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Our Ref YLL/LW/2021-10.01

22 October 2021

**Mrs Sarah Norman**

Chief Executive, Barnsley Metropolitan Borough Council  
PO Box 634  
BARNSELEY S70 9GG

Dear Madam,

**FORMAL COMPLAINT AGAINST BMBC HEAD OF PLANNING, MR J. JENKINSON  
LAND ON THE WEST SIDE OF LAIRD'S WAY, PENISTONE**

During the Barnsley Local Plan Process, our consultants submitted robust representations to Officers directly and also through the 'Call for Sites' process, seeking the allocation of our land on the West Side of Laird's Way, Penistone for Car Parking/Interchange uses.

We had previously been in discussions/negotiations with South Yorkshire Passenger Transport Executive (SYPTe) and Barnsley Metropolitan Borough Council's (The Council's) then Head of Planning, Mr Stephen Moralee around 2014. During these discussions, we were represented by Walton & Co (Planning Lawyers). SYPTe made known at that time their need and desire for Car Parking/Interchange on part of the land in our ownership at Laird's Way.

This is recorded within a detailed report prepared by our company entitled '*A Timeline of Events regarding the Need and Desire for Strategic Transport Interchange on land Adjacent Penistone Railway Station*' which was submitted to various members and officers of the Council; including the Leader, Chief Executive and Head of Planning, at the time of publication in December 2016.

Notwithstanding this, at the time of the Examination in Public (EiP) Hearing Sessions in respect of the Barnsley Local Plan (BLP) during 2018, the Council's Head of Planning, Mr Joe Jenkinson, publicly contradicted written and verbal evidence presented by our company, **by verbally stating to the Local Plan Inspector** that the Council did not require the land for car parking/interchange uses and would not be seeking to allocate the land for car parking/interchange uses in the BLP. We believe these events were recorded in the EiP Hearing Minutes. If this isn't the case, there are a number of individuals who attended the relevant EiP Hearing who would be prepared to corroborate these events on legal oath.

Importantly, to reiterate:

**The Council's Head of Planning, Mr Jenkinson, verbally informed the BLP Inspector,**



contrary to the verbal evidence given to the same Inspector immediately beforehand by Steven Green of Yorkshire Land, that the Council did not require the land for car parking/interchange use and would not be recommending the allocation of the land for such uses in the BLP.

Prior to Mr Jenkinson giving verbal evidence to the BLP Inspector, our planning consultant, Mr Paul Butler of PB Planning, had written to the Council (with copies to the BLP Inspector) during the EiP process to inform both the Council and the BLP Inspector that in the event the site **was not** allocated for Car Parking/Interchange uses in the BLP, we would be seeking to bring the land forward for residential development.

Shortly after Mr Jenkinson provided his verbal evidence to BLP Inspector, the EiP Hearings were closed and the Inspector went away to write a final report and recommendations. During the intervening period, the Council published together with a report to Cabinet (prepared by Mr Jenkinson) the Barnsley Rail Vision, which identifies at Page 14, contrary to Mr Jenkinson's earlier comments at the BLP EiP Hearings in respect of the land at Laird's Way:

*"Improvements to Station Facilities and Environs to include... improved parking facilities at Penistone Station."*

On this basis and particularly considering SYPTE had placed on record the need and desire for Car Parking/Interchange at Lairds Way, for the Head of Planning to have rejected our proposals for Car Parking/Interchange use and to have informed the BLP Inspector accordingly, is in our opinion, inexplicable, inconsistent and highly misleading.

In addition, Mr Jenkinson's stance was at odds with the site's allocation in the former Barnsley Unitary Development Plan (UDP) which formed the statutory development plan for the Barnsley Borough until the adoption of the BLP. The former UDP had specifically allocated part of the land on the West Side of Laird's Way for Bus Rail Infrastructure (Policy PE19/1).

The BLP was formally adopted by the Council on 03 January 2019 and within this new development plan our Land at Laird's Way is now identified simply as Urban Fabric.

Following our request, Mr Butler provided us with a detailed note dated 08 January 2019, summarising the planning position of our Laird's Way site, according to its allocation in the BLP, which confirms that residential development would be entirely appropriate and permissible. A copy of Mr Butler's letter is enclosed for completeness.

#### **Example of Land owned by Barnsley Council allocated as Urban Fabric in the adopted BLP**

We would draw your attention to the Auction Particulars enclosed, relating to Lot 7 of an Auction held by Mark Jenkinson on 14 July 2021, being the former Garage Site off the Willows, Oxspring, S36 8ZZ. As you will note from the Auction particulars, this is an irregular shaped area of land extending to 628sqm offered for sale on instructions from Barnsley Council. Importantly, the majority of the site is allocated within the BLP as Urban Fabric. However, the Auction particulars do identify that part of the site is within the Green Belt. Notwithstanding this, the extent of the land identified to be Urban Fabric is the identical allocation to that of our land on the West Side of Laird's Way.

The Auction for the Council's land took place on 13 July 2021 with a guide price of £60k. For clarity, this was for an irregular shaped site of 628sqm of which part is within the Green Belt



(whereas all of our Laird's Way land is allocated as Urban Fabric within the BLP) without the benefit of planning permission. However, the site attracted a great deal of interest and the final Open Market Auction Sales Price far exceeded the Guide Price, achieving £150k, as evidenced by the enclosed screenshot.

The Former Garage site (at 628sqm gross) equates to less than one-fifth of an acre in size and were the gross area of our land at Laird's Way to be attributed the pro-rata open market value (again notwithstanding the fact that the full extent of our Laird's Way land falls within the allocation of Urban Fabric) then this would equate to a value for our Laird's Way site of approximately £1.5million.

### **Barnsley Local Plan**

The BLP identifies Site Reference HS75, Land at Halifax Road, Penistone (which we had promoted and held on a Legal Option) for housing development. This site was removed from the Green Belt **specifically to meet the Councils identified housing needs in the Principal Town of Penistone**. The urgency for the delivery of new homes on the allocated housing site is set out in a letter provided to us by Mr Richard Crossfield of Lancasters Property Services, a long established Estate Agency business, a copy of which is enclosed.

Formal Pre-application Advice in relation to the development of the Halifax Road Site was submitted by Avant Homes during 2018 and subsequently by Barratt Homes and David Wilson Homes (BDW) during 2019. Importantly, neither of the pre-application advice notes issued to Avant Homes or BDW (dated 07 December 2018 and 12 September 2019 respectively) make any reference whatsoever to a need to provide land on the West Side of Laird's Way. In fact, the Pre-application advice note issued to Avant Homes simply sets out in relation to matters concerning 'S106 Obligations' that contributions towards sustainable travel measures will be sought and that this will be to improve facilities at the Train Station and potential bus service coverage/frequency.

BDW submitted its planning application for the site, in joint names with the landowner, Rebecca Jane Scott, during February 2020 and it subsequently transpired during late 2020 that the Head of Planning would be seeking provision of the unrelated land at Laird's Way, in separate ownership, as part of the application. In an email (enclosed) from BDW's Development Director, Mr David Coe, to Joe Jenkinson dated 10 November 2020, Mr Coe informed the Council's Head of Planning that Yorkshire Land were clear *'they do not want any linkages between the two sites'*. Following this, in his email response dated 11 December 2020 (enclosed) Mr Jenkinson sought to establish why the land was required as part of BDW's Halifax Road Site planning application, summarising with what can be viewed as a veiled threat, that he *'is not therefore able to offer any assurances that the application would be considered favourably in the absence of a mechanism for securing the car parking at the train station.'*

Considering Mr Jenkinson's verbal evidence to the BLP Inspector, that the Council did not require our Laird's Way site for car parking/interchange use and would not be recommending its allocation for such in the BLP, as well as the fact that the need to provide the Laird's Way site was not highlighted in any Pre-Application Advice provided by the Council in respect of proposals for the Halifax Road, Penistone site (as set out above) or in the site specific Policy in the adopted BLP, in our opinion, this demonstrates Mr Jenkinson's inconsistency and the desperate and improper measures employed to reverse his error.

What is apparent here, in our opinion, is that the land at Laird's Way was in fact desired for Car Parking/Interchange use and that Mr Jenkinson had made a grave error in failing to secure the land for such purposes via the BLP process. Therefore, in seeking to establish the



requirement to provide the land through the planning application process in respect of the Site at Halifax Road, Penistone (in which we were not the applicant or land owner, but held a financial interest) Mr Jenkinson was, in our opinion, making an unlawful last-ditch attempt to secure the land for the Council.

We believe our ownership of the Laird's Way site has been exploited by the Council. For example, had our Laird's Way site been in the ownership of another party, unconnected to the Halifax Road, Penistone site, the planning application by BDW would have been determined entirely on its own merits. However, whilst the Halifax Road, Penistone site application was Policy compliant (the application was recommended for Approval by the Case Officer) and importantly considering the Council had specifically removed the site from the Green Belt to meet housing needs in the Principal Town of Penistone, the Head of Planning (being aware of our financial interest in the Halifax Road, Penistone site) subsequently threatened refusal of BDW's planning application, unless our Laird's Way site was provided to the Council for Car Parking/Interchange use, even though there is nothing in Planning Policy linking the two sites. In our opinion, Mr Jenkinson's actions wrongly placed undue, excessive and coercive pressure on Yorkshire Land to transfer the Laird's Way site to the Council on terms very favourable to the Council and prejudicial to the interests of our company.

Was this matter to become the subject of a Panorama investigation, in our opinion, we believe there would be widespread criticism, condemnation and despair levelled at the Council and those responsible for the handling of this matter and this, in our opinion, would result in public trust in those decision makers in the planning system, as well as the fairness of that system, being seriously prejudiced.

Quite frankly, we were presented with the scenario that we either provide the Council with the land at Laird's Way or planning approval will not be forthcoming to BDW at the Halifax Road, Site. A site in which we were not the landowner, but in which Mr Jenkinson knew we held a financial interest. In our opinion, this was highly unethical and unlawful and amounts to extortion and blackmail.

Mr Jenkinson subsequently sent a further email to Mr Coe on 21 December 2020 (enclosed) following feedback from SYPTE, advising that:

*"Based on the above, we are still some way from reaching any sort of agreement, particularly given the unrealistic valuation YLL seem to be attributing to the land. It strikes me therefore that unless YLL are able to offer more land we will be unable to progress with the application."*

Once again this shows, in our opinion, the improper conduct being pursued by Mr Jenkinson.

In relation to Mr Jenkinson's comments regarding valuation, we would like to know whether Mr Jenkinson is professionally qualified to value land or was this a personal opinion? The Council's response to recent Freedom of Information requests should assist us in clarifying this point.

If Mr Jenkinson is not qualified to value land, was Mr Jenkinson already in receipt of a third-party professional valuation for our Laird's Way site at the time of his email? The example provided above with regard to the Council's disposal of land at Oxspring, demonstrates land values achieved in an unbiased open market disposal.

On a Teams Meeting held on 18 June 2021 between ourselves, our solicitor at Womble Bond Dickinson and BDW's Senior Land Manager, Mr Mathew Drake, with the Council's Case



Officer, Legal Team and Valuer, it was apparent that the application by BDW in respect of the Halifax Road Site would not progress unless we acquiesced and entered into agreement to provide the land at Laird's Way to the Council on their terms. Notwithstanding that we did not wish to dispose of our Laird's Way land and despite there being no legal or enforceable policy linkages between the two sites in the adopted BLP.

Notwithstanding this, as was set out to Mr Jenkinson by Mr Coe in his email of 10 November 2020, it is entirely reasonable that separate negotiations could have been held between Yorkshire Land and the Council concerning the Laird's Way site's commercial viability for car parking/interchanges use, on the basis that this was not related to BDW's application at the Halifax Road, Penistone site. These negotiations would have been carried out on a fair footing and on commercial terms acceptable to both parties. However, we can confirm that neither Mr Jenkinson nor any other representative of the Council have contacted us at any stage since the adoption of the BLP to enquire as to whether we would be prepared to consider the disposal of all or part of our Laird's Way site for car parking/interchange uses.

By 31 July 2021, we were running out of time to exercise our Legal Option in respect of the site at Halifax Road and contractually this left us with little choice but to progress on the terms for the disposal of the Laird's Way site dictated by the Council.

We believe that Mr Jenkinson, in his position as Head of Planning for the Council, has acted unlawfully in obtaining the Laird's Way site.

The legal position is outlined in Legal Advice provided by Walton & Co (Planning Lawyers) and separately by BDW from Walker Morris, a copy of which has been provided to us by BDW. Both Advice notes are enclosed for completeness. However, for brevity their key statements include:

Walker Morris

(3) *The Council has suggested that the application will not be "progressed positively" without some sort of deal in relation to land or the delivery of offsite parking or other works associated with Penistone Railway Station. I am instructed that this is a suggestion that the officers will recommend refusal unless some sort of "deal" is done.*

(14) *The Local Plan could have allocated the Station Site for parking. It did not. It could have attempted to link the development of the Site to the delivery of that Parking, it did not.*

(16) *The suggested conditionality of linking the grant of planning permission at the Site with the transfer of the Station site falls far outside the legal and policy basis for imposing a planning condition or requesting a S106 obligation. It relates to land outside the control of the applicant, is undeliverable and is a suggestion that it unnecessary to make the development acceptable. It is unreasonable and has no policy basis or justification. It appears to be an entirely opportunistic attempt to circumvent off site land acquisition the Council would like to achieve. The Council has separate powers for that purpose and these then invoke the statutory code for compensation, which it would be improper to attempt to avoid.*

(17) *There is no proper basis for refusal of planning permission based around the Council's recent*



*desire to link delivery of the site to delivery of parking at the Station Site by some means or another. Indeed it would be entirely improper to do so.*

Walton & Co (Planning Lawyers)

*(21.1) There are no local planning policies which directly link the development of the Residential Site and the provision of the Land as a car park and/or interchange facility associated with the station. None of the Council's policy documents mention any relationship between these two land parcels, and the specific policy applicable to the Residential Site (HS75) is silent as to any matters relating to the Land. The fact that there is no express policy basis for the Proposed s106 Obligation to be secured as part of the Residential Site's development indicates that it is not necessary to make the Proposed Development acceptable in planning terms.*

*(21.4) In contravention of its own policies, the Council appears to be opportunistically utilising the Application as a means through which to acquire the Land without having to do so through private negotiation with YLL, or through exercise of compulsory purchase powers. This is patently an unreasonable and perverse position for the authority to take.*

Based on the facts outlined in this letter, we believe the Council have acted unlawfully in obtaining our land at Laird's Way in that Mr Jenkinson, in his capacity as the Council's Head of Planning, stated that the planning application in respect of the site at Halifax Road, Penistone would not be recommended for approval unless our land at Laird's Way was provided to the Council and having, in our opinion, been coerced into this, following approval at Planning Regulatory Board on 08 June 2021, Mr Jenkinson refused to issue the formal Planning Approval notice until such time as the Council had formally secured our Laird's Way site. In our opinion, this was wholly unethical and improper and prejudicial to the interests of our company, as we were obliged to transfer our land at Laird's Way to the Council at a highly discounted price, well below market value.

As stated in the two legal advice notes (enclosed) there are no Policy linkages between the Laird's Way site and the Halifax Road, Penistone site and therefore the Council carried out wrongdoing in pursuing this course of action.

We would like to know whether the decision therefore to proceed to obtain our Laird's Way site via means of the application in respect of the Halifax Road, Penistone site was orchestrated by Mr Jenkinson or also by other officers of the Council? We are also concerned to know why, in consideration of the serious nature of this matter, this was not red-flagged internally as being an improper and unlawful course of action?

Had the planning application at the Halifax Road, Penistone site being refused, which is what Mr Jenkinson indicated would be the case in the event our land at Laird's Way was not provided, planning appeal timescales were likely to be in excess of twelve months, and in consideration of the fact that we were running out of time to exercise our Legal Option in respect of the Halifax Road, Penistone site, this would have left us with insufficient time to conclude proceedings positively. Mr Jenkinson thereby exploited our weak position and in consideration of the events detailed in this letter, we believe our position was severely prejudiced.

The Halifax Road planning application submitted by BDW & Rebecca Jane Scott was Policy compliant and stood up wholly on its own merits, therefore threatening to refuse/withhold planning permission on a policy compliant application and an allocated site – a site removed from the Green Belt and allocated for housing development via the BLP process **specifically to meet identified housing needs** in the Principal Town of Penistone – unless we provided an unrelated site, being land on the West Side of Laird's Way, Penistone and on terms dictated



by the Council, is nothing short of shameful and those responsible must now face the consequences.

Yours sincerely  
**YORKSHIRE LAND Limited**



**Steven Green**  
Managing Director

Encs      *PB Planning Letter Re: Land at Laird's Way, Penistone dated 08 January 2019*  
*Auction Particulars - Former Garage Site off the Willows, Oxspring, S36 8ZZ*  
*Screenshot of final Auction price achieved - Former Garage Site off the Willows, Oxspring, S36 8ZZ*  
*Letter by Richard Crossfield, Lancasters Property Services to BMBC Councillor Cheetham*  
*Emails dated 10 November and 11 December 2020 between David Coe (BDW) & Joe Jenkinson (BMBC)*  
*Email dated 21 December 2020 from Joe Jenkinson (BMBC) to David Coe (BDW)*  
*Walker Morris Advice Note*  
*Walton & Co (Planning Lawyers) Advice Note*



Yorkshire Land Limited  
PO Box 785  
Harrogate  
HG1 9RT

8<sup>th</sup> January 2019

Dear Steven,

**LAND AT LAIRDS WAY, PENISTONE – POTENTIAL RESIDENTIAL DEVELOPMENT -  
INDEPENDENT SUSTAINABILITY & DELIVERABILITY ASSESSMENT**

I write further to my letter dated 5<sup>th</sup> December 2016 (enclosed for ease of reference) and in response to your request for me to review its conclusions following Barnsley Metropolitan Borough Council's (BMBC's) decision to adopt the new Barnsley Local Plan on the 3<sup>rd</sup> January 2018.

Within my original letter I provided commentary on the following areas: -

- Site Description
- Planning History
- Local Planning Policy Context
- Sustainability Assessment
- Deliverability Assessment

For ease of review, this update provides commentary on the above areas once more.

For the avoidance of any doubt, in undertaking this review I have considered updated planning guidance in respect of National Planning Policy Framework 2018 (NPPF), correspondence between BMBC and the Inspector throughout the Local Plan Examination in Public process and the Inspector's Final Report (including Main Modifications).

**SITE DESCRIPTION**

The site's description in respect of existing use, existing character and surrounding uses largely remains unchanged.

The site represents a redundant, dilapidated, previously developed site located close to the centre of Penistone. The site is located in a sustainable location in respect of access to services and facilities.

Within my previous letter I identified that the planning precedent of the acceptability of the site for residential use has recently been established by Barnsley Metropolitan Borough Council (BMBC) in their approval of an application for 36 homes on land which lies adjacent to the site.

The development of this site has not been completed, thus establishing the acceptability of residential development in this location in perpetuity.

**PLANNING HISTORY SEARCH**

As you will be aware, no new planning applications have been submitted at the site. As identified previously, the planning history search of the site provides evidence of the site's former uses. With regards to the planning history on adjacent areas of land, as identified above, the precedent of residential development being suitable on a previously developed site in this location of Penistone has been established by BMBC's approval of application Ref. 2016/0954 for 36 homes in November of this year. A development that has now been completed.



## LOCAL PLANNING POLICY CONTEXT

BMBC adopted the new Local Plan on the 3<sup>rd</sup> January 2019.

Penistone is identified as a “Principal Town” and Policy LG2 of the document confirms this status. With regard to future housing development Policy H1 identifies that 21,546 net additional homes will be delivered over the period 2014 to 2033 and that the Council will maintain a minimum 5-year supply of deliverable housing sites. Policy H2 of the document identifies that Penistone will deliver 1,003 of the 21,546 homes to be built within the Borough over the identified plan period. Policy H7 identifies an affordable housing target for developments in Penistone of 30%, subject to viability testing.

The adopted Proposals Map identifies that the site is located within the defined Urban Fabric of Penistone which is identified as “Land within the Settlement with no specific allocation”. Policy H5 of the Local Plan identifies that proposals for residential development on sites above 0.4 hectares which are not shown as housing sites on the Policies Maps will be supported where they are located on previously developed land; located within a Principal Town; are accessible by public transport; and have good access to a range of shops and services.

The principle of development of homes at the proposed development site is therefore fully in compliance with the policies contained within the adopted Local Plan.

With regards to the site’s current use, this of course remains unchanged from our previous letter. The site has been available for development for the majority of the last 30 years and particularly since it was purchased by Yorkshire Land Limited (YLL) in 2007. The Penistone Railway Station Report prepared by YLL in December 2016 (Reference YLL/PS/2016) which was sent to the Leader of the Council, Sir Stephen Houghton CBE, the Council’s Head of Planning, Mr Joe Jenkinson, and the local MP and current Sheffield City Region Mayor, Mr Dan Jarvis, identifies the substantial measures that YLL have sought to take over the last 11 years to promote and facilitate the comprehensive development of the site for a Public Transport Interchange. However, at the point of writing this letter there is no immediate prospect of the delivery of the Public Transport Interchange at the site or a mixed-use development on the northern section of the site.

Indeed, the potential delivery of the Public Transport Interchange by YLL was originally proposed alongside the development of their two sites at Wellhouse Lane, Penistone and Sheffield Road, Oxspring. The adopted Local Plan does not provide any site specific policy linkages to the Penistone site and the Oxspring site has not been allocated. The site was also promoted for interchange use by YLL throughout the Local Plan Examination in Public, but this was not supported by the Council. As a result, no site specific policy identifying the land for interchange use has been cited in the adopted Local Plan and as set out above, the land is simply defined as Urban Fabric.

We note the comment in your instruction letter, that having had considerable financial outlay in the land since the time of your purchase some 12 years ago, you now need to progress with a development to realise a return on your expenditure.

Consequently, given the site’s previously developed nature, we believe that it is now prudent to consider an appropriate, viable, alternative use for the site. Especially given that the site is currently an eyesore situated in a prominent location in Penistone. It is our view that residential development would be an appropriate alternative use for the site.

It is therefore clear to us that the site’s redevelopment for residential use would be entirely compliant with current local planning policy guidance for the following reasons: -

- It is located within the defined settlement limits and built up area of the Principle Town of Penistone;
- It could make a positive contribution to delivering Penistone’s proposed 1,003 housing requirement;
- It is located on previously developed land;



- It is highly accessible by public transport;
- It is located within 480m of Penistone Town Centre and thus accessible on foot or bicycle to a range of shops and services;
- It is located adjacent to an Important recreational and Tourism asset; the Trans Pennine Trail; and
- It is located adjacent to a newly completed residential development site.

## SUSTAINABILITY ASSESSMENT

With regards to the economic and social role of sustainable development, the original conclusions we reached in our letter dated 5<sup>th</sup> December 2016 remain unchanged. The site represents a previously developed site, located in a highly sustainable location, which can meet the identified housing needs of Penistone. The adoption of the Local Plan, confirming the site as “Urban Fabric” and the recent completion of the residential development adjacent to the site, only aid in confirming this position. The site is currently an eyesore situated in a prominent location in Penistone. It is our view that residential development would be an appropriate use for the site.

With regards to the environmental role of sustainable development, again our position remains unchanged. The site's historic use as railway sidings renders it as having no current environmental value. There are no other environmental concerns associated with the development of the site. The redevelopment of the site would also remove an existing eyesore situated in a prominent location in Penistone.

Overall there are no adverse environmental impacts that would significantly and demonstrably outweigh the identified benefits of the proposed development.

## DELIVERABILITY ASSESSMENT

Following the undertaking of an up to date assessment of the site, it remains our view that the development of new homes at the site would be deliverable as the site is situated in a **suitable** and highly sustainable location in respect of existing settlement form and there are no technical or environmental (built and natural) constraints that would preclude the development of the site. The site is **available** now as it is under the control of a developer who has a successful track record of delivery and who are actively seeking the development of the site. The site can also be considered **achievable** as we are aware of strong developer interest from parties who can deliver new homes on the site within the next 5 years. The completion of the adjacent residential development site confirms this position also.

## CONCLUSION

It remains our professional and independent view that the redevelopment of the Lairds Way, Penistone site for residential development would be entirely in accordance with national and local planning guidance.

The site is located within the defined settlement limits and built up area of the Principle Town of Penistone. The site is located on previously developed land and its redevelopment would remove an existing eyesore situated in a prominent location in Penistone.

The site's redevelopment for residential use could make a positive contribution to delivering Penistone's and the Borough's identified housing needs. The site is located in a highly sustainable location, within 480m of Penistone Town Centre and within walking distance of existing bus stops and Penistone Train Station.



The site can be considered a deliverable residential development site. The site's development would create a sustainable, high quality and accessible residential development which will provide significant social, economic and environmental benefits to the local area and the wider Borough.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'P. Butler'.

**PAUL BUTLER**  
Director



# Former Garage Site off The Willows, Oxspring, Sheffield, South Yorkshire S36 8ZZ

**GUIDE PRICE £60,000\***

**VACANT SITE**

- **Former garage site - 628 sqm**
- **Established residential location backing onto Green belt**
- **Freehold**
- **Potential for residential (STP)**

## Location

The site is located adjacent 58 The Willows in the desirable village of Oxspring, which lies south east of Penistone.

## The Site

The land is identified on the adjoining plan and amounts to 628sqm

## Planning

The site is mainly Urban Fabric in the Local Plan, however part is Green Belt which would not be suitable for most forms of development, therefore any development should be concentrated on the Urban Fabric part. Any development would need to fit with the character of surrounding properties which consist of bungalows. Interested parties are invited to make their own planning and highways enquiries in respect of possible schemes.

## Note

Prospective Purchasers should note that the Conditions of Sale for this lot include a requirement that the Purchaser pays Barnsley Council's legal costs and a 5% + VAT premium or £500 + VAT minimum payment in addition to the price bid

## EPC Rating

## VIEWING

On site at any reasonable time

## SOLICITORS

Bury & Walkers LLP, Britannic House  
Regent Street, Barnsley S70 2EQ

ON INSTRUCTIONS FROM BARNSELY  
METROPOLITAN BOROUGH COUNCIL





AA



rkjenkinson.co.uk

Lot 7: Former Garage Site of... ✖

Bid



History



Terms



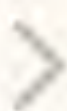
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**Cllr Tim Cheetham**

*Cabinet Spokesperson – Regeneration & Culture*

PO Box 634

BARNSELEY

S70 9GG

Dear Cllr Cheetham,

**AFFORDABLE HOUSING**

**BARNSELEY METROPOLITAN BOROUGH**

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**Directors**  
K Crossfield FRICS, FAAV  
T E Beaumont CREA, FNAEA  
R Crossfield BSC (Hons)

Reg. Office  
Reg. No 2346083  
Lancaster House  
20 Market Street  
Penistone  
Sheffield  
S36 6BZ

**PRS** Property  
Redress  
Scheme



I refer to an article (enclosed for reference) which appeared in the Barnsley Chronicle on Friday, 29 January 2021 under the headline:

**'Only Three Affordable Homes Built in West'.**

The article quoted you in your capacity as Barnsley Council Cabinet Spokesperson responding to the under delivery of Affordable Housing built in the West of Barnsley and with particular reference to Penistone:

*"Affordable Housing is generally secured as part of a wider development or delivered directly on small to medium-sized sites by registered providers such as housing associations or the Council. The West of the Borough is more rural, meaning there are fewer sites available as it's less suitable for larger-scale housing developments... We're working hard to support new housing developments as Barnsley's population grows and aim to make sure that housing needs and aspirations are met by ensuring everyone has access to a home that is well maintained, warm and affordable."*

The article has spurred me to write and explain/express in further detail from my own experience of the housing market both in a personal and professional capacity, the negative impact that the lack of housing supply in the Penistone area is having on the local community.

**Independent Estate Agents, Surveyors and Property Management**

Website: [www.lancasters-property.co.uk](http://www.lancasters-property.co.uk) Email: [mail@lancasters-property.co.uk](mailto:mail@lancasters-property.co.uk)

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In a personal capacity, I was born, bred and educated in Penistone and continue to live in the Town with my partner and children, who also go to school locally. I am a Director of Lancaster's Property Services and our company has the longest high street presence of any estate agency business in Penistone. As a company we have been serving the community for more than 40 years; personally, I have been working out of our Penistone office for more than 20 years, I therefore consider, as the saying goes, that I am at the coal face of the local housing market and in a position to give a first-hand and accurate account of that market.

There is currently (and has been for some time now) a huge shortage of properties across all house types and tenures, for sale and rent in the Penistone/Western half of the Borough. This is something which is evenly experienced by other estate agents in the area. We and other high street agencies have never experienced such a low housing stock level. As I write this letter it may surprise you to know that there are only ninety properties For Sale in S36 as a whole, (including parts of S36 which fall under the borough of Sheffield). To give you a bench mark our estate agency office in Penistone had approximately seventy five houses on the market at one point; supply in general is at an all-time low. When properties do come to the market for sale or rent, we are inundated with interest due to the severe shortage of supply, this situation consequently inflates asking prices making affordability for those people on lower incomes even more difficult and often impossible for them to get onto the housing ladder.

We witness on almost a weekly basis tearful situations when potential buyers and renters are told their offer has not been accepted (having been outbid due to the volume of bidders on so few available properties) often leaving them feeling in a hopeless position. These are situations which are extremely upsetting and unfortunately, are experienced on a regular basis. We also witness first-hand the raw emotion of how much these people desire their own home; especially, those at the lower end of the market (young & first time buyers etc.) where affordability is the critical issue.

It is in my company's interest to keep abreast of the property market from planning to housing completions and I understand that the Barnsley Local Plan (adopted over two years ago now) took much longer in the making than had initially been anticipated, consequently delaying the delivery of the new homes in Penistone; the part of the Borough where the newspaper article highlights the delivery of only 3 affordable homes in the West of the Borough over an 18 month period. Resultantly, it is absolutely essential that developers are encouraged to bring forward quickly the sites which have been specifically allocated for housing delivery in the Barnsley Local Plan, so that Penistone's identified housing needs can be met. A local resident recently asked me what the



purpose was of removing land from the Green Belt to meet housing needs if the homes are not built to meet those needs.

I am aware, following a public consultation event which I attended at St John's community centre in Penistone over 1 year ago, that the developer Barratt David Wilson Homes submitted a planning application on Barnsley Local Plan Housing Site Policy Reference HS75 (Planning Ref 2020/0274).

This planning application is proposed on a site which the Council removed from the Green Belt and allocated specifically to meet housing needs in this part of the Barnsley Borough. At the public consultation event it was made known that the proposals were for over 400 homes, of which 30% will be affordable properties.

Other than the Planning Application submitted by Barratt David Wilson Homes in February 2020, to my knowledge there is currently just one modest residential scheme which is currently under construction at Saunderson Avenue, Penistone by Orion Homes (Planning Ref 2018/0800). This development totals 28 dwellings of which just 6 will be affordable homes, split between rent and shared ownership. Research identifies that this application was formally registered on 23 July 2018 and only formally approved on 03 January 2020, over 1 and a half years post submission!

I do not know of any other developments either pending at the planning application stage or already under construction in Penistone, which are above the threshold requiring the delivery of affordable homes. As you will be aware, Local Plan Policy confirms that only schemes consisting of 15 or more homes will be required to provide affordable housing. It is imperative that the large housing scheme submitted by Barratt David Wilson Homes be supported, thereby enabling the delivery of much needed market and affordable homes for Penistone.

I would therefore urge the Council to encourage the earliest delivery of development on all allocated housing sites in Penistone and for all professionals/decision makers involved to act with determination to speed up the planning application process wherever possible.

I have not written this letter as criticism of the Council, but a reflection of the current dire situation in the local housing market. It is commonly recognised by Government and opposition parties nationally that the country is facing a housing crisis. I would add that this crisis is no more prevalent than in Penistone. The delivery of only three affordable homes in the west of the Borough over an 18 month period can be viewed as nothing other than a startling wake-up call for all professionals and decision makers and should serve as a reality check to spur all those with the power and influence to do so into action to address this critical issue affecting people's lives, hopes and



aspirations across this Borough, ensuring everyone has access to a home that is well maintained, warm and affordable.

Please do not hesitate to call should you wish to discuss.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Richard Crossfield', written in a cursive style.

Richard Crossfield BSc (Hons)  
Director - Lancasters Property Services  
01226 763307

CC            *Cllr Sir Stephen Houghton CBE*  
              *Cllr John Wilson*  
              *Cllr Robert Barnard*  
              *Cllr Paul Hand-Davis*  
              *Joe Jenkinson*  
              *Miriam Cates MP*  
              *Cllr David Greenhough*  
              *Cllr David Griffin*  
              *Cllr Hannah Kitching*

*Encs    Barnsley Chronicle Article Friday 29 January 2021 'Only Three Affordable Homes Built in West'*



Chronicle: "This year has been especially difficult for us all, with the need for older people especially, to self-isolate."

"A big thank you to the staff and students at Horizon and to all

those who that have taken time to support each other this year.

"Younger and older people can gain so much from being together and supporting each other."

"This is an excellent example of intergenerational work and

this award is to celebrate and recognise Horizon Community College for their age-friendly initiatives."

**Above: Alec Olsen of Age UK Barnsley with Horizon's events manager Lucy Kenyon.**

# Only three affordable homes built in west

**By Josh Timlin**

ONLY a handful of affordable homes were built in the west of Barnsley during an 18-month period.

Of new homes built in the area – which covers Penistone and Dodworth – only three were built between January 2019 and October 2020.

This is in comparison to the 106 affordable homes that were built in the same period in Hoyland, Wombwell and Darfield, 81 in North Barnsley and Royston, and 58 in Darton and Barugh. According to data from

Rightmove, the average price for a property in Penistone was £182,960 last year – compared to Wombwell's average of £133,486, Royston's average of £123,912, and Darton's average £136,653. In total, 347 affordable homes were built in the borough in the 18-month period.

Coun Tim Cheetham, cabinet spokesperson, said: "Affordable housing is generally secured as part of a wider development or delivered directly on small to medium-sized sites by registered providers such as housing associations or the council."

"The west of the borough is

more rural, meaning there are fewer sites available as it's less suitable for larger-scale housing developments."

"The latest housing delivery test figures published by the government show that, over the last three years, Barnsley has provided the minimum number of houses required across the borough."

"We're working hard to support new housing developments as Barnsley's population grows, and aim to make sure that housing needs and aspirations are met by ensuring everyone has access to a home that is well maintained, warm and affordable."

# Aldi Old Mill Lane



Steven

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**From:** Jenkinson, Joe (HEAD OF PLANNING, POLICY & BUILDING CTRL)  
[JoeJenkinson@barnsley.gov.uk]  
**Sent:** 11 December 2020 08:51  
**To:** Coe, David  
**Cc:** Andrew, Hannah (SENIOR PLANNING OFFICER); Paul Butler;  
matthew.drake@barratthomes.co.uk  
**Subject:** \*EXTERNAL: FW: Penistone



**EXTERNAL EMAIL WARNING**

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Morning Dave,

We have now had chance to consider this further. The sustainable travel measures for the site need to be considered alongside measures to ensure that the impact of the proposal on the highway network will be acceptable in terms of capacity and safety.

At present Penistone train station has limited car parking provision and only one location where additional car parking could realistically be provided. The allocation to which this application relates accounts for over one third of the number of dwellings anticipated to come forward in Penistone throughout the plan period. It far outweighs any other allocations within the settlement and particularly those yet to come forward. As the land that could accommodate additional station car parking is owned by the land promoter for this residential site and there is a requirement to ensure the development complies with Local Plan policy T3, it would represent a massive missed opportunity if we were not to secure the car parking via a S106 agreement. This is particularly so given the positive dialogue with South Yorkshire Passenger Transport Executive, Network Rail, Leeds and Sheffield City Regions, Transport for the North, Kirklees Council and the Penistone Line Community Rail Partnership about increasing the train service frequencies from hourly to half hourly as well as additional off peak services. Accordingly, failure to secure the land for the car parking would contradict paragraph 108 of the National Planning Policy Framework, which states:

108 In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;

The site was one of the most contentious sites during the Local Plan examination during which some participants called into question the overall sustainability of Penistone and its suitability to accommodate growth. Increased car parking provision at the train station would go some way to demonstrating to the local community that new development does bring with it enhanced infrastructure. However, if we squander this and leave it to a separate negotiation, it is difficult to see how we could persuade politicians and the community that your proposal contributes sustainable development having regard to economic, social and environmental dimensions. I am not therefore able to offer any assurances that the application would be considered favourably in the absence of a mechanism for securing the car parking at the train station.

On the matter of highway capacity and safety, I'm told that whilst we have previously advocated a roundabout on Halifax Road, we recognise that if a ghost island priority junction meets design standards and is deemed safe following a road safety audit, we would be prepared to relax our requirement for a roundabout. However, please note that there are other off site highway issues still unresolved including capacity of the A628/Bridge Street junction. You will therefore need to work closely with our Highway Development Control team to come up with a suitable solution to demonstrate the proposal complies with Local Plan policy T4.

I trust this explains our position.



Regards

Joe Jenkinson  
Head of Planning & Building Control  
Barnsley Metropolitan Borough Council  
Westgate Plaza  
S70 2DR

Email: [joejenkinson@barnsley.gov.uk](mailto:joejenkinson@barnsley.gov.uk)

**From:** Coe, David <[david.coe@barratthomes.co.uk](mailto:david.coe@barratthomes.co.uk)>

**Sent:** 10 November 2020 08:35

**To:** Jenkinson, Joe (HEAD OF PLANNING, POLICY & BUILDING CTRL) <[JoeJenkinson@barnsley.gov.uk](mailto:JoeJenkinson@barnsley.gov.uk)>

**Cc:** Andrew, Hannah (SENIOR PLANNING OFFICER) <[HannahAndrew@barnsley.gov.uk](mailto:HannahAndrew@barnsley.gov.uk)>; Paul Butler <[paul.butler@pbplanning.co.uk](mailto:paul.butler@pbplanning.co.uk)>; Drake, Mathew <[mathew.drake@barratthomes.co.uk](mailto:mathew.drake@barratthomes.co.uk)>

**Subject:** Penistone

Joe,

Further to our discussion early last week Re: the current planning application at Wellhouse Lane, Penistone and the land in the ownership of Yorkshire Land adjacent Penistone Train Station. We have spoken with Yorkshire Land and they are clear that they do not want any linkages between the two sites. The land at Wellhouse Lane isn't in the ownership of Yorkshire Land. Notwithstanding this, they have confirmed that they are willing to enter into discussions with the Council regarding the site's commercial viability for interchange use, on the basis that this is not related to the Wellhouse Lane application. They are also happy to provide a letter of comfort in advance of planning committee if required.

Any deal done following the approval of the planning application could still utilise the SPD funding given that the money would be in the Council's hands and the SPD refers to the monies being used at the Station site.

Happy to chat if required.

Dave

David Coe

Development Director | [Barratt Homes & David Wilson Homes Yorkshire West](#)  
Leeds Office: Raynham House | 2 Capitol Close | Morley | Leeds | LS27 0WH  
M: 07771 975098 | T: 0113 307 6908 | E: [david.coe@barratthomes.co.uk](mailto:david.coe@barratthomes.co.uk)





Steven

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**From:** Jenkinson, Joe (HEAD OF PLANNING,POLICY & BUILDING CTRL)  
[JoeJenkinson@barnsley.gov.uk]  
**Sent:** 21 December 2020 15:04  
**To:** Coe, David  
**Cc:** Andrew, Hannah (SENIOR PLANNING OFFICER); Lake, Wayne (HIGHWAY DEVELOPMENT CONTROL MANAGER)  
**Subject:** \*EXTERNAL: Penistone Station Car Parking  
**Attachments:** ARUP - design in editable form - YL revised land offer.png  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged



**EXTERNAL EMAIL WARNING**

Please do not click on **LINKS or ATTACHMENTS** where you are unsure of its origin. In such cases delete the email.

Afternoon Dave,

I have had some feedback from SYPTE as follows:

Improved bus integration, drop-off/pick-up and active travel provision are key requirements for a car park at this station. The WSP report that recommended 50 spaces to meet demand but this was undertaken in 2015/2016 and in the years since, footfall at the station grew by a further 7%. Whilst we do not expect a return to pre-Covid levels for a while, we are likely to need more than 50 spaces, particularly given the additional developments in the area and desired increases in frequency of rail services.

They have also provided an overlay of the land offered on top of an initial outline design ARUP. This shows that:

- YL has offered a small part of the land, which is approximately 30-50% woodland and un-usable steep sloping ground, more of a maintenance liability than benefit.
- The land offered gives no space for rail replacement bus services or taxi pick up
- It is unclear whether the land offered provide sufficient space for a footbridge/lifts to land. This would be a requirement imposed by Network Rail due to the resulting increased footfall over the Barrow Crossing any car park would bring. The east side of any new structure would not fit within the footprint of existing Network Rail land and would therefore need to be within the offered land and closer to the viaduct.
- Entry/exit looks too narrow for 2 vehicles to pass clear of pedestrians.

Please also be aware that the ARUP design is a few years old now and I understand the NWR design guides may have changed to take into account the ever increasing car sizes with a requirement for more 'over-sized' spaces.

Based on the above, we are still some way from reaching any sort of agreement, particularly given the unrealistic valuation YLL seem to be attributing to the land. It strikes me therefore that unless YLL are able to offer more land we will be unable to progress positively with the application. If you are agreeable, I'd suggest the best way to progress this will be to meet with SYPTE in the new year to work up a layout in partnership with them and to get a valuation once we have clarity of the red line boundary.

Regards

Joe Jenkinson  
Head of Planning & Building Control  
Barnsley Metropolitan Borough Council  
Westgate Plaza  
S70 2DR

Email: [joejenkinson@barnsley.gov.uk](mailto:joejenkinson@barnsley.gov.uk)



## **Land at Halifax Road, Penistone, Barnsley (the Site)**

### **Advice**



## Introduction

- 1 I am asked to advise Barratt David Wilson Homes on the approach that Barnsley MBC is apparently taking in relation to the determination of a planning application for 402 dwellings at the above site ("the Application").
- 2 The Site is allocated for housing in the adopted Local Plan. The allocation is subject to a number of matters. None of them relate to the delivery of offsite parking provision or any other works at the Penistone railway station. Nor do they relate to the transfer of land for such purposes.
- 3 The Council has suggested that the application will not be "*progressed positively*" without some sort of deal in relation to land or the delivery of offsite parking or other works associated with Penistone railway station<sup>1</sup>. I am instructed that this is a suggestion that the officers will recommend refusal unless some sort of "deal" is done.

## Facts

- 4 The Application is for 402 dwellings on land at Halifax Road, Penistone. The Application was made by the land owner of the Site and Barratt David Wilson jointly. A separate party, who has facilitated the arrangements to bring that site forward for development, but has no ownership in it, owns other land adjacent to the Penistone station at Lairds Way ("the Station Site"). I am instructed the Council are aware of this other party but have not approached them to acquire the Station Site or to proceed to undertake any works in relation to it.
- 5 The Local Plan was adopted just 2 years ago in January 2019. The Site is allocated under policy HS75. There are several provisions in that policy that relate to the way the site is to be developed. There is no mention of the Station Site, improvements to the Penistone station or off site car parking in the policy or in the related text. The policy requires "appropriate off site road safety enhancements" as the only off site matter. That could not be construed as relevant to the Councils current suggestion. The Council has not claimed it is.
- 6 Policy T3 of the Local Plan deals with new development and sustainable travel. It sets out general, and non-site specific matters related to the location of sites and their design, parking for cycles and the need for applications to be accompanied by a travel plan and transport assessment or statement (as appropriate). The acceptability of the location of the site has been set by its allocation after

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<sup>1</sup> Email of 21.12.2020 from J Jenkinson (Head of Planning)



careful consideration by the Council and scrutiny by the examining Inspector. Policy T3 says that where accessibility is unacceptable for any given site, there is an expectation of a financial contribution to be made in line with policy I1. The policy text refers to an SPD coming forward in the future.

- 7 The Sustainable Travel SPD (November 2019) is now the SPD that policy T3 alludes to and deals with the contributions suggested by T3 and I1. It states that the Local Plan has already identified sites in the most sustainable locations that have good access to public transport or where networks can be extended. However, it goes on to state that if accessibility is unacceptable, the solution is a financial contribution, in accordance with Local Plan policy I1. The SPD determines the amount of that contribution. The SPD sets out at length why contributions are the appropriate response to comply with Local Plan policies T1 and T3 and this allows the Council to finance and provide for the cumulative impacts of developments. It confirms that the making of financial contributions in this way achieves Local Plan policy compliance. The list of schemes used to determine the rate of contribution includes, at Table 9, a park and ride scheme at Penistone station.
- 8 Applying the rates in the SPD to the application results in a figure of £402,000; a sum Barratt David Wilson have confirmed will be delivered through a S106 agreement associated with the grant of permission at the Site.
- 9 The Station Site is not subject to any site specific allocation in the Local Plan. I am instructed that a parking and interchange use allocation was sought by the land owner of that site at the time, but this not taken forward by the Council or the Inspector. Indeed I am instructed the Council resisted it. Consequently the adopted Local Plan is silent and makes no reference to the Station Site at all. The Adopted Neighbourhood Plan for the area supports the development of the Station Site for parking uses, but this support is independent of any connection between that site and the development of the housing site at HS75.
- 10 There is a long history of pre application correspondence with the Council. In December 2018, a month before the adoption of the Local Plan, the Council confirmed in writing that what was needed from a public transport point of view to see a satisfactory development of the site, was a contribution to enhance a current bus service and a contribution towards improvements at the Penistone station. That is exactly what has been taken forward by the SPD in November 2019 and is offered by Barratt David Wilson.
- 11 For reasons that are not entirely clear, there has been some form of discussion between the Council and Barratt David Wilson to enquire as to the possibility of the land at the Station Site being made available to the Council, notwithstanding that this is not land that either Barratt or the owner of the



Site own or control. The Council has attempted to link the delivery of the Site with the delivery of the Station Site as an interchange, saying it would be a missed opportunity to not do so<sup>2</sup>. There has also been a vague reference to policy T3 of the Local Plan and the general terms of NPPF in relation to opportunities for sustainable travel.

## Analysis

- 12 There is nothing in the Local Plan that can be said to restrict the development of the Site as being subject to the delivery of works at the Station Site or the transfer of the Station Site to the Council. That is simply not in the Local Plan and cannot remotely be implied by Policy T3 or otherwise. Nor can it be implied by NPPF or the Neighbourhood Plan.
- 13 The Local Plan directly refers to contributions for public transport infrastructure works and the SPD is the vehicle to determine what these are for each development. The Local Plan has already found the sites that are allocated to be accessible. The SPD makes clear that its funding is to be spent on (amongst other things) parking improvements at Penistone station.
- 14 The Local Plan could have allocated the Station Site for parking. It did not. It could have attempted to link the development of the Site to the delivery of that parking, it did not.
- 15 Barratt David Wilson have offered to fully meet the SPD contribution to accessibility. Their proposal meets policy at every level.
- 16 The suggested conditionality of linking the grant of planning permission at the Site with the transfer of the Station Site falls far outside the legal and policy basis for imposing a planning condition or requesting a S106 obligation. It relates to land outside the control of the applicant, is undeliverable and is a suggestion that is unnecessary to make the development acceptable. It is unreasonable and has no policy basis or justification. It appears to be an entirely opportunistic attempt to circumvent off site land acquisition the Council would like to achieve. The Council has separate powers for that purpose and these then invoke the statutory code for compensation, which it would be improper to attempt to avoid.
- 17 There is no proper basis for refusal of planning permission based around the Council's recent desire to link delivery of the Site to delivery of parking at the Station Site by some means or another.

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<sup>2</sup> Email of 11 December 2020 from J Jenkinson.



Indeed it would be entirely improper to do so.

- 18 Any refusal based on this improper linkage should be appealed and strongly contested. There would be a very strong prospect of costs as well as success at appeal.

**RICHARD SAGAR**  
**2 February 2021**



## Advice Note

### Land at Laird's Way, Penistone ("the Land")

#### Background

1. We are asked to advise Yorkshire Land Limited ("**YLL**") on the position ostensibly being pursued by Barnsley Metropolitan Borough Council ("**the Council**") regarding an ongoing planning application (reference 2020/0274) ("**the Application**") relating to land at Halifax Road Penistone ("**the Residential Site**"). The Application has been submitted by Barratt David Wilson Homes ("**BDW**"), and proposes the development of the Residential Site so as to provide 400 dwellings, landscaping, and associated infrastructure ("**the Proposed Development**").
2. The Residential Site is expressly allocated for housing as site HS75 in the Council's Local Plan (adopted 2019) ("**the Local Plan**"). The Application has been submitted in the joint names of BDW and the freehold owner of the Residential Site (Rebecca Scott). However, we understand that YLL is facilitating the Proposed Development by way of an option agreed with the freeholder, and a conditional contract agreed with BDW. The Application was submitted to the Council in February 2020, and is due to be considered at planning committee with a recommendation for approval (subject to conditions and proposed planning obligations) on 8 June 2021.
3. Separate to the above, YLL owns the freehold interest in the Land and which is located approximately 1 kilometre to the south east of the Residential Site and which is in the immediate proximity of Penistone railway station. Neither BDW nor Rebecca Scott have any interest in the Land. We understand that YLL promoted the Land for development as a parking interchange associated with the use of the railway station as part of the Local Plan examination in public. However, we are informed that this was not supported by the Council, and the adopted Local Plan and policies map identifies the Land as 'Urban Fabric' for these purposes.
4. Allocation policy HS75 does not make any reference to development of the Residential Site requiring any mitigation works on the Land, provision of off-site parking improvements, or improvements to Penistone railway station. We further understand that the Proposed Development was subject to 2 separate pre-application meetings with the Council (one with Avant Homes, and one with BDW), and that the responses provided by the Council following those discussions similarly made no mention of any works on the Land being necessary to mitigate impacts associated with the development of the Residential Site.
5. Notwithstanding, we understand that the Council has indicated to BDW that the Application will be refused unless a planning obligation and entered into under section 106 of the Town and Country Planning Act 1990 ("**the 1990 Act**") is secured to provide the Land as a car park associated with the train station ("**the Proposed s106 Obligation**"). Indeed, we have had sight of the planning officer's report to Planning Committee upon the Application ("**the Officer's Report**") which expressly states this fact, and suggests that the Land will be secured as such in lieu of a



sustainable travel contribution of £400,000 which would otherwise be payable pursuant to the Council's Sustainable Travel Supplementary Planning Document ("**the SPD**").

6. Following publication of the Officer's Report, we understand that BDW has written to the Council objecting to the Proposed s106 Obligation, and committing to pay a £400,000 contribution in accordance with the SPD ("**the Contribution**") rather than to provide a car park / interchange facility on the Land. Indeed in preparing this advice note, we have had sight of a separate written advice to BDW provided by its solicitor (Richard Sagar of Walker Morris LLP) dated 2 February 2021 ("**the Legal Note**") advising that the Proposed s106 Obligation would fall far outside of the relevant legal and policy tests for requesting a section 106 obligation. We are informed that BDW's letter objecting to the Proposed s106 Obligation will be read out to the Planning Committee by the Council's planning officer, although it is unclear how members will respond to this.
7. Notwithstanding the above, and separate to the Application process, we understand that YLL has contacted the Council with a view to selling the Land to the authority. We are informed that this approach was made prior to the Officer's Report being published, with heads of terms being provided to the Council on 13 May 2021. This approach was also made entirely independently of BDW and Rebecca Scott given that those persons have no interest in the Land. Rather, YLL wishes to dispose of its landholdings within the Penistone area as part of its broader business strategy.
8. In the context of the above, we are asked to provide our own view as to whether the Council would be justified in requiring the Proposed s106 Obligation to be secured and for the Land to be transferred to it in order to provide a car park / interchange associated with the train station, rather than to accept the Contribution.

## Analysis

9. As a matter of law<sup>1</sup> and policy<sup>2</sup>, a planning obligation may only constitute a reason for granting planning permission and should only be sought by a planning authority where the obligation is:
  - a) Necessary to make the development acceptable in planning terms;
  - b) Directly related to the development; and
  - c) Fairly and reasonably related in scale and kind to the development.
10. We have not had sight of any formal explanation or justification provided by the Council as to how it considers the Proposed s106 Obligation to satisfy these tests. However, the Officer's Report suggests that the Council considers the obligation to be justified by reference to policies HS75 and T3 of the Local Plan, as well as the SPD and policy LE1 of the Penistone Neighbourhood Plan (adopted August 2019) ("**the Neighbourhood Plan**").

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<sup>1</sup> Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

<sup>2</sup> Paragraph 56 of the National Planning Policy Framework



11. We do not consider that these policies provide any justification for the Proposed s106 Obligation in the light of the Council refusing to accept the Contribution. Rather, we are of the view that the obligation would fail to satisfy the tests of a valid obligation outlined at paragraph 9 above in such circumstances.
12. Policy HS75 of the Local Plan is a site-specific policy applicable to the Residential Site, and prescribes those matters which its development would be expected to address. Indeed, paragraph 9.8 of the Local Plan expressly states that “where there are specific issues [involved with housing allocations], site specific policies are provided”. None of the matters identified in policy HS75 relate to the Land, car parking, or improvements to Penistone train station. The policy refers to “appropriate off-site road safety enhancements” being provided. However, those comments cannot sensibly be construed as requiring the Land to be given over to car parking associated with use of the train station. Indeed, such works would not directly relate to the road network, and we have not had sight of any evidence to suggest that they would deliver any safety benefits in highways terms.
13. Policy T3 of the Local Plan states that new development will (amongst other matters) be expected to “be located and designed to reduce the need to travel, be accessible to public transport, and meet the needs of pedestrians and cyclists. It should be noted that even ignoring matters relating to the Contribution and the Proposed s106 Obligation, the Proposed Development intends to secure a package of sustainable travel measures which might be argued to consisted acceptable levels of accessibility for the purposes of policy T3. Indeed, we understand that the scheme intends to secure a separate £100,000 commuted sum toward sustainable travel measures, as well as new pedestrian / cycle routes through the site and a link road designed to support buses.
14. Policy T3 continues, noting that where levels of accessibility as part of new development schemes are unacceptable, the Council “will expect developers to take action or make financial contributions in accordance with policy I1”. Paragraph 12.47 of the Local Plan noted that a supplementary planning document would be forthcoming and would provide further detail as to how policy TS3 ought to be applied in practice. The SPD has since been adopted, and its paragraph 3.1 expressly confirms that it supplements policies TS3 and I1 for these purposes.
15. Paragraph 4.9 of the SPD specifically comments that in order to meet policy T3, developers will be expected to provide a capital contribution towards public transport and/or active travel infrastructure. This can be achieved through “on-site provision as part of the development proposal, and a contribution towards provision of facilities off site”. Paragraph 4.2 adds that financial contributions in line with the SPD are necessary to (amongst other matters) reflect the fact provision of public transport enhancements are normally outside of the control of applicants, and assist the Council in providing for the cumulative impacts of new developments on the operation of public transport services.
16. It is therefore clear that the SPD anticipates that any off-site sustainable travel benefits required to be secured by development proposals should be addressed through financial contributions. This



is entirely understandable given that off-site matters typically involve land outside of the control of applicants. It is well established that except for monetary obligations, planning obligations are not typically an appropriate instrument for imposing off-site obligations given that the scope of s106 of the 1990 Act itself is limited to the land which the obligation attaches (generally the application site)<sup>3</sup>. Similarly, planning conditions relating to land not in control of an applicant or which requires the consent of another person often fail tests of reasonableness and enforceability.<sup>4</sup>

17. Policy I1 of the Local Plan supports the above approach, noting that contributions will be secured where necessary provision is not directly provided by a developer, with pooled contributions also able to be utilised where appropriate. In this regard, Appendix C of the SPD prescribes a formula for calculating sustainable travel contributions for residential developments, with a park and ride scheme at Penistone station one of the schemes used to determine the contribution rate. In specifying an indicative cost for such works (£1.75 million), we assume that the Council accounted for the potential costs associated with acquiring any land required to facilitate their delivery.
18. We understand that application of the formula identified in the SPD to the Proposed Development produces the Contribution figure of £400,000, which BDW is willing to pay as part of any section 106 agreement in support of the Application. The Contribution therefore accords with the Council's own policies, and is consistent with the requirements of the Local Plan and the SPD. Indeed, we understand that the Council's pre-application response upon the Proposed Development confirmed that it would require a financial contribution toward improvements at Penistone station, which is precisely what BDW have confirmed that it will provide.
19. Policy LE1 of the Neighbourhood Plan notes that the development of the Land to "alleviate parking issues" within the town centre will be supported. However, it plainly does not require such land to be given up for such purposes as part of the Proposed Development. Indeed, the policy does not make or allude to any connection between the Land and the Residential Site, and does not even specify that the Land ought to be developed for parking purposes specifically associated with the railway station. Rather, the focus of the policy is on increasing the vitality of Penistone town centre, and providing additional parking to benefit the town's businesses and workers.
20. With the above in mind, we consider that any refusal by the Council to accept the Contribution and to specifically require that the Proposed s106 Contribution be secured as part of the Proposed Development would be entirely unjustified in policy terms. Indeed, any such position would be contrary to the Council's own policy documents, and be entirely unreasonable given that it would impose requirements on the applicants that are outside of their control. We would concur with the comments made in the Legal Note that any position taken by the Council to link the Proposed Development with a requirement to transfer the Land rather than to accept the Contribution would

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<sup>3</sup> See for example *R (Khodari) vs Royal Borough of Kensington and Chelsea* [2017] EWCA Civ 333

<sup>4</sup> Paragraph 21a-009-20140306 of the National Planning Practice Guidance



seem to represent an opportunistic attempt by the authority to acquire title in the Land either through negotiation with YLL or compulsorily.

## Conclusions

21. In light of the above discussion, we conclude that:

- 21.1 There are no local planning policies which directly link the development of the Residential Site and the provision of the Land as a car park and/or interchange facility associated with the station. None of the Council's policy documents mention any relationship between these two land parcels, and the specific policy applicable to the Residential Site (HS75) is silent as to any matters relating to the Land. The fact that there is no express policy basis for the Proposed s106 Obligation to be secured as part of the Residential Site's development indicates that it is not necessary to make the Proposed Development acceptable in planning terms.
  - 21.2 Rather, the Council's planning policies indicate that sustainable travel obligations relating to off-site matters should be dealt with by way of a financial contribution calculated in accordance with the SPD. BDW is wanting to pursue this approach, and to pay the Contribution to the Council accordingly. Any refusal by the Council to accept the Contribution and to insist on the Proposed s106 Obligation would be unjustified on this basis, and entirely improper.
  - 21.3 Indeed, in adopting such a position, the Council would be requiring the applicants to enter into planning obligations relating to off-site matters and land outside of their control. Section 106 obligations are not typically appropriate mechanisms to address off-site issues (other than though financial contributions). It would therefore plainly be unreasonable for the Council to insist upon such an approach in the absence of any clear policy or substantive justification.
  - 21.4 In contravention of its own policies, the Council appears to be opportunistically utilising the Application as a means through which to acquire the Land without having to do so through private negotiation with YLL, or through exercise of compulsory purchase powers. This is patently an unreasonable and perverse position for the authority to take.
22. In light of the above, we concur with the conclusions of the Legal Note that any refusal of the Application on the basis of requiring the Proposed s106 Obligation to be secured rather than to accept the Contribution would be vulnerable to successful appeal and an award of costs against the authority.
23. Notwithstanding the above, the fact that YLL is separately engaging with the Council with a view to disposing of the Land would appear to provide the Council with opportunity to acquire the Land and properly determine the Application in accordance with its own policies. Indeed, in such circumstances the authority would be able to secure the Contribution in approving the Application so as to ensure that the Proposed Development makes a proportionate contribution to sustainable



travel matters, whilst separately purchasing the Land to deliver any car park / interchange works that are envisaged.

24. We trust the above assists for present purposes, but please contact us if you require any further information.

**Alec Cropper**

**Walton & Co**

**4 June 2021**