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Mrs Janet Hodson
JVH Town Planning Consultants
Houndhill Courtyard
Hound Hill
Marchington
UTTOXETER, Staffs
ST14 8LN

Our Ref:APP/R4408/A/10/2138041
Your Ref: JVH/UK/177

18 January 2012

Dear Madam,

TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY UK COAL PLC
APPLICATION REF: 2009/1277
FORMER NORTH GAWBER COLLIERY AND COSWO SPORTS PITCH, CARR GREEN LANE AND SPARK LANE, MAPPLEWELL, BARNSLEY

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Andrew Pykett BSc(Hons) PhD MRTPI, who held a public local inquiry on 4 May and between 11-13 October 2011 into your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the refusal of Barnsley Metropolitan Borough Council (the Council) to grant planning permission for residential development to include means of access, re-grading of the site, retirement homes, public open space and the relocation of the existing sports pitch, in accordance with planning application ref: 2009/1277, dated 30 September 2009.

2. The appeal was recovered for the Secretary of State's determination in November 2010, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be allowed and outline planning permission be granted. For the reasons given in this letter, the Secretary of State agrees with the Inspector's recommendation. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

Procedural matters

4. An application was made by your client for a partial award of costs against the Council. The Secretary of State's decision on this application is the subject of a separate letter.

Policy Considerations

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material

Jean Nowak, Decision Officer
Department for Communities and Local Government
Zone 1/H1, Eland House
Bressenden Place, London SW1E 5DU

Tel 0303 444 1626
Email: PCC@communities.gov.uk

considerations indicate otherwise. In this case, the development plan comprises *The Yorkshire and Humber Plan* (RS) (2008); the *Barnsley Core Strategy* (CS) (2011); and saved policies of the *Barnsley Unitary Development Plan* (UDP)(2000).

6. Other material considerations which the Secretary of State has taken into account include those documents referred to at IR3(a), (b) and (c) and IR14. Those documents referred to which are in draft form are afforded limited weight as they may be subject to change. Circular 11/95: *Use of Conditions in Planning Permission*; Circular 05/2005: *Planning Obligations;* and the Community Infrastructure Levy (CIL) Regulations (2010 and 2011), are also material considerations.

Main Issues

7. The Secretary of State agrees that the main considerations are as set out by the Inspector at IR73.

Location

8. For the reasons given at IR74-83, the Secretary of State agrees with the Inspector's conclusion at IR83 that the appeal site would be a suitable location for housing development. In coming to that conclusion, the Secretary of State has had particular regard to the Inspector's conclusions in respect of accessibility (IR74); impact on the local highway network (IR80); the fact that it would be unrealistic to consider the reclamation of the whole site as greenspace as being a viable possibility (IR76); the opportunity to provide affordable housing and make use of previously developed land in a sustainable location (IR78-79); and the fact that both surface water and foul water drainage from the site can be adequately accommodated (IR81-82).

Policy

9. For the reasons given at IR84-88, the Secretary of State agrees with the Inspector's conclusion at IR89 that, in assessing the suitability of the appeal site in policy terms, a balance needs to be struck between site-specific UDP policies on the one hand and the regional and strategic approaches of the RS and CS on the other. He agrees (IR88) that the RS and the CS are relatively recent component parts of the development plan, while attributing limited weight to the proposed revocation of the RS. Against that, the Secretary of State, like the Inspector, recognises that the plan period for the UDP was from 1986 to 2001 (IR86) and the site-specific UDP policy which excluded the site from development during that plan period reflected different circumstances (IR84-86). The Secretary of State also agrees with the Inspector (IR84) that the UDP acknowledged that the appeal site is well related to the settlement, with good accessibility, with some potential for development in the longer term.

Housing requirement

10. For the reasons given at IR90-94, the Secretary of State agrees with the Inspector's conclusion at IR94 that the Appellant's methodology for calculating the 5 year period is to be preferred over that advocated by the Council and, in particular, given the ambitious overall target included in the CS, that there is little benefit to be gained from adopting a methodology which effectively constrains the 5 year requirement.

Housing land supply

11. For the reasons given at IR95-100, the Secretary of State also agrees with the Inspector's concerns about the potential shortcomings of the Council's formulaic approach to deriving available land supply. In particular, he agrees with the Inspector's conclusion at IR98 that arbitrary discounting of small sites would be inappropriate. He also agrees (IR99) that there is some justification for discounting those undeveloped sites which have been available at least since they were allocated in the UDP in 2000 (IR99); and that some discounting of the Council's supply side assessment of the amount of housing likely to be provided on the 3 school sites referred to at IR100 is also justified. Overall, therefore, the Secretary of State agrees with the Inspector (IR101) that a 5 year supply of deliverable sites has not been demonstrated and that therefore paragraph 71 of PPS3 applies so that the proposal should be considered favourably having regard to the policies contained in the PPS.

Prematurity

12. The Secretary of State agrees with the Inspector that, for the reasons given at IR102, allowing this appeal would be contrary to the development plan in relation to its UDP designation as only being suitable and appropriate for development "in due course". However, he also agrees with the Inspector's conclusion at IR103 that, with the exception of the sports pitch, the appeal site has been effectively unused or under-used for a long time and that progress with firm proposals through the formal development plan mechanism has been slow - with the Development Sites and Places DPD not due to be adopted until the end of 2014. He also agrees with the Inspector that, for the reasons given at IR104, it seems unlikely that any potential redevelopment of the land would not include a substantial proportion of new housing.

13. Thus, while noting the Council's argument (IR105) that dismissal of this appeal would be justified because, amongst other matters, the UDP effectively requires that the future of the land should be determined only, or principally, through the development plan mechanism, the Secretary of State agrees with the Inspector's conclusions that, for the reasons given at IR106, the proposal would not conflict with the development plan taken as a whole and the Council has failed to demonstrate clearly how allowing this appeal would prejudice the outcome of the DPD process.

Conditions and obligations

14. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions and obligations as set out at IR57-72. The Secretary of State is satisfied that the proposed conditions are reasonable and necessary and comply with Circular 11/95. He also agrees with the Inspector (IR72) that the s106 agreement accords with Circular 05/2005 and the CIL Regulations.

Overall conclusions

15. The Secretary of State agrees with the Inspector that, although the appeal scheme would be contrary to the development plan in terms of the site not being allocated for housing development in the UDP, the UDP was prepared on the basis of allocating sites up to 2001, while there is support in the CS and national policy for identifying more housing sites in the Council's area to provide an adequate 5-year

supply. The appeal scheme offers such an opportunity, including the provision of affordable housing, and would also make use of previously developed land in a sustainable location.

Formal Decision

16. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for residential development to include means of access, re-grading of the site, retirement homes, public open space and the relocation of the existing sports pitch, in accordance with planning application ref: 2009/1277, dated 30 September 2009, subject to the conditions listed at Annex A of this letter.

17. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

18. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

19. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

20. A copy of this letter has been sent to the Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak
Authorised by the Secretary of State to sign in that behalf

Annex A

Conditions

1. The development hereby permitted shall not be commenced unless and until approval of the following reserved matters has been obtained in writing from the Local Planning Authority:-

(a) the layout of the proposed development.
(b) scale of building(s)
(c) the design and external appearance of the proposed development.
(d) landscaping

2. Application for approval of the matters reserved in Condition 1 above shall be made to the Local Planning Authority before the expiration of three years from the date of this permission, and the development, hereby permitted, shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

3. Development shall not commence until details of the phasing of the development has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

4. Detailed plans shall accompany the reserved matters submission indicating existing ground levels and any proposed alterations to ground levels, the proposed finished floor levels of all dwellings, associated structures and road levels. Thereafter the development shall proceed in accordance with the approved details.

5. No development shall take place, including any re-grading and reclamation engineering operations, until a Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Method Statement shall be adhered to throughout the re-grading/reclamation and construction periods. The Statement shall provide for:

- The parking of vehicles of site operatives and visitors
- Means of access for construction traffic
- Loading and unloading of plant and materials
- Storage of plant and materials used in constructing the development
- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- Wheel washing facilities
- Measures to control the emission of dust and dirt
- Measures to control noise levels during construction
- A scheme for recycling/disposing of waste

6. Sightlines, having the dimensions 2.4m x 90m, shall be safeguarded at the junctions with Carr Green Lane and Spark Lane, approved as the primary means of access to the development shown on the ‘Masterplan’, MPJ Design drawing no 09/032-01, such that there is no obstruction to visibility at a height exceeding 1.05m above the nearside channel level of the adjacent highway.

7. Development shall not commence until arrangements have been entered into to secure works to mitigate the effect of the development on highway safety. Such work shall be completed prior to the development being brought into use and comprise:

(a) provision of right turn lane on Spark Lane;
(b) provision of signal controlled junction at Blacker Road/Greenside/Spark Lane;
(c) provision of controlled pedestrian crossing facility at Blacker Road;
(d) any necessary signing/lining;
(e) any necessary alterations to street lighting;
(f) any necessary alterations to drainage;
(g) any necessary resurfacing/reconstruction.

8. Prior to the commencement of the development a survey methodology shall be submitted to the local planning authority to assess the existing condition of the highways to be used for construction traffic. The scheme shall indicate the extent of the highway to be surveyed. Within 28 days of the completion of the construction phase of the development a second survey shall be submitted to identify any highway defects directly attributable to the construction traffic, a remediation strategy and an agreed timetable for the works. Any remediation of the highway that is necessary shall be carried out by the developer unless agreed otherwise by the local planning authority.

9. No development shall take place until works have been carried out to provide adequate facilities for the disposal and treatment of foul water, in accordance with details to be submitted to and approved in writing by the local planning authority.

10. No re-grading of the site shall commence until details of the mechanism by which the existing public sewers crossing the site will be protected during any construction work have been submitted to and approved in writing by the local planning authority.

11. Unless otherwise agreed in writing by the local planning authority, no building or other obstruction shall be located over or within 6.0 (six) metres either side of the centre line of each of the 825mm, 750mm, 675mm and 525mm sewers i.e. protected strip widths of 12 metres per sewer, which cross the site.

12. Unless otherwise agreed in writing by the local planning authority, no building or other obstruction shall be located over or within 3.0 (three) metres either side of the centre line of each of the 450mm, 375mm and 225mm sewers i.e. protected strip widths of 6 metres per sewer, which cross the site.

13. Surface water from vehicle parking and hardstanding areas shall be passed through an interceptor of adequate capacity prior to discharge. Roof drainage shall not be passed through any interceptor.

14. No development shall take place until:

(a) Surface water drainage details, including a scheme for surface water run-off limitation and a programme of works for implementation using sustainable drainage principles as set out in the approved Flood Risk Assessment, have been submitted to and approved in writing by the Local Planning Authority;

(b) Porosity tests shall be carried out in accordance with BRE 365, to demonstrate that the subsoil is suitable for soakaways;

(c) Calculations based on the results of these porosity tests shall prove that adequate land area is available for the construction of the soakaways.

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.

15. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification), no building or structure shall be placed or erected within 6 metres of the watercourse shown on the approved plan.

16. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works. Prior to occupation of the dwellings/commencement of the use, a validation report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing of the Local Planning Authority.

17. Prior to the commencement of development approved by this permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), a remediation method statement and verification procedures for the part of the site shown as area 5 in the Geo Environmental Assessment April 2005, Football Pitch Ground Investigation Report and Revised Remedial Method Statement, shall be submitted to and approved in writing by the local planning authority.

18. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority.

19. No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters.

20. Construction or remediation work comprising the use of plant, machinery or equipment, or deliveries of materials shall only take place between the hours of 08:00 to 19:00 (Mondays to Fridays), and 08:00 to 13:00 (Saturdays), and at no time on Sundays or Bank Holidays.

21. Prior to the commencement of re-grading and reclamation engineering operations on the site, a minimum 3 metre high bund shall be constructed in the location of the site shown in the Kirkby Charles Associates Draft Noise Assessment dated January 2011, in accordance with detailed plans to be submitted to and approved in writing by the Local Planning Authority. The approved bunding shall be retained throughout the re-grading and reclamation engineering operations phase.

22. Plans accompanying the application for the approval of reserved matters shall include public open space provision proposals designed in substantial accordance with

the ‘Masterplan’, MPJ Design drawing no 09/032-01 with regards to the overall and individual area dimensions, proposed locations and the type of the areas shown. The provision of the open space shall be provided prior to completion of the development in accordance with the approved scheme.

23. At the same time as application/s is/are made for the approval of reserved matters, a scheme for the provision and layout of the new playing field in the location shown on the Masterplan (MPJ Design Drawing No: 09/032-01) shall be submitted to and approved in writing by the local planning authority. The scheme shall include the following:

- The construction details and surface finishes of the playing pitch, the changing facilities, car park and means of access;
- An assessment of the ground conditions of the land proposed for the new playing field, including existing and proposed levels and surface water drainage arrangements;
- A management plan for the playing pitch including the use of the facility by organisations and the local community;
- A timetable, citing both the phasing referred to in condition 3 above and the annual playing season, for the construction and first use of the playing pitch, the changing facilities, car park and means of access.

The scheme shall be implemented in accordance with the details and the timetable as approved.

24. No dwellings shall be occupied until a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens), has been submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved and any subsequent variations shall be agreed in writing by the local planning authority. The scheme shall include the following elements:

- detail extent and type of new planting (NB planting to be of native species)
- details of maintenance regimes
- details of any new habitat created on site
- details of treatment of site boundaries and/or buffers around water bodies

25. At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources (as described in the glossary of Planning Policy Statement: *Planning and Climate Change* (December 2007)). Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to and approved in writing by the Local Planning Authority as a part of the reserved matters submissions required by condition 1. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter.

26. Prior to the commencement of the development a scheme showing how the route of the footpath No 22 will be safeguarded during construction shall be submitted and approved in writing by the local planning authority. The scheme shall be implemented for the relevant period.

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Andrew Pykett BSc(Hons) PhD MRTPI

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

Date: 24 November 2011

TOWN AND COUNTRY PLANNING ACT 1990

BARNSLEY METROPOLITAN BOROUGH COUNCIL

APPEAL BY

UK COAL PLC

Inquiry opened on 4 May 2011

Former North Gawber Colliery and CISWO Sports Pitch, Carr Green Lane and Spark Lane, Mapplewell, Barnsley, South Yorkshire

File Ref(s): APP/R4408/A/10/2138041

File Ref: APP/R4408/A/10/2138041
Former North Gawber Colliery and CISWO Sports Pitch, Carr Green Lane and Spark Lane, Mapplewell, Barnsley, South Yorkshire

- 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 UK Coal plc against the decision of Barnsley Metropolitan Borough Council.
- The application Ref: 2009/1277, dated 30 September 2009, was refused by notice dated 7 April 2010.
- The development proposed is residential development to include means of access, re-grading of the site, retirement homes, public open space and the relocation of the existing sports pitch – resubmission of application 2008/1955 (outline) (Amended Scheme).
- The inquiry sat for 4 days on 4 May and 11-13 October 2011.

Summary of Recommendation: That the appeal be allowed and outline planning permission granted.

Procedural Matters

1. At the inquiry an application[1] was made by UK Coal plc for a partial award of costs against Barnsley Metropolitan Council. This application is the subject of a separate Report.

2. A Unilateral Undertaking dated 11 October 2011 has been executed under section 106 of the above Act[2]. Amongst other matters, it includes contributions towards: the upgrading of local bus services; the relocation of a football pitch and the construction of changing rooms; the enlargement of Mapplewell Primary School; and the provision of both CISWO (Coal Industry Social Welfare Organisation) almshouses and affordable houses. The obligation is the subject of further consideration later in this Report. The inquiry was closed in writing on 26 October 2011 after receipt of the completed Undertaking.

3. The appeal was recovered by the Secretary of State for his own consideration and determination in November 2010. The particular matters about which the Secretary of State wishes to be informed are as follows:

   (a) the extent to which the proposed development would be in accordance with the development plan for the area;

   (b) the extent to which the proposed development would be consistent with Government policies in Planning Policy Statement (PPS) 1: *Delivering Sustainable Development*, and accompanying guidance *The Planning System: General Principles* with particular regard to whether the design principles adopted in relation to the site and its wider context, including the layout, scale, open space, visual appearance and landscaping, will preserve or enhance the character or appearance of the area, having regard to advice in paragraphs 33 to 39 of PPS1;

   (c) the extent to which the proposed development is consistent with Government planning for housing policy objectives in PPS3: *Housing* with particular regard towards delivering:

[1] Document 38
[2] Document 39

(i) high quality housing that is well-designed and built to a high standard;

(ii) a mix of housing, both market and affordable, particularly in terms of tenure and price, to support a wide variety of households in all areas, both urban and rural;

(iii) a sufficient quantity of housing taking account of need and demand and seeking to improve choice;

(iv) housing developments in suitable locations, which offer a good range of community facilities and with good access to jobs, key services and infrastructure;

(v) a flexible, responsive supply of land – managed in a way which makes efficient use of land, including the re-use of previously developed land, where appropriate;

(d) the extent to which the proposed development is consistent with the advice in PPG13: *Transport,* in particular the need to locate development in a way which helps to promote more sustainable transport choices; promote accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling; reduce the need to travel, especially by car and whether the proposal complies with local car parking standards and the advice in paragraphs 52 to 56 of PPG13;

(e) the matters set of in the council's Refusal of Planning Permission dated 7 April 2010;

(f) whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, the form these should take; and

(h) any other matters that the Inspector considers relevant.

4. A Statement of Common Ground[3] was completed during the adjournment. It includes a description of the site and of the proposed development. The planning history of the land is recorded together with the relevant contents of the development plan. There is an abbreviated form of the draft conditions, together with matters to be included in the section 106 obligation. The principal matters which are agreed and not agreed between the parties are identified. The Refusal of Planning Permission cited above includes 5 refusal reasons. On the basis of the agreed matters the statement indicates that the Council will not defend reasons for refusal 3, 4 and 5. The inquiry proceeded accordingly.

The Site and Surroundings

5. The appeal site comprises land formerly used as the North Gawber Colliery. It extends to some 17.5ha and lies immediately to the south of the centre of Mapplewell, some 5.8kms to the north-west of the centre of Barnsley. It is a largely open area of colliery spoils, demolition rubble, derelict areas and some tree growth. The area slopes down from north to south in a series of irregular terraces from about 96m AOD to 67.5m AOD.

[3] Document 3

6. The site is largely disused since mining activities ceased in 1988 with the closure of the colliery. There are known to be 5 mine shafts and 3 adits within the site. Following the closure of the colliery a playing pitch was installed in the north-west corner of the land.

7. The site is bounded to the north by the Mapplewell Business Park and by retail development off Mapplewell Drive. There are 2 care homes to the north-west of the site, with residential development fronting onto Spark Lane to the west and south-west. There is an extensive area of residential development on the opposite side of Spark Lane. There are small industrial units and more residential development to the south-east of the land, with an extensive area of relatively recent residential development on the opposite side of Carr Green Lane. To the south the land adjoins open land formed from another area of colliery spoil which lies in the Green Belt. The centre of Mapplewell – defined by the meeting of Spark Lane, Blacker Road, Greenside, and Towngate – lies close to the north. It includes shops and services, bus stops, a health centre and a library. Mapplewell Primary School lies to the north of Blacker Road.

Planning Policy

8. The development plan comprises: *The Yorkshire and Humber Plan* (RS)(2008); the *Barnsley Core Strategy* (CS)(2011); and saved policies of the *Barnsley Unitary Development Plan* (UDP)(2000).

9. Paragraph E 1 of Policy SY1 of the RS seeks to focus most development on Sheffield and the 3 sub regional towns, including Barnsley. Policy H1 provides for an increase in the region's housing stock. In Barnsley, the planned annual average net increase in the number of dwellings between 2008 and 2026 is 1,015 units. The total net increase would therefore be 18,270. Policy H2 seeks to establish a mechanism to manage and secure the increase in the supply of new housing. Amongst other matters, it prioritises housing development on brownfield land; it seeks to co-ordinate the release of housing land with improvements to the green, social and physical infrastructure; it adopts a flexible approach to delivery by not treating housing figures as ceilings; and, by maintaining housing land trajectories, managing the delivery of land where actual performance is outside acceptable ranges.

10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the determination of a planning application must be made in accordance with the development plan. As it is the Government's intention to revoke the RSs, and the provisions of the Localism Act reflect this objective, limited weight can be given to the intended revocation.

11. The CS, adopted in September 2011, is the most recent component of the development plan. Policy CSP 8 records that priority will be given to development in Urban Barnsley (in which the appeal site is located) and the other 6 principal towns in the plan area. In view of its place in the settlement hierarchy, Urban Barnsley will be expected to accommodate significantly more growth than any of the individual principal towns. Policy CSP 9 seeks to achieve the completion of 21,500 net additional homes during the period 2008 to 2026. It also records that a minimum 5 year supply of deliverable sites will be maintained. Of this total, Policy CSP 10 provides that 9,800 will be in Urban Barnsley (46%). Similarly, Policies CSP 11 and CSP 12 provide for the allocation of 350ha of employment land to meet the development needs of existing and

future industry and business, with 130-155ha in Urban Barnsley. Policy CSP 13 records that the phased release of allocated housing sites will be set out in the Development Sites and Places DPD. The release of sites will deliver the spatial strategy of the plan by giving priority to sustainably located sites within Urban Barnsley and the principal towns. Policies CSP 14 and CSP 15 respectively seek to secure the priority use of previously developed land, a broad mix of house types, and the provision of 25% affordable housing.

12. The plan period for the UDP covered the years 1986 to 2001, but much of its relevant content was saved in a Direction made in September 2007. The saved policies include those which are most specific to the appeal site. The Proposals Map indicates that the bulk of the appeal site falls within the terms of Policy DT7. It records that, in accordance with Policy GS11, the existing uses on the land will normally remain during the plan period and development will be restricted to that necessary for the operation of these uses. The land identified is defined as urban land to remain undeveloped (ULTRU). Policy GS11 includes the same provisions, but it adds that planning permission for the permanent development of such land will only be granted following a review of the UDP which proposes *that* specific development on the land in question.

13. The playing field referred to in paragraph 6 above is identified on the Proposals Map as urban greenspace. Policy DT10 records that such areas will normally remain open and undeveloped. Between the playing field and Spark Lane, the Proposals Map shows part of the appeal site is designated as a housing policy area under Policy DT2. There is a similar area within the appeal site fronting onto Carr Green Lane. The policy records that the areas will remain predominantly in residential use. However, both the identified areas are currently unused, and they were evidently previously part of the colliery. The parties agreed at the inquiry that the identification of the land on the Proposals Map appears to be erroneous, but it was further considered this has no effect on the parties' cases.

14. Relevant national policy is cited in the Secretary of State's statement of matters letter referred to in paragraph 3 above. This principally includes PPS3 together with the Practice Guidance on Strategic Housing Land Availability Assessments (SHLAA). It was agreed by the parties at the inquiry that the written Ministerial Statement of 23 March 2011 (Planning for Growth) should be regarded as a material planning consideration in the determination of the appeal. The draft National Planning Policy Framework (NPPF) of July 2011 is also a material consideration, but as a consultation document it is subject to potential amendment and this limits the weight it can attract.

The Proposals

15. The application which has given rise to the appeal was made in outline, but it includes details of the proposed means of access to the site. The scheme also involves the substantial re-grading of the site. At the beginning of the inquiry I therefore clarified the plans which constitute the basis of the application. These are:

- Drawing No: 09/032-02

  1:2500 scale Location Plan with site edged red

- Drawing No: 54633-P5 – Sheet 2 (in Appendix B of the Transport Assessment, by Faber Maunsell AECOM)

  Carr Green Lane site access

- Drawing No: 54633/P/3

  Spark Lane access

- Drawing No: SDA/09022/21 (cited in the Remedial Earthworks Operations: Summary of Proposals, by Scott Doherty Associates)

  Existing Topography

- Drawing No: SDA/09002/22

  Proposed Post-earthworks Ground Profile

- Drawing No: SDA/09022/23

  Cross sections showing cut and fill

- Drawing No: SDA/090022/24

  Cut and fill areas

16. With the exception of the means of access, the reserved matters – layout, scale, appearance, and landscaping – are left for subsequent approval. A masterplan has been prepared (Drawing No: 09/032-01) showing how a scheme might be laid out, including the relocation of the football pitch to the south-east corner of the site. I understand the plan was prepared for illustrative purposes. Nevertheless, the application was accompanied by a Design and Access Statement which I have taken into account in the preparation of this Report. The status of the masterplan is also enhanced by its inclusion and citation in the submitted obligation.

17. The masterplan refers to the provision of a new playing pitch in the southern part of the site, together with a separate access, car parking and changing facility, as well as areas of open space with additional landscaping. The principal landscaped area would extend across the centre of the site on an east/west axis with an enlarged central section. The southern part of the site is also proposed to become a dedicated amenity area designed to enhance and support its ecological value. Notwithstanding the reservation of the layout and landscaping of the site for future approval, I have therefore taken account of the masterplan in the drafting of conditions and the consideration of the obligation.

The Case for the Appellant

I have reported the case on the basis of the advocate's closing submissions with additional references to the evidence submitted before and during the inquiry as necessary. The material points are:

18. The appeal site is a suitable and sustainable location for the development of housing, and the redevelopment of the land also brings considerable planning benefits. Along with the remediation and regeneration of previously developed land, it will deliver affordable housing, public open space, and a qualitative improvement to the playing pitch provision. The Council considers the site should be the subject of another round of forward planning, but the proposal

complies with the definition of sustainable development in the Core Strategy and to allow the appeal would comply with the Ministerial Statement of 23 March 2011.

Development plan

19. The Regional Strategy (RS) and the Core Strategy (CS) are both elements of the development plan. They are up to date and carry full weight. In contrast, the Council relies on Policies GS11 and DT7 of the UDP. However, this does not preclude the beneficial use of the land, and the use of the word 'normally' in each policy indicates flexibility. The weight of the UDP is diminished both by its age, together with the purposes and context in which the policies were devised. The contemporary concerns about viability and educational infrastructure have been resolved, and the text of the policy indicates that a review would occur by 2001. The current position is that the Policy GS11 would be reviewed by the end of 2014. The cited policies therefore no longer provide a sensible framework for decision-making, and very little weight should be ascribed to them. Although the policies were saved in 2007, the then Secretary of State indicated that they should nevertheless be promptly reviewed. They are in any event outweighed by more recent policy.

Housing land requirement

20. Securing an adequate and available supply of housing land against the 5 year requirement is a key element of national policy (PPS3). The absence of a supply should weigh heavily in favour of the scheme. Extensive concerns that a supply was unavailable were raised in an appeal decision in March 2010 and in subsequent representations at the Core Strategy examination.

21. The parties agree that the relevant period is December 2010 to December 2015, but while the Appellant argues the quantity should be calculated by the residual method, the Council favours a requirement derived from the housing trajectory. The Appellant's case is supported by a number of appeal decisions, but the Council has identified no support to justify its approach. The Council's use of the trajectory to derive a 5 year supply figure is supported by neither CS Policy CSP 9, nor by any of the explanatory text. The Council's method does not account for any shortfalls (or surplus) which may have occurred, but the greater the shortfall (or surplus) the more inaccurate the trajectory becomes. The method cannot provide for a rational examination of satisfactory progress towards the accomplishment of the overall requirement. The suggestion that the trajectory can be altered from time to time as housing monitoring reports are prepared renders the method outside the provisions of the CS. Such a practice would be incapable of scrutiny or independent examination.

22. Based on the residual method the requirement is for at least 6,688 dwellings (gross). That figure would be higher if it was considered all the shortfall should be made up within 5 years, or if the additional 20% suggested in the NPPF is added.

Housing land supply

23. The calculation of the supply of housing land should be based on the advice included in paragraph 54 of PPS3 and the DCLG's Practice Guidance for the preparation of SHLAAs. Amongst other matters, the Practice Guidance records the need for authorities to contact land owners and developers in relation to the

sites they are promoting in plans. However, the SHLAA has not been prepared in accordance with this advice, and it is therefore a seriously flawed document. The Council has therefore been unable to convincingly demonstrate that a 5 year supply of housing land is available.

24. The Council's SHLAA assessment includes the UDP allocations, but although many sites have been designated for many years, they have been neither brought forward for development nor the subject of approaches to land owners. The failure to observe the relevant guidance has led to the inability of the Council to provide any explanation as to why sites which have not come forward for 10-15 years might be developed in the next 5. Indeed, although the greater likelihood of sites being developed is recognised in the latest SHLAA Update, the re-designation of sites was the result of a simple re-categorisation of constraints. The originally identified constraints had neither been removed nor ameliorated. In essence, the availability and achievability of the planned housing sites has not been considered. It is on this basis that the Appellant has concluded the identified sites should be removed from the supply figures.

25. The SHLAA Practice Guidance suggests that the deliverability of sites with planning permission should be assessed following contact with land owners and developers. But the Council has no information from developers, and it has applied a formula to predict the scale of development based on the size of the site and its stage in the planning process. The formula is not derived from any guidance, nor is it borne out by the direct contacts with developers made by the Appellant. For example, although many of the UDP allocations have remained undeveloped for over 10 years, the formula assumes that *all* such sites will result in a proportion of the theoretical maximum number of dwellings. There is no evidence to suggest the formula indicates how housing land is delivered in reality.

26. In the Appellant's view small sites are an unreliable source of supply. There is no empirical basis for the inclusion of all the small sites, or they should at least be the subject of significant discounting. The Practice Guidance records that the existence of planning permission is not a guarantee of availability.

27. In its calculations of housing supply the Council also relies on the redevelopment of redundant school sites. Although the Council had previously not included land derived from this source, they were subsequently included on the grounds that they were 'equivalent' to allocated sites. There is no development programme which the Council is able to cite which illustrates when the delivery of houses on these sites might be expected. Although the site at Royston has been brought to the market, it has not been sold, and, on the latest information, the potential for housing is less than contemplated in the previous 5 year supply figures[4]. The Council suggests the school sites could deliver 533 dwellings, but this is inconceivable taking account of the need for consultation, the preparation of design and infrastructure requirements, the marketing of the sites and obtaining planning permission.

[4] The 2009 SHLAA Update records the site could yield 237 dwellings (at 35 dph), but the actual bid (see Document 24) scheme comprises 156 dwellings. On the basis of the Council's formula, the site would generate 78 dwellings in 5 years.

28. The Council cannot rely on the CS Inspector's conclusions to support its case. He was proceeding on data which has shown to be flawed and inaccurate – especially in relation to the number of dwellings delivered from sites with the benefit of planning permission. Nor did he have the time to investigate sites and the SHLAA. The information with which he was supplied was defective. In any event, he was taking a broad overview of the soundness of the CS over the whole plan period and not undertaking a detailed examination of housing land supply evidence in a development control context. On the basis of the council's own methodology, there is only a narrow margin between requirement and supply. The Council's case would have to prevail of each of the points at issue for the 5 year supply to be considered adequate. In addition, and in the unlikely event of it being concluded that a 5 year supply exists, both the RS and the CS make it clear that the housing land requirements are not ceilings. No harm would be caused by the delivery of additional land.

Prematurity and alternative uses

29. Paragraph 72 of PPS3 records that housing proposals should not be refused solely on prematurity grounds. Paragraph 17 of *The Planning System: General Principles* raises the possibility of refusal on prematurity grounds, but in this case there is no phasing policy. The policies of the UDP refer to the review of the plan, while CS Policy CSP 13 merely empowers the Council to adopt a phasing policy. As far as emerging policy is concerned, the proposed Development Sites and Places DPD is not yet a consultation draft. The Ministerial Statement of 23 March 2011 encourages the grant of planning permission where plans are absent, and prematurity is not therefore a suitable basis for objection to an otherwise suitable development.

30. It is likely, in any event, that the Development Sites and Places DPD will have to be secured from ULTRU sites. The appeal site is in the most appropriate spatial location – Urban Barnsley – and it is also previously developed land. Indeed, it is the *only* previously developed land currently comprising ULTRU and other safeguarded sites.

31. The Council has also raised the possibility that the site could have alternative uses. In the light of its remediation costs, its use as open space would not be viable. In the Council's own estimation its possible use as employment land is also considered to be unviable, and it cannot be sensible to postpone a decision to consider whether such a use might be appropriate.

The Case for the Local Planning Authority

I have reported the case on the basis of the advocate's closing submissions with additional references to the evidence submitted before and during the inquiry as necessary. The material points are:

32. Many of the issues raised in the Secretary of State's letter are not in dispute. The Council's case is therefore founded on three main considerations: compliance with the development plan, especially UDP Policies GS11 and DT7; prematurity; and the adequacy of housing land supply in Barnsley.

Development plan

33. The RS sets out the strategic patterns of development and the regional housing requirement, whilst the CS records the local housing requirement and its

distribution. Most development is to take place in Urban Barnsley – including Darton. But the only site specific policies are those included in the UDP.

34. The bulk of the site is identified as ULTRU and Policy GS11 provides that: existing uses will normally remain during the plan period; development will be restricted to that necessary for the operation of the existing uses; and, planning permission for the permanent development of the land will only be granted following a review of the UDP which proposes *that* development on the land in question. Policy DT7 includes similar provisions.

35. The Appellant refers to the use of the word 'normally' in the first part of Policy GS11, but it does not apply to the second part. The proposed development is not necessary for the operation of the existing uses, and there has been no review of the UDP or LDF policy which proposes development of the land in question. The appeal proposal conflicts with Policies GS11 and DT7. The purpose of Policy GS11 is to protect the land as a resource for future use. It is to be retained for the future and only allocated following technical assessment, consultation and review in the plan making process.

36. The Appellant seeks to overcome the conflict with policy by reference to UDP paragraph DT7/2. But this is a justification for the protection of the land; it does not allocate it subject to constraints being overcome. Although it may now be agreed the development of the land for housing would be viable, and that the educational constraints can be overcome, this does not justify the redevelopment proposed. The relevant site specific policies do not indicate that the appeal should succeed. Nor do the other policies of the plan point in another direction. The appeal proposal conflicts with the development plan when considered as a whole.

Prematurity

37. The third limb of Policy GS11 provides that planning permission will only be granted following a review of the UDP. No such review has taken place. The potential of the site to contribute to housing and employment needs is due to be considered in the forthcoming Development Sites and Places DPD. The CS makes provision for housing and employment land, and contemplates the phased release of the former. To make the decision in advance of the relevant DPD would prejudge the outcome of the process.

38. A decision to grant planning permission would therefore be premature within the terms of paragraphs 17 and 18 of *The Planning System: General Principles.* The land is capable of being used for a variety of uses and mixes, or of being left undeveloped – the decision should be made through the plan making process.

Housing land supply

39. In this case the Council acknowledges that, if demonstrated, a shortage of housing land may be capable of outweighing the conflict with the development plan. This is recognised in the first refusal reason.

40. The relevant 5 year period is agreed between the parties, but the requirement is not agreed. The Appellant considers the figure should be derived from the annualised proportion of the total included in CS Policy CSP 9. The Council maintains the figure should be derived from Appendix 2 of the CS. There is also

an issue of how to make provision for the shortfall which has arisen to date. The parties agree that completions to date total 2,023 dwellings.

41. Paragraph 9.49 of the CS makes it clear that the housing requirement should be derived from the trajectory, and paragraph 57 of PPS3 advises that there should be at least sufficient sites to deliver the housing requirement of the trajectory over the forthcoming 5 year period. The trajectory should therefore be used to set the requirement rather than the annualised figure. This was the approach and methodology adopted by the Council at the CS Examination. The use of another method for the calculation of the requirement would undermine the plan making process.

42. On this basis the 5 year requirement is for 5,251 units. The CS plan period is 2008-2026 and 2¾ years have elapsed. The trajectory requirement is estimated to be 2,530, and the shortfall in therefore about 500 units. If the shortfall is to be made up in the first 5 years the total requirement would be 5,758. For a 10 year period the requirement would be about 5,500, and for the remaining 15¼ years – 5,417 units.

43. For the most part, the dispute between the parties in respect of the housing land supply, relates to deliverability. The categories of sites considered by the Council are derived from Figure 4 in the SHLAA Practice Guidance – unimplemented or outstanding planning permissions for housing; planning permissions for houses under construction; existing allocations; and surplus public sector land. The deliverability dispute has 4 components – the assessment of likely completion rates on identified sites; the inclusion of small sites; the inclusion of UDP allocations; and the inclusion of surplus education sites.

44. On the basis of past experience the Council has adopted a formula based approach. It provides an overall prediction, and it does not depend on information from individual landowners or developers. Although the Appellant has obtained site-specific information, this does not purport to be comprehensive, and it does not demonstrate that the overall prediction is deficient. Adding the reduction in supply from particular sites to the Council's formula would lead to a double discount. The Appellant's approach would only be valid if it was comprehensively applied.

45. There is no basis in the SHLAA Practice Guidance or elsewhere for the omission of all small (fewer than 9 units) sites. The CS Examination Inspector rejected such a discounting, and, if adopted, it would severely underestimate the total potential supply.

46. The Appellant's discounting of the old UDP allocations is based on an outdated version of the SHLAA prior to its updating in February 2011[5]. Although it is correct that few developers responded to the Council's consultation on the SHLAA, each site has been assessed and reasons have been included for the regrading of sites. The CS Examination Inspector concluded the updated SHLAA could bear the weight which it needed to carry. In the circumstances there is no justification for discounting all the old UDP sites as advocated by the Appellant.

47. The SHLAA Update considers that 3 education sites are capable of delivering 808 dwellings in the 2011-16 five year period – 169 units on the Kingston School site;

[5] Document 15

249 units at Priory School, Monk Bretton; and 390 units at Wombwell High. The progress with the site at Royston School is also a cause for optimism. The Appellant's fear that it would take over 2 years between the closures of the schools in the summer of 2012 until outline planning permission is obtained is unduly pessimistic. It is unrealistic to presume that no dwellings will be completed on the school sites before December 2015.

48. If it is held that there is an inadequate supply of housing land, it would not follow that the appeal should succeed. Indeed, a shortfall would be insufficient to override the indication of the development plan that the alternative development of the land should be considered through the development plan process with full and proper consultation. As far as the Ministerial Statement on planning for growth and the draft NPPF are concerned, the additional 20% of housing land proposed in the latter seeks to adjust the trajectory rather than increase the overall figure. In any event, Barnsley has already made an additional allowance in the CS over and above the RS figure. The draft NPPF cannot set aside a trajectory considered and adopted in such a recent CS.

The Planning Obligation

49. The Council does not object to the contents of the section 106 undertaking. Nor does the Appellant contend that any of its provisions fail to satisfy the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.

The Cases of Interested Persons

50. **Cllr Roy Miller** has been the ward member for 26 years and experienced the closure of pits in the area. He is not against the development of new houses, but he has some particular concerns in respect of the appeal site. The development could exacerbate the danger of flooding in the locality. All the local schools are at capacity, and an influx of new pupils would carry significant revenue costs for the local authority. The local provision of medical and dental services is at capacity. The scheme would generate up to 800 new cars with a consequential increase in traffic movement. There would be an adverse effect on traffic congestion in the centre of the village. Swallow Hill Lane in particular is very narrow, and the proposed link between between Spark Lane and Carr Green Lane would become a rat run. The site of the proposed playing field is not on a bus route, and the land as a whole acts as a green lung for the village.

51. **Cllr Harry Spence** is also a local ward member. He is concerned about the impact of the scheme on traffic congestion at Towngate in the centre of the village. Similarly, Swallow Hill Road is no more than a narrow lane; it would be overloaded by additional traffic. As far as the bus service is concerned however, this is adequate and no improvement is necessary. There would be a threat of more flooding however in Wentworth Road and Barugh Lane in the event of a new connection. The three primary schools in the area are over-subscribed and 400 houses would generate 80-100 new pupils. In any event, there has been no consultation with the school, and there would be no room for an extension. The scheme envisages retirement homes for former miners but there are not now many former miners left – he doubts whether this demand exists. He is also interested to know who would manage the proposed affordable homes and what would the rental levels be. In his view neither the NCB nor UK Coal have given anything back to the village in recognition of both the coal extracted or the

miners who have died. In addition, there has been no local consultation by UK Coal on the subject of the matters included in the section 106 obligation. In relation to the proposed relocation of the football pitch, it is estimated that this could take up to 3 years if the land is contaminated. Any interruption in the continuity of a pitch could be a threat to the club.

52. **Mr Barry Walker** is the former Post Master in Mapplewell, a former lecturer in engineering, and a resident of Carr Green Lane. He is concerned about tree felling on the appeal site (especially silver birch trees) and that the facilities of the village would be inadequate to support so many new houses. There is only one dentist, one chemist, and two medical practices. The former bank has closed, and the post office is too small. The additional traffic movements would be too much for the village to readily accommodate, and parking for the proposed relocated football pitch would be inadequate. Drivers would be forced to use Carr Green Lane. In addition, the proposed site of the pitch is water-logged.

53. **Mr Ken Hunter** is the Secretary of the North Gawber Colliery Football Club. The club is the sole user of the existing football pitch, but it currently comprises a total of 14 teams. There has been no consultation with the club by UK Coal or CISWO. There is a shortage of open space in the locality, and, although the scheme includes a proposal to move the pitch, the new location would be on the outskirts of the settlement rather than close to its centre. The club is upset that its former discussions with CISWO about the future were terminated.

Written Representations

54. There were a total of 40 written representations from interested persons at the appeal stage. They were all objections to the proposed development. Most of the objections referred to the likelihood of additional traffic causing congestion both in the village and elsewhere. Attention was also drawn to the likely adverse effect of the proposed development on the potential for surface water flooding in the area. The social infrastructure of the village is considered inadequate or over-subscribed – especially doctors, dentists and schools. Others referred to the value of the site for wildlife and the benefit of the land remaining as a green, undeveloped space.

55. At the application stage there were 24 individual letters of objection to the scheme raising many of the same issues. There were also two separate petitions signed by 420 and 380 people respectively. The petitioners consider both that the land should remain undeveloped as a green space for future generations, and the current infrastructure is over-subscribed. Concerns were expressed that the foul sewerage system would be placed under undue pressure. The proposed relocation of the football pitch further from the village centre was considered disadvantageous. The proposed site would be well away from local services including water, electricity and changing facilities. The former local Member of Parliament drew attention to the need for additional pitches and facilities.

Conditions and Obligation

The numbered draft conditions cited in paragraphs 57 to 66 of the Report are those included in Document 22. The obligation is Document 39.

56. The draft conditions[6] and the reasons for their imposition and the Unilateral Undertaking[7] were discussed at the inquiry. I have considered the draft conditions in the light of the discussion at the inquiry and the contents of DoE Circular 11/95: *The Use of Conditions in Planning Permissions.* The draft conditions were devised by the Council, and unless otherwise indicated they raised no objection from the Appellant. I have considered the obligation in the light of the contents of the Community Infrastructure Levy Regulations 2010.

Conditions

57. Draft conditions 1 and 2 are standard outline conditions. I agree with the parties that on such a large site the phasing of the proposal (draft condition 3) would be both necessary and reasonable and in the interests of residential amenity and highway safety. Draft condition 4 requires the submission and approval of finished levels, and I agree with the parties that this would be necessary in order properly to assess the impact of components of the proposed development on each other. Draft condition 5 seeks a method statement for the proposed re-grading and reclamation of the land. In view of its size and proximity to existing residential and other development a statement would be necessary in the interests of residential amenity.

58. Draft conditions 6 and 7 would be necessary to secure adequate levels of highway safety. The purpose of draft condition 8 is to secure the remediation of the highway attributable to the prospective development. The Council raises no objection to the revision proposed by the Appellant (see attachment to Document 25), and I agree that such a condition would be necessary and in the interests of highway safety.

59. Draft conditions 9, 10 and 13 are designed to protect the local water and aquatic environment. I consider they would be necessary and reasonable. The purpose of draft conditions 11 and 12 would be to secure access to various sewers on the land. I consider they would be necessary and reasonable. With the exception of the reference to foul water drainage (which would be covered by draft condition 9), I consider draft condition 14 would be necessary and in the interests of the avoidance of flooding.

60. The purpose of draft condition 15 is to secure access to watercourses and is necessary in the interests of the water environment. Draft condition 16 would require prior notification of the remediation scheme. In view of the previous use of the site, it is a necessary and reasonable precaution to minimise the risks of contamination. Draft condition 17 would provide similar and specific protection for the site of the relocated football pitch. The purpose of draft condition 18 would be to discourage the use of penetrative piling and so reduce the risk of groundwater contamination. Draft condition 19 would also diminish the possibility of surface water contamination.

61. The parties disagreed about the time limits on remediation or construction work included in draft condition 20. The Council favours working hours between 08:00 and 18:00 (Mondays to Fridays), and 09:00 and 14:00 (Saturdays), with no work on Sundays or bank holidays. The Appellant suggests 07:00 to 19:00 hrs (Mondays to Fridays), and 07:00 to 13:00 hrs (Saturdays), with a provision for

[6] Documents 22, 25 and 26
[7] Document 36

plant maintenance during Saturday afternoon. Work on Sundays would be confined to essential maintenance or emergency work.

62. The purpose of the condition is to protect the amenities of local residents and accord with UDP Policy ES1. However, it would appear the cited policy has not been saved. PPG24: *Planning and Noise* provides some advice in relation to the interaction between noisy development and noise-sensitive neighbours. Most usefully perhaps it effectively defines night-time as 23:00 to 07:00 hrs. Although concerned with another area of planning management, further advice is included in MPG11: *The control of noise at surface mineral workings.* It defines night-time as 19:00 to 07:00 hrs, and day-time as 07:00 to 19:00 hrs. In some areas however 08:00 may be more appropriate than 07:00. The working week should generally be regarded as Monday to Friday and Saturday morning, while Saturday afternoons, Sundays and Public/Bank Holidays would normally be regarded as periods of rest. It also recognises however that in some local circumstances it may be appropriate for an evening period (typically 19:00 to 22:00 hrs) and/or a dawn period (typically 06:00 to 07:00 or 08:00) to be defined. I have taken account of this advice and note in the context of the appeal site that residential property is close by, including care homes. In the circumstances I consider appropriate working times would be 08:00 to 19:00 hrs (Mondays to Fridays), and 08:00 to 13:00 hrs (Saturdays). I see no reason why plant maintenance, including essential work, should not be carried out during normal working hours, but I recognise that emergency work may, by definition, be necessary at any time.

63. Draft conditions 21 and 22 are designed to protect and secure residential amenity and I consider they would be both necessary and reasonable.

64. Draft conditions 23 and 24 are concerned with the provision and layout of the replacement playing pitch. The parties agree that the purpose of the conditions is to secure the construction and use of the replacement playing pitch, changing facilities and car park. No objection is raised by the Appellant to the principle, but there is concern[8] that the necessary works should avoid any excessive interruption to the use during the playing season. I agree with the parties and have suggested an appropriate condition based on their submissions.

65. The illustrative scheme proposes some extensive landscaped areas and I agree with the parties that these would require long term management. Amongst other matters, draft condition 25 seeks to secure a plan, and I consider this to be both necessary and reasonable. Draft condition 26 would seek to secure at least 10% of the energy use of the proposed development from decentralised and renewable or low-carbon energy sources. This would be both necessary and reasonable in the interests of sustainable development.

66. There is a public right of way which passes across the southern part of the appeal site. The purpose of draft condition 27 is to ensure that the route would be safeguarded during the period of the proposed development.

Obligation

67. As recorded above, the appeal is accompanied by a Unilateral Undertaking made under section 106 of the above Act. The Council raises no objection to the

[8] Document 27

contents of the obligation, but I have nevertheless considered its provisions against the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the advice included in ODPM Circular 05/2005 *Planning Obligations.*

68. Schedule 4 of the obligation, under the heading of the highways contribution, comprises 2 parts. The bus service contribution of £121,500 would be payable after the occupation of the fiftieth permitted dwelling and used towards the upgrade of bus services in the locality. The travel master contribution of £77,220 would be payable before the occupation of any permitted dwelling and used towards the cost of South Yorkshire's multi-operator subsidised travel ticket. The appeal scheme envisages the construction of a substantial number of dwellings and many of those making written representations expressed concern that there would be an inevitable increase in traffic pressure on the local network. I agree with the parties that the proposed highways contribution would increase the attraction of public transport provision in the area, and thus contribute to its sustainability. I conclude this component of the obligation would be necessary, directly related to the development, and fairly and reasonably related to its scale and kind.

69. The draft conditions discussed above require the construction of the relocated football pitch and its ancillary facilities. One of the purposes of Schedule 3 of the obligation, under the heading of public open space, is the transfer of the pitch and its ancillary facilities to the Council and the payment of a commuted sum of £87,000. Alternatively, the management company also required under the Schedule to be responsible for the future maintenance of the open spaces on the site may become responsible for the pitch and its ancillary facilities. The pitch is protected by UDP Policy DT10, and representations made at the inquiry confirmed that it is extensively used. The proposed development would also result in the other open spaces shown in the masterplan being both more accessible and more intensively used. I agree with the parties that both components of the public open space would require management and maintenance, and I conclude this aspect of the obligation would be necessary, directly related to the development, and fairly and reasonably related to its scale and kind.

70. Schedule 2 of the obligation, under the heading of primary education provision, makes provision, subject to an appropriate assessment prior to the occupation of the fiftieth dwelling, for a primary school contribution of £150,000 for the construction of a new classroom at Mapplewell Primary School. Evidence submitted at the inquiry indicates that the school is currently close to its capacity of 270 on the roll. The Council estimates the complete development would yield approximately 77 children of primary school age, and the school would therefore be over-subscribed. I agree with the parties that an over-subscription seems likely, and I conclude this aspect of the obligation would be necessary, directly related to the development, and fairly and reasonably related to its scale and kind.

71. Schedule 1 of the obligation, under the heading of affordable housing, provides for the designation of 25% of the permitted dwellings to be classified as affordable housing units – comprising CISWO almshouses, social rented dwellings and shared ownership dwellings. CS Policy CSP 15 requires that on sites of 15 dwellings or more, 25% should be affordable, and the developer is required to demonstrate that their status would be subsequently maintained. I agree with

the parties that this provision of the scheme conforms to the requirements of the development plan, and I conclude this aspect of the obligation would be necessary, directly related to the development, and fairly and reasonably related to its scale and kind.

72. I therefore conclude in relation to the obligation that it complies with the tests included in Regulation 122. I further conclude the provisions of the obligation comply with the additional requirements of ODPM Circular 05/2005 – they are relevant to planning and reasonable in all other respects. I consider the matters which have necessitated the obligation cannot therefore weigh against the proposal as a whole.

Conclusions

The following conclusions are based on my report of the evidence submitted to and heard at the inquiry, and my inspections of the site and its surroundings. The numbers in square brackets refer to preceding paragraphs of the report.

73. The Secretary of State's letter records the matters about which he particularly wishes to be informed. I refer to these individually at the end of these conclusions. As recorded above however [32], many of the issues in the letter are not in dispute between the principal parties. Nevertheless, taking account of all matters raised, including those by interested persons, I believe the main considerations on which this case turns are as follows:

    (a) The extent to which, having regard to its location, the proposed development would be consistent with the policies and advice included in PPS1: *Delivering Sustainable Development,* PPS3: *Housing,* and PPG13: *Transport;*

    (b) Having regard to the contents of the development plan and paragraphs 70 and 71 of PPS3, the extent to which the proposal is supported by the deliverability of a 5 year supply of housing land; and

    (c) Having regard to the contents of paragraphs 17-19 of *The Planning System: General Principles* and emerging DPDs, whether the development of the site would be premature.

Location

74. Paragraphs (c)(iv), and (d) of the Secretary of State's letter, recorded in paragraph 3 above, are concerned with the location of the appeal site. The appeal site is that of a former colliery which ceased working in 1988. The site is close to the centre of Mapplewell, and the associated settlement of Staincross, which lie principally to its north and north-west. There are a number of small industrial units immediately to the north of the site together with the commercial centre of the village. Mapplewell Primary School lies on the opposite side of Blacker Road, which passes through the village centre. In relation to the village itself the site therefore occupies a central location which offers opportunities for pedestrian shopping and access to public transport. The site is sufficiently close to the primary school for access to be obtained by walking or cycling, with some job opportunities. Many more opportunities would evidently exist within the centre of Barnsley which is relatively close. The town centre also provides opportunities for leisure activities, and the scheme involves the relocation and enhancement of the existing football pitch on the land. In locational terms the proposal therefore has much in common with the other largely residential parts of the settlement, but it is closer to its commercial core than much of the village which lies to the west and north-west. In terms of its accessibility credentials I consider the scheme complies with the content and purpose of paragraph 19 of PPG13. As far as car parking standards are concerned (paragraphs 52-56 of PPG13), these are matters which would be considered within the context of the layout of the scheme at the detailed stage. [3, 5, 6, 7, 16]

75. The application was made in outline form, with most matters of detail reserved for subsequent approval. Paragraph (b) of the Secretary of State's letter refers

to the design principles adopted by the scheme, and much of the detail which would illustrate the principles therefore remains unresolved. However, a masterplan has been prepared. Although this is for illustrative purposes, its inclusion in the submitted Unilateral Undertaking endows it with greater weight. It shows that the land could be successfully developed. The plan indicates that, although most of the appeal site would be used for the residential development cited in the application, the southern edge of the land would remain undeveloped, together with boundary areas on both the south-east and north-west sides. The proposed replacement sports pitch would occupy the southern corner of the site, with less formalised public open spaces focused on a central area. The CISWO retirement homes cited in the application would be sited close to the existing care homes in the northern corner of the land. [3, 15, 16, 17]

76. There are no buildings of the former colliery remaining on the appeal site, but I saw on my visit that the land has not been completely reclaimed. Although the works which were carried out after the closure of the colliery were evidently substantial, the impact of the site is one of demolition rubble and reworked spoil. Self-planted trees have colonised parts of the land – particularly along its southern boundary. I understand the area is, to an extent, used by local residents for informal recreation, but I agree with the Appellant that it is unrealistic to consider the reclamation of the whole site as greenspace would be a viable possibility. [5, 31, 50, 55]

77. The land slopes down from north to south and overlooks Green Belt land in the valley of the River Dearne to the south. It therefore benefits from an attractive prospect, and I have no reason to suppose the development of the land as proposed would not result in an improvement to its existing appearance in the landscape. Although the layout of the site is reserved for subsequent approval, the illustrative plan shows how a scheme could take advantage of the opportunity whilst simultaneously providing the new dwellings with attractive outlooks – especially to the south. The CISWO retirement homes would be closest to the commercial centre of the village on relatively level ground. Paragraphs (a)(i), (a)(ii) and (a)(iii) of the Secretary of State's letter refer respectively to the quality, mix and quantity of housing proposed. This could only be realistically assessed in the context of a full or detailed proposal, but I have no reason to suppose the advice on these matters included in PPS3 could not be successfully achieved. [3, 5]

78. In relation to the provision of affordable housing – cited in paragraph (a)(ii) – the submitted obligation records that 25% of the units would be so classified and protected. Similarly, the development would involve the use of previously developed land, as cited in paragraph (a)(v) of the Secretary of State's letter. In these respects the proposal would therefore accord with the purposes of paragraphs 27-29 and paragraph 36 of PPS3, as well as with paragraph 27(viii) of PPS1 in relation to the latter matter. [72]

79. The location of the appeal site in relation to the existing form and structure of Mapplewell and Staincross is evident from the Darton Community Area Proposals Map[9]. This indicates the central location previously occupied by the colliery, with built-up parts of the settlement now evident to the east, north and west of the appeal site. Only the southern boundary of the site remains open to the

[9] Document 21

surrounding countryside. In relation to urban form therefore the site conforms, in general terms, with the diagram included in Figure 3.2 in the recently adopted Planning Advice Note 30 – Sustainable Location of Housing Sites[10]. Although it is on the edge of the settlement, the land does not project into the countryside. Indeed, it abuts built-up components of the settlement on three of its four sides. In this respect (Step 2a – Location within Settlement) the site is considered to be in a sustainable location, although I acknowledge that it fails to comply with the criteria included in the following test (Step 2b – Current UDP Notation).

80. Although it does not form part of the Council's case, the objections made by interested persons and many of those making written representations refer to the effect of the proposed development on the local highway network. The highway impact of the proposal was the subject of detailed consideration by consultant highway engineers at the application stage. A Transport Assessment was conducted and concluded that there was no overriding reason preventing the local planning authority from recognising that the proposals would not have a material impact on the surrounding highway network. The report was considered by the Council's own transportation officers and, subject to a number of conditions, no objection was raised to the proposal. [50, 51, 52, 54, 55]

81. Similarly, objections based on the possibility of adverse surface water drainage effects were made. This matter was also considered by consultant engineers, and the impact of the proposals on the downstream infrastructure was recognised. The development would increase the impermeable area footprint of the site and hence the potential run-off. However, the downstream threat could be attenuated by the use of a variety of sustainable urban drainage systems. This would include the minor re-routing of the existing ditch, and the institution of online attenuation measures. It is considered this would have a positive impact on the local flood regime. [50, 54, 55]

82. The impact of the proposed development was considered by both the Environment Agency and Yorkshire Water, and subject to the imposition of appropriately worded conditions, no insuperable objections were raised. On this basis I consider that both the surface water and foul water drainage from the site can be adequately accommodated.

83. Paragraph 69 of PPS3 lists a number of considerations which should be applied to the determination of planning applications for housing. These include the assessment of the suitability of the site, including its environmental sustainability, and using land efficiently and effectively. **On the basis of these considerations I consider the appeal site to be a suitable location for housing development.**

Policy

84. I have referred in paragraph 79 above to the failure of the scheme to receive any benefit from Step 2b of Planning Advice Note 30. Although the Council raises no sustainability objection to the proposal, its designation as ULTRU in the UDP is central to its case. Paragraph 3.57 of the UDP records that the land designated under Policy GS11 has some potential for development in the longer term. The land would be the subject of technical assessment and public consultation when the plan is reviewed if it is considered at the time that that additional land is

[10] Document 19

needed. I acknowledge that the policy is site-specific. With the exception of the final limb of Policy GS11, UDP Policy DT7 repeats its contents. However, paragraph DT7/2 is also specific. It acknowledges that the land is well related to the settlement and that it has good accessibility. At the time of its adoption the development costs were considered to be prohibitive given the quantity and availability of readily deliverable local alternatives. In addition, the then pressure on school places rendered the site inappropriate for housing at that time. [12, 32, 33, 34, 35]

85. At the time, the appeal site was therefore effectively being kept in reserve for future use and development as and when this would be considered to be necessary. The Council raises no objection to the scheme on viability grounds, and the section 106 obligation is sufficient to overcome the concern expressed in paragraph DT7/2 about school capacity. I acknowledge the Appellant's argument that the reference in both policies to 'normally' indicates some flexibility, but it is clear from the last sentence of Policy GS11 that the permanent development of the land would *only* be permissible following a review of the plan. It is equally clear from the final sentence of paragraph 3.57 and the penultimate sentence of paragraph DT7/2 that the availability of land elsewhere made a significant contribution to the temporary embargo. It follows from these considerations that the deliverability of a 5 years supply of housing land formed a dominant theme of the inquiry. [19, 35, 36]

86. I return to the parties' requirement and supply assessments later, but I agree with the Appellant that the Council has placed a substantial reliance on UDP Policies GS11 and DT7. The plan period of the UDP was 1986 to 2001, and writing on behalf of the then Secretary of State from the Government Office for Yorkshire and The Humber, the author indicated in 2007 in relation to the extension of saved policies that this should not be regarded as an opportunity to delay DPD preparation[11]. Policies were extended in the expectation that they would be replaced promptly. Finally the letter records that 'where policies were adopted some time ago, it is likely that material considerations, in particular the emergence of new national and regional policy and also new evidence, will be afforded considerable weight in decisions'. [12, 19]

87. Paragraph 9 of PPS1 places a similar emphasis on the need to ensure that plans are kept up to date, and, although the CS has now been adopted, I understand the complementary Development Sites and Places DPD is not yet in draft consultation form. The site-specific allocation of the appeal site under Policies GS11 and DT7 is therefore unlikely to be formally reviewed until the end of 2014 – some 13 years after the end of the UDP plan period. Although the policies carry the weight ascribed to them by section 38 of the 2004 Act, the passage of time and the emergence of other policy must affect their utility in comparison with other, more recent, development plan policies. [19, 29]

88. In comparison with the UDP, the RS and the CS are relatively recent component parts of the development plan. RS Policy SY1 renders Barnsley one of the 4 urban settlements in the South Yorkshire sub-region where most development should occur, and paragraph B1 of Policy H2 prioritises housing development on brownfield land. Paragraph B5 advises the adoption of a flexible approach to the delivery of housing by not treating housing figures as ceilings. In following the

[11] See Appendix 4 to Mrs Hodson's Proof – Document 10

lead provided by the RS, the CS Policy CSP 8 identifies Urban Barnsley as the location for significantly more growth than other locations in the plan area. Under Policy CSP 10 it should account for 46% of the new homes in the plan area between 2008 and 2026. The next highest settlement (Goldthorpe) will be expected to accommodate only 14%. Although I agree with the Council that these policies cannot be described as site-specific, they are nevertheless both important and recent components of the development plan. The parties agree that in order to discern its purpose the development plan has to be considered as a whole, but I consider the Council has placed excessive reliance on the UDP policies at the expense of the more recent RS and CS contributions to the planning policy context of the case. [9, 19, 36]

89. The balance to be struck between the site specific UDP policies on one hand, and the regional and strategic approaches of the RS and CS on the other, is set within the context of the national policy derived from PPS3. Paragraph 54 requires that sites should be available to deliver sufficient housing land over the first 5 years of the plan period. The expected rate of housing delivery should be illustrated through a housing trajectory for the plan period, and the Council has specifically cited paragraph 57 of PPS3 – to the effect that the supply should be managed to secure a continuous supply of deliverable sites over the following 5 years of the trajectory. [20, 41]

Housing requirement

90. The parties agreed at the inquiry that the relevant period for the calculation of both the housing requirement and supply is December 2010 to December 2015. However, they disagree about the appropriate methodology. Based largely on paragraph 57 of PPS3 and paragraph 9.49 of the CS, the Council argues that requirement should be calculated from the trajectory. The Appellant contends that the use of the trajectory for this purpose is flawed and that it has not found favour in other appeal decisions[12]. [21, 41,]

91. The Appellant observes that the use of the trajectory promoted by the Council would fail to take account of shortfalls or surpluses, and that its periodic alteration would take place outside the formal planning machinery. It would therefore be incapable of appropriate scrutiny and examination. The residual method on the other hand can take account of shortfalls and surpluses, and provided the methodology is included in the plan, it will have been subjected to the necessary scrutiny and examination. [21]

92. I acknowledge that paragraph 57 of PPS3 does appear to indicate that the housing trajectory can be used as a means of calculating the requirement, but I recognise the residual method has been used in other circumstances and locations. In the context of this case, CS Policy CSP 9 merely states that a 5 year supply of deliverable sites will be maintained. While paragraph 9.49 refers to the trajectory in Appendix 2 of the plan, the graph itself lacks detail, and it is not clear from the text how it is intended the trajectory would inform the 5 year requirement. Paragraph 9.49 refers to the down-turn in the economy, and I fear that excessive reliance on the trajectory for the calculation of the next 5 year requirement could carry the danger of a self-fulfilling further local down-turn. In contrast, the residual method would encourage the correction of an under

[12] See Appendix 13 to Mrs Hopson's Proof – Document 10

performance by increasing the requirement derived from the annualised target of 21,500 net additional homes for the whole period.

93. Much evidently hinges on the capacity of the local house building industry and the willingness of developers and land owners to release land where such development is permitted. The health of the housing market and the availability of finance make their own contributions to the rate of new housing development. Having adopted different methodologies, the parties arrive at different conclusions about the size of the 5 year requirement. The Council argues that a gross number of 5,251 dwellings is required. But, the under-performance (in terms of completions) since the start of the plan period compared with the trajectory amounts to some 500 units. If this is to be made up over the next 5 years, the requirement would become about 5,760 units. Based on the residual method the Appellant argues that the requirement should be for at least 6,688 units. [22, 42]

94. On the basis of its performance since 2002, including the effect of the current down-turn, the target included in CS Policy CSP 9 is ambitious – with a marked increase in performance in the second half of the period[13]. I fear its achievement will be difficult. Nevertheless, the target for the 18 year period is expressed in the form of a minimum, and I see little benefit in the adoption of a methodology which effectively constrains the 5 year requirement. In any event, RS Policy H2 remains part of the development plan, and, as recorded above, it states that housing figures should not be regarded as ceilings. In summary, I favour the Appellant's methodology for the calculation of the 5 year requirement. [9]

Housing land supply

95. At the inquiry the parties did not agree the extent of deliverable land which was available for new housing. The Council has placed much reliance in this respect on the contents of Figure 4 in stage 2 of the SHLAA Practice Guidance – sources of sites with the potential for housing. In assessing the likely completion rates on identified sites the Council has adopted a formula approach[14] to derive its totals. The formula recognises a direct relationship between the size of sites (in 5 categories between under 20 units and over 200 units) and the stages they have reached in the planning system (in 4 categories: allocated; outline permitted; full permission; and under construction). For example, for sites of over 200 dwellings it is assumed that the following proportions will ultimately be delivered: 40%; 50%; 66.6% and 100%. For sites of under 20 dwellings, 100% will be delivered in all categories. [43, 44]

96. I understand the formula is based on experience and practice in Barnsley, and I acknowledge it must provide an indication of likely out-turns. However, the Practice Guidance suggests a number of additional stages in order to arrive at an informed assessment of deliverability. To be considered available, stage 7b requires that the land is either controlled by a housing developer who has expressed an intention to develop, or by the land owner who has expressed an intention to sell. The existence of planning permission does not necessarily mean that the site is available. A significant degree of contact between the Council and the relevant land owner/developer is therefore necessary in order to make an

[13] As illustrated in Appendix 1 of Mr Hart's Supplementary Proof – Document 6
[14] See Table 2 of Appendix 8 of Mr Hart's Supplementary Proof – Document 6

informed assessment, but I note that on the basis of the latest 2009 SHLAA Update[15], the response rate from owners or their agents was poor. Although I can therefore understand the attraction of a formula, I share the Appellant's concern about the Assessment and its utility. [25]

97. There are 3 specific areas of disagreement between the parties which contribute to a substantial difference in their respective assessments of the extents of the deliverable land supply: small sites; UDP allocations; and school sites. [25, 26, 27, 45, 46, 47]

98. The Appellant argues that small sites (of under 9 dwellings) are an unreliable source of potentially deliverable dwellings. The Council considers there is sufficient land deliverable for a total of 5,972 dwellings over the coming 5 years. Of these, 989 units would be on small sites[16]. There is no doubt that such sites are by definition of little interest to large scale or volume house builders, and I can understand that permissions can be granted and can subsequently expire with some regularity. I agree with the Council however that the SHLAA Practice Guidance does not indicate that small sites should be excluded from the supply side assessment, even though making meaningful contacts with land owners/developers is likely to be more difficult. The Appellant suggests that if the small sites are not entirely excluded from the calculation, they should at least be significantly discounted. I consider that an element of discounting would be appropriate on the basis of an evidentially devised threshold. It follows that arbitrary discounting would be inappropriate, and in the circumstances, I do not consider the reduction as proposed by the Appellant to be justified. [26]

99. The Appellant has made an assessment of the contribution which might be expected from the sites allocated for housing development in the UDP[17]. I gather that in the 2009 SHLAA (which predates the 2009 SHLAA Update) it was considered that none of the sites would be deliverable within the early part of the plan period. Furthermore, having been allocated since at least the adoption of the UDP in 2000, they have been available for development for nearly 12 years. Partly on this basis, but also because of site specific characteristics, the Appellant considers that none of this land should be included in the supply side assessment. I agree with the Appellant that the failure of the sites to attract development does not inspire confidence that they should now be considered deliverable in the next 5 years (as assessed in the 2009 SHLAA Update). The Council's formula-based methodology presumes that at least some development will be generated, but in view of the passage of time, I believe the promotion of the land identified is questionable. Although the 2009 SHLAA Update was found to be suitable for its purpose by the CS Examination Inspector, I can understand that, with the limited time available, it could not be the subject of thorough enquiry. In relation to this part of the Appellant's case I consider there is justification for the discounting of the 10 sites concerned. [8, 24, 28, 46]

100. A number of schools in Barnsley are due to be replaced, and it is anticipated that 6 sites will be available for redevelopment. Of these, 3 appear in the 2009 SHLAA Update – Kingston School, Priory School (Monk Bretton), and Wombwell High. They could deliver a total of just over 800 dwellings between now and

[15] Document 15
[16] As illustrated in Appendix 30 of Mrs Hodson's Proof – Document 11
[17] See Appendix 10 to Mrs Hodson's Proof – Document 10

December 2015[18]. However, based partly on the experience at Royston High, the Appellant considers this unlikely. Although not included in the SHLAA Update, this appears to be the most advanced site. Initially considered suitable for 237 dwellings[19], I understand the Council has now accepted a proposal for a mixed use development with a total of 156 dwellings[20]. Although I recognise that planning the redevelopment of such sites is itself a time-consuming undertaking, I anticipate on this basis that the 3 school sites would be able to provide some housing land – though perhaps for significantly fewer dwellings than initially anticipated. I conclude that some discounting of the Council's supply side assessment from this source would be appropriate. The circumstances illustrate the utility of direct contact with owner/developers. [27, 47]

101. I have considered the appeal proposal in the context of the need for a 5 year supply of housing land required both by CS Policy CSP 9 and PPS3. As far as the requirement is concerned, I favour the methodology suggested by the Appellant. As for the supply side of the assessment, although I consider it is legitimate to include a figure derived from the small sites, significant numbers would be lost from the Council's calculations as a result of the conclusions I have reached in respect of the UDP allocated sites and the school sites. The contents of the Ministerial Statement and, to a lesser extent, the NPPF, add weight to my understanding of this consideration. **I conclude that a 5 year supply of deliverable sites has not been demonstrated, and that paragraph 71 of PPS3 therefore applies – to the effect that the proposal should be considered favourably having regard to the policies contained in the PPS including the considerations in paragraph 69. I have previously paid attention to the issues raised in paragraph 69 in paragraphs 74 to 83 of these conclusions.**

Prematurity

102. The second limb of the Council's objection to the proposal is that it is premature. Within the terms as they are expressed in paragraph 70 of PPS3, the grant of planning permission *would* undermine the achievement of its policy objectives. This stance is most specifically expressed in the latter part of UDP Policy GS11, whilst CS Policy CSP 13 records that the phased release of housing land will be addressed in the Development Sites and Places DPD. Notwithstanding the implication of its UDP designation (that in due course it would be suitable and appropriate for development), a number of those making representations considered the land should remain as green space. For its part, the Council cited the possibility of a mixed development including housing and employment uses. [11, 37, 38, 54, 55]

103. I recognise and acknowledge that a large area of partially reclaimed land close to the centre of the settlement cannot be regarded as other than a significant planning opportunity. There must potentially be many different ways in which the land might be redeveloped, and one of the purposes of the planning system is to ensure that such opportunities are the subject of circumspection and community involvement. However, with the exception of the sports pitch, the land has been effectively unused, or under-used, for a long time. Other than the

[18] On the application of the Council's formula the yield would be about 533 units.
[19] See Appendix 26 to Mrs Hodson's Proof – Document 11
[20] Document 24

appeal scheme, progress with firm proposals through the formal development plan mechanism has been slow, with the Development Sites and Places DPD not due to be adopted until the end of 2014. [6, 19]

104. In any event, my attention was drawn to the contents of paragraph 72 of PPS3 which records that applications should not be refused on prematurity grounds alone. Paragraph 17 of *The Planning System: General Principles* is concerned with the same matter. It envisages circumstances where planning permission may be refused on prematurity grounds where a DPD is being prepared or is under review, but it has not yet been adopted. However, the first consultation stage has not yet been reached. In this case the appeal scheme is substantial in Mapplewell terms, but, on the basis of the evidence I have seen and heard, I believe it is unlikely any potential redevelopment of the land would not include a substantial proportion of new housing. I also agree with the consequence of the Appellant's observation in relation to the last sentence of paragraph 17 that there is effectively no phasing policy in existence which affects the land. [29]

105. I have considered the Council's counter-argument that, although refusal on prematurity grounds is seldom acceptable, the dismissal of the appeal would be justified in this case because of its conflict with UDP Policies GS11 and DT7 and their reasoned justifications. Amongst other matters, Policy GS11 effectively requires that the future of the land should be determined only, or principally, through the development plan mechanism. [37, 38]

106. I do not dispute that to allow the appeal and grant the outline planning permission sought would conflict with the letter and content of the final sentence in Policy GS11. But I do not consider such a conclusion would render such a decision in conflict with the development plan – which should be read as a whole. I consider the purposes and content of the later components of the plan (the RS and the CS) pull in the opposite direction, albeit on the basis of regional and strategic policy rather than site-specific designation. In addition, paragraph 19 of *The Planning System: General Principles* requires that where planning permission is refused on prematurity grounds, it is necessary to demonstrate *clearly* how it would prejudice the outcome of the DPD process. I do not consider the Council's case demonstrates such prejudice with the clarity sought. **I conclude that, having regard to the contents of paragraphs 17-19 of *The Planning System: General Principles* and emerging DPDs, the development of the site as proposed would not be premature.**

107. I return to the particular matters about which the Secretary of State wished to be informed, and conclude as follows:

(a) Although there is conflict with UDP Policy GS11, and to a rather lesser extent with Policy DT7, the proposal complies with the relevant parts of RS Policies SY1 (Paragraph E 1), and H2 (Paragraph B 1, 4, and 5), and CS Policies CSP 8, CSP 10 and CSP 13. Considered as a whole, I conclude the proposal is in conformity with the development plan;

(b) The scheme is in outline form and many matters relevant to the design principles to be adopted, including its layout, open spaces, visual appearance and landscaping, would remain for subsequent approval;

(c) As recorded above, many details would remain for subsequent approval, but in relation to the use of the land I consider the proposal would be consistent with Government policy as expressed in PPS3;

(d) In view of its proximity to the centre of Mapplewell and the contents of the obligation made under section 106 of the above Act, I consider the proposed development to be consistent with the advice included in PPG13. The compatibility of the scheme with the local car parking standards referred to in paragraphs 52 to 56 of PPG13 would be considered at the detailed stage;

(e) The Council did not defend refusal reasons 3, 4 and 5 of its refusal notice dated 7 April 2010. As far as refusal reasons 1 and 2 are concerned, I consider neither that the existence of a 5 year supply of deliverable housing land has been demonstrated, nor that the scheme would be premature;

(f) I consider the obligation executed under section 106 of the above Act to be: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

Recommendation

108. I recommend that the appeal should succeed and that outline planning permission should be granted as shown in the drawings listed in paragraph 15 above and subject to the conditions included in the schedule at the end of this Report.

Andrew Pykett

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Rupert Warren (on 4 May) and Mr Neil Cameron QC	instructed by Mr Andrew Frosdick LL B, Dip LG Borough Secretary, Barnsley MBC
He called:	
Mr Alan Hart Dip TP MRTPI	Policy Planning Team, Barnsley MBC
Mr Andrew Burton BA(Hons) Dip TP MRTPI	Planning Officer, Barnsley MBC

FOR THE APPELLANT:

Mr Ian Dove QC	instructed by JVH Town Planning Consultants Ltd
He called:	
Mrs Janet Hodson BA(Hons) Dip TP MRTPI	JVH Town Planning Consultants Ltd

INTERESTED PERSONS:

Cllr Roy Miller	Local member, Barnsley MBC
Cllr Harry Spence	Local member, Barnsley MBC
Mr Barry Walker	Local resident
Mr Ken Hunter	Secretary, North Gawber Colliery Football Club

DOCUMENTS

1 Council's Notice of Inquiry and circulation list
2 Letters of representation
3 Statement of Common Ground dated 29 July 2011

Proofs of Evidence and Appendices

For the Council

4 Mr Burton's Proof dated April 2011, and Appendix
5 Mr Hart's Proof dated April 2011, and Appendices (1-4)
6 Mr Hart's Supplementary Proof dated September 2011, and 8 Appendices
7 Mr Burton's Supplementary Proof dated September 2011, and 2 Appendices
8 Schedule and summary tables of the Council's Housing Land Supply Note

For the Appellant

9 Mrs Hodson's Proof dated 3 April 2011
10 Mrs Hodson's Appendices (1-19)
11 Mrs Hodson's Supplementary Proof dated 12 September 2011, and Appendices (20-30)

Documents submitted by the Council during the inquiry

12 Outline opening submissions
13 Core Strategy, adopted September 2011
14 Advice to Inspectors, National Planning Policy Framework – Consultation Draft
15 Barnsley SHLAA 2009 Update
16 Distribution of pupil addresses for 6 primary schools
17 Email and attachment concerning capacities and predicted pupil numbers, dated 10 February 2011
18 Report dated 2 September 2011 concerning Development Sites and Places DPD of the LDF
19 Planning Advice Note 30 – Sustainable Location of Housing Sites, dated July 2011
20 Barnsley UDP Vols 2-13, adopted December 2000
21 Extract from Barnsley UDP + Darton Community Area Proposals Map
22 Draft conditions
23 Projected numbers on roll at local schools
24 Manuscript by Mr Hart – Royston School afteruse
25 Email and attachment dated 12 October 2011 – draft conditions
26 Manuscript by Mr Burton – draft conditions
27 Sports pitch creation, submitted by Cllr Spence
28 Outline closing submissions
29 Costs application response

Documents submitted by the Appellant during the inquiry

30 Opening submissions
31 Draft Unilateral Undertaking
32 Barnsley's Local Development Scheme
33 Recovered appeal decision dated 30 June 2011 and Inspector's Report
34 Preliminary outline programme for remediation
35 SHLAA Practice Guidance
36 Unilateral Undertaking (superseded)
37 Closing submissions
38 Costs Application
39 Unilateral Undertaking, dated 11 October 2011

Schedule of Conditions

1. The development hereby permitted shall not be commenced unless and until approval of the following reserved matters has been obtained in writing from the Local Planning Authority:-

(a) the layout of the proposed development.
(b) scale of building(s)
(c) the design and external appearance of the proposed development.
(d) landscaping

2. Application for approval of the matters reserved in Condition 1 above shall be made to the Local Planning Authority before the expiration of three years from the date of this permission, and the development, hereby permitted, shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

3. Development shall not commence until details of the phasing of the development has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

4. Detailed plans shall accompany the reserved matters submission indicating existing ground levels and any proposed alterations to ground levels, the proposed finished floor levels of all dwellings, associated structures and road levels. Thereafter the development shall proceed in accordance with the approved details.

5. No development shall take place, including any re-grading and reclamation engineering operations, until a Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Method Statement shall be adhered to throughout the re-grading/reclamation and construction periods. The Statement shall provide for:

- The parking of vehicles of site operatives and visitors
- Means of access for construction traffic
- Loading and unloading of plant and materials
- Storage of plant and materials used in constructing the development
- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- Wheel washing facilities
- Measures to control the emission of dust and dirt
- Measures to control noise levels during construction
- A scheme for recycling/disposing of waste

6. Sightlines, having the dimensions 2.4m x 90m, shall be safeguarded at the junctions with Carr Green Lane and Spark Lane, approved as the primary means of access to the development shown on the 'Masterplan', MPJ Design drawing no 09/032-01, such that there is no obstruction to visibility at a height exceeding 1.05m above the nearside channel level of the adjacent highway.

7. Development shall not commence until arrangements have been entered into to secure works to mitigate the effect of the development on highway safety. Such work shall be completed prior to the development being brought into use and comprise:

(a) provision of right turn lane on Spark Lane;
(b) provision of signal controlled junction at Blacker Road/Greenside/Spark Lane;
(c) provision of controlled pedestrian crossing facility at Blacker Road;
(d) any necessary signing/lining;
(e) any necessary alterations to street lighting;
(f) any necessary alterations to drainage;
(g) any necessary resurfacing/reconstruction.

8. Prior to the commencement of the development a survey methodology shall be submitted to the local planning authority to assess the existing condition of the highways to be used for construction traffic. The scheme shall indicate the extent of the highway to be surveyed. Within 28 days of the completion of the construction phase of the development a second survey shall be submitted to identify any highway defects directly attributable to the construction traffic, a remediation strategy and an agreed timetable for the works. Any remediation of the highway that is necessary shall be carried out by the developer unless agreed otherwise by the local planning authority.

9. No development shall take place until works have been carried out to provide adequate facilities for the disposal and treatment of foul water, in accordance with details to be submitted to and approved in writing by the local planning authority.

10. No re-grading of the site shall commence until details of the mechanism by which the existing public sewers crossing the site will be protected during any construction work have been submitted to and approved in writing by the local planning authority.

11. Unless otherwise agreed in writing by the local planning authority, no building or other obstruction shall be located over or within 6.0 (six) metres either side of the centre line of each of the 825mm, 750mm, 675mm and 525mm sewers i.e. protected strip widths of 12 metres per sewer, which cross the site.

12. Unless otherwise agreed in writing by the local planning authority, no building or other obstruction shall be located over or within 3.0 (three) metres either side of the centre line of each of the 450mm, 375mm and 225mm sewers i.e. protected strip widths of 6 metres per sewer, which cross the site.

13. Surface water from vehicle parking and hardstanding areas shall be passed through an interceptor of adequate capacity prior to discharge. Roof drainage shall not be passed through any interceptor.

14. No development shall take place until:

(a) Surface water drainage details, including a scheme for surface water run-off limitation and a programme of works for implementation using sustainable drainage principles as set out in the approved Flood Risk Assessment, have been submitted to and approved in writing by the Local Planning Authority;

(b) Porosity tests shall be carried out in accordance with BRE 365, to demonstrate that the subsoil is suitable for soakaways;

(c) Calculations based on the results of these porosity tests shall prove that adequate land area is available for the construction of the soakaways.

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.

15. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification), no building or structure shall be placed or erected within 6 metres of the watercourse shown on the approved plan.

16. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works. Prior to occupation of the dwellings/commencement of the use, a validation report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing of the Local Planning Authority.

17. Prior to the commencement of development approved by this permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), a remediation method statement and verification procedures for the part of the site shown as area 5 in the Geo Environmental Assessment April 2005, Football Pitch Ground Investigation Report and Revised Remedial Method Statement shall be submitted to and approved in writing by the local planning authority.

18. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority.

19. No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters.

20. Construction or remediation work comprising the use of plant, machinery or equipment, or deliveries of materials shall only take place between the hours of 08:00 to 19:00 (Mondays to Fridays), and 08:00 to 13:00 (Saturdays), and at no time on Sundays or Bank Holidays.

21. Prior to the commencement of re-grading and reclamation engineering operations on the site, a minimum 3 metre high bund shall be constructed in the location of the site shown in the Kirkby Charles Associates Draft Noise Assessment dated January 2011, in accordance with detailed plans to be submitted to and approved in writing by the Local Planning Authority. The approved bunding shall be retained throughout the re-grading and reclamation engineering operations phase.

22. Plans accompanying the application for the approval of reserved matters shall include public open space provision proposals designed in substantial accordance

with the 'Masterplan', MPJ Design drawing no 09/032-01 with regards to the overall and individual area dimensions, proposed locations and the type of the areas shown. The provision of the open space shall be provided prior to completion of the development in accordance with the approved scheme.

23. At the same time as application/s is/are made for the approval of reserved matters a scheme for the provision and layout of the new playing field in the location shown on the Masterplan (MPJ Design Drawing No: 09/032-01) shall be submitted to and approved in writing by the local planning authority. The scheme shall include the following:

- The construction details and surface finishes of the playing pitch, the changing facilities, car park and means of access;
- An assessment of the ground conditions of the land proposed for the new playing field, including existing and proposed levels and surface water drainage arrangements;
- A management plan for the playing pitch including the use of the facility by organisations and the local community;
- A timetable, citing both the phasing referred to in condition 3 above and the annual playing season, for the construction and first use of the playing pitch, the changing facilities, car park and means of access.

The scheme shall be implemented in accordance with the details and the timetable as approved.

24. No dwellings shall be occupied until a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens), has been submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved and any subsequent variations shall be agreed in writing by the local planning authority. The scheme shall include the following elements:

- detail extent and type of new planting (NB planting to be of native species)
- details of maintenance regimes
- details of any new habitat created on site
- details of treatment of site boundaries and/or buffers around water bodies

25. At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources (as described in the glossary of Planning Policy Statement: *Planning and Climate Change* (December 2007). Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to and approved in writing by the Local Planning Authority as a part of the reserved matters submissions required by condition 1. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter.

26. Prior to the commencement of the development a scheme showing how the route of the footpath No 22 will be safeguarded during construction shall be submitted and approved in writing by the local planning authority. The scheme shall be implemented for the relevant period.

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.