

Our Ref: MJT/JMT/AP082-17

8th January 2018

Barnsley MBC.,
Planning Services,
PO Box 604,
Barnsley,
S70 9FE.

Dear Sir / Madam,

RE: APPLICATION FOR REMOVAL OF PLANNING CONDITION (CONDITION NO 5) – APPROVAL OF OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT – LAND AT SANDYGATE LANE, STAIRFOOT, BARNSELY, S71 5AW (APPLICATION NO 2016/0288) – BLACKSTONE DEVELOPMENTS

Please find attached the above-mentioned application which has Planning Portal reference 06255777. I confirm that the requisite planning fee will be paid directly to the Council by the applicant.

For the clarification, this application proposal seeks the removal of condition 5 attached to the subject permission. The condition states:-

“The development hereby permitted shall not begin until a scheme, including a timetable for implementation and long term maintenance agreements, has been submitted to and approved in writing by the LPA for the provision of or enhancement to off-site public open space in accordance with Core Strategy policy CSP35. The provision or enhancement of the off-site open space shall as a minimum mitigate for the loss of the site’s existing Green Space function or potential and shall be provided prior to the completion of the development in accordance with the approved scheme.”

The stated reason for this condition is set out in the decision notice as follows:

"In the interests of residential and visual amenity to ensure adequate provision of public open space in accordance with Core Strategy Policy CSP 29."

In support of this application for removal of the condition and to provide the Council with full details, I would comment as follows:-

- (i) The subject site forms a former railway sidings which has been unused for many years. The characteristics of the site, owing to its former use, are that of despoiled former industrial land.
- (ii) The subject planning permission granted by the Council is for the development of the site for residential purposes. Notwithstanding the form and historic uses of the site, it is noted in the wording of the condition that the requirement relates to ***"the loss of the site's existing Green Space function or potential."***

In respect of this issue, it will be noted that the subject site by its nature and form does not have a Green Space function nor, by reference to the statutory development plan and the planning history, does it not have potential as such. Within the UDP Saved Policies the site is an allocated "employment" site. The relevant Saved UDP Policy BA4/11 Doncaster Road, Stairfoot states:-

"This site has good access to the main Barnsley to Doncaster Road. It has potential for the development of small industrial and commercial units which could support proposed employment training and outreach projects in nearby areas of high unemployment. The prominent position of the site in relation to the main road and to the proposed strategic footpath along the adjoining disused railway will need to be taken into account in the design of the development. Supplementary guidance will be prepared for the site."

Therefore, in the statutory development plan the site is not identified an existing Green Space site. The site is a longstanding former railway sidings which has no characteristics in terms of form or function of Green Space.

It will also be noted that no further "Supplementary Guidance" was provided and in terms of taking into account the "strategic footpath", it will be noted that condition 13 (as recently amended) provides for this to be taken into account.

- (iii) In terms of the emerging plan that the Council proposed to allocate the land as Green Space in the draft Local Plan. Given the nature of the land as despoiled former railway sidings, it is not clear why this was allocated. An objection was formally submitted to the Council in respect of that allocation on behalf of Blackstone Developments. It is noted that allocation remains in the emerging plan, notwithstanding the objections to this that have been lodged. The site can clearly have no role to play in Green Space given that planning permission has

been granted for residential use. Therefore, the Green Space allocation can carry no weight as the allocation has been both challenged through the development plan process and superseded by the grant of planning permission for residential development on this site.

In summary, therefore:

1. This is a despoiled area of former railway sidings which has none of the characteristics of Green Space and has never functioned as Green Space.
2. Objections were lodged to the draft allocation. It is difficult to comprehend how at this stage they appear to have been set to one side given that the Council had granted permission for residential use.

The site has not (either in the past or present) had a Green Space function, is allocated in the statutory development plan for employment use nor can it have in the future, given the approval to develop the site for housing purposes. In this context, the condition cannot in any way be considered to be necessary, relevant or reasonable as set out further below in relation to the six tests for conditions.

- (iv) In terms of the policies referred to in both the stated condition and the reason for the imposition of the condition, it refers to the following:-

1. CSP29 'Design'.

It is considered that from examination of this policy it does not provide the basis for requiring contributions to Green Space.

2. CSP35 'Green Space'

In respect of CSP35 'Green Space, this is not in any way justified in this instance in that:-

- (a) The site has a longstanding employment allocation in the statutory development plan), has only been used for industrial purposes (railway sidings) and does not by any stretch of the imagination constitute Green Space. As a consequence, there is no justification whatsoever to provide a contribution to Green Space.
- (b) It is noted that in the supporting text at Para 9.243 it states:

"Green spaces are green open areas which are valuable for amenity, recreation, wildlife or biodiversity and include types such as village greens, local open spaces, country parks, formal gardens, cemetery, allotments, woodlands, recreation grounds, sports pitches and parks."

The subject site forms a longstanding despoiled industrial site allocated for industrial purposes in the development plan and having all the characteristics of its previous use, i.e. a railway sidings. It does not nor ever has constituted Green Space, by reference to the above definition of Green Space.

Therefore, as outlined above the two separate policies referred to in both the policy and the reasoning for the imposition of the condition cannot be justified and are not relevant to this development.

Further information is now set out in respect of the use of conditions set down in both the National Planning Policy Framework and Planning Practice Guidance.

- (v) In terms of the use of conditions in planning permissions, at Para 206 of the NPPF this states:-

"Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other aspects." (TPC underlining).

Planning Practice Guidance advises in more detail about the use of planning conditions. With regard to the six tests for conditions set out in the NPPF (above), it states:-

"The six tests must all be satisfied each time a decision to grant permission subject to conditions is made." (TPC underlining).

The advice then goes on to set out the tests and key considerations for conditions. The subject condition is now analysed against these below and it is clearly demonstrated that the subject condition fails a number of these tests for the reasons set out:-

- (a) Necessary

The advice states:-

"A condition must not be imposed unless there is a definite planning reason for it, i.e. it is needed to make the development acceptable in planning terms."

Furthermore, it states:-

"If a condition is wider in scope than is necessary to achieve the desired objection it will fail the test of necessary."

This site has never functioned as Green Space and, as such, the requirement is unnecessary.

(b) Relevant to the Development to be Permitted

The advice states:-

"It is not sufficient that a condition is related to planning objectives; it must also be justified by the nature or impact of the development permitted."

It also goes on to state:-

"A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development."

This proposal does not result in the loss of Green Space. This is a longstanding industrial site with an employment allocation in the current development plan. The site has never functioned as Green Space. The issue of Green Space is not impacted upon by the development and, therefore, the condition is not relevant to the development approved.

(c) Reasonable in All Other Aspects

The advice states:-

"Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness."

This site does not result in the loss of Green Space. As such, the requirement for an estimated £3000 per dwelling contribution (provided by the Council) cannot in any way be justified and places an unjustifiable burden on the applicant.

It is considered by reference to the six tests for conditions that it is clear that the condition does not pass these tests. It is also clear that the site has historically never functioned as Green Space, nor is it allocated in the current development plan as Green Space. This is a former industrial site and the character and form of the site reflects that. It has never had a Green Space function when considered in the context of the definition of Green Space as set out in the development plan.

It is clear in the context of the evidence presented and in all circumstances that there is no justification whatsoever for the imposition of a requirement to contribute to Green Space. The site has never functioned as such and, therefore, does not result in the loss of Green Space which needs to be compensated. The allocation in the emerging development cannot carry any weight. This has been objected to and the Council has subsequently granted permission for residential development. It does not reflect the historic function and allocation of the site; its current form and nature; or its future use given that planning permission has been granted for residential use.

6

Barnsley MBC

Should the Council require any further information or wish to discuss the matter in more detail, please do not hesitate to contact me. In any event, I would be grateful if you would contact me prior to drafting up your recommendation for determination.

Yours faithfully,

Michael Townsend BA (Hons) MRTPI
Chartered Town Planner

Encs