site visit, that the Appeal Site, taken as a whole, can reasonably be considered as a previously developed site." The Inspector considered that the Appeal Site was a "largely Brownfield site" where the presumption against development on Greenfield sites should not apply.

5.6 In the recent Leeds District example, the Planning Officer's report stated that "on balance however in considering the PPS3 definition it is concluded that it can be defined as brownfield as although it has not perhaps been formally gardened it appears to have been a contiguous piece of 'garden' area not clearly separated and not used for other purposes."

5.7 In the consideration of this Appeal application it is considered that the Appeal Site comprises the dwellings and residential curtilages of three properties, Hillside, Fieldhouse and The Old Stables. The curtilage of Hillside is not contested by the Council.

5.8 In determining what constitutes a curtilage, the Appeal Court has held that three factors have to be taken into account:

a) The physical layout of the building and structure
b) Ownership past and present, and
c) Use and function past and present.

[Stephenson LJ in Attorney-General ex.rel. Sutcliffe, Rouse & Hughes v Calderdale BC 1983]

5.9 Although these three factors were considered in terms of the deciding whether a structure was within the curtilage of a listed building, they were recently considered by an Inspector to be the relevant legal approach in establishing how a curtilage is defined. Therefore these three factors are considered relevant in the consideration of this Appeal Site. In assessing the previously developed status of the site, the Inspector in a recent decision (APP/F4410/A/06/2025536 & APP/F4410/A/07/2038100) relating to residential development on garden land states that:

> "In my opinion, of particular relevance to these appeals is the recent judgement by Ouseley J from George Wimpey UK Limited v First Secretary of State (2005), in which he reviewed the significant authorities with respect to curtilage and the issue of previously developed land. He concluded that what is required is an intimate association to such a degree that the one forms part and parcel of the other, properly regarded as an integral whole."

5.10 Further to the reference to Stephenson LJ, the Inspector also referred to a case where the curtilage was a question of fact and degree. The Appeal Decision and recent Judgement are enclosed at Appendix 5.

5.11 Looking at the three established factors that determine the curtilage of a property, the Appeal Site is assessed as follows:

Physical Layout:

5.12 As explained, the Appeal Site comprises the three properties of Hillside, Fieldhouse and The Old Stables, along with their garden cartilages. The curtilage of Fieldhouse extends southwards, and includes a formal garden area to the immediate rear of Fieldhouse with a less formal lawned garden to the south, as the land slopes downwards. The Old Stables is a detached property with a raised lawned area to the immediate south/south east and again with less formal garden land beyond, extending southwards and sloping downwards.

5.13 All of the Appeal Site is in the curtilage of private residential land which has been and is being used for the personal enjoyment of the occupiers. None of the land comprises any form of public open space.

Ownership:

5.14 The Appeal Site is in three different private ownerships, which relate to the three residential properties contained within the Appeal Site. The three parcels are identified in Section 2. Prior to the current land ownerships Parcels A and B were within the same ownership.

5.15 The Appeal Site is privately owned space which is not available to the public and is not designated as public open space or urban greenspace.

Use or Function:

5.16 Prior to the development of The Old Stables, Hillside and Fieldhouse the Appeal Site was open fields. However, since the 1960's the Appeal Site has been used as garden areas associated with the three dwellings. Although not all necessarily laid out as formal garden land the Appeal Site has never been used for anything other than the personal enjoyment of the occupiers. Since the three properties within the Appeal Site have been developed, the associated land has always had an intimate association with the three dwellings, and as such, the differing elements of each parcel within the Appeal Site can be considered

APPENDIX ONE

The Appeal Site (approximate red line boundary)

The Traveller's Inn Public House and grounds.



Chantry Orchards – new housing development.



View from the rear of Fieldhouse looking south.



View from the south of Hillside and Fieldhouse
looking norhwards.
Visible are the residential properties to the east of
the Appeal site.





New residential properties at Chantry Drive, to the west of the Appeal Site.

The southern elevations of the existing properties at the Appeal Site.



Hillside.



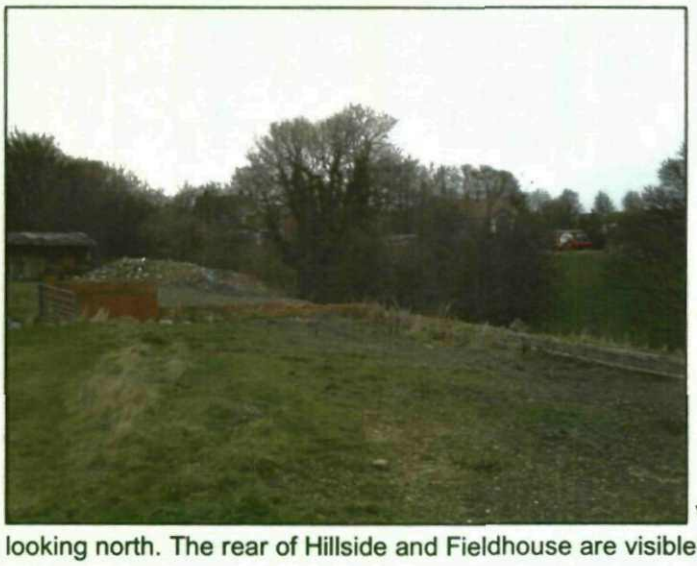
Fieldhouse.



The Old Stables.



The formal levelled garden area associated with The Old Stables, and remaining garden land beyond.



View from levelled garden area looking north. The rear of Hillside and Fieldhouse are visible.



Existing storage shed to the east of The Old Stables, and north of leveled garden area of the The Old Stables.



View from southern edge of formal garden associated with The Old Stables of sloping Appeal Site to the bottom south east corner and the existing residential properties beyond (to the east).

APPENDIX TWO

Images of England

Non Print Page



© Mrs Barbara A West LRPS

IoE Number:	334256
Location:	TRAVELLERS' INN, DODWORTH GREEN ROAD (east side) DODWORTH, BARNSLEY, SOUTH YORKSHIRE
Photographer:	Mrs Barbara A West LRPS
Date Photographed:	12 July 2004
Date listed:	01 November 1966
Date of last amendment:	01 November 1966
Grade	II

SE 30 NW DODWORTH DODWORTH GREEN ROAD (East side)

SE 30 NW DODWORTH DODWORTH GREEN ROAD (East side) 4/129 Travellers' Inn 1.11.66 II Public House. Dated 1782. Rendered. Welsh slate roof. Three storeys with two storey wings. Three bays with single bay wing to each side. Symmetrical front apart from added castellated porch to right of central part. Quoins. 3-light flat-faced mullion windows to left and right of central block (mullions removed ground-floor left). Central single light to ground floor and first floor central quatrefoil with dated plaque above. The side wings are set back slightly. The left one has an entrance and a 4-pane sash to each floor. The right one has a single light window (possibly replacing an entrance) and a 3-light window, as before, to each floor. The roof is hipped over the central block. Lateral stacks to central block; taller gable stacks to side wings. Rear: Symmetrical apart from ground-floor additions. Tripartite windows to left and right, second floor. Ventian windows to left and right, first floor, with central single light. Render obscures the window surrounds and any architectural details. C20 interior details.

Please note that the inclusion of a listed building on this website does not mean it is open to the public.

APPENDIX THREE

Barnsley Housing Land Availability Assessment 2008

5 Year Housing Land Supply 2008 – 2013 Report

BARNSLEY
Metropolitan Borough Council

PREPARED BY BARNSLEY METROPOLITAN BOROUGH COUNCIL

Barnsley Housing Land Availability Assessment 2008
5 Year Housing Land Supply

1. Introduction

Planning Policy Statement 3: Housing (PPS3) states that local planning authorities should set out in Development Plan Documents (DPD) policies and strategies for delivering the level of housing provision that will enable a continuous delivery of housing for at least 15 years from the date of adoption of the relevant DPD. Authorities should identify sufficient specific deliverable sites to deliver housing in the first five years, and, where possible, for years 6-10. Where specific sites cannot be identified for years 6-15, broad locations for future growth can be included.

This is a follow up to the earlier report for the period 2007-2012. This report demonstrates that there is a sufficient land supply for the 5 year period from 1 April 2008 to 31 March 2013 which satisfies the requirements of PPS3.

2. Policy Context

PPS3

PPS3 was published in November 2006 and outlines the Government's objective of ensuring that the planning system delivers a flexible, responsive supply of land. It states that local planning authorities should draw on 'information from Strategic Housing Land Availability Assessments (SHLAA) and or other relevant evidence' to identify sufficient specific deliverable sites to deliver housing in the first five years.

The Council is currently finalising a detailed SHLAA, in collaboration with stakeholders, which will be available soon. This is being carried out in line with practice guidance on SHLAA which was published by CLG in July 2007. The SHLAA will set out the 'forward look' with regard to the borough's housing land supply. This report informs the SHLAA. A five year supply report will be published annually.

Regional Spatial Strategy (RSS)

The RSS sets out the housing requirement for each local planning authority within its area. The RSS was approved by Government in May 2008 and became part of the development plan for the borough. The housing requirement for Barnsley is for 1015 dwellings net per annum between 2008 and 2026.

Growth Point

In July 2008 the Council was awarded Growth Point status by the Government for the period 1st April 2008 to 31st March 2017. In practice this means that the Council has committed to delivering an uplift of 21% on its RSS housing provision figures.

Barnsley is a partner in two Growth Point Partnerships. These are the Doncaster and South Yorkshire Growth Point and the Leeds City Region Growth Point.

Table 1 below shows the housing trajectory for the borough. The trajectory starts in 2004 to conform to the period from which the RSS applies.

Table 1 – Housing trajectory for period 1st April 2008 to 31st March 2013 in context of RSS and Barnsley Growth Point*

Year	New Dwellings	Demolitions	Net Dwellings	Target	Difference
2004	1426	192	1234	840	394
2005	1497	166	1331	840	491
2006	1111	177	934	840	94
2007	1115	171	944	840	104
2008	1509	355	1154	840	314
2004-2008	6658	1061	5597	4200	1397
2009	1463	419	1044	1015 (*1228**)	29 (*-184**)
2010	1430	282**	1148	1015 (*1228**)	133 (*-80**)
2011	1398	250**	1148	1015 (*1228**)	133 (*-80**)
2012	1482	250**	1232	1015 (*1228**)	217 (*4**)
2013	1543	250**	1293	1015 (*1228**)	278 (*65**)
2009-2013	7316	1451	5865	5075(*6140**)	790 (*-275**)
2004-2013	13974	2512	11462	9275 (10340*)	2187 (*1122**)

* Growth point target for period 1st April 2008-31st March 2017 is to achieve 21% uplift on RSS target of 1015 homes pa.
** These demolition numbers are assumptions based on averages of past clearances.

The level of demolition of housing is associated with available funding for housing market renewal (HMR) activity. There is no long term clearance programme for Barnsley. At this time funding is available until 31st March 2011.

DCLG Advice to Government Offices and the Planning Inspectorate (April 2007)

This advice outlines for Government Offices and the Planning Inspectorate guidance issued for local authorities in PPS3. It elaborates on guidance in paragraph 54 on assessing deliverability.

3. Windfalls

The Council has not included any windfall sites without planning permission or included any assumed forward supply that may be provided by windfalls in the five year housing land supply demonstrated by this report. An analysis of the contribution that windfalls have made historically to the housing supply in the borough can be found in Appendix 3 of the SHLAA Methodology which is available on the Councils website.

4. Demolitions

Recent clearance in HMR areas has generally resulted in a net increase in housing by way of replacement on site. Consequently the HMR programme has not required additional housing sites and this is likely to be the case for future clearance activity.

As a result there is no provision required in the 5 year supply for a reduction of supply due to HMR activities.

The level and timing of clearance is dependent on the availability of government funding for housing market renewal activity, together with the progress of renewal implementation programmes. Consequently the level and timing of demolitions shown in table 1 are assumptions based on averages of past clearances.

5. Process

There are three main stages to the process of assessing the land supply as set out in PPS3;

1. Identify housing provision figure
2. Identify potential sites
3. Assess whether potential sites are deliverable.

While this process has been broadly followed, a number of assumptions have been made which are outlined below.

The 5 year Housing Land Supply in Barnsley Borough

Stage 1 Identify housing provision figure

The first stage in assessing the land supply is to identify the housing provision figure. As stated above the figures in the approved RSS are to be used. These figures give a total for 5 years of 5075 made up as follows:

5 years (2008/09 to 2012/13) at 1015	5075
Total	**5075 (net)**

Additionally, following the awarding of growth point status to the borough in July 2008, the Council has committed to delivering a 21% uplift on RSS housing provision figures. This gives a total for 5 years of 6090 made up as follows:

5 years (2008/09 to 2012/13) at 1228	6140
Total	**6140 (net)**

Stage 2 Identify potential sites

The Housing Land Availability System is updated annually in April. On the system there are records of all sites with planning permission for residential development (including those under construction) and all sites allocated in the Unitary Development Plan (UDP) for housing.

Stage 3 Assess whether potential sites are deliverable

In stage 3 all the potential sites were assessed for their deliverability, as described in paragraph 54 of PPS3. As part of the assessment a number of assumptions were made as follows;

- Sites with planning permission have a reasonable possibility of delivering housing and therefore have not been individually assessed in terms of their deliverability.

- Allocated UDP sites which are still undeveloped have been assessed for deliverability. The UDP has been through a public inquiry and is the adopted development plan.

- Housing requirements are based on the approved RSS (5 years at 1015 net dwellings) plus the growth point mark-up of 21% on top of the RSS requirement.

Assumptions have been made about when sites with outline/full planning permission and remaining UDP housing allocations will come forward. Table 2 below shows how timing assumptions were made according to the sites' status and the number of dwellings proposed.

Where sites are allocated the capacity has been used in place of the number of dwellings proposed. Capacity is generally calculated at 35 dwellings per hectare. Historically, as demonstrated in recent Annual Monitoring Reports, densities have been higher than this and this is reflected in the densities used in the SHLAA. However the UDP is still the borough's development plan and Supplementary Planning Guidance 2: The Design and Layout of New Housing lays out a minimum density of 35 dwellings per hectare.

Table 2 - Rate of Development – Commitments – From 1 April 2008 – 31 March 2013

Site Status	Number of Dwellings				
	< = 20	21-50	51-100	101-200	> 200
Under Construction	All	All	All	All	All
With Full Planning permission	All	All	All	80%	66.6%
With Outline Permission	All	All	All	60%	50%
Allocated	All	66.6%	66.6%	50%	40%

1. Table based on assumption that smaller sites are easier and quicker to develop.
2. Table assumes sites with outline permission will generally be developed later due to need to obtain reserved matters permission.

Table 3 overleaf is a summary showing the supply distributed amongst the UDP Community Areas after the assumptions, shown in table 2 above, have been applied.

Table 3 - Housing Supply in Barnsley MBC at March 2008 for Period 1 April 2008 – 31 March 2013									
Column	A	B	C	D	E	F	G	H	I
UDP community area	Dwellings under construction	**Dwellings on all sites with full PP**	Dwellings on sites with full PP deliverable over 5 years	**Dwellings on all sites with outline PP**	Dwellings on sites with outline PP deliverable over 5 years	**Dwellings on sites allocated in UDP**	Dwellings on allocated sites deliverable over 5 years	Total 5 year deliverable supply of dwellings (sum of A + C + E + G)	**Total supply of dwellings (sum of A + B + D + F)**
Barnsley Town Centre	23	**365**	305	**210**	162	**0**	0	490	**598**
Barnsley Urban	258	**1073**	989	**826**	579	**587**	353	2179	**2744**
Darfield	34	**118**	118	**30**	30	**26**	18	200	**208**
Darton	45	**57**	55	**61**	61	**101**	69	230	**264**
Dearne Towns	103	**358**	286	**949**	542	**270**	156	1087	**1680**
Dodworth	21	**39**	39	**10**	10	**0**	0	70	**70**
Hoyland	93	**188**	188	**143**	143	**267**	176	600	**691**
North East Towns	97	**239**	192	**48**	48	**348**	198	535	**732**
Penistone	121	**504**	408	**30**	30	**21**	14	573	**676**
Royston	11	**89**	89	**25**	25	**270**	147	272	**395**
Wombwell	141	**485**	446	**228**	228	**117**	71	886	**971**
Western Rural	35	**139**	139	**5**	5	**21**	14	193	**200**
Barnsley MBC	982	**3654**	3255	**2565**	1863	**2028**	1216	7316	**9229**
RSS housing requirement 1 April 2008 – 31 March 2013 (net) + growth point mark-up								**6140**	

Table 4 – Planning Status of Additional 1.9 Years Approximate Supply After 31 March 2013					
	Under construction	All sites with full PP (sum of B – sum of C, table 3)	All sites with outline PP (sum of D – sum of E, table 3)	Sites allocated in UDP (sum of F – sum of G, table 3)	Additional supply total (sum of I – sum of H, table 3)
Planning Status of additional 1.9 years supply	**0**	**399**	**702**	**812**	**1913**

In Tables 2 & 3 PP = planning permissions. For further information on the sites involved in the housing supply analysis please contact 01226 772630.

6. Conclusion

Table 3 above demonstrates that by using the 3 stage process described earlier we have identified a supply of **7316** dwellings, which satisfies the requirements of PPS3, for the 5 year period 1 April 2008 – 31 March 2013. This is made up of dwellings:

• currently under construction,	982
• on sites with full planning permission	3255
• on sites with outline planning permission	1863
• on UDP housing allocations which are still to be developed	1216
Total:	**7316**

As table 4 above demonstrates, an additional 1.9 years approximate supply after 2013 has been identified. This is made up of:

• on sites with full planning permission	399
• on sites with outline planning permission	702
• on UDP housing allocations which are still to be developed	812
Total:	**1913**

APPENDIX FOUR

JACOBS

Barnsley Strategic Housing Land Availability Study

Final Summary Report

March 2009

Final

Jacobs UK Limited, Unit 1, 1 Maple Court, Tankersley, Barnsley, S75 3DP

Registered Office: 95 Bothwell Street, Glasgow, G2 7HX

JACOBS

Document control sheet

Client: Barnsley Metropolitan Borough Council
Project: Barnsley Strategic Housing Land Availability Study: Job No: B0613300/C
Title: SHLAA Final Summary Report

	Prepared by	Reviewed by	Approved by
ORIGINAL	NAME Martin White	NAME Trevor Hobday	NAME Simon Witney
DATE March 27th 2009	SIGNATURE	SIGNATURE	SIGNATURE

This report, and information or advice which it contains, is provided by Jacobs UK Limited solely for internal use and reliance by its Client in performance of Jacobs UK Limited duties and liabilities under its contract with the Client. Any advice, opinions, or recommendations within this report should be read and relied upon only in the context of the report as a whole. The advice and opinions in this report are based upon the information made available to Jacobs UK Limited at the date of this report and on current UK standards, codes, technology and construction practices as at the date of this report. Following final delivery of this report to the Client, Jacobs UK Limited will have no further obligations or duty to advise the Client on any matters, including development affecting the information or advice provided in this report. This report has been prepared by Jacobs UK Limited in their professional capacity as Consulting Engineers. The contents of the report do not, in any way, purport to include any manner of legal advice or opinion. This report is prepared in accordance with the terms and conditions of Jacobs UK Limited contract with the Client. Regard should be had to those terms and conditions when considering and/or placing any reliance on this report. Should the Client wish to release this report to a Third Party for that party's reliance, Jacobs UK Limited may, at its discretion, agree to such release provided that:

(a) Jacobs UK Limited written agreement is obtained prior to such release, and
(b) By release of the report to the Third Party, that Third Party does not acquire any rights, contractual or otherwise, whatsoever against Jacobs UK Limited, and Jacobs UK Limited accordingly assume no duties, liabilities or obligations to that Third Party, and
(c) Jacobs UK Limited accepts no responsibility for any loss or damage incurred by the Client or for any conflict of Jacobs UK Limited interests arising out of the Client's release of this report to the Third Party.

JACOBS

Contents

1	Executive Summary – Summary of Results	1-1
2	Consultation and Engagement	2-1
3	Detailed Analysis	3-1
4	Overall SHLAA Supply in Barnsley	4-1
5	Conclusions	5-1

Appendix 1a –Summary of Responses to Draft SHLAA Sites Consultation

Appendix 1b – New Sites Submitted During and After October 2008 SHLAA Sites Consultation

Appendix 2 –Final SHLAA Site List and Site Assessment

JACOBS

1 Executive Summary – Summary of Results

The SHLAA has identified that sites for approximately **21290 homes (net)** are suitable, available and achievable for development between 2008 and 2026. This compares with a net requirement for **19974** homes made up of the total RSS housing provision figure for the period 2008 to 2026 and the 21% uplift on these numbers required as part of the borough's growth point status for the period 2008-2016. Additionally Sites for a further 1571 homes may potentially come forward if constraints can be overcome (this is laid out in table 1.2).

Table 1.1: TOTAL DELIVERABLE SHLAA SITES

SHLAA delivery period /Source of Supply	Potential Supply	Homes which may not be delivered/achievable in SHLAA periods due to constraints	Total Housing Trajectory Requirement for period to 2026	Difference Between SHLAA Supply and Housing Trajectory
1 April 2008 - 31 March 2016 (first eight years supply)				
Homes under construction by 2013	+ 982			
Homes from sites with full planning permission by 2013	+ 3255			
Homes from sites with outline planning permission by 2013	+1863			
Running Sub total	**6100**			
Homes from sites with outstanding full permissions which may be delivered after 2013	+ 399			
Homes from sites with outline planning permissions which may be delivered after 2013	+ 702			
Running sub total	**7201**			
Homes from SHLAA 'green' Sites (without highways constraints)	+ 1649			
Homes from SHLAA 'amber' sites which are likely to come forward in the early period.	+ 4760			
*Homes (net) from clearance sites	0			
SUB TOTAL 2008-2016	**13610**		**9824**	**+3786**
1 April 2016 – 31 March 2026				
Homes from remaining SHLAA 'amber sites' (notional carry over from 2008 – 2013 – without Highways Constraints)	+ 7680			
* Homes (net) from clearance sites	0			
SUB TOTAL 2016-2026	**7680**		**10150**	**-2470**
GRAND TOTAL 2008-2026	**21290**		**19974**	**+1316**

The oversupply of 3786 dwellings from the early period of the SHLAA could be carried forward to add to the supply in the later period

JACOBS

TABLE 1.2: ADDITIONAL SHLAA SITES WITH DELIVERABILITY CONSTRAINTS

SHLAA delivery period /Source of Supply	Potential Supply	Homes which may not be delivered/achievable in SHLAA periods due to constraints*
Homes from SHLAA 'green' sites which may be difficult to develop because of highways constraints	(+1211)	(-1211)
Homes from SHLAA 'amber' sites which may have highways constraints.	(+360)	(-360)
Sites where constraints need to be overcome	***1571***	

* These sites have not been included in table 1.1 but will come forward if constraints are overcome.

TABLE 1.3: SHLAA ABEYANCE SITES (SITES NOT CURRENTLY CONSIDERED SUITABLE FOR DEVELOPMENT)

SHLAA delivery period /Source of Supply	Potential Supply	Homes which may not be delivered/achievable in SHLAA periods due to constraints
ABEYANCE SITES		
Homes from SHLAA 'red' sites	(+10,560)	-10,560
Abeyance sites Total	**10,560**	**0**

JE JACOBS

2 Consultation and Engagement

Introduction

The purpose of this report is to summarise the findings of the 2009 Strategic Housing Land Availability Assessment (SHLAA) for Barnsley.

Stages of Production.

The SHLAA has followed both national and regional guidance. It has been produced in a number of stages:

- Initial engagement and opportunity to comment on the methodology and call for sites. This included a launch event held in January 2008 which was followed by a consultation period.
- Engagement on the suitability of sites through use of the Home Builders Federation and LDF communication channels. This included requesting information on the deliverability of sites during an additional consultation period in October 2008.
- Issue of the final SHLAA.

Documents Which Make up the SHLAA

The SHLAA consists of a number of documents which demonstrate a robust approach to the study.

- The January 2008 launch documents included a question response sheet, a report on the methodology, a power point presentation and an initial list of sites.
- The October 2008 consultation documents included the proposed list of SHLAA sites and an assessment of their suitability, a plan of the location of SHLAA sites indicating their suitability, a questionnaire on their deliverability and a further report which responded to issues raised during consultation in terms of the methodology.
- This final report consists of a summary of results, the final SHLAA sites table indicating their suitability and deliverability.
- A separate five year housing land supply note for Barnsley, as at April 2008, also forms an overall part of the SHLAA.

Comments and responses to the January 2008 consultation were addressed in the reports "Response to Consultation" and "Assessing Site Deliverability" which were issued as part of the second round of consultation in October 2008. Responses to the October 2008 consultation have been reflected in the final SHLAA tables and are summarised at Appendix 1a for information.

Engagement and Consultation

As outlined above, key stakeholders and developers have been engaged and consulted at all stages of the SHLAA. This has included an invitation to submit sites, an opportunity to comment on the assessment of sites and an opportunity to provide detailed information on the deliverability of sites. The Council has made extensive use of its on line consultation system, which it is now encouraging respondents to use when commenting on LDF documents.

The SHLAA was generally available through the Councils on line consultation system for any organisation or individual to comment on. A comprehensive list of developers and their agents compiled as part of the Local Development Framework was used as the basis to consult specific house building organisations and their representatives. The on-line consultation system was used to contact these organisations which meant information could be exchanged electronically. Numerous responses to the SHLAA were generated and this information has been used to inform the overall assessment. These organisations and individual contacts are listed below:

Name of Consultee	Organisation	Name of Consultee	Organisation
Amy Heys	Env. Agency	Kerry Lawson	Barton Willmore*
Bev Butler	Fusion	Laura Edwards	HBF
Bob Edinburgh	Kirklees MBC	Laura Sharman	Glendale
Charlie Webber	Redrow	Linda Wright	HBF
Colin Holm	Natural England	Lindsay Ramsden	David Wilson
Gen Berridge	Dacre Son & Hartley	Lyne Barker	Lynne Barker Ltd.*
Harriet Fisher	YHA	Matthew Collins	Turley Associates*
Howard Mee	Miller Homes	Mark Davis	Strata Homes
Janet Hodson	JVH Town Planning*	Matthew Jackson	Barrett Homes
John King	CPRE	Matthew Naylor	Yorkshire Water
Jon Briar	Dacre Son & Hartley*	Michael Long	SYPTE
Jonathan Collins	Henry Boot	Michael Whitehead	Doncaster MBC
Mike Barningham	Natural England	Miranda Barnes	CBRE
Nicholas Whitford	HA	Nick Ward	Rotherham MBC
Patricia Hill	Bellway Homes	Paul Stock	Glendale
Peter O'Brien	TSY	Phil Turnidge	Rotherham MBC
	PRE Planning*	Rachel Jones	Townsend Planning
Roland Bolton	DLP*	Ron Wilson	FMB
Russell Rowe		Sam Kipling	EA
Sara Worthington	Peacock & Smith*	Simon Vincent	Sheffield CC
Spatial Planning Group	Wakefield MBC	Stephen Dobson	Shepherd Homes
Steve Watson	Glendale	Terry Rodgers	HA
Tim Pegg	Persimmon Homes	Tim Williams	Miller Homes

* These consultees are planning consultants or agents who were representing a number of clients (including landowners and developers e.g. UK Coal).

Appendix 1a in this document provides a summary of the comments which were received.

JE JACOBS

3 Detailed Analysis

This section provides a detailed analysis of the results of the SHLAA.

Barnsley Five Year Housing Land Supply

The five year supply note sets out the level of housing which is anticipated to be delivered in the next five years and beyond (Please see annex C of PPS3). The table below sets this out.

Table 3.1: Summary of Barnsley Five Year Housing Supply (existing supply)

Supply Source	1 April 2008-31 March 2013	Further sites anticipated to be constructed after 2013
Sites currently under construction	982	n/a
Sites with full planning permission	3255	399
Sites with outline permission	1863	702
UPD housing allocations which are still to be developed	1216	812
Total	**7316**	**1913**
Total Excluding UDP Sites	**6100**	**1101**

Overall, 7316 dwellings are anticipated to come forward over the period 2008 to 2013 with a further 1913 after this date. Of this supply, 1216 are anticipated to be on UDP sites before 2013 and 812 afterward this date.

As UDP sites have been assessed as part of the SHLAA supply, there is some overlap between the SHLAA and five year land supply note. Without UDP sites, the total five year supply is 6100 before 2013 and a further 1101 beyond 2013, giving a total of 7201

The purpose of the five year land supply note is to set out future supply for a five year period from now, whereas the SHLAA considers supply from the point after when the Council anticipates its Core Strategy will be adopted. As such, the five year supply and SHLAA serve different purposes. Clearly it is necessary to combine the results of both to provide the overall assessment of potential housing supply.

SHLAA Sites

Guidance on the SHLAA is clear that the first five year period should begin from the date that it is anticipated that the Core Strategy is adopted. For Barnsley, this will be set out in the Local Development Scheme and is anticipated to be January 2011. As such, the starting point for the SHLAA will be 01 April, 2011.

The two periods of the SHLAA are:

- Early period which are sites available and achievable in the first five years after the Core Strategy has been adopted i.e. between 2011 and 2016.

JE JACOBS

Table 3.2: Summary of SHLAA Results: Early Period – 2011-2016

	(Green)										Potential Yield		
	Total Sites	Barnsley sub-regional town	Cudworth	Wombwell	Royston	Hoyland	Goldthorpe	Penistone	Other	Total	40 dph	45 dph	50dph
Number of Sites	14	7	0	1	0	2	3	1	0	14			
Total Area ha	71.5	49.3	0	1.19	0	6.7	11.3	0	3	71.49	2859.6	3217.05	3574.5
Total Area Brownfield	71.5	49.3	0	1.19	0	6.7	11.3	3	0	71.49	2859.6	3217.05	3574.5
Total Area Greenfield	0	0	0	0	0	0	0	0	0	0	0	0	0
		49.3		*1.19*		*6.7*	*11.3*		*3*	*71.49*	*2859.6*	*3217.05*	*3574.5*
LDF Sites (1)		8.5	0	1.19	0	1.7	11.3	3	0	25.69	1027.6	1156.05	1284.5
Safeguarded (2)		38	0	0	0	0	0	0	0	38	1520	1710	1900
LDF Representation Sites (3)		0.6	0	0	0	5	0	0	0	5.6	224	252	280
Schools (4)		0	0	0	0	0	0	0	0	0	0	0	0
SHLAA sites (5)		2.2	0	0	0	0	0	0	0	2.2	88	99	110
UDP Sites (6)		0	0	0	0	0	0	0	0	0	0	0	0
Total		**49.3**	**0**	**1.19**	**0**	**6.7**	**11.3**	**3**	**0**	**71.49**	**2859.6**	**3217.05**	**3574.5**
With Significant Highways Constraints		30.28								30.28	1211.2	1362.6	1514
Adjusted Totals		**19.02**	**0**	**1.19**	**0**	**6.7**	**11.3**	**3**	**0**	**41.21**	**1648.4**	**1854.45**	**2060.5**
LDF Sites with Highways Constraints		6								6	240	270	300
Safeguarded Land with Highways Constraints		24.3								24.3	972	1093.5	1215

(1) Sites that were proposed as allocations in the 2005 Preferred Options Barnsley Housing Sites DPD.

(2) Sites that were proposed as safeguarded land on the 2005 Preferred Options Proposals Maps.

(3) Sites that were put forward to the Council for consideration for allocation as housing sites as part of the LDF process but were not shown as allocated or safeguarded in the 2005 Preferred Options DPD's.

(4) Sites that will come available as part of the Councils 'Remaking Learning' programme. More information on this can be found in the adopted Barnsley Education Sites DPD.

(5) Sites that have been put forward by developers etc. for inclusion in the SHLAA.

(6) Sites that are housing proposals in the adopted UDP.

JE JACOBS

Early Period Sites: 2011-2016 Period

Overall table 3.1 shows that:

- 71.5 ha of land is suitable and available in the first five year period of the SHLAA. At 40 dwellings per hectare, this could yield 2860 dwellings.
- Of this, 30.1 hectares has been identified as having highways constraints. This would reduce the overall figure by 1211 to 1649 dwellings.
- The majority of sites (49.3 hectares – 1972 dwellings) are in Barnsley sub-regional town. However, all the sites which have highways constraints are also within Barnsley sub-regional town. If none of these sites could be achieved, this would reduce this figure to 19ha and 760 dwellings at 40 dph.
- The majority of other sites are in Goldthorpe. This is a total of 11.3 ha which could yield 452 dwellings.
- The rest of the sites are in Cudworth, Hoyland and Penistone with a total of 11ha which could yield 440 dwellings at 40dph.

JE JACOBS

Table 3.3: Later Period Sites: 2016-2026

	amber										Potential Yield		
	Total Sites	Barnsley Sub Regional Town	Cudworth	Wombwell	Royston	Hoyland	Goldthorpe	Penistone	Other	Total	40 Dph	45 dph	50dph
Number of Sites	96	40	13	13	7	8	8	5	0	94			
Total Area ha	320.8	133.6	39.7	50.7	22	30.1	30.8	12.8	0	319.7	**12788**	**14386.5**	**15985**
Total Area Brownfield	47.3	14.4	0	16.8	11	0.7	4.4	0	0	47.3	**1892**	**2128.5**	**2365**
Total Area Greenfield	216.3	104.5	34.8	31.4	11	6.7	14.9	11.4	0	214.7	**8588**	**9661.5**	**10735**
Total Area Brownfield/Greenfield	57.6	14.7	4.8	2.5	0	22.7	11.5	1.4	0	57.6	**2304**	**2592**	**2880**
	321.2	*133.6*	*39.6*	*50.7*	*22*	*30.1*	*30.8*	*12.8*	*0*	*319.6*	*12784*	*14382*	*15980*
LDF Sites (1)		*5.6*	*5.6*	*6.7*	*1.1*	*0.5*	*0.7*	*1.4*	*0*	21.6	**864**	**972**	**1080**
Safeguarded (2)		82.2	23	11	6.5	20.2	22.6	5.6	0	171.1	**6844**	**7699.5**	**8555**
LDF Representation Sites (3)		10.2	1.6	5.9	0	0	2.4	3.4	0	23.5	**940**	**1057.5**	**1175**
Schools Sites (4)		10.4	0	21.5	6.8	0	4.7	0	0	43.4	**1736**	**1953**	**2170**
SHLAA sites (5)		3.3	0	1.1	0	0		2.4	0	6.8	**272**	**306**	**340**
UDP Sites (6)		21.8	9.5	4.8	7.8	9.4	0.3	0	0	53.6	**2144**	**2412**	**2680**
Total		**133.5**	**39.7**	**51**	**22.2**	**30.1**	**30.7**	**12.8**	**0**	**320**	**12800**	**14400**	**16000**
With Significant Highways Constraints		2.7	6.5							9.2	368	414	460
Adjusted Totals		**130.8**	**33.2**	**51**	**22.2**	**30.1**	**30.7**	**12.8**	**0**	**310.8**	**12432**	**13986**	**15540**
Safeguarded sites with Highways Constraints		2	6.5							8.5	340	382.5	425
UDP Sites with Highways Constraints		0.7								0.7	28	32	35

(1) Sites that were proposed as allocations in the 2005 Preferred Options Barnsley Housing Sites DPD

(2) Sites that were proposed as safeguarded land on the 2005 Preferred Options Proposals Maps

(3) Sites that were put forward to the Council for consideration for allocation as housing sites as part of the LDF process but were not shown as allocated or safeguarded in the 2005 Preferred Options DPD's.

(4) Sites that will come available as part of the Councils 'Remaking Learning' programme. More information on this can be found in the adopted Barnsley Education Sites DPD

(5) Sites that have been put forward by developers etc. for inclusion in the SHLAA

(6) Sites that are housing proposals in the adopted UDP

Table 2.2 shows that:

- A total area of 320ha of land is more likely to be suitable in the second period of the SHLAA with a potential yield of approximately 12,800 dwellings at 40dph.
- Of this, approximately 9 hectares (360 dwellings) may not be achievable due to highways constraints leaving a residual figure of 12,440 dwellings.
- At least 133.5 hectares giving a yield of 5340 dwellings is suitable and available in Barnsley sub-regional town.
- Wombwell has the next highest proportion of land with a possible yield of at least 2040 dwellings at 40dph.
- Cudworth, Hoyland and Goldthorpe could yield 3760 dwellings at 40dph shared fairly equally between them (i.e. approximately 1250 dwellings in each settlement).
- Royston and Penistone could provide a further 1400 dwellings at 40 dph.

Potential to Bring Later Period Sites into the Early Period of the SHLAA.

Guidance on the SHLAA states that the methodology should also consider if later period sites could come forward earlier, if sustainability and other issues could be overcome.

The SHLAA has positively identified the supply that could come earlier from PDL. However, it is clear that development will need to take place on greenfield sites to meet the RSS housing requirements.

In addition the secondary schools reorganisation programme (Remaking Learning) has already begun the process of disposing of surplus sites. As such, these sites are also likely to come forward for development earlier in the LDF period.

As part of the 2005 Preferred Options Housing Sites DPD a detailed housing sites selection methodology based on sustainable development criteria was used to generate a preferred list. A number of these sites are greenfield and are classed as 'amber' in this assessment. As they have already been assessed previously and were proposed to be allocated in the LDF, these sites are suitable in the early period of the SHLAA.

For these reasons, it is considered that the following supply of 'amber sites' could reasonably be expected to come forward in the first rather than the second period of the SHLAA:

- Existing UDP sites.
- Schools disposal sites.
- Sites which were previously considered suitable for LDF housing allocation.

The effect this has on the period in which a site is placed in is reflected in the SHLAA site list in appendix 2 in the **SHLAA Period column.**

Overall, this would provide an additional 119ha of land in the early period of the SHLAA and at 40 dph would yield 4760 dwellings.

Abeyance Sites

These sites are not currently suitable for housing development and are to be held in abeyance. This is because:

- They are within the existing UDP green belt and / or the proposed LDF Green Belt Boundary. RSS for Yorkshire and Humber is clear that a Green Belt review for South Yorkshire will not be undertaken and therefore only localised boundary changes are appropriate.
- They are within a high risk flood zone where the Environment Agency has indicated that development would not be suitable. PPS 25 requires a sequential approach to development in terms of directing new development away from high risk flood zones.

- They are outside the sub-regional town, the principal towns, Grimethorpe and Royston and other settlement boundaries as shown in the UDP.

Table 3.4: Abeyance Sites.

Red Sites	
Total Sites	31
Total Area ha	264.9
Total Area Brownfield ha	49.9
Total Area Greenfield ha	187.6
Total Area Brownfield/Greenfield ha	27.4
LDF Green Belt ha	237
High Risk Flood Zone	25.1

Additional SHLAA Sites

A number of other sites for inclusion in the SHLAA were submitted at the second round of consultation. As such, these were received after the call for sites had ended. Therefore, these have not been taken into account in this version of the SHLAA but will be assessed as part of any update. A list of these sites is provided as Appendix 1b.

JE JACOBS

4 Overall SHLAA Supply in Barnsley

Section 2.4 of the SHLAA Regional Guidance is clear that it is approached as a technical exercise which forms one component of the overall LDF evidence base. The SHLAA should be a document that identifies potential housing supply and does not seek to make policy decisions on which sites should be developed, nor, should it begin to formulate development plan policy in its own right. Table 4.1 below shows the results of the SHLAA taking into account the five year housing supply.

SHLAA delivery period /Source of Supply	Potential Supply	Homes which may not be delivered/achievable in SHLAA periods due to constraints	Total Housing Trajectory Requirement for period to 2026	Difference Between SHLAA Supply and Housing Trajectory
1 April 2008 - 31 March 2016 (first eight years supply)				
Homes under construction by 2013	+ 982			
Homes from sites with full planning permission by 2013	+ 3255			
Homes from sites with outline planning permission by 2013	+1863			
Running Sub total	**6100**			
Homes from sites with outstanding full permissions which may be delivered after 2013	+ 399			
Homes from sites with outline planning permissions which may be delivered after 2013	+ 702			
Running sub total	**7201**			
Homes from SHLAA 'green' Sites (without highways constraints)	+ 1649			
Homes from SHLAA 'amber' sites which are likely to come forward in the early period.	+ 4760			
*Homes (net) from clearance sites	0			
SUB TOTAL 2008-2016	**13610**		**9824**	**+3786**
1 April 2016 – 31 March 2026				
Homes from remaining SHLAA 'amber sites' (notional carry over from 2008 – 2013 – without Highways Constraints)	+ 7680			
* Homes (net) from clearance sites	0			
SUB TOTAL 2016-2026	**7680**		**10150**	**-2470**
GRAND TOTAL 2008-2026	**21290**		**19974**	**+1316**

The oversupply of 3786 dwellings from the early period of the SHLAA could be carried forward to add to the supply in the later period

JACOBS

Appendix 1a –Summary of Responses to Draft SHLAA Sites Consultation

Current SHLAA Sites – Response to Consultation

Map	Site Ref.	Location	Suitability Grade	Representation Suggested Deliverability Grade	Reason	BMBC Response
Barnsley Urban	DSS9	Higham Lane, Dodworth	Amber	Green	Immediately available, No constraints.	Site greenfield so remains amber
Barnsley Urban	HO676	Land of Ellwood, Lundwood	Amber	Green	Immediately available, no constraints. Greenspace rating wrong – needs to be changed	Site greenfield so remains amber. Greenspace error rectified but makes no difference to SHLAA grade.
Barnsley Urban	HS18	Former Gawber Colliery	Amber (Re-grade to Green as site is brownfield)	Green	None Given except planning application submitted (2008/1555)	Site regraded to green as now accepted as PDL
Barnsley Urban	SAF15	Site East Of Dearne Hall Road,Low Barugh	Amber	Green	No ownership or physical constraints	Site greenfield so remains amber
Barnsley Urban	SAF30	Site West of Wakefield Rd., New Lodge	Amber	Green	None Given	Site greenfield so remains amber
Barnsley Urban	SAF32	Former Gawber Colliery	Amber	Green	None Given except planning application submitted	Site re-graded to green as now accepted as PDL

JE JACOBS

Map	Site Ref.	Location	Suitability Grade	Representation Suggested Deliverability Grade	Reason	BMBC Response
					(2008/1555)	
Barnsley Urban	SAF6	Site North Of Wilthorpe Road, Wilthorpe	Amber	Amber	No ownership constraints but issue with access	Site to remain amber
Cudworth	H0700	Land of Pontefract Road	Amber	Green	Only constraints access & tenant	Site greenfield so remains amber
Cudworth	SAF9 (part of)	Site At Blacker Lane, Shafton	Amber	None Stated	Supports current safeguarded status but would like site allocated in LDF	Site greenfield so remains amber. Allocation should be pursued through LDF process.
Dearne	13	Land east of Goldthorpe and Bolton on Dearne	Red	Green	Sustainable location, good urban extension	Site greenfield and within LDF greenbelt so remains red.
Dearne	44	Land west of Holly Grove, Goldthorpe	Amber	Green	No significant restraints, permissions granted, access points established.	Permission for hotel not residential. Site greenfield so remains amber
Dearne	SAF19	Site south of Barnburgh Lane, Goldthorpe	Amber	Green	Good urban extension	Site greenfield so remains amber
Dearne	SAF36	Site South Of Broadwater Estate, Bolton Upon Dearne	Red (Boundary needs amending to exclude flood zone)	Amber	Flood risk zone should be removed to allow new site with amber grading	Draft SFRA confirms flood risk. Amended site outside of flood zone could be included in SHLAA update if submitted.

JE JACOBS

Map	Site Ref.	Location	Suitability Grade	Representation Suggested Deliverability Grade	Reason	BMBC Response
Hoyland	8	Former Rockingham Colliery Site	Amber	Green	good urban extension deliverable within 5 years	Site regraded to green as amber rating based only on landfill proximity.
Hoyland	SAF16 (Part of)	Site North of Hoyland Road, Hoyland Common	Amber	Green	Could be developed without comprehensive development of whole site	Site remains amber due to greenfield. Amended site removing greenfield element could be included in SHLAA update if submitted.
Rural Sites 1	DSS8	Naylor Industries, Clough Green, Cawthorne	Red	Green	No ownership issues, no physical constraints	Site remains red as in greenbelt and outside settlement boundaries.
Wombwell	HO680	Land at Havelock Street, Darfield	Needs assessing & adding to table	Green	No physical Constraints	Site added to SHLAA
Wombwell	HS49	Land north of Barnsley Rd.	Amber	Amber	No ownership issues	Site is graded as amber
Wombwell	SAF4	Site South Of Lundhill Grove / Grantley Close, Wombwell	Amber	Green	No constraints on sites development	Site remains amber due to greenfield status.

JE JACOBS

Appendix 1b – New Sites Submitted During and After October 2008 SHLAA Sites Consultation

Map area	New Site Ref.	Location	Representor Suggested Grade	Reason / Comment
Barnsley Urban	NS3	Land South of Lund Lane, Lundwood	Green	Planning application submitted on site, site in single ownership. Development will bring environmental gains.
Barnsley Urban	NS9	Land at Saville Hall Farm, Dodworth	None Stated	Sustainable site
Barnsley Urban	NS10	Land off Keresforth Hill Road, Barnsley	None Stated	Sustainable site
Barnsley Urban	NS12	Land south of Darton Lane	Green	Appropriate site for an urban extension
Barnsley Urban	NS13	Land at Former Woolley Colliery	None Stated	Regeneration
Barnsley Urban	NS15	West of Wakefield Road, Athersley, Barnsley	None Stated	
Barnsley Urban	NS19	Former William Freeman Factory, Mapplewell	Green	Sustainable location
Cudworth	NS4	Land at Shafton Two Gates	Green	Land available, accessible and in single ownership in transport corridor.
Cudworth	NS16	East of Sunningdale Drive / Lindrick Close, Shafton	None Stated	
Dearne	NS5	Land at Little Houghton	Green	Planning application to be submitted shortly
Hoyland	NS6 A, B, C	Lands at Birdwell	None Stated	Sustainable sites
Hoyland	NS7	Land Adjoining Cock Inn, The Walk, Birdwell	None Stated	Sustainable site
Hoyland	NS8	Land off Roebuck Hill, Jump	None Stated	Sustainable site

JE JACOBS

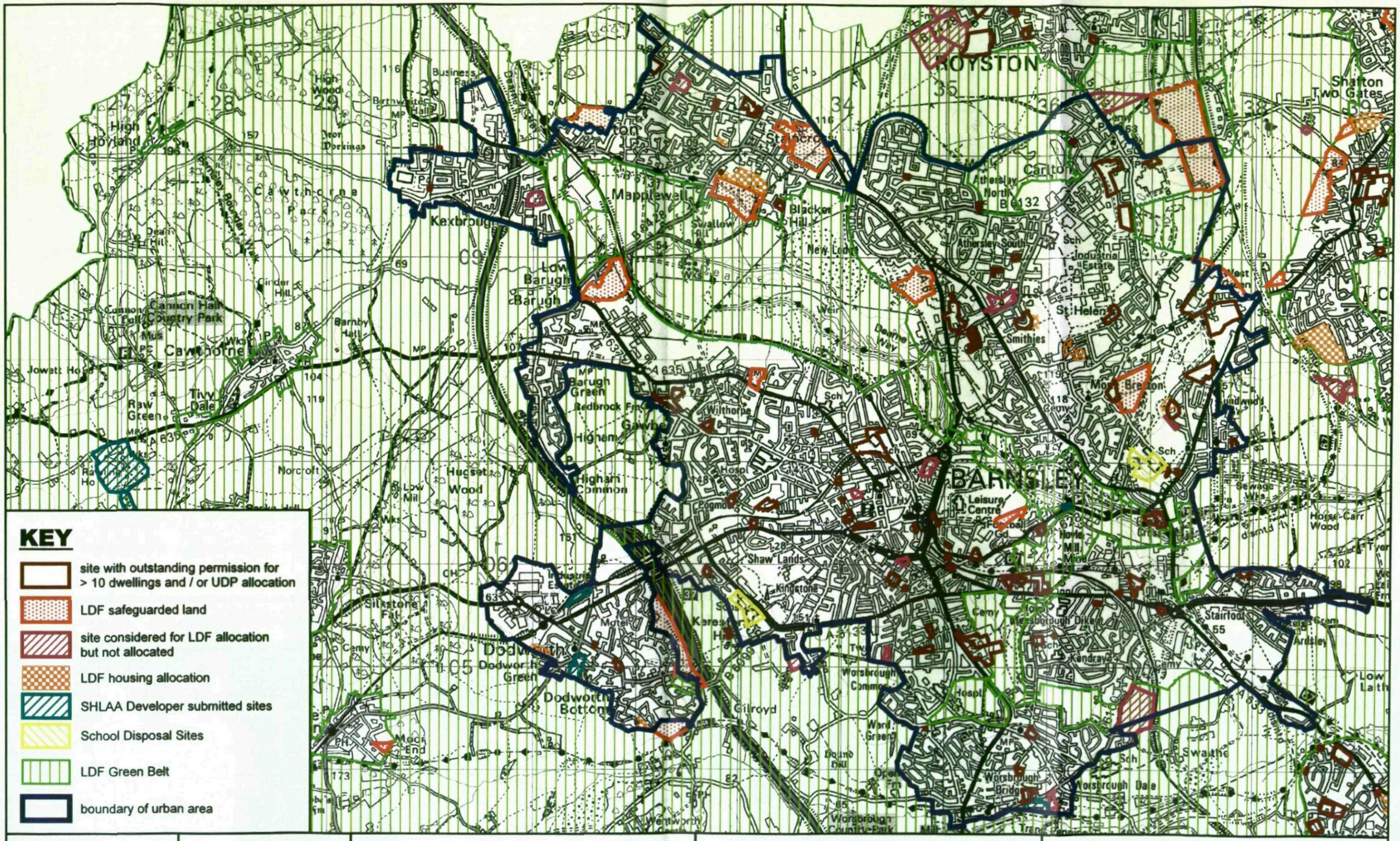
Map area	New Site Ref.	Location	Representor Suggested Grade	Reason / Comment
Hoyland	NS14	Site to the south of Dearne Valley Link Road	None Stated	Urban extension of Hoyland
Hoyland	NS17	North of Dearne Valley Parkway, Hoyland	None Stated	
Rural	NS2	Old Mill Lane, Thurgoland	None Stated	Site should , at least, be safeguarded land in LDF
Rural	NS18	Land at Bower Hill, Oxspring	None Stated	Land should be removed from green belt as it performs none of the required functions
Wombwell	NS1	Doncaster Road, Darfield	None Stated	Site should, at least, be retained as safeguarded land as in UDP. Sustainable location that could help borough meeting targets
Wombwell	NS11	Land to the East of Lundhill Road	Green	Sustainable location

JACOBS

Appendix 2 –Final SHLAA Site List and Site Assessment

This appendix is provided as a separate document.

Map	Site Reference	Location	Site Area (Ha)	Status	Brownfield	Greenfield	LDF Green Belt	UDP Green Belt	Flood Risk Zone	Within 250m of an Existing Landfill Site	Within 400m of a Public Transport Corridor	STPTE Analysis of whether 400m of the Core Bus Network	Loss of Designated Greenspace	Representation from Consultation	Accept, Consider or Reject Response	Site Suitability Assessment	Revised Assessment of Site Suitability	Within 250m of an Historic Landfill Site	Consultation Comments on Deliverability	Highways comments	How deliverable is the site?	SHLAA GRADE	SHLAA PERIOD
Barnsley U	2	Land Between Richard Road And Meyrick Drive, Darton, S75 5NP	1.79	Housing Site Considered for LDF	Yes	No	No	No	1	No	Yes		Yes			Amber	Amber	No			Only constraint is that the site is within 250m of an historic landfill site. Consultation with the EA would be required as part of any future planning application to ensure this can be overcome.	Amber	Later
Barnsley U	27	Land North Of Keresforth Hall Farm, Keresforth Hall Drive, Keresforth, S70 6RN	1.50	Housing Site Considered for LDF	No	Yes	Yes	Yes	1	No	Yes		No			Red	Red	No				Red	Abeyance
Barnsley U	45	Yorkshire Water Site North Of New Road, Staincross, S75 6NQ	1.82	Housing Site Considered for LDF	Yes	No	No	No	1	No	No	Yes	Yes			Amber	Amber	No				Amber	Later
Barnsley U	63	Yorkshire Water Site North Of Carlton Road, Monk Bretton, S71 2AW	2.78	Housing Site Considered for LDF	Yes	No	No	No	1	No	No		Yes			Amber	Amber	No				Amber	Later
Barnsley U	DSS2	Land off Green Road, Dodworth	2.19	SHLAA Developer Submitted Sites	No	Yes	No	No	1	No	Yes	No	No			Amber	Amber	No	Current planning application for site.		No constraints on deliverability have been identified.	Amber	Later
Barnsley U	DSS4	West Street Worsborough, Barnsley	2.18	SHLAA Developer Submitted Sites	Yes	No	No	No	1	No	No		No		No representation but original amber suitability based on that site is within 250m of historic landfill. Therefore potentially this site could be considered as Green in terms of suitability as this is more a deliverability constraint	Amber	Green	Yes	None received.	No highways constraints identified.	Only constraint is that the site is within 250m of an historic landfill site. Consultation with the EA would be required as part of any future planning application to ensure this can be overcome.	Green	Early
Barnsley U	DSS7	Pontefract Road, Hoyle Mill, Barnsley	0.34	SHLAA Developer Submitted Sites	No	Yes	No	No	2 and 3	No	Yes		Yes			Red	Red	Yes				Red	Abeyance
Barnsley U	DSS9	Higham Lane,Dodworth	1.15	SHLAA Developer Submitted Sites	No	Yes	No	No	1	No	Yes	No	No	Sustainable site except it is greenfield. Suggest green.	Greenfield so it remains amber	Amber	Amber	No	No constraints	Highways improvements would be required to enable the full potential development of the site to be realised. This would require the acquisition of third party land. Even with highways improvements may limit to approximately 50 dwellings.	Development could proceed without highways improvements but this would be more limited than the full potential of the site can provide.	Amber	Later
Barnsley U	H0185	Coniston Avenue, Darton, Barnsley	1.26	UDP Housing Proposal	No	Yes	No	No	1	No	No	Yes	No			Amber	Amber	No				Amber	Early
Barnsley U	H0187	Land Off Greenside, Mapplewell, Barnsley	1.41	UDP Housing Proposal	No	Yes	No	No	1	No	Yes		Yes			Amber	Amber	No				Amber	Early
Barnsley U	H0455	Land Off Alric Drive, Barnsley	0.66	UDP Housing Proposal	No	Yes	No	No	1	No	Yes		No			Amber	Amber	Yes				Amber	Early



KEY

- site with outstanding permission for > 10 dwellings and / or UDP allocation
- LDF safeguarded land
- site considered for LDF allocation but not allocated
- LDF housing allocation
- SHLAA Developer submitted sites
- School Disposal Sites
- LDF Green Belt
- boundary of urban area

Scale 1: 35,000

NORTH

Drawn by: AKI

Drwg No: T0195 - 010

Date: August 2008

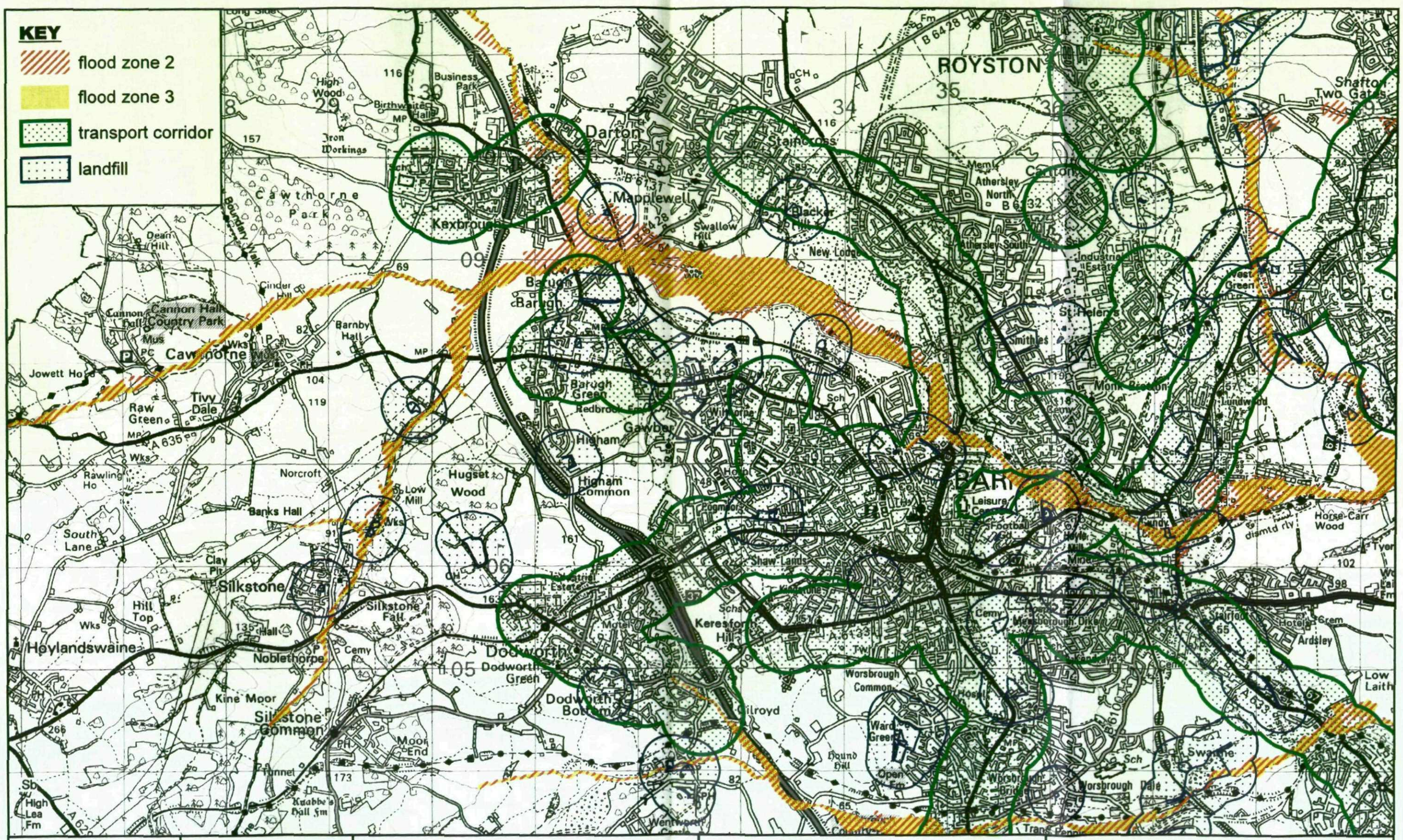
Project: Strategic housing land availability assessment

Drawing: Barnsley Urban area

BARNSLEY Metropolitan Borough Council

Planning and Transportation Service
Assistant Director: Stephen Moralee BA(Hons) MBA
PO Box 604, Barnsley. S70 9FE
Tel: (01226) 772601

Reproduced from the Ordnance Survey mapping with the permission of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Barnsley Metropolitan Borough Council, Licence number 100022264, 2008



Scale 1: 35,000 NORTH	**Drawn by:** AKI **Drwg No:** T0195 - 009 *Date:* September 2008	**Project:** Strategic housing land availability assessmenrt **Drawing:** flood risk, public transport & landfill around the Barnsley Urban area	BARNSLEY Metropolitan Borough Council	**Planning and Transportation Service** Assistant Director: Stephen Moralee BA(Hons) MBA PO Box 604, Barnsley. S70 9FE Tel: (01226) 772601

Reproduced from the Ordnance Survey mapping with the permission of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Barnsley Metropolitan Borough Council, Licence number 100022264, 2008

APPENDIX FIVE

Appeal Decisions

Inquiry held on 17, 18 and 19 April and 3 May 2007

Site visit made on 18 April 2007

by Karen Baker DipTP MA DipMP MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Date: 1 June 2007

Appeal A: APP/F4410/A/06/2025536
Land to the rear of 9-15 Park Drive, Sprotbrough, Doncaster DN5 7LA

- 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 Barratt Homes Sheffield Limited against the decision of Doncaster Metropolitan Borough Council.
- The application Ref. 05/03628/FULM, dated 2 December 2005, was refused by notice dated 30 June 2006.
- The development proposed is the erection of 19 dwelling houses and access road.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Appeal B: APP/F4410/A/07/2038100
Land to the rear of 9-15 Park Drive, Sprotbrough, Doncaster DN5 7LA

- 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 Barratt Homes Sheffield Limited against the decision of Doncaster Metropolitan Borough Council.
- The application Ref. 06/03003/FULM, dated 27 October 2006, was refused by notice dated 7 February 2007.
- The development proposed is the erection of 24 dwelling houses and access road.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Applications for Costs

1. At the Inquiry applications for costs were made by the Council and Sprotbrough Residents' Action Group against the appellants, and by the appellants against the Council. These applications are the subject of separate decisions.

Procedural Matters

2. At the Inquiry the Council confirmed that it has withdrawn that part of its fourth reason for refusal in respect of Appeal A which relates to archaeology. I shall therefore consider the appeal on that basis.

3. The appellants submitted a planning obligation in respect of each appeal at the Inquiry. These obligations transfer to the Council the freehold ownership of the area of protected woodland and 3m buffer zone and provide for the payment of a commuted sum of £15,000 for the future maintenance of these areas. In addition, these obligations provide for a commuted sum equivalent to 15% of the value of the land with the benefit of planning permission in lieu of the

OT100-049-104

Case copied by COMPSS under click-use licence

provision of public open space within the developments. I shall have regard to these obligations during my consideration of these appeals.

4. A number of amended/additional plans were submitted by the appellants prior to the determination of the planning applications. For the avoidance of doubt, I have considered the appeals on the basis of the following plans. In Appeal A: OS Location Plan (Drawing No. P05:3520:0S); Existing Site Layout (Drawing No. P04:1719:03); Site Survey (Drawing No. P04:1719:04); Planning Layout (Drawing No. P04:1719:05 Rev. E); Housetype A Plans & Elevations (Drawing No. P05:3520:06); Housetype B Plans & Elevations (Drawing No. P05:3520:07); Housetype C Plans & Elevations (Drawing No. P05:3520:08); Housetype D Plans & Elevations (Drawing No. P05:3520:09); Housetype E Plans & Elevations (Drawing No. P05:3520:13); Garages Plans & Elevations (Drawing No. P05:3520:11 Rev. C); Street Scenes (Drawing No. P05:3520:12 Rev. A); Landscape Proposal (Drawing No. 095-01 Rev. A); and, Planting Plan (Drawing No. 095-02 Rev. A). In Appeal B: OS Location Plan (Drawing No. P05:3520:0S); Existing Site Layout (Drawing No. P06:3633:02); Site Survey (Drawing No. P06:3633:03); Planning Layout (Drawing No. P06:3633:04); Housetype A Plans & Elevations (Drawing No. P06:3633:05); Housetype C Plans & Elevations (Drawing No. P06:3633:06); Housetype D Plans & Elevations (Drawing No. P06:3633:07); Garages Plans & Elevations (Drawing No. P06:3633:08); Block Plan (Drawing No. P06:3633:09); Landscape Proposal (Drawing No. 095-01 Rev. F); and, Planting Plan (Drawing No. 095-02 Rev. F).

Main Issues

5. I consider that the main issues in these appeals are the effect of the proposed developments on:

   a) the housing land supply within the Borough, having regard to local and national policies;

   b) the emerging Local Development Framework (LDF), in particular the Draft Core Strategy, which identifies Sprotbrough as a no growth settlement;

   c) the character and appearance of the area, including the preserved trees and woodland area; and,

   d) an area of ecological interest.

Planning Policy

6. The development plan for the area is the Regional Spatial Strategy (RSS) for Yorkshire and the Humber to 2016, based on a Selective Review of RPG 12, adopted in 2004, and the Doncaster Unitary Development Plan (UDP), adopted in 1998. I have been referred to a number of policies within these documents, however, I consider that the following are most pertinent to my consideration of these appeals. In the RSS, Policy P1 seeks, amongst other things, to minimise the need for greenfield development and the need to travel. It goes on to say that, wherever possible, development should be located within urban areas and that development plans should adopt a sequential approach to meeting development needs which should start with the reuse of suitable previously developed land and buildings within urban areas. Policy H2 sets out the sequential approach to the allocation of housing land, with preference being

given to previously developed land and conversions of existing buildings to housing use within urban areas, subject to providing decent accommodation in an acceptable setting. It goes on to say that in rural areas, the provision of housing should be to meet local needs and/or support local services, giving priority to the reuse of previously developed land or buildings and to conserving (and where possible enhancing) the character of the small town or village. Policy H3 sets out criteria for managing the release of housing land. Policy N1 requires local planning authorities to identify and develop policies for areas important to conservation of biodiversity.

7. In the UDP, Policy PH 11 says that within Residential Policy Areas development for housing will normally be permitted, except where it would be at a density or of a form which would be detrimental to the character of the surrounding area or would result in an over-intensive development of the site, amongst other things. Policy ENV 18 promotes the conservation and enhancement of the Borough's landscape and seeks to maintain local variations in that landscape. It goes on to say that, wherever possible, woodlands, habitats of landscape importance and trees, amongst other things, will be protected and enhanced. Policy ENV 21 seeks to protect and conserve existing trees and woodlands. Policy ENV 43 expects development proposals in respect of non designated sites containing natural features and supporting wildlife to conserve and enhance existing features of nature conservation interest. Policy ENV 50 says that the importance of species protected by law will be taken into account when considering development proposals that would have an adverse effect upon any site supporting them. Policy ENV 59 states that in considering proposals for new development considerable importance will be attached to the need to protect existing trees and other natural landscape features.

8. I have had regard to The Yorkshire and Humber Plan, Draft for Public Consultation and the LDF: Core Strategy: Preferred Options, both published in December 2005. Given that these plans are at an early stage in their preparation I have afforded them limited weight in accordance with paragraph 18 of The Planning System: General Principles. In the Draft RSS, Draft Policy H1 sets out the provision and distribution of housing within the Region. It also sets a target of 65% for the proportion of housing development taking place on previously developed land and through conversions of existing buildings over the period 2004-2021. Draft Policy SY1E sets out the strategic patterns of development. In the Draft Core Strategy, Draft Policy CS-S13 says that development within the larger (defined) villages, will be confined to quality infilling which maintains or enhances village character. Draft Policy CS-H3 says that Residential Policy Areas will continue to be designated around existing predominantly residential areas in the urban areas and around the defined villages as a basis for development control. It goes on to say that, within these areas, non-residential uses, brownfield and small greenfield windfall housing proposals will normally be supported, provided they conserve and where possible enhance local character and residential amenity. It states, however, that larger greenfield windfall sites (10+ units) will only be supported in particular circumstances.

9. I have also had regard to the Council's Greenfield Moratorium Policy, which was introduced in September 2002, and reviewed in February 2003. This document contains a presumption against the granting of any new planning permissions

for housing development on greenfield sites, including those greenfield sites allocated for housing within the UDP. It is intended that this document will stay in place until the Council produces its new LDF housing allocations, which will take account of RSS requirements and national housing policies which have been introduced since the adoption of the UDP. The Greenfield Moratorium Policy is not part of the development plan or Supplementary Planning Guidance, and has not been subject to public consultation. As such, this limits the weight to be attached to it. Nevertheless, it does accord with the advice in Planning Policy Statement (PPS) 3: Housing and is a material consideration in my determination of these appeals.

Reasons

Housing Land Supply

10. The appeal site lies within the built up area of Sprotbrough, in a Residential Policy Area, as defined in the Doncaster UDP. Although, in principle, the development of such land for housing would be acceptable, the UDP sets out a number of criteria which have to be met. In addition, the Council's Greenfield Moratorium Policy contains a presumption against the granting of any new planning permissions for housing development on greenfield sites, including those within the built up area. The Council and many third parties consider that the appeal site is greenfield land and, as such, the Greenfield Moratorium Policy should apply. The appellants stated at the Inquiry that, in principle, the application of the Greenfield Moratorium Policy is not disputed. However, it is considered by the appellants that it should not be applied to the appeal site as it constitutes previously developed/brownfield land as defined in PPS 3. The appellants confirmed at the Inquiry that if I am minded to conclude that the appeal site does not constitute previously developed/brownfield land, then the appeals should be dismissed.

11. PPS 3 defines previously developed land as that which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. The appellants consider that the appeal site forms part of the curtilages of the dwellings at Nos. 9-15 Park Drive. However, this is disputed by the Council, the Sprotbrough Residents' Action Group and many local residents. The issue of curtilage has been the subject of much case law, some of which has been referred to by the main parties in evidence and closing submissions at the Inquiry. In my opinion, of particular relevance to these appeals is the recent judgement by Ouseley J from George Wimpey UK Limited v First Secretary of State (2005), in which he reviewed the significant authorities with respect to curtilage and the issue of previously developed land. He concluded that what is required is an intimate association to such a degree that the one forms part and parcel of the other, properly regarded as an integral whole. He recited the 3 factors identified by Stephenson LJ in Attorney-General ex. rel. Sutcliffe, Rouse and Hughes v Calderdale Borough Council (1983) that had to be taken into account in deciding whether a structure (or object) was within the curtilage of a listed building, namely the physical layout of the listed building and the structure; their ownership, past and present; and their use or function, past or present. In addition, he referred to the case of Skerritts of Nottingham Limited v Secretary of State for the Environment, Transport and the Regions (2001) in

which Walker LJ said that what was within a curtilage was a question of fact and degree.

12. The Council identified 8 factors to be considered, having regard to the Oxford English Dictionary (OED) definition of curtilage and the judicial guidance identified by the main parties, namely size; visual appearance; use and activities; the degree of separation between the accepted garden areas and the appeal site; the degree of separation within the appeal site between the different ownerships; the degree of exclusion of non owners from the appeal site; the recent activity which has taken place before the first application was submitted and subsequent to the first refusal of planning permission; and the extent and nature of activities within the appeal site by non owners. The appellants' planning witness accepted in cross examination that all of these factors are relevant when considering the issue of curtilage, with the exception of size and use of the land by third parties. Although many of these factors may be inherent in the assessment of curtilage, I concur with the appellants' view that the 3 factors set out by Stephenson LJ encapsulate the relevant legal approach. As such, I have used these 3 factors as the basis for my assessment of the issue of curtilage in these cases.

Physical Layout

13. The appeal site consists of 4 strips of land to the rear of Nos. 9-15 Park Drive. It was apparent from my site visit that there are many similarities in the layout of each plot. All 4 dwellings are located close to Park Drive, to the north west end of the plots. Each dwelling has a well maintained front garden containing grass, shrubs and/or flower beds, along with a driveway which provides access to a garage. The land immediately to the rear of each dwelling contains grass, patio/sitting out areas, shrubs and/or flower beds, along with other domestic paraphernalia, such as washing lines and barbeques.

14. Beyond these more manicured rear gardens, immediately to the north west of the appeal site, the land becomes less formally laid out. At No. 9, this area consists of a large concrete driveway/parking area, and contains 2 large buildings of wood and block construction, along with an area of rough grass land. At No. 11, beyond a small wire fence and gate, this area contains a number of trees, some flower beds and planting, along with run down garden sheds and an area for the dumping of garden waste. At No. 13, this area contains a number of substantial trees, with bluebells underneath, a garden shed and a compost heap. At No. 15, this area is partly overgrown and includes a greenhouse, some fruit trees and an area for the dumping of garden waste. It is not disputed by the Council that these less formal areas form part of the rear gardens to each of the dwellings. Each plot is separated from its neighbour by a hedge along the side boundary of the formal and less formal garden areas.

15. Beyond these less formal garden areas, to the south east, is the appeal site. It is mostly laid to grass, with the exception of the wooded area either side of the public right of way at the south eastern end of the appeal site and an area of planting along part of the north eastern boundary of No. 9. Each plot is separated from the others by post and wire fencing up to, but not including, the wooded area. A post and wire fence also exists around 3m to the north west of the public right of way, through the wooded area.

Ownership

16. The appeal site is in a number of different ownerships. The occupiers of Nos. 9, 11 and 15 own all of the land to the rear of each of their respective homes. However, it was apparent from the evidence presented to the Inquiry that the rear part of No. 13, which forms part of the appeal site, is not owned by the current owners/occupiers of this dwelling, but by the previous owners/occupiers who retained ownership of this part of the site upon the sale of No. 13 to the current owners/occupiers in 1993.

17. From the evidence presented to the Inquiry by these owners/occupiers, I understand that the residents of these dwellings have lived here for many years. In terms of No. 9, the current owners/occupiers, Mr and Mrs Harden, purchased the land in 1947, which was then being used for agricultural purposes, and commenced construction work on their house in 1950. Mr and Mrs Middleton have owned and occupied No. 11 for over 27 years. Mr and Mrs Taylor owned and occupied No. 13 between 1973 and 1993, when they sold the house and part of the plot, excluding the area that now forms part of the appeal site, to Mr and Mrs Harvey, who have occupied No. 13 since that time. Finally, with regards to No. 15, Mrs Stanley and her late husband purchased the house and land in 1947, at which time some of the plot was leased to a local farmer for agricultural purposes.

Use or Function

18. Prior to the construction of the houses at Nos. 9-15 Park Drive it is apparent, from the written evidence presented to the Inquiry, that much of this land was used for agricultural purposes. However, since the late 1940s/early 1950s the current/recent owners/occupiers of Nos. 9-15 state that the appeal site has been used as garden areas associated with the dwellings. Although not formally laid out, there is evidence from historic aerial photographs and personal photographs and written evidence of the owners/occupiers that show that this area was mostly laid to grass, with some demarcation of the boundaries between the properties by shrubs/tree planting. In addition, although now removed, it is apparent that a number of outbuildings, fruit trees and other ornamental trees existed on parts of the appeal site.

19. I understand from the evidence presented to the Inquiry that the use of that part of the appeal site to the rear of No. 9 has included the keeping of chickens and ponies, growing of fruit and vegetables, riding of quad bikes, barbeques, entertaining friends and family, exercising dogs and Brownie events. In terms of that part of the appeal site to the rear of No. 11, I understand that the area has been used as a children's play area, including football, for which football posts remained in situ for over 10 years, social and fundraising events, family bonfires, fruit trees and the growing of vegetables, and exercising dogs. With regard to No. 13, when occupied by Mr and Mrs Taylor, the land to the rear of the property within the appeal site was used as a kitchen garden, primarily to grow fruit and vegetables, up until the early 1990s. Since that time it has been kept as mown grass. I note the informal arrangement between Mr and Mrs Taylor and the current owners/occupiers of No. 13, which has allowed the latter to use this area. Indeed, I note that they have utilised it as a children's play area and for the exercising of dogs. Finally, the current owner of No. 15 confirmed in her written statement to the Inquiry that the land to the rear of

this property, within the appeal site, was used for the growing of fruit and vegetables, as well as a children's play area.

20. Given the size of the plots associated with these dwellings, it is not surprising that they were laid out in the way portrayed at the Inquiry by the owners/occupiers. In my opinion, it is logical to retain a formal garden area close to the rear of the dwelling for sitting out, small children's play and other domestic uses such as barbeques, clothes drying areas and garden sheds. However, from the evidence provided to the Inquiry, I am satisfied that the rear portions of these large plots also provided a garden function, including the growing of vegetables and fruit, older children's play, including football, and for entertaining on a larger scale. As such, I consider that the part of the plots within the appeal site had, and still have, an intimate association with the dwellings at Nos. 9-15 Park Drive, to such a degree that each forms part and parcel of the other and should be properly regarded as an integral whole.

21. I note the comments of the Sprotbrough Action Group and many neighbouring residents that members of the public have been allowed to roam freely onto the appeal site. Although some public access onto this site has been clearly tolerated by the owners of the land over the years, it is apparent from the evidence presented to the Inquiry and from my site visit that access has been limited mostly to the wooded area around the public right of way, with only occasional straying onto the grassed area. It is unusual for private gardens to contain a wooded area and public right of way. However, to my mind, such access does not diminish the use or primary function of this area as private gardens.

22. I acknowledge the recent activity on the appeal site carried out by the appellants prior to the submission of the first planning application, including the clearance of trees and the erection of new boundary treatment. However, it was clear from my site visit and from the evidence provided to the Inquiry that it does constitute part of the curtilages of the dwellinghouses at Nos. 9-15 Park Drive, given the current physical layout, along with the ownership and use/function of the land, past and present. I am satisfied, therefore, that the appeal site is previously developed/brownfield land to which the Council's Greenfield Moratorium Policy should not be applied. As such, the principle of residential development would be acceptable on this site.

23. I conclude, therefore, that the proposed development would not harm the housing land supply within the Borough, having regard to local and national policies.

Emerging LDF

24. The Draft Core Strategy defines Sprotbrough as a larger (defined) village within Draft Policy CS-S13, where development will be confined to quality infilling which maintains or enhances village character. Draft Policy CS-H3 says that Residential Policy Areas will continue to be designated around existing predominantly residential areas in the urban areas and around the defined villages as a basis for development control. Although the emerging LDF does not as yet identify these Residential Policy Areas, the appeal site falls within such an area in the current UDP. Given this, along with the brownfield nature of the appeal site, I am satisfied that its development for residential purposes

would not be contrary in principle to the emerging policies within the Draft Core Strategy.

25. I conclude, therefore, that the proposed development would not harm the emerging LDF, in particular the Draft Core Strategy.

Character and Appearance

26. The appeal site forms part of the rear garden areas of Nos. 9 – 15 Park Drive. To the north east of the appeal site is the modern residential estate known as Fairfield Manor, which comprises a mixture of detached, semidetached and terraced, mostly 2 storey, properties. To the north, north west and west of the site are the more mature dwellings, with substantial land to the rear, which front onto Park Drive. To the east is the A1(M) motorway and to the south is a modern residential estate, which includes mostly detached 2 storey dwellings along Millstream Close and St Chads Way. A public right of way exists along the north eastern boundary of the appeal site from Birch Close and continues, to the west, through the southern part of the appeal site, to Brompton Road, and, to the east over the A1(M).

27. The appeal proposals would include the construction of 19 and 24 dwellings of 2 – 2.5 storeys in height, at a density of 24 and 30 dwellings per hectare, in Appeals A and B respectively. Given the layout, design, height, scale and density of the dwellings proposed, along with the location of other similar developments nearby, in particular the Fairfield Manor estate, I do not consider that they would appear visually obtrusive or cramped or represent an overdevelopment of this backland site.

28. Local residents and the Sprotbrough Residents' Action Group expressed concern that a large number of mature trees and planting had been removed from the appeal site prior to the submission of the first planning application. Indeed, many stated the importance of these trees in terms of local amenity at the Inquiry. However, I note the statement of the Council's Tree Officer at the Inquiry that these trees were of poor quality. This is confirmed by their exclusion from the Council's Tree Preservation Order (TPO) No. 207, which was placed on other neighbouring trees, including some within the appeal site, in 1999. In addition, following notification by third parties of the felling of these trees in 2005, the Council's Tree Officer visited the site and did not seek to protect these trees through the imposition of a further TPO. As such, the removal of these trees by the appellants and the owners of the appeal site was a lawful act.

29. An assessment of the amenity value of the cleared trees, as well as their quality, would have been made by the Council's Tree Officer when he considered the imposition of a TPO in 1999. He would also have had an opportunity to reassess their value when he visited the site in 2005. Although I have not had the opportunity to see these trees in situ prior to their removal, I am satisfied that they would have been of limited amenity value.

30. I have had regard to the photographic evidence provided by third parties and the appellants in respect of the extent of the tree cover prior to the clearance of much of the appeal site. In addition, I understand the request by the Sprotbrough Residents' Action Group that I assess the effect of the proposals on the appeal site as it was prior to the clearance of the trees. Nevertheless,

this work was undertaken legally and my duty is to consider the appeal site as it is now and the effect of the proposed developments on the character and appearance of the area and preserved trees within the site.

31. The proposed developments would include the removal of a further 46 trees on the appeal site, none of which is included within the TPO. A survey carried out on behalf of the appellants by The Landscape Agency in October 2005 shows that of the trees to be removed, only 2 are considered to be of a high amenity value and only 10 are considered to be in good condition. Each proposed development would include a substantial landscaping scheme that would provide a good mix of smaller ornamental species and some larger, long lived species. Given this, I concur with the view of the Council's Tree Officer that the proposals would achieve a reasonable balance between tree loss and new planting.

32. In addition, a 3m woodland buffer zone would be provided in each proposal between the garden areas of the new dwellings and the preserved trees. The Sprotbrough Residents' Action Group suggested at the Inquiry that this buffer zone should be increased to 10m. However, given the extent of the buffer zone proposed, along with the planting to be included within it, I am satisfied that it would be sufficient in these cases to protect the preserved trees from the neighbouring residential development. Further, I acknowledge the appellants' intention to transfer the ownership of the woodland area to the Council, along with a commuted sum for its maintenance and management. I note the concerns of the Sprotbrough Residents' Action Group that a commuted sum of £15,000 is insufficient for the upkeep of this woodland. However, the Council is content with this figure and it satisfies the Council's standard. In my opinion, the transfer of this woodland area to the Council, along with the commuted sum for its maintenance, would ensure that it would be appropriately managed for the enjoyment of those users of the public right of way, which currently runs through an area of unmanaged private woodland.

33. Some glimpses of the proposed developments would be possible from this public right of way, particularly during the winter months. Nevertheless, I am satisfied that, given the significant number of trees to be retained and the distance between it and the new dwellings, along with the woodland buffer zone, the experience of the users of this route would not be dissimilar to that currently enjoyed.

34. I note the concerns of local residents and the Sprotbrough Residents' Action Group that to allow these proposals would set a precedent for further development to the rear of properties on Park Drive and that this has led to the felling of trees on neighbouring land to the west of the appeal site. It is apparent from the TPO, however, that the extent of the woodland area included within it substantially increases beyond the appeal site. Indeed, the woodland area depicted as W1 on the TPO extends considerably further north to the rear of Nos. 17 – 27 Park Drive than it does within the appeal site. In addition, a group of trees, G22, and a single tree, T78, are also included within the TPO to the rear of No. 23. Any future development proposal would therefore have to take account of these preserved trees, the extent of which is significantly greater than on the appeal site.

35. The Council, Sprotbrough Residents' Action Group and local residents are concerned that the development of the appeal site would lead to the loss of an important green lung/oasis and amenity area within the settlement. It was apparent from the evidence presented to the Inquiry that members of the public have enjoyed the public right of way, along with the amenity greenspace provided by the woodland area and other parts of the appeal site for many years. I acknowledge the appeal decision made by my colleague in 1999 (Ref. T/APP/F4410/A/98/299067/P4) and his concerns relating to the harm to the character and appearance of the area from a proposed development of 21 detached dwellings. This previous proposal, however, was on a larger site, of which the appeal site formed only a part, and included a more substantial area of woodland, to the north west of the public right of way, through which the proposed access road would have been constructed and a number of houses erected. Many of these trees are now subject to TPO No. 207.

36. Although the proposals would lead to the development of most of the appeal site, I am satisfied that those areas that would be retained, including the public right of way and area of preserved woodland would ensure that the important part of this amenity greenspace would still be enjoyed by local residents. In addition, given the provision of other amenity open space in the area, particularly within the Fairfield Manor estate, along with a commuted sum in lieu of the provision of public open space within the developments, I am satisfied that sufficient amenity open space would be available in the locality to serve the existing and future occupiers of this part of Sprotbrough.

37. I conclude, therefore, that the proposed developments would not harm the character and appearance of the area, including the preserved trees and woodland area. As such, the proposals would accord with Policies PH 11, ENV 18, ENV 21, ENV 43 and ENV 59 of the UDP.

Ecological Interest

38. The Council is concerned that the proposed developments would put at risk species protected by law. However, I have been given no indication either in the Council's ecological proof of evidence or at the Inquiry as to the particular species of concern. In addition, many local residents have expressed concerns relating to the effect of the proposed developments on various species, including birds and bats.

39. The appellants have provided an ecological assessment of the appeal site, which includes a desk study and field surveys undertaken on 8 February, 18 April and 11 May 2006, to establish the baseline ecological situation; identification and evaluation of the importance of ecological features likely to be affected; identification of the biophysical changes that may impact on the ecological features and an assessment of whether they are likely to give rise to a significant ecological impact; and mitigation and compensation measures to avoid or reduce any negative impacts. This assessment shows that no protected species have been recorded living on the site. The clearance of the site would be timed to avoid impacting on nesting birds and new opportunities for protected species would be created as part of the development proposals. The appellants' ecological assessment is not disputed by the Council's Ecologist Planner and I have seen no evidence to contradict the findings of this detailed

assessment undertaken in accordance with the Institute of Ecology and Environmental Management Guidelines 2006.

40. Sprotbrough Residents' Action Group and other third parties expressed the view at the Inquiry that the ecological assessment should have been carried out prior to the clearance of some of the trees on the appeal site. However, as detailed above, the removal of some of the trees on the appeal site was lawful and there is no evidence before me to indicate that this act was detrimental to the wildlife and ecology of this area. Indeed, at the Inquiry the appellants' ecological consultant referred to an ecological and landscape history report prepared by Colin Howes, in March 1998, on behalf of the Sprotbrough Residents' Association. This report examined a larger area, that included the appeal site, which was subject to a planning application (Ref. 98/70/1590/P/FUL) and appeal (Ref. T/APP/F4410/A/98/299067/P4) for residential development. This report did not identify any specially protected species resident on the site. However, it did show that there was evidence of Pipistrelle bats hunting amongst the trees. I acknowledge that fewer species were evident in the appellants' ecological assessment of the appeal site, following the removal of some of the trees. However, the earlier survey examined a much larger area and I note the statement of the appellants' ecological witness to the Inquiry that if he had examined the neighbouring land as well as the appeal site, then it is likely that he would have come to the same conclusions.

41. Although I have not had the opportunity to see any of the trees in situ prior to their removal, I am satisfied, from the submitted evidence, that they would have been of limited wildlife and ecological value. In any event, it is my duty to consider the appeal site as it is now and the effect of the proposed developments on the existing wildlife and ecology. From the evidence before me, I do not consider that the proposed developments would be detrimental to the wildlife or ecology of the appeal site.

42. I conclude, therefore, that the proposed developments would not harm an area of ecological interest. As such, the proposals would not be contrary to Policy N1 of the RSS or Policies ENV 18, ENV 43 and ENV 50 of the UDP.

Other Matters

43. Several local residents are concerned about the effect of the proposed developments on highway and pedestrian safety. I note that the Highway Authority has no objections to the proposals. Given the position of the proposed access to the appeal site and the number of houses proposed, vehicular movements would increase, particularly along Birch Close. In addition, local residents are concerned that vehicle speeds would be increased in the vicinity of an area of open space close to the entrance to the appeal site where currently few vehicle movements occur. The Sprotbrough Residents' Action Group has suggested a planning condition be imposed on any approval which would require the implementation of a traffic calming scheme along Birch Close, particularly close to this area of open space. The appellants have no objections to such a condition. In my opinion, given the likely increase in vehicle speeds and movements along Birch Close in the vicinity of the area of open space, the introduction of traffic calming measures would be reasonable in the interests of pedestrian safety. I am satisfied, however, that the wider

highway network would be able to accommodate the likely additional vehicular movements associated with the proposed developments.

44. With regard to public open space, the appellants have included a commuted sum payment within the submitted planning obligations in lieu of the provision of public open space on the appeal site, equivalent to 15% of the value of the land. The Council confirmed at the Inquiry that this would satisfy its concerns in relation to open space provision and that the commuted sum would be used for the provision/improvement of open space within Sprotbrough.

45. I note the concerns of the Sprotbrough Residents' Action Group in relation to deforestation and C02 emissions. Nevertheless, given the number of trees to be removed, along with the proposed planting and retained trees, I consider that there would be no material harm in these respects from the proposed developments.

46. The Sprotbrough Residents' Action Group expressed concern that the proposals would not include any affordable housing provision. I note the appellants' statement at the Inquiry that at the time of submitting the planning applications there was no requirement for such provision on sites of 25 dwellings or less. I also acknowledge that the Council has not sought the provision of any affordable housing as part of these proposals. PPS 3 says that in Local Development Documents, local planning authorities should set out the range of circumstances in which affordable housing will be required, amongst other things. It goes on to say that the national indicative minimum site size threshold is 15 dwellings. Although both proposals would now be above this minimum site size threshold, given that the Council's LDF is at an early stage in its preparation and that no requirement for affordable housing on this site has been put forward by the Council, I am satisfied that there would be no requirement for the provision of affordable housing in these cases.

Conditions

47. In addition to the standard time limit condition, the Statement of Common Ground suggests 13 conditions. A number of other conditions have also been suggested by Sprotbrough Residents' Action Group. I shall have regard to Circular 11/95 during my consideration of these conditions. A condition requiring the submission and approval of samples of materials to be used in the external surfaces of the proposed dwellings would be necessary to safeguard the character and appearance of the area. However, it would not be necessary for bat slates to be incorporated into roof design details to encourage the roosting and habitat of bats. A condition requiring the submission and approval of a Construction Impact Management Plan would be necessary to safeguard the living conditions of nearby residents. A condition requiring the submission and approval of details of all boundary walls and fences would be reasonable to safeguard the character and appearance of the area.

48. A condition requiring the submission and approval of a noise attenuation scheme would be reasonable in the interests of the living conditions of future occupiers, given the close proximity of the A1(M). A condition requiring the submission and approval of a landscaping scheme would be reasonable to safeguard the character and appearance of the area. Conditions requiring the protection and replacement of retained trees would be reasonable to safeguard

the character and appearance of the area. A condition requiring that tree surgery work be carried out in accordance with the approved plans and particulars and that best arboricultural practice shall be employed would be reasonable to safeguard the character and appearance of the area. A condition which requires the submission and approval of a wildlife enhancement scheme would be reasonable to encourage and enhance nesting and feeding provision for woodland birds close to a wildlife corridor. A condition which requires the submission and approval of traffic calming measures along Birch Close would be reasonable in the interests of pedestrian safety as detailed earlier in these decisions.

49. A condition requiring the issue of a one year Travelmaster ticket to each household would not be necessary in the interests of sustainable development. A condition requiring that the developments be carried out in accordance with the amended plans would not be necessary given that the plans upon which the appeals have been determined are listed elsewhere in these decisions. A condition requiring the site to be developed with separate systems for foul and surface water on and off the site would not be necessary as this matter is covered by other legislation. A condition requiring the submission and approval of highway engineering and highway surface water details is not sufficiently precise and covers matters dealt with under separate legislation. Conditions requiring the revision of the layout of the proposed development, to prevent future access to land to the south west, and reducing the density to 9 dwellings per hectare, would be unreasonable as they would change the description and layout of the developments approved. A condition requiring the increase in the buffer zone from 3m to 10m would not be necessary to safeguard the preserved trees and would be unreasonable as it would change the layout of the developments approved.

Conclusions

50. For the reasons given above and having regard to all other matters raised, I conclude that the appeals should be allowed.

Formal Decisions

Appeal A: APP/F4410/A/06/2025536

51. I allow the appeal, and grant planning permission for the erection of 19 dwelling houses and access road on land to the rear of 9-15 Park Drive, Sprotbrough, Doncaster DN5 7LA in accordance with the terms of the application, Ref. 05/03628/FULM, dated 2 December 2005, and the plans submitted with it, subject to the following conditions:

    1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.

    2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

    3) No development shall take place until a Construction Impact Management Plan, indicating the measures to be taken to mitigate the effects of the

construction activity and associated vehicle movements upon the living conditions of neighbouring residents and upon highway safety has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the agreed Construction Impact Management Plan.

4) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed for each building prior to its first occupation. Development shall be carried out in accordance with the approved details.

5) Prior to the commencement of development, a noise attenuation scheme for the dwellings hereby approved shall be submitted to and approved in writing by the local planning authority. The scheme shall include measures for single unit thermal double glazing, similar measures to external doorways to all sensitive/habitable rooms and passive acoustic ventilation. The measures as approved shall be incorporated into each dwelling prior to its occupation.

6) No development shall take place until details of a landscaping/planting scheme have been submitted to and agreed in writing by the local planning authority. The scheme shall indicate all existing trees and hedgerows on the site, showing their respective size, species and condition. It shall distinguish between those that are to be retained, those proposed for removal and those requiring surgery. The scheme should also indicate, where appropriate, full details of new or replacement planting. All planting material included in the scheme shall comply with the local planning authority's Landscape Specification in Relation to Development Sites. The planting as approved shall be carried out in accordance with a timescale submitted to and approved in writing by the local planning authority prior to the commencement of the development. Any tree or shrub planted in accordance with the approved scheme which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives prior written approval to any variation.

7) No trees, shrubs or hedges shown for retention on the Planning Layout (Drawing No. P04:1719:05 Rev. E) shall be topped, lopped or felled, uprooted or otherwise damaged for five years after the commencement of development without the prior written consent of the local planning authority. Any such trees, shrubs or hedges removed or becoming damaged or diseased before the end of the period shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives prior written approval to any variation.

8) The erection of fencing for the protection of any retained trees shall be undertaken in accordance with the approved Tree Protection Plan and particulars contained in the Landscape Specification (May 2006) before any equipment, machinery or materials have been brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the

site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

9) Tree surgery work shall be carried out in accordance with the approved plans and particulars (Tree Survey, October 2005). Best arboricultural practice shall be employed in all work, which shall comply with British Standard BS3998: 1989 Recommendations for Tree Work and, unless otherwise approved by the local planning authority, shall be completed before the development commences.

10) Prior to the occupation of the dwellings hereby permitted, a wildlife enhancement scheme, with the emphasis on nesting and feeding provision for woodland birds and the mitigation of the impacts of public access shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the occupation of the last dwelling on the site.

11) Prior to the commencement of the development hereby approved, a scheme of traffic calming measures along Birch Close shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the dwellings hereby approved.

Appeal B: APP/F4410/A/07/2038100

52. I allow the appeal, and grant planning permission for the erection of 24 dwelling houses and access road on land to the rear of 9-15 Park Drive, Sprotbrough, Doncaster DN5 7LA in accordance with the terms of the application, Ref. 06/03003/FULM, dated 27 October 2006, and the plans submitted with it, subject to the following conditions:

1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.

2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

3) No development shall take place until a Construction Impact Management Plan, indicating the measures to be taken to mitigate the effects of the construction activity and associated vehicle movements upon the living conditions of neighbouring residents and upon highway safety has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the agreed Construction Impact Management Plan.

4) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed for each building prior to its first occupation. Development shall be carried out in accordance with the approved details.

5) Prior to the commencement of development, a noise attenuation scheme for the dwellings hereby approved shall be submitted to and approved in writing by the local planning authority. The scheme shall include measures for single unit thermal double glazing, similar measures to external doorways to all sensitive/habitable rooms and passive acoustic ventilation. The measures as approved shall be incorporated into each dwelling prior to its occupation.

6) No development shall take place until details of a landscaping/planting scheme have been submitted to and agreed in writing by the local planning authority. The scheme shall indicate all existing trees and hedgerows on the site, showing their respective size, species and condition. It shall distinguish between those that are to be retained, those proposed for removal and those requiring surgery. The scheme should also indicate, where appropriate, full details of new or replacement planting. All planting material included in the scheme shall comply with the local planning authority's Landscape Specification in Relation to Development Sites. The planting as approved shall be carried out in accordance with a timescale submitted to and approved in writing by the local planning authority prior to the commencement of the development. Any tree or shrub planted in accordance with the approved scheme which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives prior written approval to any variation.

7) No trees, shrubs or hedges shown for retention on the Planning Layout (Drawing No. P06:3633:04) shall be topped, lopped or felled, uprooted or otherwise damaged for five years after the commencement of development without the prior written consent of the local planning authority. Any such trees, shrubs or hedges removed or becoming damaged or diseased before the end of the period shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives prior written approval to any variation.

8) The erection of fencing for the protection of any retained trees shall be undertaken in accordance with the approved Tree Protection Plan and particulars contained in the Landscape Specification (May 2006) before any equipment, machinery or materials have been brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

9) Tree surgery work shall be carried out in accordance with the approved plans and particulars (Tree Survey, October 2005). Best arboricultural practice shall be employed in all work, which shall comply with British Standard BS3998: 1989 Recommendations for Tree Work and, unless otherwise approved by the local planning authority, shall be completed before the development commences.

10) Prior to the occupation of the dwellings hereby permitted, a wildlife enhancement scheme, with the emphasis on nesting and feeding provision for woodland birds and the mitigation of the impacts of public access shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the occupation of the last dwelling on the site.

11) Prior to the commencement of the development hereby approved, a scheme of traffic calming measures along Birch Close shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the dwellings hereby approved.

Karen Baker

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr E Robb of Counsel	Instructed by Mrs K Winnard
He called	
Mr M Roberts MA PGCert (Urban Design) MRTPI	Major Projects Officer
Mr R McKone BA(Hons) BPI MRTPI	Principal Planning Officer (Housing)
Mr JP Tesh BSc(Hons) Tech Cert(ARBOR.A) Nat Cert of Horticulture (Arboriculture)	Trees and Hedgerows Officer
Mr M Nowacki BA MSc MIEEM	Ecologist Planner

FOR THE APPELLANTS:

Miss F Patterson QC	Instructed by O'Neill Associates, Lancaster House, James Nicolson Link, Clifton Moor, York YO30 4GR
She called	
Mr A Bowman-Shaw DipArb(RFS) Tech Cert(ARBOR.A)	Director of The Landscape Agency, Hall Barn, Stockton Hall, Rugby Road, Southam, Warwickshire CV47 8HS
Mr J Drewett BSc MIEEM	Ecological Consultant, 3 Victoria Row, Eppleby, Richmond, North Yorkshire DL11 7BE
Mrs J O'Neill BSc DipTP MRTPI	Director of O'Neill Associates

FOR SPROTBROUGH RESIDENTS' ACTION GROUP:

Miss S Clover of Counsel	Instructed by Sprotbrough Residents' Action Group
She called	
Mr S Merriman	7 St Chads Way, Sprotbrough DN5 7LF
Mr K Lennox	20 Oak Court, Sprotbrough DN5 7NH
Councillor R Bartlett	72A Spring Lane, Sprotbrough DN5 7QL

INTERESTED PERSONS:

For:	
Mr G Middleton (on behalf of the owners of Nos. 9, 11, 13 & 15 Park Drive)	11 Park Drive, Sprotbrough DN5 7LA
Against:	
Mr M Fisher	12 Oak Court, Sprotbrough DN5 7NH
Mr J Kelly	3 Birch Close, Sprotbrough DN5 7JY
Mr J Hoare	72 Lancaster Crescent, Tickhill, Doncaster DN11 9QB
Councillor J Blackham (Member of Planning Committee)	Rivendell, Bloomhill Road, Moorends, Doncaster DN8 4SS
Mr A White	1 Millstream Close, Sprotbrough DN5 7YA
Mr E Rimington	25 Park Avenue, Sprotbrough DN5 7LW

Mr B Pearson, Secretary of Sprotbrough Preservation Association	Ferryboat Cottage, 2 Lower Sprotbrough, Doncaster DN5 7NB
Mr T Law	61 Park Drive, Sprotbrough DN5 7LN

DOCUMENTS

1 Council's letters giving notice of the Inquiry and a list of people notified
2 Representations received in response to the Council's notification letter in respect of Appeal A
3 Representations received in response to the Council's notification letter in respect of Appeal B
4 Representation received to Application B from Mr & Mrs Banner, dated 11 December 2006, submitted by the Council
5 Opening statement by the appellants
6 Opening statement by Sprotbrough Residents' Action Group
7 Witness statement of Mr S Merriman, on behalf of Sprotbrough Residents' Action Group
8 Witness statement of Mr K Lennox, on behalf of Sprotbrough Residents' Action Group
9 Witness statement of Councillor R Bartlett, on behalf of Sprotbrough Residents' Action Group
10 Summary of proof of evidence of Mr A Bowman-Shaw, submitted by the appellants
11 Summary of proof of evidence of Mr J Drewett, submitted by the appellants
12 Summary of proof of evidence of Mr M Nowacki, submitted by the Council
13 Statement by Mr G Middleton, 11 Park Drive, Sprotbrough DN5 7LA
14 Statement by Mr M Fisher, 12 Oak Court, Sprotbrough DN5 7NH
15 Statement by Mr J Hoare, 72 Lancaster Crescent, Tickhill, Doncaster DN11 9QB
16 Statement by Mr A White, 1 Millstream Close, Sprotbrough DN5 7YA
17 Statement by Mr E Rimington, 25 Park Avenue, Sprotbrough DN5 7LW
18 Statement by Mr B Pearson, Secretary of Sprotbrough Preservation Association, Ferryboat Cottage, 2 Lower Sprotbrough, Doncaster DN5 7NB
19 Arboricultural statement by Mr E Pretty on behalf of Sprotbrough Residents' Action Group
20 Statement by Mr T Law, 61 Park Drive, Sprotbrough DN5 7LN
21 Extract showing Policy H3 from the RSS for Yorkshire and the Humber to 2016, based on a Selective Review of RPG 12, adopted in 2004, submitted by the Council
22 Extract showing Policy CS-H3 from the Local Development Framework: Core Strategy: Preferred Options, published in December 2005, submitted by the Council
23 Friends of the Earth Briefing 'Forests and Climate Change', submitted by the appellants
24 Instructions to Counsel to advise on behalf of Barratt Homes Sheffield Limited, submitted by the appellants
25 Minutes of Planning Committee, dated 27 June 2006, submitted by the Council
26 Minutes of Planning Committee, dated 18 July 2006, submitted by the Council
27 Unilateral planning obligation in respect of Appeal A, submitted by the appellants

28 Unilateral planning obligation in respect of Appeal B, submitted by the appellants
29 BS5837:2005 Trees in relation to construction - Recommendations, submitted by the Council
30 Extracts from the Land Registry showing the registered Title of land within the appeal site and Nos. 9-15 Park Drive, submitted by the Council
31 Figure 7.2: Context Diagram from the Yorkshire and Humber Plan, Draft for Public Consultation, published in December 2005, submitted by the Council
32 Statement by Mr RD Taylor, owner of land to the rear of 13 Park Drive, Sprotbrough, submitted by Mr Middleton
33 Statement by Mr and Mrs M Harvey, 13 Park Drive, Sprotbrough, submitted by Mr Middleton
34 Statement by Olive Stanley, 15 Park Drive, Sprotbrough, submitted by Mr Middleton
35 Statement by Mrs J Harden, 9 Park Drive, Sprotbrough, submitted by Mr Middleton
36 Closing statement by Sprotbrough Residents' Action Group
37 Closing statement by the Council
38 Closing statement by the appellants
39 Costs application by the Council
40 Bundle of authorities relating to curtilage, submitted by the Council and appellants

PHOTOGRAPHS

1 Aerial photograph, dated 21 September 1948, submitted by the appellants
2 Aerial photograph, dated 13 September 1956, submitted by the appellants
3 Aerial photograph, dated 14 June 1967, submitted by the appellants
4 Aerial photograph, dated 3 May 1971, submitted by the appellants
5 Aerial photograph, dated 9 September 1987, submitted by the appellants
6 Aerial photograph, dated summer 1989, submitted by the appellants
7 Aerial photograph, dated 30 April 1994, submitted by the appellants

PLANS

Appeal A

Original Application Plans:

A1/1 OS Location Plan (Drawing No. P05:3520:0S)
A1/2 Existing Site Layout (Drawing No. P04:1719:03)
A1/3 Site Survey (Drawing No. P04:1719:04)
A1/4 Planning Layout (Drawing No. P04:1719:05 Rev. D)
A1/5 Housetype A Plans & Elevations (Drawing No. P05:3520:06)
A1/6 Housetype B Plans & Elevations (Drawing No. P05:3520:07)
A1/7 Housetype C Plans & Elevations (Drawing No. P05:3520:08)
A1/8 Housetype D Plans & Elevations (Drawing No. P05:3520:09)
A1/9 Housetype E Plans & Elevations (Drawing No. P05:3520:13)
A1/10 Garages Plans & Elevations (Drawing No. P05:3520:11 Rev. B)

Additional Plans Accepted by the Council and Considered as part of the Application:

A1/11 Landscape Proposal (Drawing No. 095-01)
A1/12 Planting Plan (Drawing No. 095-02)
A1/13 Street Scenes (Drawing No. P05:3520:12 Rev. A)

A1/14 Revised Sketch Layout (Drawing No. P05:3520:SK01)
A1/15 Planning Layout (Drawing No. P04:1719:05 Rev. E)
A1/16 Garages Plans & Elevations (Drawing No. P05:3520:11 Rev. C)
A1/17 Landscape Proposal (Drawing No. 095-01 Rev. A)
A1/18 Planting Plan (Drawing No. 095-02 Rev. A)

Appeal B

Original Application Plans:

B1/1 OS Location Plan (Drawing No. P05:3520:0S)
B1/2 Existing Site Layout (Drawing No. P06:3633:02)
B1/3 Site Survey (Drawing No. P06:3633:03)
B1/4 Planning Layout (Drawing No. P06:3633:04)
B1/5 Housetype A Plans & Elevations (Drawing No. P06:3633:05)
B1/6 Housetype C Plans & Elevations (Drawing No. P06:3633:06)
B1/7 Housetype D Plans & Elevations (Drawing No. P06:3633:07)
B1/8 Garages Plans & Elevations (Drawing No. P06:3633:08)
B1/9 Block Plan (Drawing No. P06:3633:09)

Additional Plans Accepted by the Council and Considered as part of the Application:

B1/10 Landscape Proposal (Drawing No. 095-01 Rev. F)
B1/11 Planting Plan (Drawing No. 095-02 Rev. F)

[Home] [Databases] [World Law] [Multidatabase Search] [Help] [Feedback]

England and Wales High Court (Administrative Court) Decisions

You are here: BAILII >> Databases >> England and Wales High Court (Administrative Court) Decisions >> George Wimpey UK Ltd., R (on the application of) v First Secretary of State & Anor [2004] EWHC 2419 (Admin) (22 September 2004)
URL: *http://www.bailii.org/ew/cases/EWHC/Admin/2004/2419.html*
Cite as: [2004] EWHC 2419 (Admin)

[New search] [Printable RTF version] [Help]

Neutral Citation Number: [2004] EWHC 2419 (Admin)
CO/2306/2004

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2
22 September 2004

Before:

MR JUSTICE OUSELEY

THE QUEEN ON THE APPLICATION OF GEORGE WIMPEY UK LIMITED **(CLAIMANT)**

-v-

(1) FIRST SECRETARY OF STATE
(2) CASTLE MORPETH BOROUGH COUNCIL **(DEFENDANTS)**

Computer-Aided Transcript of the Stenograph Notes of
Smith Bernal Wordwave Limited
190 Fleet Street London EC4A 2AG
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

MR PETER VILLAGE QC AND MR ROBERT WHITE (instructed by Berwin Leighton) appeared on behalf of the CLAIMANT
MR TIMOTHY MORSHEAD AND MR JEREMY BLUNDELL (for judgment only) (instructed by the Treasury Solicitor) appeared on behalf of the DEFENDANT

HTML VERSION OF JUDGMENT

Crown Copyright ©

1. MR JUSTICE OUSELEY: This is an application under section 288 of the Town and Country Planning Act 1990 to quash a decision of the First Secretary of State, dated 30 March 2004. By that decision, he refused planning permission for the construction of 187 dwellings, open space provision and related matters on 5.7 hectares of land on the southern edge of Morpeth. The land in question lies to the south of County Hall and is owned by Northumberland County Council.

2. The Inspector had recommended, following the holding of a public inquiry, that planning permission be granted. The appeal which he heard was made by the claimant, George Wimpey Limited, against the failure by the local planning authority, Castle Morpeth Borough Council, to determine its planning application. The Secretary of State rejected the Inspector's recommendation. Castle Morpeth Borough Council resolved after the appeal had been lodged that it would have refused planning permission had the matter not been appealed already.

3. The two main issues at the inquiry were:

   (1) What was the extent of the shortfall in housing supply in Castle Morpeth?

   (2) Were Areas 2, 3 and 4 of the appeal site "previously developed land" within the scope of those words in PPG3?

4. The Inspector concluded that George Wimpey's assessment of housing supply and shortfall was correct and that there would be a deficit of over 200 dwellings by the end of 2006, the end of the structure and local plan periods. It was agreed that Area 1 (1.1 hectares) was previously developed land and would be likely to receive planning permission soon. He also concluded that Areas 2 and 3, at least, were previously developed land.

5. The argument about whether they were previously developed land turned on whether those areas were within the curtilage of County Hall. The Secretary of State concluded, in disagreement with the Inspector, that they were not within the curtilage of County Hall, and for that reason were not previously developed land.

6. There was an issue before me as to whether the First Secretary of State had accepted George Wimpey's figures of housing shortfall as the Inspector had done. Mr Morshead, who appeared for him, submitted that he had indeed accepted the Inspector's conclusions on that matter but had rejected his conclusion that the appeal site should be permitted to be developed, or permitted to be developed now in order to make up that shortfall. He had done so because he had concluded that Areas 2 and 3 were greenfield sites rather than previously developed land. No sequential exercise had been done to compare those areas with other possible sites. Furthermore, the regional guidance and emerging structure plan Alterations meant that, with potential previously developed land, there was no sufficient urgency to justify the release of this large greenfield site now.

Housing Land

7. Section 54A of the 1990 Act requires the First Secretary of State to make decisions in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan for these purposes is the Northumberland County Structure Plan and the Castle Morpeth District Local Plan, each running from 1991 to 2006. The former was adopted in 1996, the latter in February 2003. Policy H1 of the Structure Plan requires 2,500 dwellings to be built in Castle Morpeth between 2001 and 2006. Policy H3 requires each district to maintain a 5-year supply of readily available land capable of meeting the build rate implied by that target.

8. The Local Plan in Policy H2 identified sites which, with conversions, windfalls and those already built, would provide, on the Authority's assessment contained in the Plan, all but 44 dwelling units of that target. Policy MH1 identified five sites in Morpeth, including Area 1 of the appeal site. Areas 2 to 4 were not allocated for development in that Plan. The reasoned justification to Policy MH1, paragraph 30.16.9, refers to Areas 2 and 3, among other sites, as follows:

> "Land at Southgate Wood has been allocated throughout the plan period for housing development. As part of the review of housing allocations under PPG3 (Housing), part of the site has been confirmed as being available through the Council's Urban Capacity Study. This is the site of the former County Council Business Centre. The remainder of the previous allocation (which extends round the rear of County Hall and is bounded by the Catchburn) is a greenfield site on the edge of the settlement. Considering the current availability of brownfield land in Morpeth, the release of such greenfield sites cannot be justified. However, this site does have some potential to meet some of the longer term development needs of the Town, but this decision would be taken in the context of the availability of brownfield land at that time, the progress towards meeting Structure Plan Housing Targets and the need to avoid an oversupply of land."

9. RPG1, the Regional Planning Guidance for the North East to 2016 and approved in November 2002, requires Northumberland County to provide 700 dwellings per annum to 2006 and 800 per annum thereafter. This was a reduced build rate. The Northumberland County and National Park Joint Structure Plan, First Alteration Deposit Draft of May 2003 proposed to allocate an annual average of 110 dwellings per annum to 2006 and 125 dwellings per annum thereafter to the Castle Morpeth Borough Council area.

10. In paragraph 11 of the Inspector's report, he accepts that objections had been made to that Plan for consideration at an EIP in March 2004, which meant that little weight should be afforded to it. In so concluding, the Inspector relied upon paragraph 48 of PPG1. That did not mean that account could not be taken of it however. It was not at issue at the inquiry but that the site (Areas 1 to 4, although no actual development was proposed on Area 4) was suitable for housing and was in a sustainable location, lying within the settlement boundaries of Morpeth. The First Secretary of State took the view that, as greenfield sites, Areas 2 and 3 were not suitable for housing "at this time". It appears that there is an issue as to precisely what was meant in that context by "suitable for housing".

11. The Inspector's report sets out the contentions of the parties. In paragraph 22 he notes that the Local Authority conceded that the up-to-date shortfall against the development plan targets would be in excess of 104 dwellings, with some further allowance to be made for planning permissions not being implemented. However, the Local Authority also argued that RPG1 meant that it had to construct 565 dwellings between 2002 and 2007, and it had ample land to meet that requirement without the release of greenfield land, as it saw Areas 2 to 4 of this appeal site.

12. In paragraph 32, the Inspector records George Wimpey's case as being that the stock of land relied on by the Local Authority to fulfil the requirement set out in the development plan needed to be examined, and their location, in terms of the sequential test in PPG3, in comparison with the appeal site. George Wimpey attacked the prospect of sites coming forward from among those set out in policies H2 and MH1 of the Local Plan.

13. The Inspector referred to various concessions which had been made by the Local Authority and the disputed sites which had been the subject of discussion between the Local Authority and George Wimpey's advisers in the usual way. He concluded in paragraph 74:

> "To summarise the position with regard to allocations in Policy H2, the Council admit that the 70 houses allocated at Hadston 2A will not be built and that not all permissions will be implemented. In addition, I consider that the development of the Lairage to be in serious doubt resulting in the loss of the estimated 25 houses here. Add this to the accepted shortfall of 60 dwellings at St George's Hospital and the projected deficit of 34 and the shortfall would be at least 189 dwellings. Should the Council permit the appellant's application to redevelop the disused business centre this would reduce the deficit by 8. However, if one accepts the appellant's assumption that 10 per cent of permitted sites will not be developed this would increase the deficit by a further 36 dwellings [34] leading to a deficit at the end of the plan period of over 200 dwellings."

14. He then considered in paragraphs 75 to 76 sites which were not allocated under policy H2, but which the Local Authority had put forward at the inquiry as preferable to the appeal site in sequential terms. Those paragraphs also considered sites which local residents had put forward as preferable. Each suffered from various constraints, and the Inspector concluded in paragraph 77:

> In light of the above, I am not persuaded that these sites would come forward before the end of the plan period and, for that reason, they would not assist the Council in meeting

the requirements of Policy H1 of the Structure Plan or RPG1."

15. His overall conclusion on the housing issue in paragraph 78 was:

> "The Council do not dispute and I see no reason to question the appellant's confidence that if permitted, the development could provide a significant number of houses within the plan period. To my mind, the potential net increase of 159 dwellings (187 minus the allocation of 28 on the disused business centre) would make a significant contribution to meeting the Structure Plan target. It would also, in my view, assist the Council in achieving the objectives set out in RPG1. I conclude, therefore, that the proposal is necessary to meet the housing needs of the Borough."

16. It is useful also at this stage to note paragraph 82:

> "Given my conclusions regarding the brownfield status of the site and the Council's acceptance that it is suitable for housing, I see no reason to hold back development pending a review of the Local Plan. In addition, in my view, the Local Plan at paragraph 30.16.9 makes provision for the development of the whole of the site subject to, amongst other things, progress towards meeting the Structure Plan target."

17. I turn now to the Secretary of State's conclusions in his decision letter. The First Secretary of State attached some weight to the fact that RPG1 and the emerging Structure Plan First Alteration envisaged a reduced housing requirement for Morpeth. Although that plan was at an early stage, in his view:

> " ... the emerging Structure Plan proposal is consistent with the judgment he has made about preferring to attach more weight to the monitor and manage approach than to the threat of a shortfall. Proper consideration under the monitor and manage approach would be foreclosed if Areas 2 and 3 were released by this appeal. The Secretary of State also notes that the Council's urban capacity study includes several previously developed sites in Morpeth which appear to be preferable to Areas 2 and 3 on an application of the sequential criteria."

18. Crucially for Mr Village's submissions, paragraph 11 of the decision letter dealt with, or purported to deal with, the figures in relation to housing supply. Much debate is centred on that paragraph:

> "The Secretary of State appreciates that the Council's own figures (updated to June 2003) predict a shortfall of 34 dwellings against the Local Plan's target. However, he regards this shortfall as insignificant both in absolute terms and, moreover, in light of the emerging Structure Plan notwithstanding the relatively early stage of that plan. Even if he had not taken the view that the shortfall is insignificant, the Secretary of State's view would nevertheless have been that a shortfall of 34 dwellings was of insufficient weight to justify the proposed development of 187 dwellings on the appeal site."

19. The Secretary of State commented, in effect, on paragraph 30.16.9 of the Local Plan in paragraph 12 as follows:

> "The Secretary of State notes that the Local Plan describes the appeal site, including Areas 2 and 3, as showing some potential to meet some of the longer-term development needs of the town. The Secretary of State makes clear that he expresses no view on that assessment. But he takes the view that any decision to release Areas 2 and 3 for their long-term potential should be taken in light of the circumstances that prevail when longer-term development needs fall to be assessed."

20. The final point which the Secretary of State made in relation to housing, relevant for these purposes, was in paragraph 27 in his overall conclusions as follows:

> "The Secretary of State attaches significant weight to the question of housing need but does not accept that it is possible to conclude that there will be insufficient land to meet the Structure Plan target. Rather, he has had regard to the Local Plan and emerging Structure Plan and considers that there is no need for the development of 187 houses at this time and, given the policy in RPG1 that there should be a reduction in the rate of the construction of new dwellings, that need for development on such a scale may not arise.

> If however need does arise, the Secretary of State considers that there may be sequentially preferable previously developed sites in the Borough."

21. It is useful to set out certain extracts from "PPG3: Housing" 2000 at this stage. PPG3 imposes an obligation on local planning authorities to identify sites for housing and buildings for conversion and reuse sufficient to meet its housing requirements, and requires them to manage the release of land over the planning period. That is in paragraph 28. Paragraphs 29 and 30 provide as follows:

> "29. Local planning authorities in preparing development plans should adopt a systematic approach to assessing the development potential of sites, and the redevelopment potential of existing buildings, deciding which are most suitable for housing development and the sequence in which development should take place.
>
> 30. In identifying sites to be allocated for housing in local plans and UDPs, local planning authorities should follow a search sequence, starting with the re-use of previously-developed land and buildings within urban areas identified by the urban housing capacity study, then urban extensions, and finally new development around nodes in good public transport corridors. They should seek only to identify sufficient land to meet the housing requirement set as a result of the RPG and strategic planning processes. In doing so they do not need to consider all the land in their area: they should not extend the search further than required to provide sufficient capacity to meet the agreed housing requirement."

22. Paragraph 31 sets out criteria relevant to that exercise, which include: the availability of previously developed sites, the location and accessibility of potential sites to jobs and services, infrastructure requirements, and the ability to build communities.

23. Paragraphs 32 and 33 require a Local Authority to adopt policies that cause previously developed land to be developed before greenfield sites, that is to say to apply the sequential process that is set out in paragraph 30 of PPG3. Paragraph 34 requires sufficient sites to be allocated to provide for five years' development of housing land, which allocations should be monitored, reviewed and rolled forward with time.

24. Paragraph 38 deals with how development plans should be seen in the light of this PPG. The First Secretary of State regarded the Local Plan here as satisfying the requirements of PPG3. Paragraph 38, however, says that guidance may override a non-conforming local plan. Even if a greenfield site were allocated in such a plan, PPG3 policy priorities should be applied to it, and comparison with previously developed land would be particularly relevant in the decision whether or not to grant planning permission.

25. I now turn to the detail of this first ground of challenge. Mr Village QC, for the claimant, submitted in this first ground of challenge that the First Secretary of State had ignored both the claimant's case on housing shortfall and need, and the Inspector's acceptance of that case. Paragraphs 11 and 27 of the decision letter dealt only with the Council's pre-inquiry updated shortfall. Had the First Secretary of State considered the position as found by the Inspector and had he accepted it, the need argument against which he balanced the release of this greenfield site, as he saw it, could have been very different. The First Secretary of State had ignored a relevant consideration and had failed to deal with an issue of particular importance in the case, or to give reasons for any apparent conclusion on it which he did reach.

26. Various other aspects of the Secretary of State's approach to the housing land supply issue were criticised, but the principal point made was that the decision letter simply failed to grapple with what were the crucial figures in the case.

27. Mr Morshead's submissions for the First Secretary of State were, in essence, that the claimant had misread the decision letter. In fact, the First Secretary of State had accepted the shortfall conclusions reached by the Inspector; nowhere had he rejected them. It would be truly astonishing if the First Secretary of State had dealt with the contentions of the Local Authority based on the Development Plan and had ignored the Inspector's conclusions on them. The decision letter should be read as assuming an acceptance of those figures, and paragraphs 11 and 27 therefore made other points.

28. Paragraphs 9 and 10 of the decision letter, he submitted, showed that the First Secretary of State had

thought that the Structure Plan targets were less important than the Inspector had done, and thought it was more important that the Local Plan, which did not allocate Areas 2 and 3 for housing, was up-to-date and based on an urban capacity study and therefore it mattered more. Consequently, any actual shortfall fell to be dealt with under the plan, monitor and manage approach of PPG3. To permit the development of the appeal site would cut across that approach because those areas had not been ranked or compared with others under PPG3's sequential approach. All of that analysis by the First Secretary of State necessarily assumed that the claimant's and the Inspector's shortfall figures were correct. The First Secretary of State, in effect, concluded that the appeal site should not be developed because it had not been through a ranking comparison. Indeed, there was previously developed land in the urban capacity study which the Secretary of State said seemed to be preferable. In the light of the emerging Structure Plan in RPG1, the need to meet any shortfall was less urgent because of the potential for a reduction in the build rate.

29. Paragraph 11 was explained as dealing with a further potential objection which the claimant might raise to that line of argument or analysis by the First Secretary of State, ie that the adopted Local Plan, albeit updated from the figures in it, still showed that there was a deficit, albeit small, to be met. It was not a point which had been raised by Wimpey's, but the Secretary of State thought he needed to address it; it was that small shortfall which was being dismissed as unimportant, not the shortfall which the Inspector had found. Where in paragraph 27 of the decision letter the First Secretary of State had said that it was not possible to conclude that there would be insufficient housing, he was not referring to the shortfall figures as found by the Inspector, he was referring back to the absence of a comparison between the appeal site and previously developed land in any urban capacity study. If there were a need for such development, such previously developed land might come forward instead.

30. I do not accept Mr Morshead's submissions. It is very surprising that the Inspector's conclusions and the claimant's case on housing need was not dealt with in the decision letter explicitly, or even *apparently considered. Particularly this is so when other figures which are not relevant to the case as* put by the parties or as concluded by the Secretary of State are dealt with in paragraph 11. Mr Morshead has urged that that is so surprising that it supports his point that in fact the Secretary of State had indeed tacitly accepted the Inspector's conclusions. But I am unwilling to take the fact that such a failure is surprising as sufficient by itself to warrant a conclusion that the failure contended for by Mr Village had not happened.

31. I am especially reluctant to do so where the terms of the decision letter contain almost no support for Mr Morshead's proposition. First, there is no explicit statement of any acceptance of the Inspector's conclusions. No consideration is given to the significance of the conclusion that there was a substantial shortfall when the First Secretary of State weighed the need for housing against the advantages of the plan, monitor and manage approach, and against the potential availability of previously developed land from the urban capacity study, or against the absence of a sequential test ranking for Areas 2 and 3. The only consideration given to figures is in paragraph 11 of the decision letter which talks of a shortfall of 34 as the shortfall, ie the only relevant shortfall. If the Secretary of State had been making a purist point, moreover, about the Local Plan target and seeking to anticipate an argument which had not been raised, it is curious that he chose to update it for past completions and yet ignored agreed future shortfalls. It is plain that a clear analysis and decision on the extent of housing need is critical to the subsequent analysis of how that weighs against other considerations which the Secretary of State was entitled to take into account.

32. Second, there is very little in the rest of the decision letter to point to any acceptance in this respect of the claimant's case. The second and third sentences of paragraph 9 contrast a shortfall against the Development Plan target (the Structure Plan target but it is also the Local Plan target) with the position as is seen in the Local Plan. This false contrast between the Structure Plan and the Local Plan in those two sentences readily fits with a rejection of the Inspector's conclusions, or reaching no conclusion on it because of some other approach which was preferred.

33. It is difficult to abstract an acceptance of the Inspector's conclusions on the figures, coupled with the disavowal of their significance as he saw them, which is what Mr Morshead submits he was doing, from any paragraph in the decision letter. Likewise, paragraph 10 of the decision letter speaks of "the threat of a shortfall", whereas the Inspector had not found that a shortfall was a risk or a threat, or possible down the line, but that there was in fact insufficient land to meet the target (see for example paragraphs 74 and 83 of the Inspector's report). The Inspector concluded that there would be a shortfall looking to the picture now, and to the imminence of the end of the plan period in 2006.

34. In paragraph 27 of the decision letter, the Secretary of State says that he "does not accept that it is possible to conclude that there will be insufficient land to meet the Structure Plan target". I find this to

be the clearest sign that the view was taken that the Secretary of State did not accept, or regarded as irrelevant, the Inspector's conclusions in relation to the figures. That is because what he does not accept in that sentence is precisely what the Inspector concluded. Mr Morshead's explanation that that sentence dealt with the absence of a comparison in an urban capacity study or sequential ranking between the appeal site and other sites bears no relationship to any language which the Secretary of State uses.

35. Thirdly, there are other indicators that either the issue has been ignored or the Inspector's conclusion rejected for no reasons which are discernible. In paragraphs 10 and 27 of the decision letter, the First Secretary of State refers to the potential for previously developed sites in the urban capacity study to come forward. The First Secretary of State is no more explicit than that as to what sites he is in fact identifying, but it may be that those are the ones in the study which are notated "deferred post 2006". Yet the Inspector's report makes it clear that, faced with the shortfall contended for by the claimant and the lesser shortfall conceded by the Local Authority (which is much greater than the 34 referred to by the First Secretary of State), previously developed land sites inside and outside the urban capacity study were considered by the Inspector and were part of his assessment of the shortfall. It appears that one greenfield site, the substitute for Hadston 2A (see paragraph 72 of the Inspector's report) was, in addition, considered.

36. Accordingly, the Secretary of State appears to be taking the view that there are previously developed land sites, though he does not identify them explicitly, which could come forward to meet what, on his analysis, is a very significant shortfall. Yet these were considered in the Inspector's report and were rejected as adequate. I would have taken some persuading in the light of the detailed consideration of the availability of sites by the Inspector, including previously developed land, allocated and some not allocated, and a further greenfield site that the Local Authority had failed to put forward at least all the previously developed land sites it could. There is also no recorded contention that there was any better greenfield site raised by it; Hadston 2A was considered and rejected as appropriate for these purposes by the Inspector.

37. The extent of the consideration of these other sites was confirmed by a witness statement from Mr Woolf, the claimant's planning expert. He explained the process of examination which he and local authority officers had undertaken before the inquiry in order to narrow the issues. The statement was produced to rebut the contention in Mr Morshead's skeleton argument that part of the First Secretary of State's reasoning was that no comparison for the sequential ranking had taken place. Although that may be true in the urban capacity study sense, and it is not clear to what extent the local authority put forward greenfield sites (save for Hadston 2A substitute), as preferable to the appeal site, the Inspector's report and the witness statement make it impossible for the Secretary of State to contend, on the material before him, that the shortfall could be met by previously developed land whether in or outside the urban capacity study.

38. An analysis of previously developed land of the sort which the Secretary of State refers to could only be relevant on the facts of this case in dealing with a minor shortfall of the sort considered in paragraph 11. He could not possibly have taken the view that the shortfall was as concluded by the Inspector, and have reached the conclusions he did in relation to previously developed land sites coming forward to help make up that shortfall, in the light of what the Inspector had to say about those very sites. Had he taken the view that the shortfall was as the Inspector concluded, which was Mr Morshead's contention, he could not rationally have suggested that previously developed sites would meet it. If he had done so, it would have been a further or alternative error.

39. It would have been perfectly clear that he had given wholly inadequate reasons for adopting the approach he did towards previously developed land in the teeth of the Inspector's conclusions as to their availability and potential. Either he would have ignored the Inspector's conclusions in that respect or failed to give reasons dealing with those conclusions -- again, on an important issue between the parties. Moreover, if the Secretary of State did rely on these largely unspecified, possibly available sites up to 2006, as opposed to referring to a general possibility that something might come forward in a time of less urgency, and if he had relied on sites beyond those discussed at the inquiry, it would have been both unfair and unreasoned. He would have provided no reasons as to why he considered those sites in the light of the examination and agreements at the inquiry as the sites to be examined. It would have been unfair because, given the importance of the efficient conduct of an inquiry, pre-inquiry discussions take place in order to narrow the issues so as to focus on the differences, and with nothing from the Inspector to suggest that the analysis of those sites was inherently inadequate because a class of sites had been omitted, there would have been no reason or policy or practice to require an analysis of sites that were not at issue with the local planning authority. If he relied on matters that were raised, he gave no reasons for his apparent rejection of the Inspector's careful conclusions on

those alternative sites. If the Secretary of State relied on matters not raised, he was unfair. I use that analysis, however, not to create an additional flaw, but to point out that it is difficult in the light of that to accept Mr Morshead's primary submission that the Secretary of State had indeed accepted the Inspector's conclusions.

40. I add, bearing in mind Mr Morshead's reference to greenfield sites raised by third parties, that, given the Inspector's acceptance that the appeal site was within the settlement boundaries, was in a sustainable location and was suitable for housing (which must be a reference to some of the criteria in PPG3), there is no basis for a supposition that those greenfield sites referred to by third parties could have been regarded as preferable, or were regarded as preferable by the Secretary of State.

41. There was also a dispute about the significance of paragraph 30.16.9 in the Local Plan, in particular the reference to "longer term" development of the site and "Structure Plan targets". Mr Morshead said that the reference to development in the longer term was a reference to development after 2006, and that this was borne out by references elsewhere in the reasoned justification to other sites. That clearly was the expectation of the Local Plan when it was written, because the Local Plan clearly was premised on the basis that nearly sufficient housing land had been allocated. The appeal site had been in the deposit draft of the Local Plan, but was later removed and had a longer term potential. But obviously that gives it the potential to meet a Structure Plan target if a shortfall eventuates from the failure of other sites to deliver adequately over the plan period. It does not constitute ranking through an urban capacity study, but it is not irrelevant as to how the site could be seen in the event of a shortfall.

42. If the Secretary of State had indeed accepted the Inspector's conclusions in relation to the degree of shortfall, he would again have had to grapple with the true significance of paragraph 30.16.9 and the way in which the site was seen by the Local Authority. The fact that the site had not been ranked with other sites, or had not been allocated as a result of the Local Plan process, did not of itself mean that it should be disregarded by the Secretary of State, whatever the degree of shortfall.

43. Mr Morshead accepted, correctly, that if his arguments on this ground were rejected, it meant that there would be an error of law in the decision or an error of reasoning which would have substantially prejudiced the claimant. Mr Morshead further submitted, however, that if I were against him, as I am, on that issue, I should not quash the decision letter because there are other reasons which the Secretary of State had given: for example, the fact that the land was not previously developed land and was open space, which were independent and sufficient reasons for the refusal of permission. That meant that an error in relation to housing land availability did not lead to the quashing of the Secretary of State's decision.

44. For the reasons which I shall come to later, I do not accept the claimant's arguments on those other grounds. But I do not accept Mr Morshead's submissions that those other points were independent of the First Secretary of State's conclusions on housing land availability. First, as Mr Village rightly points out, the degree of need is intrinsically part of the overall balance between the various competing considerations. It cannot be looked at in isolation. Clearly here the degree of shortfall is relevant to the applicability of the plan, monitor and manage approach, and to the significance of the lack of sequential ranking for Areas 2 and 3. Likewise it is relevant to the degree to which targets in adopted plans, including one which the Secretary of State himself characterised as up-to-date and according with PPG3, should be allowed to be missed on the grounds of possible plan changes, to which his own guidance suggests that little weight should be attached.

45. Second, the degree of shortfall is plainly relevant to the quantum of other land required to meet any shortfall which the Secretary of State accepts or regards as important to meet. The quantum of previously developed land sites which may be available is critical to the apparent satisfaction that they could meet the shortfall, whatever it might have been accepted to be by the Secretary of State, or such part of the shortfall as he thought should be met in the circumstances of the emerging Structure Plan. So the degree of shortfall is very relevant to the potential significance of the availability of previously developed land sites. Previously developed land, which he considers, has to be looked at in the light of the shortfall. The development of a greenfield site may then become necessary. It indicates the degree of interaction between the varying points that arise in the course of an inquiry such as this.

46. Thirdly, there is nothing in the decision letter to show that the other grounds were indeed freestanding and independent conclusions, regardless of the quantity of shortfall.

47. Having pointed out the inherent interaction between need and other considerations, and the solutions

to any shortfall which the Secretary of State contemplated, it is relevant to turn to see what the Secretary of State says. Paragraph 7 of the decision letter says:

> "The Secretary of State agrees with the Inspector that whether the development of the whole of the appeal site is required to meet the Borough's need for new housing is a major consideration in determining this appeal, but he considers that this issue is heavily dependent upon whether or not the site as a whole consists of previously developed land. The Secretary of State is of the opinion that whether the proposal satisfies PPG3 and the value of the appeal site as open space under PPG17 are also important considerations."

48. This does not support the view that these were independent grounds and that planning permission would have been refused solely on the grounds that Areas 2 and 3 were not previously developed land. What it says is that the weight to be given to need is "heavily dependent" on whether the site consists of previously developed land as a whole. He does not say that the need is independent of whether the land is previously developed land, and the status of the latter, if it is not previously developed land, is determinative of the appeal regardless of the numbers; that is the contrary of what the Secretary of State says. Nor does the Secretary of State consider the issue on a contingent basis, as he did for example in paragraph 21 of his decision letter where he deals with how he would have viewed the development, if he had concluded that Areas 2 and 3 were previously developed land, in terms of any conclusion he might have reached in relation to open space. So I reject Mr Morshead's alternative submission that the other grounds relied on by the Secretary of State were seen by him as independent reasons for dismissing the claimant's appeal.

Previously developed land

49. The second contention relates to the way in which the First Secretary of State dealt with the Inspector's conclusions on whether Areas 2 and 3 were previously developed land. The significance of that conclusion is plain already. Previously developed land has priority for development over greenfield land. PPG3, Annex C, defines previously developed land:

> "Previously-developed land is that which is or was occupied by a permanent structure (excluding agricultural or forestry buildings), and associated fixed surface infrastructure. The definition covers the curtilage of the development[1]. Previously developed land may occur in both built-up and rural settings ...
>
> The definition excludes land and buildings that are currently in use for agricultural or forestry purposes, and land in built-up areas which has not been developed previously (e.g. parks, recreation grounds, and allotments - even though these areas may contain certain urban features such as paths, pavilions and other buildings). Also excluded is land that was previously developed but where the remains of any structure or activity have blended into the landscape in the process of time ...
>
> [1]The Curtilage is defined as the area of land attached to a building. All of the land within the curtilage of the site (as defined above) will also be defined as previously-developed. However, this does not mean that the whole area of the curtilage should therefore be redeveloped. For example, where the footprint of a building only occupies a proportion of a site of which the remainder is open land (such as at an airfield or a hospital) the whole site should not normally be developed to the boundary of the curtilage. The local planning authority should make a judgment about site layout in this context, bearing in mind other planning considerations, such as policies for the protection of open space and playing fields or development in the countryside, how the site relates to the surrounding area, and requirements for on-site open space, buffer strips, landscaped areas, etc."

I point out that the definition of previously developed land ends at the end of the second sentence of the footnote. The rest of the footnote deals with how a site should be developed where not all of the land, although within the curtilage, has in fact previously had buildings on it.

50. It is plain from the definition and the footnote that the question is whether the land in question is "attached" to a building. The balance of the substantive paragraphs of PPG3 were relied on by Mr Morshead for the way in which it showed how historical uses or connections could be lost. I note that it was not contended by him that Areas 2 and 3 were greenfield because of any argument that they were open space or parks. For these purposes, it is necessary to focus on Areas 2 and 3 as the relevant areas. The Inspector dealt with this matter in paragraphs 65, 66 (in part) and 67 of his report:

"65. Some of the land to the south of County Hall is mown but for the most part it comprises rough grassland. There is no physical demarcation between the site and County Hall which dominates this part of the appeal site. There is a line of fence posts along the boundary of Areas 2 and 3 but the wire fence has been trampled down and it does not form a clear boundary. The pond, Catch Burn and the woodland belt form strong, clear boundaries to the land to the south of County Hall.

66 ... However, whilst there is no dispute that part of the site was used as a football pitch, this use ceased over 5 years ago and it is not allocated or protected as such in the Local Plan. The land is used for informal recreation but it is in private ownership and to my mind cannot be classed as a park or recreation ground.

67. This area is not actively used by the County Council. However, there is nothing in Annex C to PPG3 to support the Council's contention that land must be in operational use for it to be in the curtilage of a building. The boundaries of this part of the site coincide with those shown on the planning permission for County Hall. The football pitch was provided for and used by County Council staff and to my mind, the appeal site is historically linked by association and use to County Hall. It can, in my view, be defined as being attached to the building and so lies within the curtilage of County Hall. It follows, therefore, that the whole of the site can be classed as previously developed land as defined in Annex C to PPG3."

51. The Secretary of State rejected those conclusions. He did not accept that Areas 2 and 3 were part of the County Hall curtilage. He set out his conclusions in paragraphs 16 to 19 of the decision letter.

"16. Areas 2 and 3 are open areas that have not been developed. They have no functional, physical or other connection to any buildings(sic) or buildings. Therefore they cannot be classed as previously developed land.

17. The Secretary of State has considered the factors relied-on by the appellants and by the Inspector. He finds none of them to be persuasive. The fact that Areas 2 and 3 were acquired and held in reserve in case the County Council's needs expanded does not, in the Secretary of State's view, produce the result that they should be regarded as attached to any existing building or buildings. At best, it shows that the land was held for the prospect of future attachment; and, in any event, the putative buildings for County Council purposes on these areas would have produced a distinct curtilage or curtilages. The Secretary of State notes that Area 2 was formerly used as a football pitch by employees of the County Council, but that this use and therefore any functional link to County Hall it might have implied ended five years ago. Since then, local residents have used Areas 2 and 3 for the purposes of informal recreation. The Secretary of State attaches weight to this as indicating that even if Areas 2 and 3 may once have had a loose association with any building or buildings on the County Hall site, that association has been severed. The fact that the land where the main County Hall buildings are located is not part of the appeal site further demonstrates that any link between these two areas has been severed. The Secretary of State considers that development on land adjacent to a site does not determine whether the site itself is previously developed land.

18. Even if (contrary to the Secretary of State's view) a historical link "by association and use to County Hall" continues to exist, the Secretary of State's view is that this does not produce a sufficient attachment for the purposes of his policy in Annex 'C' of PPG3. He does not attach significant weight to the fact that Areas 2 and 3 formed part of the site for which the County Council obtained planning permission, because no development has occurred on Areas 2 and 3, nor does he place weight on the red line drawn on a planning application or permission as a reliable guide to a building's curtilage.

19. Moreover, it appears from the evidence before the Secretary of State that the County Council's employees' use of the land for playing football never extended to Area 3. Therefore any functional link between Area 2 and County Hall that might be implied from its former use for recreation by those working in County Hall never extended to Area 3. Although the fence between Areas 2 and 3 no longer remains, except as a line of posts, the Secretary of State disagrees with the Inspector that its existence is a matter of little weight: its presence reinforces the lack of any link, even an historical one, between Area 3 and County Hall ..."

52. Mr Village's first contention was that there had been a breach of the provisions of Rule 17(5) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (SI 16/24), which breach, he submitted, had substantially prejudiced the claimant for the purposes of section 288 of the 1990 Act. The relevant rule provides:

> "(5) If, after the close of an inquiry, the Secretary of State -
>
> (a) differs from the Inspector on any matter of fact mentioned in, or appearing to him to be material to, a conclusion reached by the Inspector; or
>
> (b) takes into consideration any new evidence or new matter of fact (not being a matter of government policy);
>
> and is for that reason disposed to disagree with a recommendation made by the Inspector ..."

53. Essentially, the Secretary of State must notify the parties of the disagreement with the Inspector and give them the opportunity for further representations. It is clear that the First Secretary of State disagreed with the Inspector's conclusions as to curtilage and was for that reason, if no other, disposed to disagree with his recommendation. The issue between the parties was whether the disagreement involved the First Secretary of State differing from the Inspector on "any matter of fact", and if so, whether the claimant had been prejudiced by any subsequent failure to follow the Procedure Rules. Mr Village identified the "matter of fact" as being not so much whether the land was previously developed land, but whether it was within the curtilage of County Hall, and in a more refined way, whether the areas were "attached" to the buildings represented by County Hall. Mr Village submitted that whether for these purposes land was attached to, and formed thereby part of, the curtilage of a building, was a question of fact. Mr Morshead submitted that it is a question of evaluation or planning judgment.

54. The second contention of Mr Village, which it is convenient to adumbrate here, was that the Secretary of State's conclusion that Areas 2 and 3 were not part of the curtilage involved an error of law because he disregarded the relevance of the past relationship between the land and the buildings, the continuing historical link, the physical and geographical relationship and facts in respect of the past functional links.

55. For Mr Village's first contention, he relied on the judgment in particular of Goff LJ in Methuen-Campbell v Walters [1979] 1 QB 525, in particular at 528. This was a decision under the Leasehold Reform Act 1967 and was concerned with whether a paddock was within the curtilage of the house so that it could be enfranchised with it. After reference to dictionary definitions, which were said not to be helpful, Goff LJ said at page 538E:

> "What is within the curtilage is a question of fact in each case, and for myself I cannot feel that this comparatively expensive piece of pasture ought to be so regarded, particularly where, as here, it was clearly divided off physically from the house and garden right from the start and certainly at all material times."

56. Mr Village relied on both the conclusion that what was within the curtilage was a question of fact, and the importance of physical division as showing that land was not within the curtilage -- division which he said was absent here.

57. Mr Morshead emphasised the citation by Goff LJ of a passage from the judgment of Upjohn LJ in Clymo v Shell-Mex & BP Ltd (1963) 10 RRC 85, referred to at page 538H. In that judgment, Upjohn LJ said:

> "The whole problem is a question of mixed fact and law but depends very largely on the facts. Provided a piece of land satisfies the concept of being an appurtenance, it is a question of fact and circumstance whether it is an appurtenance."

58. Goff LJ continued:

> "In my judgment, for the reasons which I have given, this piece of land does not satisfy the concept of being an appurtenance but what the position will be in other cases will depend first upon the question of law whether the piece of land in question does satisfy

> that concept, and secondly whether on the facts of the particular case it ought to be regarded as an appurtenance.
>
> For these reasons I would allow the appeal, discharge the declaration that has been made and substitute the counter-declaration which I have read."

59. Roskill LJ described the question of whether land was within a curtilage as being a mixed question of law and fact. Relevant to the second point, but I deal with it here, is what Buckley LJ said at page 543F to 544C in which he sets out various matters, relevant to the conclusion to whether land is part of a curtilage or not:

> "What then is meant by the curtilage of a property? In my judgment it is not sufficient to constitute two pieces of land parts of one and the same curtilage that they should have been conveyed or demised together, for a single conveyance or lease can comprise more than one parcel of land, neither of which need be in any sense an appurtenance of the other or within the curtilage of the other.
>
> Nor is it sufficient that they have been occupied together. Nor is the test whether the enjoyment of one is advantageous or convenient or necessary for the full enjoyment of the other. A piece of land may fall clearly within the curtilage of a parcel conveyed without its contributing in any significant way to the convenience or value of the rest of the parcel.
>
> On the other hand, it may be very advantageous or convenient to the owner of one parcel of land also to own an adjoining parcel, although it may be clear from the facts that the two parcels are entirely distinct pieces of property. In my judgment, for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter.
>
> There can be very few houses indeed that do not have associated with them at least some few square yards of land, constituting a yard or a basement area or passage way or something of the kind, owned and enjoyed with the house, which on a reasonable view could only be regarded as part of the messuage and such small pieces of land would be held to fall within the curtilage of the messuage.
>
> This may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway, a garden and so forth. How far it is appropriate to regard this identity as parts of one messuage or parcel of land as extended must depend on the character and the circumstances of the items under consideration. To the extent that it is reasonable to regard them as constituting one messuage or parcel of land, they will be properly regarded as all falling within one curtilage; they constitute an integral whole."

60. It is plain from what he said that neither, for example, a common demise nor a common occupation of land is of itself decisive. Nor is the convenience or necessity of one for the full enjoyment of the other. What is required is an intimate association to such a degree that the one forms part and parcel of the other, properly to be regarded as an integral whole.

61. Next in this context I was referred to the Attorney General ex rel. Sutcliffe v Calderdale Borough Council [1983] 46 P&CR 399. This case concerned the curtilage of a listed building and whether an unlisted terrace of cottages was within the curtilage of the listed mill. Just as part of the judgments in Methuen-Campbell take their colour from the context of leasehold enfranchisement, so too part of what is said in the Calderdale case takes its colour from facets particular to listed buildings, especially historical connections and setting. Methuen-Campbell's case and, in particular, what Buckley LJ had to say, was cited extensively and with apparent approval in this context. It was agreed that three factors, in particular, were relevant. Stephenson LJ at page 407 referred to the importance of the physical "layout" of the listed building and the structure, ownership past and present, and use or function past and present. I note, however, what he said at page 408. He identified that different facts may lead to different conclusions and the same facts may lead to different judicial opinions, a point which he illustrated by cases which he cited. He concluded at paragraph 409 that:

> "The terrace has not been taken out of the curtilage by the changes which have taken place, and remain so closely related physically or geographically to the mill as to

> constitute with it a single unit and to be comprised within its curtilage in the sense that those words are used in this subsection."

I note that because of the emphasis Mr Morshead placed on the context of the examination of this issue.

62. Finally, I was referred by Mr Morshead to Skerritts of Nottingham Limited v Secretary of State for the Environment, Transport and the Regions [2001] QB 59. This was again a decision on the meaning of curtilage in the listing building context. Walker LJ said at page 61 and emphasised at page 67 that what was within a curtilage was a question of fact and degree.

63. I do not accept Mr Village's contention that there was a breach of the Procedure Rules. It all depends on whether the Inspector's conclusion that Areas 2 and 3 were attached to, and within the curtilage of, County Hall was a finding of fact within the scope of Rule 17(5). The question of what is a "finding of fact" or a "fact" depends on the context. I recognise that there is seeming support from what Goff LJ and others have said in other contexts for Mr Village's proposition, but that has to be qualified by the references to fact and degree, the context, and by the recognition in those cases that there was a two-stage process which involved examining whether something was capable of being within the curtilage, and a second stage of whether it actually was within it. The former was a question of law; the latter a question of fact or fact and degree. There is no simple answer to the question of what is a matter of fact which does not change from legal context to legal context. Much depends on what the question of fact is contrasted with. Where the contrast is between a question of fact or fact and degree and a question of law, it is easier to see what is a question of fact or degree by the contrast to a question of law. Here the question is whether this was a finding of fact or not, the latter not being delineated further.

64. The context is the Procedure Rules requiring a further opportunity for representations to be given if the Secretary of State is differing on one particular type of issue. The issues at a planning inquiry can be seen as arising on a spectrum of fact, fact and degree, the appraisal of primary facts for planning significance, the weighing of those factors and the reaching of conclusions on a range of issues or a policy judgment. There are no sharp-edged distinctions between those various types of issue. Where the conclusion on an issue involves the appraisal of a primary fact for its planning significance, I do not consider that the conclusion on that issue is a finding of fact for these purposes.

65. Here the Inspector's conclusion involves findings of fact, primary fact, as can be seen in most of paragraphs 3 and 65 of his report, at least the last two sentences of paragraph 66 and parts of paragraph 67. All those primary facts were then evaluated and weighed through a planning perspective as to whether, taken in the round, those primary facts meant that land was attached to or within the curtilage of County Hall within the context of PPG3, Annex C. This overall evaluation I regard as falling outside the scope of the Procedure Rules' findings of fact.

66. What I see as primary facts here, eg whether the land had been used as a soccer pitch, what its actual current use was, were not rejected by the Secretary of State. The Secretary of State evaluated differently, but again from a planning perspective, the primary findings of fact which the Inspector had made as to what had happened, what currently happened on the land, how the land physically related to County Hall, as well as the Inspector's evaluation of the significance of a planning approval and application. This illustrates the distinction in relation to a single fact, which feeds into the overall evaluation. He reached a conclusion as to what was on a planning application, which was a matter of primary fact. He also reached a conclusion as to its significance for the answer to the question of whether the land was within the curtilage or not. The judgment as to significance is not a matter of fact but of planning evaluation.

67. If I am wrong about that, and the Inspector had reached a finding of fact in respect of curtilage, and therefore there was a breach of the Procedure Rules when the Secretary of State reached a different conclusion without complying with Rule 17(5), I would not grant relief unless the claimant had been substantially prejudiced by that breach. Mr Village suggested that, had his client been given the opportunity to do so, he would have added submissions. In particular, he would have requested the decision officer to go and see the site for herself, which in fact she had not done. But I do not consider that the opportunity for the decision officer to visit the site at the claimant's request, which is the opportunity essentially foregone, gives rise to any substantial prejudice. First, as I have said, there was no differing by the Secretary of State from any primary findings which the Inspector reached in his report. Secondly, the reasons for the difference, or for either the Inspector or the Secretary of State's conclusions, were not ones which were essentially visual matters which required a site visit for their

proper appreciation. Nor indeed were the points made by Mr Village when he came to attack the substance of the Secretary of State's conclusions, ones which involved a visual appreciation of the site. The issue was one of what can properly be regarded as planning judgment about the weight to be given to, for example, historical associations, the cessation of a historical association, the significance of a planning application or of prospective uses that may not have taken place.

68. Mr Village suggested that there had been a use of Area 3 for a soccer pitch in part, or for golf use. But with respect to him, that is to miss the point of Rule 17. The Inspector made no findings that that was the case. Rule 17 is not, and cannot be, a basis for persuading the Secretary of State not to differ from the Inspector, nor a basis for attempting to improve on the findings which the Inspector has made.

69. I also reject the criticisms made of the substance of the Secretary of State's conclusions. I am far from clear that, even if there were substance in the criticisms from a planning point of view, that they could amount to an error of law or deficiency of reasoning in this case. First, as I have said, the First Secretary of State took the primary facts and weighed them differently, for adequately explained reasons, in reaching his own conclusion. He did not, for example, ignore the physical connection between the appeal site and County Hall, that is to say that there was continuity and that they were not separated by a physical barrier. The Secretary of State was entitled to take the view that mere continuity did not go very far in the context of land surrounded by other land, and although, for example, there was a belt of trees to the southern boundary, there was no evidence that there was a fence there. Nor did the Secretary of State ignore the past links between Area 2 and County Hall. There was no finding of fact by the Inspector to support the contentions that Area 3 had been used in part for a soccer pitch or golf area. The notations on the proposed landscape plan were not necessarily the result of survey and may not help.

70. The Secretary of State did not treat the historic link, such as it was, as legally irrelevant; he treated it as of limited value when it had existed on what the Inspector had to say, and of no real weight now that it was over, again in the light of what the Inspector had to say about the fact of current use. PPG3, as Mr Morshead pointed out, illustrates how past links can be eroded for these purposes.

71. The Secretary of State was entitled to reject the red line around a previous planning application as significant. Indeed, the force of that can be seen from the way in which the current application site does not conform to that previous application site, in that it includes Area 1 and an area within its Area 2 which was not within the earlier red line. Mr Village's criticism that the Secretary of State had engaged in what he described as "slicing salami" is not correct. The Secretary of State has set out his view in the round on the various relevant factors for consideration.

72. Although I accept what is said in the authorities to which I have referred, that the cessation of the common ownership and the cessation of a functional link does not mean that land cannot be so closely related physically and geographically to a building as to constitute a single unit, this does not mean that the converse is also true, especially where there is no continuing functional link, as the Secretary of State was entitled to conclude. The question of whether land is now so closely related as to constitute a single unit is what has to be examined. The Calderdale case recognised that there could be a physical link reflecting a historic but not continued function, but that turned on its combination of facts.

73. The Secretary of State has not ignored the physical relationship, which continues, and the absence of a barrier between the appeal site and County Hall. Nonetheless, it was, in my judgment, wholly open to the Secretary of State to conclude as he did in relation to the weight which he attached to the various components, which required to be examined in relation to this issue. He did not ignore any that were relevant and reached a conclusion on them in the round which, in my judgment, cannot be challenged. This analysis also illustrates the need to draw a distinction of the sort which I have done when considering the procedural contention.

Open space

74. I turn next to open space, the final area of challenge. Mr Village took two points. The first was that the Inspector had not given limited weight to the overall sports provision proposed by the claimant, but only to the new pitch provision. Accordingly, the First Secretary of State had misunderstood the report and ignored the other benefits put forward by the claimant, in particular the £300,000 contribution towards the provision of new changing rooms away from the appeal site.

75. The second contention was that the First Secretary of State had ignored the fact that the area used for informal recreation on the appeal site was private land, albeit that the owner, Northumberland County

Council, was a public body. It was not held as public open space and any informal use was precarious and could end with a change of owner or of land management.

76. As to the first contention, I accept that the provision of replacement pitches and new changing rooms for the one pitch which had existed on the appeal site but no longer did was the response to the objection raised by Sport England. The provision overcame that objection and was seen by Sport England and by the local authority (paragraph 80, 4th sentence of the Inspector's report) as a benefit. The Inspector said:

> "79. ... To my mind, the provision of these formal spaces with guaranteed public access would compensate for the loss of the current, informal arrangement.
>
> 80. ... There is nothing to show that the football pitch would [not] be reinstated should this appeal be dismissed. To this extent, I afford limited weight to the planning obligation but I am mindful that the proposed facilities at Morpeth Common are supported by the Council's Playing Pitch Strategy and the Sports Council. Indeed, the Council accept that the proposed contribution to new sports pitches and changing rooms would be a benefit ..."

77. I accept that there is a proviso in the Inspector's comment in paragraph 80 that he affords limited weight to the planning obligation "to this extent", and that that relates to the prospect of pitch replacement and pitch reinstatement on site, and that he nonetheless still sees the proposal as bringing a recreational benefit; (the insertion of the word 'not' in the second sentence of paragraph 80 is agreed to be necessary. Its omission was a typographical error).

78. In paragraph 21 of the decision letter, the Secretary of State makes no reference to the benefit afforded by the provision of changing rooms. He says:

> "21. He notes that Sports England withdrew their objection to the application; but he agrees with the Inspector that the provision of new football pitches at Morpeth Common, which precipitated the withdrawal of their objection, should be given only limited weight for the reasons given by the Inspector. The Secretary of State does not consider that new football pitches would compensate for the existing use made of Areas 2 and 3 by local residents for informal recreation. The Secretary of State does not agree with the Inspector that the provision of smaller areas of formal open space within the proposed development would compensate for the loss of amenity to local residents as they would be both significantly smaller and different in character than the existing open space."

79. Crucial to the Secretary of State's judgment was the significance of the loss of open space with the recreational potential for a pitch and informal uses which he saw the appeal site as affording. The Secretary of State is focusing, in particular, on the loss of open space and the inadequacy of alternative provision within the developed appeal site. The existence of changing rooms for proposed new pitches did not really grapple with his concern. It is to him, on his approach, a small point, albeit a material consideration, but it is not one which requires any special mention. I do not accept that the Secretary of State misunderstood the nature of the benefits. He is instead placing his focus on the open space aspect.

80. As to the second contention, it is of course quite common for privately owned land to be subject to precarious informal recreation. Clearly there is no guarantee in relation to its continued use, as the Inspector implicitly accepted when he contrasted that with the guaranteed position which would be achieved in relation to the recreational areas provided within the development.

81. The Secretary of State, in paragraphs 21, 22 and 28 of the decision letter, referred to the loss of open space provided to residents on Areas 2 and 3 as if, submitted Mr Village, it was not at risk and could be presumed to continue. But first the Inspector himself implicitly concludes with his reference in paragraph 80 to the fact that "there is nothing to show that the football pitch would [not] be reinstated should this appeal be dismissed" that there was no imminent threat to use by the public. He would not otherwise have given weight to the fact that the football pitch might well be reinstated, thereby limiting the weight he gave to the replacement. There was no assertion or evidence to show that, if the appeal were dismissed, Northumberland County Council either intended to divest itself of the land to an owner who would block public access or to change its land management so as to achieve the same result. Such evidence would be regarded with caution anyway. In effect, in the absence of such evidence accepted by the Inspector or the Secretary of State, the Secretary of State was entitled to approach the

continuation of informal recreation as if there were no identified threat or substantial reason as to why it should not continue. In any event, a local authority owner might have a different approach to public access from an ordinary private owner anyway.

82. It was for the claimant to make out the point that the informal recreation would cease by reference to evidence. Absent that, there was no error of law or material consideration ignored in the Secretary of State approaching matters on the basis that the informal recreation, although not guaranteed, would continue. Of course, if that turns out to be erroneous, that can always be pointed out whenever the land comes up for future consideration.

83. However, for the reasons which I have given, this decision is quashed.

84. MR WHITE: My Lord, I am obliged. I appear for the claimant this morning. Mr Blundell appears for the First Secretary of State. My Lord has indicated that the decision will be quashed and on that basis I ask for the principle of costs in this matter. Secondly, My Lord, in view of your Lordship's observations in respect of ground 1, I ask, my Lord, that costs be assessed on that ground on the indemnity basis rather than the standard basis.

85. MR JUSTICE OUSELEY: Why?

86. MR WHITE: I do not know whether my Lord needs to be taken to the case of Kiam.

87. MR JUSTICE OUSELEY: I think if you are making an application for indemnity costs you are going to have to persuade me. So what is Kiam?

88. MR WHITE: I will hand it up, My Lord. My Lord, it is a decision of the Court of Appeal, which stated in the head note on page 2 that, in order for an applicant to succeed in an order for indemnity costs, the conduct of the losing party would need to be unreasonable to a high degree; not merely wrong or misguided in hindsight. My Lord, I refer to the judgment of Simon Brown LJ (as he then was) at paragraph 12 where he said:

> "I for my part, understand the Court there [in an earlier case of re Minty] to have been deciding no more than that conduct, albeit falling short of misconduct deserving of moral condemnation, can be so unreasonable as to justify an order for indemnity costs. With that I respectfully agree. To my mind, however, such conduct would need to be unreasonable to a high degree; unreasonable in this context certainly does not mean merely wrong or misguided in hindsight. An indemnity costs order made under Rule 44 (unlike one made under Rule 36) does, I think, carry at least some stigma. It is of its nature penal rather than exhortatory."

89. My Lord, in view of your Lordship's observations, firstly that it was surprising -- I think your Lordship said "very surprising" -- this critical issue as to housing need was not dealt with at all and the housing shortfall was not grappled with at all in the decision letter. That is the first point, my Lord. Secondly, the argument that was put before your Lordship on behalf of the First Secretary of State your Lordship indicated was not justified on the basis of the evidence set out in the decision letter. On that basis I say that we have reached that threshold set out in Kiam.

90. MR JUSTICE OUSELEY: Thank you. Mr Blundell, deal with the principle first and then indemnity costs.

91. MR BLUNDELL: My Lord, in view of the principle, we do not object to an award of costs. We do, however, object to an order of indemnity costs on ground 1 on the quite simple ground that the conduct here does not get anywhere near the high threshold applied in Kiam.

92. MR JUSTICE OUSELEY: I am inclined to agree with you. I do not think there is very much you can say. You have made your points.

93. There will be an order for costs to be assessed. Not merely do I not think that the conduct of the Secretary of State reaches the high threshold, I do not think there was anything irresponsible about it to attract a penal point. But I thought, if I might say so, Mr White, it was a little bold as you had lost on the other issue. You can have Kiam back. I will not say "better luck next time".

BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII
URL: *http://www.bailii.org/ew/cases/EWHC/Admin/2004/2419.html*