

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 station¹. 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

¹ 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 so². 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.

² 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