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Our Ref YLL/BMBC-MO/2022-12.01

02 December 2022

Mr Sukdave Ghuman
Monitoring Officer
Barnsley Metropolitan Borough Council
Town Hall
Church Street
BARNSELEY
S70 2TA

Sent by email to
sukdaveghuman@barnsley.gov.uk

Dear Mr Ghuman,

LAND ON THE WEST SIDE OF LAIRD'S WAY - PENISTONE

As you will recall, we wrote to you on 28 October and 03 November 2022 respectively to bring your attention to our serious concerns regarding the conduct of various Officers and Members of Barnsley Metropolitan Borough Council in relation to the Council's acquisition of our land on the West Side of Laird's Way, Penistone.

However, as of the date of this letter, we are yet to receive any written acknowledgement or formal reply and we are therefore writing again now, to ascertain how you are progressing in dealing with the serious matters we have raised.

You will no doubt be aware that we have also corresponded separately with the Council's Head of Legal Services (who is complicit in the matters we have raised) and most recently, we also sent our detailed eleven page formal letter of reply (accompanied by a further detailed Legal letter from Walton & Co (Planning Lawyers) to the letter we received from the Council's Service Director for Regeneration & Culture, Kathy McArdle on Sunday, 30 October 2022. This correspondence was copied to you at the time of sending, but is also enclosed again with this letter for your ease of ongoing reference.

Included in our formal letter of response to the Council's Service Director for Regeneration & Culture is a request for a **formal apology**, considering the number of factual inaccuracies and false statements which the Service Director had made in her letter and which we have

factually addressed in our formal reply. However, neither an apology nor any written acknowledgement or reply to our letter has been forthcoming to date.

In this regard, we are now further concerned that despite having addressed with hard evidence the false statements made by the Council's Service Director – not least that the transfer of our Laird's Way land was not included as an obligation in a S106 agreement, as the Service Director had incorrectly stated in her letter, as well as the compelling content of the further legal letter submitted to the Council separately by leading planning lawyers, Walton & Co, in this matter, the Council are now attempting to stonewall us with silence, which is simply not acceptable behaviour for those with the power and responsibility of public office, not least professional legal officers of Local Authorities who are duty bound to ensure probity is upheld at all times.

Indeed, the statement made by the Council's Head of Legal Services made in his email to us dated 03 November 2022, preceding our formal letter of reply to Mr McArdle, that:

"the Council will not be responding to further communications in this matter"

Is highly concerning and simply not acceptable. Moreover, we find this an appalling abuse of power that Mr Field was willing to reply before being in receipt of the full facts in relation to Ms McArdle's letter, which we subsequently set out in our letter of 09 November. Although, we are pleased that this correspondence did not continue to reference Mr Field's earlier contention that our correspondence would be "*considered vexatious*" as it is evidently not.

Indeed, our most recent correspondence to the Council's Service Director for Regeneration and Culture addresses a number of fundamental misunderstandings on the part of Barnsley Council in this matter and as is also set out in the final paragraph of the separate letter from Walton & Co (Planning Lawyers) dated 09 November 2022:

"For the reasons discussed in this letter, it is clear that the Council's reluctance to meaningfully engage with YLL upon this matter to date has been based upon mistaken understanding of the relevant factual and substantive issues. We therefore trust that this letter is useful in clarifying matters so as to enable detailed discussions to take place with our client going forwards. We are aware that YLL has requested that the Council commission and objective and independent investigation into the approach pursued by the authority regarding the Land's transfer. It is suggested that such an investigation would be of benefit to all parties given the Council's continued misunderstanding of the documents underlying the Permission, as well as the Applications evolution."

The full letter from Walton & Co is also enclosed for your ease of reference.

We therefore believe that the Council and its Legal Officers are duty bound to address impropriety where it is brought to the Council's attention (as has been abundantly demonstrated by firm evidence in this instance) and a failure to do so would be a fundamental failure and dereliction of duty.

We are a highly professional and respected regional development company, now in our 36th year of operation and we continue to go from strength to strength based on our values of candour and integrity. Never in our decades of operating in Barnsley or in various other

authority areas across Yorkshire have we ever had to deal with such a mis-handling of affairs by a Local Authority, where we have submitted a formal complaint, evidenced with firm and compelling evidence and facts and reinforced with several legal advice notes and letters and yet the Council still refuses to

- A) investigate the matter appropriately;
- B) acknowledge evidenced wrongdoing; and
- C) take any appropriate action.

In essence, we have now evidenced there were no S106 obligations or planning conditions requiring that we transfer the Laird's Way land to Barnsley Council as part of the unrelated planning application (Ref 2020/0274) by Barratt & David Wilson Homes pertaining to the development of Barnsley Local Plan Housing Site Allocation HS75. However, following the resolution at Planning Regulatory Board to grant planning permission on 08 June 2021, the Council's Head of Planning then withheld the formal planning decision notice to allow Barratt & David Wilson Homes to commence their development, until such time as we had entered into the formal legal agreement pertaining to the sale of our unlinked and unrelated third party land at Laird's Way to Barnsley Council on the terms and price dictated by the Council.

In our opinion and that of various other professionals we have consulted, this is a clear cut case of impropriety and blackmail.

On this basis, if the Council believes it can continue to stonewall us with silence in an attempt to make this matter go away, then it is profoundly mistaken. As a matter of principle, we will not rest until the evidenced concerns we have raised have been dealt with appropriately. Indeed, we have provided the Council with every opportunity to appropriately investigate the matter and made every attempt to achieve a satisfactory outcome by avoiding legal action, whereby the Council will be required to attempt to defend the matter, at considerable expense to Barnsley's Tax Payers at a time when many residents are dealing with a cost of living crisis.

We look forward to hearing from you.

Yours sincerely

YORKSHIRE LAND Limited



Samuel S. Green
Business Manager

Cc	Sarah Norman Cllr Sir Stephen Houghton CBE Mr Jason Field Ms Kathy McArdle Mr Oliver Coppard Julian Smith CBE MP Miriam Cates MP	- - - - - - -	Chief Executive Officer, Barnsley MBC Leader, Barnsley MBC Head of Legal Services, Barnsley MBC Service Director, Regeneration & Culture South Yorkshire Mayor Skipton & Ripon Constituency Penistone & Stocksbridge Constituency
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Enclosure 1

Letter Reference YLL/KM/2022-11.01 and dated 09 November 2022 to
Barnsley Council Service Director for Regeneration & Culture



PO BOX 785 - HARROGATE - HG1 9RT

Email: office@yorkshireland-ltd.com

Tel: +44 (0)1423 770335

Our ref YLL/KM/2022-11.01

09 November 2022

Kathy McArdle

Service Director, Regeneration & Culture
Barnsley Metropolitan Borough Council
PO Box 634
BARNSELEY
S70 9GG

Sent by email to
kathymcardle@barnsley.gov.uk

Dear Mrs McArdle,

FORMAL RESPONSE TO YOUR LETTER RECEIVED SUNDAY 30 OCTOBER 2022
LAND ON THE WEST SIDE OF LAIRD'S WAY - PENISTONE

We write to respond formally to your letter to our company, which is dated Friday, 28 October 2022, but sent to and received by us via email at 11:06am on Sunday, 30 October 2022, in relation to our complaint and allegations of improper conduct by Barnsley Metropolitan Borough Council.

We request that this correspondence is formally recorded on the Council's files, as it will be referenced in Legal Action against the Council moving forward, should this prove necessary.

As stated previously in our interim holding email reply dated Monday, 31 October 2022, this formal response is necessitated as a result of the factual inaccuracies and false statements contained throughout your letter.

We have also instructed our retained Planning Lawyers, Walton & Co, to write to you separately, in order to outline the Legal Position with regard to the various factual inaccuracies/false statements made in your letter and a copy of their correspondence, dated 09 November, is enclosed for completeness and should be read in conjunction with this letter.

Within the third paragraph of your letter, it is stated you are aware that the matters we have raised have already been considered through the Council's Complaints Procedure and by the Local Government Ombudsman. However, you have failed to identify in your letter that

neither the Council, nor the Local Government Ombudsman has actually undertaken any investigation of our allegations.

In addition, as set out in our letter to the Council's Head of Legal Services dated 03 November 2022 (Our Ref YLL/JF/2022-11.02) neither does this mean, in any way, that the Council **Cannot** nor **Should not** agree to the independent investigation we are seeking based on the lack of any investigation to date and the serious nature of the allegations we have lodged, coupled with the evidenced complicity of the Council's Leader, Planning & Legal Departments. Indeed the Council will be acting on advice from its Legal Department in this matter, in which it is clearly not impartial, which is without doubt an entirely perverse situation and clear case of the Council acting as Judge and Jury.

We question how this reconciles with the Nolan Principles of Public Life expected of all Public Officer holders?

The fact in this regard, is that Council has not in any way been exonerated from the serious allegations and matters we have raised to date and they therefore remain to be addressed.

As is apparent from the enclosed letter dated 08 July 2022 from Mr Mark Price (LGO Investigator) the LGO's decision not to investigate our complaint patently relied significantly on the basis of the financial aspects of the Council's actions in acquiring land formerly in our Ownership at Laird's Way, which is not the principal point. The overriding concern should in fact relate to the circumstances surrounding Barnsley Council's improper acquisition of our Laird's Way land in the first instance - of which any financial implications are just one resulting consideration which can be dealt with separately, including through the courts, should we deem this necessary.

You also state that you do not see anything in our letters of 20 and 26 September 2022 to the Leader of the Council, Councillor Sir Stephen Houghton CBE (Our Refs YLL/SH/2022-09.01 & YLL/SH/2022-09.02) which gives you sufficient cause to reopen that complaint. However, we find this particularly concerning as our letters to the Leader of the Council, which have been sent in furtherance to our initial detailed seven page letter to the Chief Executive of the Council dated 22 October 2021 (Our Ref YLL/LW/2021-10.01) offer a proliferation of evidence not included in our previous complaint, including evidence provided to us under the Freedom of Information Act, not least statements extracted from various email correspondence written by and between Officers of the Council, South Yorkshire Passenger Transport Executive and employees of Barratt & David Wilson Homes, which give rise to our stated concerns of pre-meditation and improper conduct by Council officers to acquire our Land at Laird's Way over a period of time.

Furthermore, it is perhaps the correspondence which is missing - by virtue of the fact that it simply never took place - which offers more evidential weight to our case of improper conduct perpetrated by Council Officers. Indeed at no time during Officers' consideration of the application (ref 2020/0274) by BDW did the Council's Head of Planning or any other Officers or Members of the Council ever contact our company directly via any means whatsoever to enquire and ascertain whether we would be prepared to sell or otherwise transfer the Land at

Laird's Way to the Council as part of/pursuant to BDW's planning application for the development of Barnsley Local Plan Housing Site Allocation Reference HS75.

We trust you will therefore appreciate just how improper the actions of Council Officers' were in this regard and aspect alone, not least on the basis that BDW were not the landowner of the Laird's Way site and their application was entirely unrelated to our Laird's Way land in that there were no landownership or Planning Policy links between the two sites whatsoever.

With regard to the bullet points in your letter, we will now address each point in turn:

You will be aware that in order for the land to be allocated the Council must first demonstrate that the allocation would be deliverable, in order for a Local Plan to be found sound.

Your statement that technical issues not appreciated at the time of allocating the HS75 site and the applicant not having been able to find a suitable solution to these issues were the reasons for the delay in Officer's determining the application. In this regard, given the references elsewhere in your letter, we take these issues to mean the Council's concerns in relation to the capacity of the A628/Bridge Street Junction in the Penistone Principal Town to accommodate new development. However, this position is factually incorrect and such concerns are not substantiated by the evidence underpinning the Barnsley Local Plan.

The legal position in this respect is considered in the attached letter sent to you directly, under separate cover, by our Planning Lawyers, Walton & Co. However, we would add that the evidence demonstrates that Barnsley Council had actually given due consideration to traffic impact resulting from the proposed Local Plan site allocation. Indeed, the evidence base underpinning the Barnsley Local Plan includes the Council's Infrastructure Delivery Plan (IDP) which at Section 4.7 (Aecom Modelling) outlines importantly that:

"The Barnsley Transport Model aims to determine whether the existing highway infrastructure is able to cope with the projected growth with or without interventions across the Borough. It assesses the cumulative effects of the proposed Local Plan and other traffic growth."

And:

"The assessment was undertaken using the Barnsley Strategic Transport models, to extract outputs from the base (2008) and forecast (2033) years for the AM and PM peak periods. These were subsequently plotted against a map of Local Plan sites to show where correlations existed between site location, congestion and general traffic growth."
(Our Emphasis)

In so far as the A628/Bridge Street Junction in Penistone is concerned, the IDP identifies that:

"In addition individual models have been run to isolate impacts of proposals on specific areas reflecting the outcomes from the strategic transport model. This includes... Penistone (A628/Bridge Street)."
(Our Emphasis)

However, critically, it is then stated in the IDP that:

"In respect of the detailed junction assessments modelling conclusions have suggested that no significant intervention is required at the Penistone Junction."

(Our Emphasis)

At that time, the Barnsley Local Plan Consultation Draft 2014 identified an indicative yield for Site HS75 (then identified as Site H82) of **516 dwellings** - substantially more (an almost 30% increase) than the 400 dwellings which were ultimately proposed at the site via the planning application submitted by BDW. The traffic modelling referred to in the Council's IDP will therefore have had regard to the substantially higher yield figure earlier proposed by the Council in reaching its conclusion that, to reiterate:

"...no significant intervention is required at the Penistone Junction"

This aside from the fact that a further housing site allocation (Ref HS74) for in excess of an additional 100 new homes (which immediately adjoins Site HS75) was also identified in the Barnsley Local Plan and this site would therefore also have been considered by the Council through its Traffic modelling in reaching its conclusion in relation to the Penistone Bridge Street Junction, in accordance with the statement above regarding the cumulative effects of the (at that time) proposed Local Plan.

In recent times, the Council has also received separate planning applications for the development of nearby Barnsley Local Plan Sites Reference HS71, HS72 and SL23 by various other developers. None of which obligated the developers to provide land for car parking or monies to Barnsley Council in respect of feasibility studies and/or improvements to the Penistone Bridge Street Junction.

The Council's own evidence base therefore contradicts the baseless claim in your letter that such technical works were not considered prior to the allocation the HS75 site for housing development which, we hasten to add, is the single largest allocation identified in the Western part of the Borough, to meet the market and affordable housing needs of the Penistone Principal Town. Indeed, had the Council not taken account of and assessed such factors as part of the Local Plan Preparation process, this would, in our opinion, have been an utter failing and dereliction of the duty of the Council and its Officers.

We would also note, as a point of interest, that prior to the completion of the Stocksbridge Bypass, the Bridge Street Junction (A628) was far busier, at all times of day, than it is now, as at that time it was the major route for through traffic travelling between J37 of the M1 and Manchester - including an almost constant passage of HGV's along the A628.

Your statement that the more detailed technical work that accompanied BDW's planning application was revealing a fundamental issue on the highway network for which the applicant was not proposing adequate mitigation is also patently incorrect.

BDW were clear from the outset that they were prepared to provide an appropriate financial contribution in relation to the A628/Bridge Street Junction and indeed the completed Section

106 agreement (which we are a party to) identifies within the definition 'Bridge End Highways Improvement Contribution' that this meant the sum of £200k:

"... to be paid to the Council and applied by the Council towards works to improve Bridge End Junction, including but not limited to, a feasibility study."

It is apparent from this definition, by virtue of the reference to a feasibility study, that the Council did not itself even know at that stage what works were required to the Bridge End Junction. However, nonetheless BDW met the obligation imposed upon them by the Council to pay the Bridge End Highways Improvement Contribution identified in the S106. This was in addition to the £400k Sustainable Travel SPD contribution also paid by BDW to the Council.

We do not then follow your statement that it would have been an easier option for the Council to refuse the application and how the transfer of our entirely unrelated and unlinked land at Laird's Way was **lawfully** necessitated as part of an alternative option you suggest officers sought to explore based on their knowledge of Penistone.

We are pleased that you have confirmed in your letter that Mr Jenkinson 'does not dispute that he confirmed during the Local Plan process that there was no need for an interchange' on the land at Lairds Way and you go to great pains to point out that Council actually suggested to BDW that our company (as the land promoter for site HS75) should consider transferring the Laird's Way land to the Council to enable the provision of car parking at the station, as opposed to an Interchange, which you are clear in stating in your letter, are not one and the same. However, respectfully, this is a weak attempt to excuse the failings of the Council and its Officers. Indeed, the Council itself has used the terms interchangeably throughout the Local Plan process as well as during BDW's planning application process. As set out in the enclosed letter from Walton & Co, the Officer's report to Planning Regulatory Board in respect of BDW's planning application for Site HS75 expressly states that the Council intends to use the Laird's Way Land:

"To provide a car park and interchange facility adjacent to the Train Station."

(Our Emphasis)

Nonetheless, we politely request that you again read our submitted letters and evidence clearly, as you will no doubt then note that within this correspondence, we have actually stated that Mr Jenkinson confirmed to the Local Plan Inspector (in complete contradiction of the verbal evidence made by our Managing Director, Mr Steven Green) that the Laird's Way land was not required for Car Parking/Interchange uses.

Indeed, varying terminology has been used at various times over several years to describe the proposals for the Laird's Way land, with SYPTe themselves also referring also to Park & Ride uses on the land. The fact is Mr Jenkinson was aware of the need (and not least SYPTe's desire) for the Laird's Way land for such uses stretching back to at least 2016 (3 years prior to the adoption of the Local Plan) and yet informed the Barnsley Local Plan Inspector that such land was not required, only later to pursue its transfer to the Council pursuant to BDW's planning application for the development of site HS75, which is unlinked and unrelated in any way by Planning Policy or Landownership.

On this basis, we believe it is demonstrated that the Council acted ultra vires and the Council

is simply attempting to defend the indefensible in the face of overwhelming evidence.

As set out in our letter to the Chief Executive dated 22 October 2021, shortly after Mr Jenkinson made his verbal evidence to the Barnsley Local Plan Inspector (in contradiction of the written and verbal evidence submitted by our company) that the Council did not require the Laird's Way Land for Car Parking/Interchange uses, Barnsley Council published the Barnsley Rail Vision alongside a report to Cabinet (Barnsley Council Ref: CAB.28.11.2018/10) which is stated to be **authored** by none other than Mr Jenkinson and which identifies (contrary to Mr Jenkinson's comments to the Local Plan Inspector) a number of key messages, including:

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

With first-hand experience, we are aware and fully appreciate that such reports take time to compile and publish and therefore it is reasonable to think that this report and its findings, to which Mr Jenkinson was most apparently involved, was in production and perhaps at an advanced stage at the time Mr Jenkinson made his verbal statement to the Local Plan Inspector that the Laird's Way land was not required for Car Parking/Interchange uses. This is another deeply concerning consideration which again casts doubt on the professionalism, competence and proper conduct of the Council's Head of Planning.

Notwithstanding the evidence confirmed in the Barnsley Rail Vision, as set out in our letter of 20 September 2022 to the Leader of the Council, South Yorkshire Passenger Transport Executive (which we are aware has now been assimilated into the South Yorkshire Combined Authority) identified in a consultation response dated 08 May 2013 to a planning application (reference 2012/1363) seeking the development of a site adjoining the land at Laird's Way, that the land on the West Side of Laird's Way (I.e. that in our company's ownership) was the preferred location for station related Car Parking and remained a priority to SYPTTE. For the avoidance of doubt, the land referred to by SYPTTE in this consultation response was shaded red on a map inserted into the document and we can confirm that this relates wholly to the land formerly in our Company's ownership.

Not only did the Council receive this consultation response directly from SYPTTE, but we also later included it within a detailed report which was distributed to the Leader of the Council and Head of Planning, Mr Joe Jenkinson, during December 2016. For further information, please visit www.penistonetransportinterchange.co.uk. The Leader of the Council, Cllr Sir Stephen Houghton CBE, himself also responded to separate correspondence from a Barnsley resident by way of letter dated 22 October 2013 (over 9 years ago) concerning developments in Penistone, in which Cllr Sir Houghton stated that:

"I will pass copies of your correspondence on to the Planners so that they can give appropriate consideration and also to the Highways Department and South Yorkshire Passenger Transport Executive as you will appreciate that the provision of a rail station (sic) goes under their remit, but I am happy to support and encourage them to provide improvements as and where resources allow."

In addition and to add to the existing email evidence we have provided in our existing correspondence with the Council, which already warrants the concerns raised and demonstrates that Council Officers, including the Head of Planning, acted improperly, we

enclose with this letter a further email dating back to 20 December 2016, which was sent from Barnsley Council's Head of Planning (Mr Joe Jenkinson) to Mr Gavin Bland an Officer at South Yorkshire Passenger Transport Executive (SYLTE) in which Mr Jenkinson stated:

"I understand Mr Green is well known to the PTE but, pleasingly, the car parking proposal suggested by WSP does not include his land." (Our Emphasis)

To provide the relevant context to this email - at that time, the adopted development plan in Barnsley consisted of the Core Strategy (adopted September 2011) and the saved policies of the Barnsley Unitary Development Plan (adopted December 2000) and SYLTE's involvement and importance as a partner of Barnsley Council is evidenced by paragraph 9.131 of the Core Strategy which identified that

"... We will explore the potential for developing local public transport interchanges in the Principal Towns, in partnership with SYLTE."

Furthermore, SYLTE's own website confirmed that they are the driving force behind the development of Public Transport in South Yorkshire.

The email refers to a report prepared by consultants WSP Brinckerhoff, on behalf of SYLTE, which assessed the suitability of an area of land already in public ownership (Network Rail) situated on the opposite side of the Penistone Railway Station to our Laird's Way land, which has since been obtained by Barnsley Council and is the subject of our complaint. However, the land in the public ownership of Network Rail was ultimately later deemed unsuitable for the car parking/interchange uses envisaged, leaving only our Laird's Way land as the suitable site to accommodate future car parking/interchange requirements.

Critically however, at the time Mr Jenkinson sent the email, the land already in public ownership and assessed by consultants WSP hadn't been discounted by SYLTE for car parking. However, as can be noted from the email correspondence dated 05 January 2016 from Walton & Co to Barnsley MBC's then Chief Executive, Diana Terris (available to view at www.penistonetransportinterchange.co.uk) we did provide the Council with a detailed report prepared by leading Transport Engineers, Pell Frischmann, detailing why that land in the ownership of Network Rail was not suitable for car parking/interchange uses.

This email serves to demonstrate that Mr Jenkinson, in his position as Barnsley Council's Head of planning, was clearly aware of our land ownership at Laird's Way, several years prior to the Local Plan process and the application submitted by BDW and Rebecca Jane Scott, for the development of Site HS75. Moreover, as corroborated by his email to SYLTE, Mr Jenkinson was obviously aware of the need (as well as SYLTE's desire) to secure land for additional parking at Penistone Railway Station. This therefore, in our opinion, also serves to substantiate our position that Mr Jenkinson acted improperly, having stated (as set out at length in our letter to the Chief Executive of the Council) at the Barnsley Local Plan Examination Hearings, in contradiction of the written and verbal evidence submitted by our company, that the Council did not require our Laird's Way land for Car Parking/Interchange uses and would therefore not be allocating it for such - only later to seek the transfer of the land to the Council, pursuant to a planning application by Barratt & David Wilson Homes and the landowner, Rebecca Jane Scott, in respect of the development of Local Plan Housing

Site Allocation HS75, which was unlinked and unrelated either in planning policy or by land ownership, but was a site in which the Council knew we held a financial interest.

We therefore disclaim, with evidence, your position that the Council only later realised the requirement for car parking uses as part of the BDW's application following the adoption of the Local Plan, as the Council and its Officers and Members were patently aware of the need and desire for the Laird's Way land, as set out in a proliferation of emails, including prior to the adoption of the Barnsley Local Plan dating back to SYPTE's consultation response in May 2013 – almost ten years ago.

You also state the Council Officers had no knowledge about our Option agreement. However, this is again another point which is not correct as the position in relation to our role as the 'Option Holder' is detailed within the S106 agreement to which we are party and was prepared, having required negotiation with the Council's Legal Department, in advance of the grant of planning permission to BDW pursuant to application 2020/0274.

In addition, the enclosed email dated 20 January 2021 written and distributed by and between officers of SYPTE, which was disclosed to us amongst other in accordance with the Freedom of Information Act, states clearly:

"It is suggested YL's agreement with the land owner for the Penistone housing site expires shortly which is prompting the current urgency."

You will no doubt read this email with interest. However, in order to provide you with some context, this email was sent (almost 5 months prior to BDW's planning application been presented for consideration by the Barnsley Planning Regulatory Board) following consultation and discussions with Officers of Barnsley Council.

Notwithstanding the above facts and evidence, you do in any event also acknowledge within your letter that the council (in your words – by definition) knew we had a legal interest in the HS75 site and therefore our allegations that the Council withheld making a decision in a timely manner therefore remains valid, whether or not the Council knew the exact format and details of our agreement with the landowner of site HS75.

You subsequently state within the fifth bullet point of your letter that the emails we have seen are merely speculation between officers as they sought to negotiate an outcome that enabled the planning application by BDW to be recommended for approval. However, we are sure you will appreciate that by definition, the emails we have quoted at length within our correspondence to the Leader of the Council dated 20 September 2022 do include many statements. Not least the email by the Council's former Senior Planner, Ms Hannah Andrew to SYPTE's Principal Project Manager, Mr Gavin Bland that:

"I appreciate that you do not normally accept consultation on pre-application enquiries. However, we have received the attached in relation to draft allocation H82 in Penistone (for 400 plus houses)... in addition to the financial implications, the landowner for this scheme is Stephen Green who also owns land adjacent to Penistone Railway Station... it would, therefore, be helpful to have your input. In particular your thoughts on the practicalities of delivering parking at the railway station assuming we were to secure some land and/or funding through this planning application." (Our Emphasis)

As identified earlier, Draft Housing Site Allocation H82 subsequently become Site Allocation HS75 in the adopted Barnsley Local Plan.

This email from the Council's Senior Planner was sent on 05 October 2018 – prior to the adoption of the Barnsley Local Plan on 03 January 2019. Clearly this communication by a Council Officer cannot be dismissed in any way as speculation, as you have stated in your letter and instead, patently serves to demonstrate Officers' awareness of our ownership of the Laird's Way land and interest in the HS75 site from the outset. However, for the record, we had not at that time ever met Hannah Andrews and the Case Officer was also incorrect in stating that we were the landowner of the proposed scheme as, for clarity, we were not the landowner of Site HS75. We can therefore only deduct from this that Hannah Andrews was made aware of our ownership of the Laird's Way land by the Head of Planning, Mr Jenkinson.

Notwithstanding other evidence, this email communication again serves, in our opinion, to demonstrate pre-meditation and improper actions of Council Officers.

Reverting to your earlier comment that you do not see anything in our letter that gives you sufficient cause to reopen the complaint, we wish to clarify that the email by the Council's (now former) Senior Planner was first quoted within our letter of 20 September 2022 to the Leader of Barnsley Council and you have clearly either wilfully or neglectfully overlooked the improper actions of the Council's Planning Officer revealed in this correspondence alone.

Notwithstanding that we subsequently go on to quote several other statements made by Council Officers, including from the Council's Head of Planning in relation to the valuation of our Laird's Way land, which we are advised Mr Jenkinson is not qualified to make and therefore specifically requested the Leader of the Council to clarify. However, this clarification was not forthcoming in your letter sent on behalf of the Leader.

How is this acceptable and professional behaviour to be expected of such a senior officer (Service Director) of the Council and how does this reconcile with the Nolan Principles of Public Life, which are expected of every Public Office holder?

We also go on to identify in our letter to the Leader of the Council that none of the Pre-Planning Advice responses provided by the Council identify any requirement that the Laird's Way land would be required to be transferred/sold to the Council pursuant to any planning application for the development of Local Plan Site HS75.

These are just some of the further concerns we have raised in furtherance to our initial formal complaint, which demonstrate that the Council's decision was clearly at odds with the evidence, but which apparently do not give you sufficient cause to reopen the complaint we have submitted. This is deeply concerning and led us to question in our recent correspondence addressed to the Council's Head of Legal Services dated 02 and 03 November respectively (Our References YLL/JF/2022-11.01 & YLL/JF/2022-11.02) whether there is in fact now institutionalised impropriety throughout the Council.

With regard to the final three bullet points of your letter, you refer to the transfer of our Laird's Way land to the Council by way of a S106 obligation. However, this is again patently incorrect as there are no such obligations included within either the S106 agreement, nor the

conditions attached to the formal Decision Notice for the corresponding planning application reference 2020/0274 by BDW.

On the basis of the evidence presented in this letter, your letter is patently littered with factual inaccuracies and false statements and yet, despite emailing you on 31 October and 01 November respectively to inform you of such and to request confirmation of the obligations contained within the S106 agreement associated with BDW's planning application, we are aghast that the Council's Head of Legal Services found it fit to respond, reiterating your earlier statement that we should refrain from sending any further correspondence in this matter as such will be treated as vexatious and go un-answered.

Indeed, we would have thought that such a senior Legal Officer of the Council, acting justly and without bias, would first wish to receive the full evidenced position from our company, correcting your factual inaccuracies and false statement, before making any response on behalf of the Council in this Serious matter.

How can this therefore be considered proper and professional behaviour of Senior Officers of a Local Authority? It is at the very best, embarrassing and wholly at odds with the Nolan Principles of Public Life, which are expected of every Public Office Holder.

We therefore request a formal apology is issued to us from the Council in this matter forthwith and that the Council now acquiesce to our request for an independent investigation into this serious matter, which we trust the Council will now agree is fully warranted on the basis of the overwhelming weight and compelling nature of the hard evidence which we have presented and is the only suitable method of achieving a satisfactory and valid outcome, considering the evidenced complicity of the Council's Leader, Planning & Legal Departments and to prevent the Council from acting as Judge and Jury.

In arranging this independent investigation, as set out previously in our letter to the Leader of the Council, we suggest this be undertaken and led by a person with appropriate experience in administrative and planning law, together with appropriate judicial experience, such as, for example, a retired Judge and we are prepared to liaise with the Council in identifying and agreeing the appointment of such a person accordingly.

Pending the findings of the independent Investigation, we will consider whether it is necessary to take legal action against the Council and its Officer's accordingly.

Yours sincerely
YORKSHIRE LAND Limited



Steven Green
Managing Director

Cc	Ms Sarah Norman	-	Chief Executive, Barnsley MBC
	Cllr Sir Stephen Houghton CBE	-	Leader, Barnsley MBC
	Mr Jason Field	-	Head of Legal Services, Barnsley MBC
	Mr Sukdave Ghuman	-	Monitoring Officer, Barnsley MBC
	Julian Smith CBE MP	-	Skipton & Ripon Constituency
	Miriam Cates MP	-	Penistone & Stocksbridge Constituency
	Andrew Jones MP	-	Harrogate & Knaresborough Constituency
	Mr Oliver Coppard	-	South Yorkshire Mayor
	Mr Stephen Edwards	-	Corporate Director of Public Transport, SYMCA

Encs Letter from Walton & Co (Planning Lawyers) to Kathy McArdle, Barnsley MBC
Letter from LGO Investigator dated 08 July 2022
Email dated 20 December 2016 sent by Barnsley Council's Head of Planning
Email dated 20 January 2021 sent by SYPTE

Timeline of Correspondence

(All documentation available to view online)

www.transparencyatlairdsway.co.uk

Letter YLL/LW/2021-10.01
Letter of Formal Complaint dated 22 October 2021 from Bell Park Kerridge to Barnsley MBC, Chief Executive
Legal Advice Note by Walton & Co
Legal Advice Note by Walker Morris
Letter YLL/SH/2022/11.01
Letter YLL/SH/2022/11.02
Letter YLL/BMBC-MO/2022-10.01
Letter YLL/SYM/2022-10.01
Letter YLL/JF/2022-11.01
Letter YLL/BMBC-MO/2022-11.01
Letter YLL/JF/2022-11.02
Email dated 03 November 2022 to Barnsley MBC, Chief Executive
Letter YLL/KM/2022-11.01
Letter dated 09 November 2022 from Walton & Co to Kathy McArdle, Barnsley MBC Service Director

Enclosure 2

Letter from Walton & Co (Planning Lawyers) dated 09 November 2022
to Barnsley Council Service Director for Regeneration & Culture

Our ref: AC/DW

Your ref:

Date: 9 November 2022

FAO: Kathy McArdle
Service Director, Regeneration and Culture
Barnsley Metropolitan Borough Council
PO Box 634
Barnsley
S70 9GG

By Email Only to: kathymcardle@barnsley.gov.uk

Dear Ms McArdle

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

We act on behalf of Yorkshire Land Limited ("**YLL**"). We write with reference to the Council's recent correspondence with our client in relation to the above site, and particularly to your letter dated 28 October 2022 ("**the Letter**").

We have reviewed the various points raised in the Letter against the planning policy framework and evidential basis existing at the time that planning permission (reference 2020/0274) ("**the Permission**") was granted for the development of land at Halifax Road, Penistone. This letter should be read alongside our previous advice note dated 4 June 2021 ("**the Advice Note**") a copy of which is enclosed. We have adopted the same terms as defined in that note for the purposes of this correspondence for ease of reference and continuity.

The facts leading up to the Application's determination are detailed in the Advice Note. The Application was formally considered by committee members at the meeting of the Council's Planning Regulatory Board on 8 June 2021 ("**the Meeting**"). Members resolved to approve the Application at the Meeting, subject to conditions and the completion of an agreement under section 106 of the 1990 Act to secure various obligations as recommended in the Officer's Report. That agreement was completed on 30 July 2021 ("**the s106 Agreement**"), with the Permission being issued that same day.

For the reasons detailed in the Advice Note and the Legal Note, neither YLL nor BDW were of the view that the Council would be entitled, in law or policy, to secure planning obligations or conditions as part of the Proposed Development requiring the Land to be transferred to the authority to provide a car park / interchange facility associated with Penistone train station. We do not intend to repeat the arguments contained in the Advice Note or the Legal Note for the purposes of this letter. However, BDW had confirmed to the Council that it would commit to pay a financial contribution of £400,000 toward sustainable travel measures, which was the full amount that application of the Council's policies in the Local Plan and SPD would require.

Paragraph 4.2 of the SPD also expressly stated that compliance with Local Plan policies T1 and T3 would be achieved through payment of financial contributions, particularly in light of

- Town & Country Planning
- Local Government
- Compulsory Purchase
- Highways

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the fact that active travel enhancements are typically outside the scope of individual applicants, and seek to address wider cumulative impacts. BDW's commitment to pay a financial contribution that was calculated in accordance with the formulae contained in the SPD was therefore an approach which was entirely supported and endorsed by the Council's own planning policies.

Furthermore, there are no policies in the Local Plan, SPD, or the Neighbourhood Plan which sought to link the delivery of the Proposed Development with the provision of infrastructure on the Land in any way. This is notwithstanding the fact that there is a specific Local Plan allocation policy (policy HS75) applicable to the Proposed Development and which specifies various requirements that the scheme would be expected to deliver. That policy had been subject to examination and adopted by the Council just 2 years previous. It was therefore recent and up to date. The SPD was even more recent, having been adopted in November 2019.

The Letter comments that policy HS75 was "just one part of the planning process", and it is correct that an allocation does not equate to a grant of planning permission. However, it is reasonable to expect a site-specific policy to outline the main infrastructure requirements associated with an allocation's delivery, particularly any which involve off-site works or third-party land. The Proposed Development had also been the subject of two separate pre-application processes, with no suggestion from the Council that the Land would need to be provided and/or that any works would need to be undertaken on the Land in order to support the residential scheme.

It is further understood that as part of the Local Plan's evolution, the Council had refused to take forward a proposal by YLL for the Land to be allocated for an interchange facility. This was notwithstanding the fact the South Yorkshire Passenger Transport Executive ("**SYLTE**") had previously confirmed to the Council that it had "strong aspirations" to extend the existing car park at the station, and had encouraged safeguarding the Land for such purposes given that it was "the preferred location for additional parking" (see the enclosed consultation response from SYLTE dated 8 May 2013 in respect of application 2012/1363).

The Letter accepts that the Council declined to allocate the Land for provision of an interchange, and that officers confirmed during the Local Plan process that there was no need for such a facility. However, the Letter attempts to reconcile that position and the authority's subsequent insistence that the Land be transferred to it to enable future use as a station car park by claiming that an interchange and a car park "not one and the same". It is unclear where the definition of an 'interchange' referred to in the Letter is derived from, although it would seem to us that any facility which enables passengers to transfer between combinations of travel would naturally fall within the ordinary meaning of the word. In any event, the claimed distinction between an interchange and a station car parking facility is artificial given that the Council has itself used those terms interchangeably throughout the Application's history. Indeed, the Officer's Report expressly states that the Council intends to use the Land "to provide a car park and interchange facility adjacent to the Train Station".

Notwithstanding the above and the positions presented in the Advice Note and Legal Note, the Council was insistent that the Land's transfer form part of the infrastructure package secured by the Proposed Development. The Officer's Report recorded the Council's reasoning in this regard, commenting that the Land would be "secured through the s106 Agreement in lieu of part of the Sustainable Travel Contribution and is a substantial benefit of the scheme as it will help address parking issues in and around the town...and a modal shift from private cars to the more sustainable train". Page 18 of the Officer's Report acknowledged that application of the formulae in the SPD would require a £400,000 contribution to be paid consistent with what BDW had offered. However, and given that the Council was proposing to

secure the Land as a part payment in lieu against this contribution, the authority recommended that the amount of any such contribution be reduced to £100,000.

The Letter suggests that the Council sought to secure the Land's transfer as part of the Proposed Development in order to address capacity issues at the Bridge End junction "for which the applicant was not providing adequate mitigation". As discussed above, the Officer's Report details how the transfer of the Land was to be treated as a payment in lieu in respect of sustainable travel matters associated with policy T3 of the Local Plan and address parking issues more widely within the town, rather than to alleviate pre-existing capacity issues at any specific junction. We are also unaware of any technical work or studies undertaken by the Council that consider how the provision of a car park on the Land would alleviate traffic at Bridge End. Indeed, it is unclear how the provision of any such facility would meaningfully reduce the total number of trips on the network given the inherent involvement of vehicles in its natural use and operation.

Irrespective, a separate financial contribution was offered by BDW and agreed with the Council to address the impacts of the Proposed Development on the Bridge End junction. Specifically, a £200,000 contribution was agreed in order to enable the Council to undertake a "detailed feasibility assessment" of the junction and "identify and scope a solution". The Officer's Report confirmed that this contribution would be paid on commencement of the Proposed Development so that funding for the improvement works could be secured as the scheme progressed, and prior to all of the dwellings being occupied.

In view of this fact, the Application was proposing to make a proportionate contribution towards addressing capacity issues at the Bridge End junction through an entirely separate mechanism to the sustainable travel contribution or transfer of the Land. The suggestion in the Letter that the need for the Council to secure the Land arose as a consequence of capacity issues at the Bridge End junction cannot be substantiated on this basis. Indeed, the conclusions to the Officer's Report expressly recognised that improvements to the Bridge End junction "could not be secured as a result of this development in isolation". As such, a comprehensive solution was expected to be identified through the feasibility study that BDW had committed to fund.

The Letter proceeds on the basis that the transfer of the Land was secured through the s106 Agreement. That is understandable given that the Officer's Report proposed that approach. However, and for reasons that are not immediately clear, the s106 Agreement was negotiated in very different terms to that envisaged by the Officer's Report. The £200,000 'Bridge End Highways Improvement Contribution' was secured in the s106 Agreement as expected, with this being paid in full on commencement of the Proposed Development. However, the sustainable travel contributions were structured in an entirely different manner to that discussed in the Officer's Report, with the transfer of the Land dealt with through a separate document to the s106 Agreement that is not directly linked to the Permission or delivery of the Proposed Development in any way.

Specifically, the s106 Agreement requires payment of a £400,000 contribution to the Council and which is to be applied by the authority toward purposes identified in the SPD. The s106 Agreement therefore secured the full amount of the sustainable travel contribution that the formulae in the SPD expected to be paid. There is no mention of the Land in the s106 Agreement, and its transfer was not secured as a payment in lieu in respect of sustainable travel matters as was detailed in the Officer's Report and endorsed by members. The Letter is therefore mistaken in suggesting that the Land forms part of the planning obligations associated with the Proposed Development. Rather, the Land's transfer appears to have been divorced from the section 106 obligations so that such matters are effectively independent of the planning position, although we understand that the Council refused to grant the Permission until the transfer of the Land was secured.

The Letter further contends that Council officers “had no knowledge of YLL’s option agreement”, and the fact that its term was nearing expiry. YLL was a party to the s106 Agreement and its option over the Land was expressly referred to in that document. It is therefore clear that the Council was aware of the nature of YLL’s interest in the Land prior to the Permission being granted. We have also had sight of email correspondence from SYPTE’s Principal Project Manager dated 20 January 2021 (“**the Email**”) (copy enclosed) which refers to discussions with Council officers regarding the Land, and which comments that YLL’s “agreement with the land owner for the Penistone housing site expires shortly”. All parties were therefore aware of the position regarding our client’s option agreement, and the potential implications for YLL should it expire prior to the Permission being granted.

The Email also records the Council’s intention to “consider how to tie the Land into the planning approval” despite the recognition that the Proposed Development was being progressed by an entirely separate entity. It is therefore clear that as at the date of the Email, the Council had yet to formulate any substantive basis through which to justify the Land’s transfer as part of the Proposed Development. This was notwithstanding the fact that the Application had been submitted to the Council in April 2020 accompanied by a full Transport Assessment (this being amended in December). The suggestion that the transfer of the Land was considered necessary by the Council to alleviate traffic at the Bridge End junction cannot be substantiated. Rather, the Email expressly indicates that the Council and SYPTE wanted to secure the Land to address “a historical issue with station parking”.

In view of the above, the Letter proceeds on a mistaken understanding of the factual position underlying the grant of the Permission. The Council’s basis for insisting that the development of the Land (as a car park or otherwise) be linked to delivery of the Proposed Development remains entirely unsubstantiated. The obligations that were agreed as part of the s106 Agreement secure contributions through which the impacts of the Proposed Development on the Bridge End junction and in respect of sustainable travel will be addressed in a policy compliant manner. However, the transfer of the Land is independent of such matters, and is not secured in the s106 Agreement.

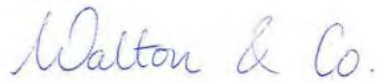
Indeed, the Land’s transfer appears to have been secured in a manner which is entirely independent of any planning controls associated with the Proposed Development. If the Council considered the provision of a car park / interchange on the Land to be necessary to mitigate the Proposed Development’s impact on the Bridge End junction, the expectation would have been for conditions or obligations to be attached to the Permission limiting the number of dwellings that could be occupied prior to such a facility becoming operational. However, the Council did not attach any such restrictions. The Proposed Development is therefore able to be fully delivered pursuant to its own timescales, regardless of whether any car park or interchange facility is ever actually provided on the Land.

We understand that the Proposed Development is proceeding pursuant to the Permission. However, were a new planning application to be submitted for the same development, we consider that the Council would be unable to refuse permission or restrict development subject to provision of an interchange facility on the Land. The Proposed Development and the delivery of parking at the train station are not linked in planning policy, and there is no evidence to suggest that one is required to make other acceptable in planning terms.

For the reasons discussed in this letter, it is clear that the Council’s reluctance to meaningfully engage with YLL upon this matter to date has been based upon a mistaken understanding of the relevant factual and substantive issues. We therefore trust that this letter is useful in clarifying matters so as to enable detailed discussions to take place with our client going forwards. We are aware that YLL has requested that the Council commission an objective and independent investigation into the approach pursued by the authority regarding the Land’s transfer. It is suggested that such an investigation would be of benefit to all parties given the

Council's continued misunderstanding of the documents underlying the Permission, as well as the Application's evolution.

Yours sincerely



Walton & Co

Encs

CC

Ms Sarah Norman, Chief Executive, Barnsley MBC (sarahnorman@barnsley.gov.uk)

Cllr Sir Stephen Houghton CBE, Barnsley MBC Leader
(CllrStephenHoughton@barnsley.gov.uk)

Mr Jason Field, Head of Legal Services, Barnsley MBC (jasonfield2@barnsley.gov.uk)

Yorkshire Land Limited (office@yorkshireland-ltd.com)

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 law¹ and policy², 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**").

¹ Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

² 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)³. 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.⁴

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

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

⁴ 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

Mr Matthew Smith
Development Management Section
Barnsley MBC
Westgate Plaza
Barnsley
S70 9FE

8th May 2013

Route Ref: 2012/1363
Our Ref: 455
Ask For: Matt Reynolds
Direct Line: 0114 2211262
E-mail: Matthew.Reynolds@sypte.co.uk

Dear Matthew,

Thank you for consulting South Yorkshire Passenger Transport Executive (SYLTE) on this planning application. Following consultation with local transport operators and a Land Use and Transport Integration (LUTI) assessment, I would like to set out SYLTE's recommendations for the site

Application Ref: 2012/1363

Description: Residential development (Outline)

Site Allocation and Station Park and Ride

- 1.1 It our understanding the site's current status in the UDP is for Transportation Use (Rail and Bus Facility). The reason behind this allocation is because SYLTE has strong aspirations to build an extension to the existing car park at Penistone station which is currently operating significantly above capacity. This plot of land is the preferred location for additional car parking and will provide the local roads with much needed relief from existing obstructive on street parking. SYLTE is developing proposals for the plot of land to be used as a Park and Ride for the Penistone area, with the objective to displace existing commuter from the road to the rail network.
- 1.2 SYLTE have secured funding within this year's capital programme (2013/14) for an initial feasibility study of the site for use as a Park and Ride. This study will ascertain the likely costs and high level business case for the development of the land at Lairds Way into a car park extension.
- 1.3 Based on the indicative proposals, SYLTE do not require the whole plot of land (see below map);

The green area is the boundary for this application. The red area shows the land required/wanted for any future Park and Ride scheme. The area to the west of Lairds Way is the ideal location for station related car parking as it remains close to the station platforms and utilises land suitable for this kind of development. The proportion of the site to the east of Lairds Way is therefore not required for transport purposes. SYLTE requests that upon the approval of this application, regard is given to the future safeguarding of the red area shown on the map for a future Park and Ride scheme.



**SOUTH YORKSHIRE PASSENGER
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Principal Solicitor and Secretary:
Steve Davenport

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**INVESTORS
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- 1.4 In relation to the future development of the land to the west of Lairds Way, SYPTE would not object to housing or employment development as long as there is suitable provision for a Park and Ride scheme. This could be completed in a similar fashion to Wombwell Park and Ride, as the adjoining development provided an integrated Park and Ride facility within the development proposal. Further study needs to be completed regarding the scale of the Park and Ride requirement (this will be completed later in the financial year).

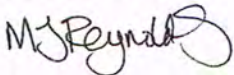
LUTI Scoring

- 2.1 SYPTE supports new development in locations which have access to the existing core public transport network. This development complies with policies set out in the BMBC LDF Core Strategy (CSP 25) and Policy I of the Sheffield City Region Transport Strategy. The site has scored 'Green' through an SYPTE LUTI assessment therefore proving that the site has access to an attractive public transport service (train services from Penistone)

To summarise, SYPTE have no objection to the development and allocation of this site for housing. However, the site to the west of Lairds Way remains a priority for SYPTE as this is the preferred location for additional station car parking.

I hope the above comments can be taken into consideration in your appraisal of the application and if you have any further queries or require additional information, please do not hesitate to contact me.

Yours sincerely



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SYPTE is a member of the [Travel South Yorkshire](#) partnership.

Steve Davenport

From: Gavin Bland
Sent: 20 January 2021 16:38
To: Pat Beijer; Melissa Farmer; Adam Midgley
Cc: Ian Fothergill; Nathan Broadhead; Amy Sutherland-Jarvest; Katy Plummer; Andrew Fosbueary
Subject: Penistone Park and Ride
Attachments: ARUP - design in editable form - YL revised land offer.png

Dear all,

A quick update where we are.

Penistone has an historical issue with station parking and various studies have identified the only possible site for additional parking is to the east of the station off Lairds Way.

In 2014/2015 working with Network Rail, the landowner of the land off Lairds Way and BMBC a proposal was drawn up by ARUP for a couple of options for park and ride adjacent to the station and accessed from Lairds Way.

Network Rail cited any park and ride would increase patronage at the station and therefore any developer would be obliged to provide / contribute towards a new footbridge to replace the barrow crossing at the south end of the station.

Network Rail had agreed to contribute £750,000 towards the footbridge and the landowner had offered his land plus £500,000 towards either the footbridge or construction of the park and ride...in return for planning permission for 350 houses on greenbelt in Penistone and a further 150 or so in Oxspring. He also offered to build a community centre in Oxspring.

The Oxspring site wasn't promoted in the local plan and the offer withdrawn, however the Penistone site has been allocated as housing and BMBC have taken the lead in ensuring the park and ride site is made available as part of the housing development.

SYLTE has allocated a nominal £5,000 - £15,000 in the capital programme every year since yet nothing as progressed from BMBC.

In August last year SYLTE was approached by BMBC planners to comment on preferred method of operation for rail based park and ride, plus development. SYLTE concluded it was preferable for SYLTE to develop, but then lease the land to NWR so the SFO is responsible for the ongoing maintenance and renewals.

In December last year SYLTE was again approached as a matter of urgency to comment on proposals from Yorkshire Land for a site of reduced size based on demand projected from an old study indicating a further 50 spaces should be provided. The red line on the attached plan shows an approximation of the proposed area of land offered. SYLTE responded indicating the original area was preferable to maintain spare capacity and space for a bus turning area (train replacement bus services).

Yesterday Ian and myself met BMBC and representatives from Yorkshire Land and the outcome was :-

The Lairds Way site has been identified in the local plan as general use, so anything can be built on it.

Barratt Homes are progressing the development of the Penistone housing site and Yorkshire Land has no connection to it, so therefore BMBC cannot insist through the planning process that the site is offered as part of granting the planning permission.

To ease the passage of the planning application Yorkshire Land is willing to offer up half of the site as shown on the attached plan, but Yorkshire Land now has plans for the remainder of the site.

Yorkshire Land has suggested the site area can be increased by lowering the site overall, although this adds cost for earth move, possible retaining walls and unknown quantity of lowering land adjacent to live railway infrastructure.

The land offer was take it or leave it, and our view (although not stated to YL) was a smaller area of land was better than no land.

Actions :-

BMBC planning officer to speak to Head of Planning with a view we would accept the restricted land as offered.
BMBC to consider how to tie land into planning approval, mindful technically the two persons (Barratt / YL) involved are now independent.

BMBC / SYPTE consideration is required on YLs suggestion of reducing site levels, and access (ownership between development plot and car park) and how this could be incorporated into any agreement.

SYPTE need to determine what the options are for the reduced area of land :-

How many spaces can be constructed on the existing site without major earthworks and therefore minimal possible issues with NWR.

How many spaces can be constructed on the whole site with major earthworks, and what are the likely implications, planning and NWR.

Costs for each option and is there an optimum solution.

ARUP is the Lot winner on the heavy rail framework, so could be appointed directly for a quick piece of feasibility work. I have asked for a ball park figure for the two costed options with high level risks to assist in us making a decision, prior to getting a formal fee proposal if we choose to go down this route.

Mindful this has been running for some time, there is currently time pressures relating to planning timescales, so on Friday we may be asked for a quick / formal answer on whether SYPTE wants to progress with the smaller parcel of land, or nothing. It is suggested YL's agreement with the land owner for the Penistone housing site expires shortly which is prompting the current urgency.

Note there is currently no funding to construct the park and ride or footbridge, but without the land we can't do anything, including recommence discussions with NWR re the footbridge.

We would welcome any views prior to BMBC coming back with the direct question, which may be as early as Friday, or at least guidance on how SYPTE's response is formulated.

Kind regards



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