Appeal Decision

Inquiry held on 31 July 2007
Site visit made on 31 July 2007

by Howard Rose DMS DipTP MRTPI MCIWM

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

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Date: 23 August 2007

Appeal Ref: APP/R4408/A/07/2040687
Former Goldthorpe Colliery (West Part) and adjacent land, off Doncaster Road, Goldthorpe,

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Sir Robert Ogden CBE LLD against the decision of Barnsley Metropolitan Borough Council.
- The application Ref. 2006/1402, dated 8 August 2006, was refused by notice dated 21 September 2006.
- The development proposed is the development of part of the employment land permitted under the planning permission dated 19 October 2005 (Ref. No. B/04/2330/DE) for residential purposes.

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

Procedural matter

1. The planning application which is the subject of this appeal is in outline with the principal means of access included at this stage.

Planning Policy

2. Where an adopted or an approved plan contains relevant policies, section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permission or an appeal shall be determined in accordance with the plan, unless material considerations indicate otherwise. The statutory development plan for the area includes the Regional Spatial Strategy for Yorkshire and the Humber to 2016 (RSS). Policy H2 sets out the sequential approach to the release of housing land, the first preference is for previously-developed land followed by other infill in urban areas.

3. Also included is the Barnsley Unitary Development Plan which was adopted in 2000. The northern portion of the appeal site is allocated for employment purposes while the southern portion is part of a wider employment policy area. Policy ED7 seeks to ensure that employment policy areas remain in employment use. In such areas development will normally be permitted for business, industry, and storage and distribution. Policy H2 seeks to ensure the availability of sufficient land to meet the identified housing need. Policy H6 requires the provision of open space and requires a minimum of 15% of the gross site area within residential schemes.

4. The Council has released a Supplementary Planning Guidance Note 24 (SPG24 May 2003) on the re-use of employment policy areas. This advises that

proposals for uses in such areas, other than those set out in policy ED7, will generally only be permitted where three criteria are satisfied. These are; first that the use for non-employment purposes would not result in a significant loss of jobs; secondly that the proposals will fit in acceptably with the surroundings; and thirdly that there would still be an adequate supply of employment land in the relevant community area.

Background

5. The planning application was refused for two reasons. The first, having regard to the current allocation of the appeal site for employment purposes and its proximity to existing industrial land uses in Beever Lane, indicated that the proposed development would result in an unsatisfactory relationship with the potential industrial activity, which would compromise the standard of amenity which future residents might expect.

6. The second indicated that the release of the land for housing purposes may conflict with proposals emerging through the Local Development Framework that would reflect the Housing Market Renewal (HMR) and Renaissance Towns objectives for the regeneration and improvement of the wider housing area. In the absence of an adopted master plan for the HMR area, the application was considered premature and potentially prejudicial to the implementation of detailed proposals that would evolve in the HMR masterplan.

7. Since the appeal was submitted there have been continuing discussions between the appellants and the local planning authority which have resulted in a substantial reduction in the areas of dispute between the appellant and the local planning authority.

8. On the first reason for refusal the Council acknowledges that, other than the retention of the telephone exchange on Beever Street, the existing industrial activities here will cease with the redevelopment of the adjoining Phase 3 site for residential purposes. In the meantime, it accepts that satisfactory living conditions for the future residents of the proposed housing development could be secured by the inclusion of a condition dealing with noise, in the event of the appeal being successful.

9. So far as the use of employment land for other uses including residential is concerned this is addressed in policy terms by the three criteria set out in SPG24.

10. With regard to these criteria, the appeal site is unoccupied and has remained so for a long time. In particular, the southern part of the site has remained unoccupied since the closure of the colliery in the 1990s. Consequently, the development of the appeal site for residential purposes would not result in the loss of existing jobs. With regard to integration with surrounding land uses, the appeal site is in a highly sustainable location close to the centre of Goldthorpe with a wide range of services within a radius of 500 metres and very good transport accessibility. So far as the supply of employment land is concerned, the Council accepts that it is not necessary to retain this site for employment purposes. Hence, it is agreed that the proposal satisfies the criteria set out in SPG24.

11. On the second reason for refusal, while the appeal site is not allocated for residential development, discussions between the appellants and the Council have confirmed that the Council wishes to see the site and the adjoining Phase 3 land redeveloped for housing in the context of the an overall masterplan for the area. One of the HMR strategic objectives is that Goldthorpe will be promoted as a 'market town' for residential growth with high quality homes focused around facilities and local jobs, as well as becoming a 'transport hub' providing key services and local job opportunities to the neighbouring settlements in the Dearne Valley. It is agreed that the development on the appeal site and the subsequent Phase 3 development will contribute to achieving this.

Main issues

12. By the time that the Inquiry opened there were three outstanding issues as follows:-

(1) whether or not the illustrative masterplan submitted with the planning application should be tied to the planning permission.

(2) whether affordable housing should be required for this development and, if so, whether it should be provided on-site or by way of a commuted sum to enable it to be provided off-site.

(3) whether the arrangements set out in Schedule 2 of the draft unilateral undertaking in relation to the Phase 3 development should be tied to the planning permission.

Reasons

Masterplan

13. The masterplan referred to is an illustrative drawing (ref.no. pod-r-001-01-02) which was submitted with the planning application and shows a possible layout for the proposed development. It shows the principal access on the eastern side of the site which is included in the outline submission. However, while the indicative layout may prove to be appropriate for the site it is not a formal part of the application submission and therefore it is agreed that the planning permission should not be tied to this masterplan.

Affordable housing

14. Affordable housing is a requirement of the proposed development as set out in the emerging Local Development Framework and in advice contained in Planning Policy Statement 3 (PPS3) 'Housing'. The Council's preference is that it should be provided on site as an integral part of the proposed development. However, it is agreed that the relevant condition to secure this aspect of the development should not preclude the possibility of agreement in due course that a commuted sum be paid in lieu. This matter is dealt with in the section on Conditions.

Unilateral undertaking

15. The appellants have submitted a unilateral undertaking which they are prepared to execute in the event of planning permission being granted. The

purpose of the undertaking is to ensure that the three phases of housing development, of which the appeal site is Phase 2, are properly integrated with the wider HMR area. To this end the appellant is willing to covenant to negotiate with the Council to acquire its interest in the Phase 3 site to enable the redevelopment of that site to proceed as soon as reasonably possible and to use all reasonable endeavours to negotiate with the owners of all other interests, excluding the BT Exchange, in the Phase 3 site which need to be acquired to enable that development to proceed.

16. While this could be helpful in bringing about the expeditious development of the Phase 3 site, I share the view, now agreed by the Council and the appellants, that it is not a necessary pre-requisite for the grant of planning permission for the proposed development of the appeal site. Hence, I do not consider that it should form any part of the planning permission for the appeal site.

17. At the Inquiry the Council and the appellants reported that they had now reached agreement on all the outstanding matters set out above and that they had also reached agreement on suggested conditions. Consequently, no oral evidence was heard at the Inquiry other than a third party submission.

Conditions

18. The Council and the appellants have agreed a set of conditions, in addition to the standard conditions relating to timescale and approval of reserved matters, which they would wish to see included in the event of the appeal being successful. I have considered these in the light of the advice in Circular 11/95.

19. That relating to ground contamination is necessary to ensure the safety of the site. Those relating to a construction survey of the highway, the parking of employees vehicles, mud on the highway and restriction of access to Beever Street are necessary to protect the condition and safety of the highway. Those relating to hours of working and noise are necessary to safeguard residential amenities. Those dealing with the layout and types of dwellings are reasonable to ensure an appropriate mix of dwellings. That dealing with CO_2 emissions is relevant in the interest of sustainability and climate change. Those dealing with foul and surface water drainage and run off are necessary to ensure proper drainage and to reduce flood risk. A condition dealing with open space is necessary to ensure appropriate provision of recreational open space and that dealing. A condition dealing with affordable housing is essential to ensure appropriate provision of such accommodation. However, in the case of the proposed development, the second part of the suggested condition, requiring the payment of money, would not accord with the advice in Circular 11/95. The condition is, therefore, based on the assumption that the affordable housing would be provided as an integral part of the proposed development.

Conclusions

20. Many of the outstanding issues between the Council and the appellants had been resolved prior to the Inquiry and the remainder were determined during the course of the Inquiry. In the circumstances, I conclude that, while the proposal is essentially to use land allocated for employment purposes for residential development, there are material considerations, particularly having regard to the Housing Market Renewal Programme and the emerging Local

Development Framework, which are sufficient to overcome any conflict with the current development plan. I have had regard to all other matters raised, particularly concerns about the integration of new development with the existing poorer quality housing adjoining the appeal site and the need to ensure that the development provides opportunities for public transport to penetrate the site. However, these are matters which should be considered in the formulation of the detailed development proposals for the site. Consequently, for the reasons set out above, I conclude that the appeal should be allowed.

Formal Decision

21. I allow the appeal, and grant planning permission for the development of part of the employment land permitted under the planning permission dated 19 October 2005 (Ref. No. B/04/2330/DE) for residential purposes on land at the former Goldthorpe Colliery (West Part) and adjacent land, off Doncaster Road, Goldthorpe, in accordance with the terms of the application, Ref. 2006/1402, dated 8 August 2006, and the plans submitted with it, subject to the following conditions:

1) Details of the access (save the principal means of access from the proposed roundabout to the east of the site), appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

3) The development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

4) Prior to the commencement of the development a report, endorsed by a competent engineer experienced in ground contamination, shall be submitted to the local planning authority. The report shall, amongst other things, include the following:

   a) Measures to physically identify the extent of made ground and measures to test and evaluate the area for the purposes of identifying the extent of any contamination areas requiring remediation.

   b) Measures to treat or remove any contaminated material identified.

   c) Measures to test and evaluate any imported soils or capping material imported onto the site to ensure they contain no levels of contamination which would render any part of the site unsuitable for its intended use.

   d) The subsequent certification that the site has been satisfactorily remediated and that the development of the site can be safely undertaken and occupied. The development shall thereafter be undertaken in full accordance with the submitted report.

5) Prior to work commencing on site a construction survey (including structural integrity) of the highways to be used by construction traffic shall be undertaken in consultation with the local planning authority. The methodology of the survey for assessing the existing condition of the highway shall be approved by the local planning authority. On completion of the development a second condition survey shall be carried out and submitted for the approval of the local planning authority. The second survey shall identify defects attributable to the traffic

arising from the construction work. Any remedial works necessary shall be completed at the developer's expense in accordance with a scheme to be agreed in writing with the local planning authority.

6) Development shall not commence until details of the parking for all employees' vehicles, the siting of the sales office and the site compound, have been submitted to and approved in writing by the local planning authority. These facilities shall be provided in accordance with the approved details.

7) Except with the prior written approval of the local planning authority, all site works including deliveries shall be limited to the hours between 08.00hours and 18.00hours on Monday to Friday, 08.00hours and 1300hours on Saturdays and not at all on Sundays and Bank Holidays. This condition shall apply except in case of emergency. Essential maintenance involving engine starting and running shall occur wherever possible in accordance with the above hours but such maintenance shall not occur between the hours of 21.00hours and 07.00 hours on Mondays to Saturdays and not at all on Sundays and Bank Holidays.

8) Prior to the commencement of the development, details of a scheme identifying measures to be taken to ensure that all vehicles leaving the site are in such condition as not to leave dust, slurry or mud on the highway shall be submitted to and approved in writing by the the local planning authority. The development shall thereafter be undertaken in accordance with the details of the approved scheme. Notwithstanding such arrangements should any material, nevertheless, be accidentally deposited on the public highway, the operator shall immediately remove such material.

9) There shall be no vehicular access from the appeal site to Beever Street, within the area shown as Phase 3, other than for emergency vehicles, unless the local planning authority otherwise gives its approval in writing.

10) No development shall take place until a detailed noise assessment scheme for protecting future residents of the development from noise arising from commercial/industrial premises has been submitted to and approved in writing by the local planning authority. Any works needed in the light of the detailed assessment to mitigate noise included within the approved scheme shall be completed before any dwelling within 50metres of the nearby industrial premises is occupied.

11) In determining applications for approval of detailed plans, submitted pursuant to this permission, due regard will shall be had to the parameters and principles contained in the Illustrative Built Form Masterplan (plan no. pod-r-001-01-02) and to the emerging or adopted masterplan resulting from the Council's masterplanning exercise for the wider Housing Market Renewal area.

12) The detailed plans referred to in Condition 1 above shall provide for a suitable mix of housing in terms of tenure, size, price and affordability.

13) No development shall take place until a report identifying how the predicted CO2 emission of the development will be reduced to at least 10% below that of a comparable conventionally designed development. Thereafter, the development shall be constructed in accordance with the approved report with all agreed equipment installed before any dwelling is occupied.

14) The site shall be developed with separate systems of drainage for foul and surface water.

15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no building or structure shall be placed or

erected within 3metres, measured horizontally, of any sewer or culverted watercourse.

16) No piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall for surface water have been completed in accordance with details to be submitted to and approved in writing by the local planning authority before development commences.

17) No development shall take place until details of the foul and surface water drainage have been submitted to and approved in writing by the local planning authority. Thereafter, no part of the development shall be occupied or brought into use until the approved scheme has been fully implemented. The scheme shall be retained throughout the life of the development unless otherwise agreed in writing with the local planning authority.

18) No development shall take place until a scheme for the provision and implementation of a surface water run-off limitation has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details.

19) The reserved matters submission referred to in Condition 1 shall be accompanied by a scheme for the provision of appropriate public open space facilities for the proposed development in accordance with policy H6 of the adopted Unitary Development Plan. Development shall not commence until the scheme has been approved in writing by the local planning authority and the public open space facilities shall be provided in accordance with a programme to be submitted to and approved in writing by the local planning authority.

20) The reserved matters submission referred to in Condition 1 shall be accompanied by a scheme for the provision of affordable housing as part of the development and the development shall not begin until this has been approved by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme which shall include:-

a) The numbers, type, and location of the affordable housing provision to be made.

b) The timing of the construction and provision of the affordable housing, by reference to the occupation of not more than 50% of the market housing to be provided on the site.

c) The arrangements to ensure that such provision is affordable for both initial and subsequent occupiers of the affordable housing.

d) The occupancy criteria to be used for the determining of the identity of prospective and successive occupiers of the affordable housing and the means by which such occupancy will be enforced.

Howard Rose

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Machin of Counsel	Instructed by the Secretary to Barnsley Metropolitan Borough Council
He submitted written evidence from	
Mr A Osborne	Programme Manager, Barnsley MBC Strategic Housing Service
Mr P O'Brien BSc DipTP	Planning & Design Advisor, Transform South Yorkshire
Mr K Swift	Senior Planning Officer, Barnsley MBC

FOR THE APPELLANT:

Mr C Newberry Q.C.	Instructed by Paul Winter, Eversheds LLP
He submitted written evidence from	
Mr J Dickinson BSc MA DipTP MRICS	Regional Director (Planning), White Young Green, Arndale Court, Headingly, Leeds, LS26 2UJ
Mr A Charles MPhil MIOA MIHT	Director of Acoustics, RPS Planning & Development, 52 Princess St, Manchester
Mr I Batty FNAEA	Senior Member, Merryweathers 1832 LLP

INTERESTED PERSONS:

Mr T Hayselden	Chief Executive, Dearne Valley Venture Ltd, Station Rd, Bolton-Upon-Deane, S63 8AB

DOCUMENTS

1	List of persons present at the Inquiry
2	Council's Letters of Notification of the Inquiry.
3.1-3.3	Letters from interested persons
4	Mr Osborne's Statement
5	Mr O'Brien's Statement
6	Mr Swift's Statement
7	Mr Dickinson's Statement
8	Mr Charles' Statement
9	Mr Batty's Statement
10	Statement of Common Ground
11	Draft Conditions as agreed
12	Design and Access Statement
13	Draft Unilateral Undertaking
14	Draft CPO Indemnity Agreement
15	A Strategy for the Barnsley Housing Market Renewal Area
16	Transform South Yorkshire (TSY), Housing Market Renewal, Barnsley Area Development Framework
17	TSY Scheme Framework Update July 2005
18	TSY Area Development Framework, Barnsley
19	East Thurnscoe Masterplan Report
20	Yorkshire Forward Corporate Plan 2005/10
21	Yorkshire and The Humber Regional Housing Strategy 2005-2021
22	Appeal Proposal Noise Assessment dated August 2006
23	Appeal Proposal Flood Risk Assessment
24	Appeal Proposal Sequential Approach and Sustainability Assessment
25	Appeal Proposal Planning Statement
26	Appeal Proposal Habitat Survey
27	Appeal Proposal Geo-Environmental Desk Study Report
28	Appeal Proposal Transport Assessment
29.1- 29.2	Files of General Core Documents

PLANS

A1-A3	Application plans (includes Illustrative plan no. pod-r-001-01-02)