

Our ref: DRW.ET

Your ref:

Date: 4 May 2016

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**By post & e-mail: [joejenkinson@barnsley.gov.uk](mailto:joejenkinson@barnsley.gov.uk)**

Dear Mr Jenkinson

## **Barnsley Local Plan – Counsel's Opinion**

As you may know, we have long represented Yorkshire Land and have corresponded with you previously regarding the promotion of two sites in the Emerging Plan by Yorkshire Land, namely Hunningley Lane and Oxspring Fields.

Yorkshire Land have also commissioned a considerable amount of experienced independent consultant advice from Peter Brett Associates, Pell Frischmann, Spawforths, Smeeden Foreman and most recently, Paul Butler of PB Planning, who I believe has spoken with you recently. In spite of the detailed representations which have been made, our client has found it extremely disappointing that the substantive evidence submitted have seemingly been ignored. In the light of this, our client has sought an Opinion from Leading Counsel, Sasha White QC to review the evidence as a critical friend.

I should emphasise that Yorkshire Land wish to be constructive and make every endeavour to avoid confrontation so as to ensure that the Barnsley Local Plan (BLP) is found sound and adopted as soon as possible. We therefore wish to share the Opinion which highlights soundness issues and legal flaws in the process which, if uncorrected would, we believe, drive the Inspector to the inexorable conclusion that the plan is not sound and would lead to substantial delay in adoption. We therefore urge that consideration of this issue at Cabinet on 18 May 2016 is deferred for full consideration of the Advice. Our client would of course very much welcome the option to meet with you to discuss these matters further.

The Opinion is enclosed and I think, in large part is completely self explanatory. In summary, there are several fundamental flaws in the Council's analysis of these sites which are also inextricably interlinked.

1. **Green Belt Review.** Counsel identifies that there has been a clear failure to properly analyse the merits of releasing land from the Green Belt consisting of

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smaller areas than the general areas identified in the review where strong defensible boundaries have been identified, particularly in the case of both Hunningley Lane and Oxspring Fields.

2. **Alternative Sites.** As a result of this lack of analysis, the Council fails to properly identify and assess reasonable alternatives contrary to the Strategic Environmental Assessment Regulations.
3. **Meeting identified housing needs in Villages.** The BLP's proposed approach to delivering homes in Villages, or lack of, is contrary to national guidance and also ignores the available evidence base provided by the Oxspring Neighbourhood Plan process. Evidence that should be given weight within the preparation of the BLP.
  - a. **Objectively Assessed Housing Needs (OAN).** The Council has assumed housing densities which are too high. The delivery of the Borough's housing needs is too reliant on large sites and sites located in poorer market areas of the Borough. Sites which will not deliver the number of homes anticipated. The Council has also identified that there is strong evidence of an unmet demand for larger family, higher value homes in the plan period (circa 2,500) which will not be met by the BLP contrary to the Council's own evidence base. Such unmet demand can be met by the release of sites such as Oxspring Fields and Hunningley Lane.
4. **Changes to BLP.** It is understood that the Council (quite rightly) wish to make progress with the BLP and are concerned that publication of further changes would considerably delay submission of the Plan. Counsel rightly makes it clear that further changes can of course be made following publication of the Consultation Draft Plan without delaying the BLP Adoption Programme. Conversely, if the Council does not make these changes and the Examining Inspector is persuaded that such changes should be made to make the Plan sound, this will engender further delay to allow consultation on Main Modifications. It does of course significantly reduce any risk of legal challenge following adoption of the Plan.

In summary, I can do no better than quote Counsel considers that 'there is a real risk of the BLP as drafted not being found sound in the process of examination, such a finding would be likely to result in substantial delay to adoption, as is clearly evidenced in experience from other authorities of which there are now a considerable and growing number.

In the light of the above, we do hope that our client will be afforded constructive engagement in this Local Plan Process. Accordingly, can you please provide some dates when you would be available to meet with us within the next two weeks to discuss the Opinion enclosed herein.

Yours sincerely



**David Walton**



**In the matter of:**

**THE BARNSELY LOCAL PLAN**

**and**

**YORKSHIRE LAND LIMITED**

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**OPINION**

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1. I am asked to advise Yorkshire Land Limited ("YLL") in respect of certain issues regarding the emerging Barnsley Borough Local Plan ("BLP").
2. I note at the outset that I have drafted this Opinion in the form of a single opinion on the issues raised in my instructions. If, having considered my advice, those instructing me consider it would be more helpful for the advice to be provided on a topic basis as contemplated in paragraph 1.9 of my instructions, I would be happy to amend my advice accordingly. However, I consider that there is some benefit (at least at the outset) in analysing the issues in the round.

**Overview and instructions**

3. The draft BLP has been the subject of consultation by Barnsley Metropolitan Borough Council ("the Council"). It is expected that a publication draft will be published in June 2016 ahead of its submission for examination.
4. YLL holds three land interests within the Barnsley Metropolitan Borough area, all of which are currently designated as Green Belt:
  - a. Land South of Halifax Road, Penistone;

- b. Oxspring Fields, Oxspring;
  - c. Hunningley Lane, Worsbrough Dale.
- 5. In the current draft BLP, the first of those sites is proposed to be allocated for residential development. Oxspring Fields and Hunningley Lane have been promoted for development, but it is not currently proposed that they should be released from the Green Belt. YLL would wish to see those sites removed from the Green Belt and allocated for development in the BLP. Further, there is an emerging draft Oxspring Neighbourhood Plan ("ONP"). Those instructing me have made representations to the ONP process suggesting that the Oxspring Fields site should be allocated for residential development through that process.
- 6. I have been provided with a considerable volume of background material, which I do not propose to summarise. Aside from the representations made in respect of the ONP, I have been provided with several documents relating to the BLP including two reports from Arup, who were commissioned by the Council to carry out a Green Belt review.
- 7. Those instructing me make three general contentions in respect of the BLP:
  - a. The Green Belt review process has not been robust;
  - b. There is a flawed approach to designated villages in the BLP where no new housing allocations have been made;
  - c. The proposed distribution of growth and housing allocations will not deliver the number and type of new homes required to meet the areas own Housing Needs, Aspirations and Economic and Housing Strategies.

8. I am asked to consider each of these points in turn, particularly with reference to the Oxspring Fields and Hunningley Lane sites.
9. I am also asked to consider whether the Council is correct to say that the Draft Local Plan cannot be amended prior to publication without a further round of consultation on a "Preferred Options Local Plan". The Council consider that such an additional consultation would be required, and accordingly such amendment would delay the Local Plan process by six months.

### **The Green Belt review**

#### **(i) National policy**

10. National policy in respect of Green Belts is contained in the National Planning Policy Framework. I note in particular the following paragraphs:

"79 The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

80 Green Belt serves five purposes:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

...

82 The general extent of Green Belts across the country is already established. New Green Belts should only be established in exceptional circumstances, for example when planning for larger scale development such as new settlements or major urban extensions. If proposing a new Green Belt, local planning authorities should:

- demonstrate why normal planning and development management policies would not be adequate;
- set out whether any major changes in circumstances have made the adoption of this exceptional measure necessary;
- show what the consequences of the proposal would be for sustainable development;
- demonstrate the necessity for the Green Belt and its consistency with Local Plans for adjoining areas; and



•show how the Green Belt would meet the other objectives of the Framework.

83 Local planning authorities with Green Belts in their area should establish Green Belt boundaries in their Local Plans which set the framework for Green Belt and settlement policy. Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term, so that they should be capable of enduring beyond the plan period.

84 When drawing up or reviewing Green Belt boundaries local planning authorities should take account of the need to promote sustainable patterns of development. They should consider the consequences for sustainable development of channelling development towards urban areas inside the Green Belt boundary, towards towns and villages inset within the Green Belt or towards locations beyond the outer Green Belt boundary.

85 When defining boundaries, local planning authorities should:

- ensure consistency with the Local Plan strategy for meeting identified requirements for sustainable development;
- not include land which it is unnecessary to keep permanently open;
- where necessary, identify in their plans areas of 'safeguarded land' between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period;
- make clear that the safeguarded land is not allocated for development at the present time. Planning permission for the permanent development of safeguarded land should only be granted following a Local Plan review which proposes the development;
- satisfy themselves that Green Belt boundaries will not need to be altered at the end of the development plan period; and
- define boundaries clearly, using physical features that are readily recognisable and likely to be permanent."

11. The Planning Practice Guidance also contains relevant guidance on Green Belt considerations in the local plan process:<sup>1</sup>

**"Do housing and economic needs override constraints on the use of land, such as Green Belt?"**

The National Planning Policy Framework should be read as a whole: need alone is not the only factor to be considered when drawing up a Local Plan.

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<sup>1</sup> Paragraph: 044 Reference ID: 3-044-20141006

<sup>2</sup> I note that the Barnsley UDP in fact confirmed that there had been an increase in the amount of land

The Framework is clear that local planning authorities should, through their Local Plans, meet objectively assessed needs unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted. Such policies include those relating to sites protected under the Birds and Habitats Directives, and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park or the Broads; designated heritage assets; and locations at risk of flooding or coastal erosion.

The Framework makes clear that, once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan.”

(ii) Green Belt review in Barnsley

12. In 2014, the Council appointed Arup to assist in the preparation of the Barnsley Green Belt review in contemplation of the emerging local plan. In a report dated 6 November 2014, Arup described their approach and methodology. I note the following points:

- a. The purpose of the review was described as the provision of an independent and objective appraisal of “Green Belt General Areas” against the five purposes of the Green Belt as set out in the NPPF;
- b. The report noted that the Green Belt boundary was “established at a time when development pressures (driven by population growth and economic trends) were less” and that the boundary had been established for 35 years with only minor changes<sup>2</sup>. Accordingly it was considered appropriate to carry out a review, on the basis of the guidance in NPPF paragraph 83;

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<sup>2</sup> I note that the Barnsley UDP in fact confirmed that there had been an increase in the amount of land designated as Green Belt since 1974, including the addition of 365 hectares of land and the deletion of 213 hectares through the UDP itself (see para 3.18 of the Supporting Text).

- c. The report recorded that the Council's draft Strategic Housing Land Availability Assessment (Peter Brett Associates, 2013) had advised that the release of land from the Green Belt would assist in providing a deliverable land supply;
  - d. At section 5, the report explained the methodology for the Green Belt review including the process for selecting "general areas" for review. At paragraph 5.2.1 the report made limited reference to safeguarded land, noting simply that the review would "need to consider whether or not any additional land from the Green Belt should be identified as safeguarded land" given that the extant safeguarded land had been considered for housing within the SHLAA.
13. As those instructing me note, it is clear from the report and the general content of the review that the review proceeded on the assumption that safeguarded land would be brought forward for development, and hence was not separately assessed in terms of its contribution to the Green Belt.
14. The review was contained in a series of reports relating to broad areas. The "Penistone and Neighbouring Villages" report (August 2014) is of relevance to the Oxspring Fields site. That report identified 11 general areas around Penistone, including 4 which directly abut the village of Oxspring (PEN2, PEN9, PEN10 and PEN11). An area of safeguarded land (SAF18) is located adjacent to PEN2 and PEN11. At page 11 of the report, in considering the function of PEN2, Arup observed:
- "Generally, safeguarded land and allocations made by the UDP proposals map do not strengthen this boundary but enforce its irregularity. The existing Green Belt boundary is particularly weak adjoining the south of Penistone Mortimer Road and Moorside Avenue and to the south of Oxspring around Roughbirkwood Lodge. The existing Green Belt boundary is therefore considered to be weak."
15. At paragraph 4.1.2, the report continued:



“In the north western section of PEN<sub>2</sub> the existing Green Belt boundary is weakly defined by the irregular built form and areas of safeguarded land; these boundaries do not represent a permanent defensible boundary and have not restricted urban sprawl.”

16. At 4.2.3 the report concluded:

“The boundary provided by the safeguarded land designations to the south of Penistone is not particularly effective in fulfilling the purposes of Green Belt and is less effective in checking unrestricted sprawl or safeguarding the countryside from encroachment.”

17. In considering PEN<sub>11</sub>, which covers the Oxspring Fields site, the report noted that overall, the general area was “strongly fulfilling the purposes of the Green Belt”. The report noted (at page 91) that the existing Green Belt boundary was “relatively strong”. It went on to find that the “Trans Pennine Trail within a dismantled railway could represent a strong internal boundary, should the General Area be considered for sub-division”.

18. Those instructing me take issue with this assessment in a number of respects. Essentially, they consider that the Oxspring Fields site has not been assessed appropriately because it has been included within an assessment area (PEN<sub>11</sub>) with land to the south west of the Trans Pennine Trail which does not possess the same environmental characteristics, because it lacks the defensible boundaries of the Trail and the B6462 Sheffield Road. In addition, they consider that in light of the observations made in respect of the existing safeguarded land, the review should have encompassed consideration of whether the Oxspring Fields site should be released from the Green Belt (whilst retaining the remainder of general area PEN<sub>11</sub>), and the safeguarded land remain in the Green Belt rather than being allocated for development through the SHLAA process.

19. In addition, those instructing me consider that the review failed to identify the sizeable decommissioned Works site (identified as a ‘depot’ on the map of

general area PEN11) as a defensible boundary within the PEN11 general area. If this were taken into account together with the Trans Pennine Trail, B6462 and the existing settlement boundary of Oxspring, YLL's site would be surrounded on each side by defensible boundaries.

20. Those instructing me would add that:

- a. There is no evidence elsewhere in the Council's material prepared in support of the BLP which supports the continued retention of SAF18 as safeguarded land (as opposed to it being returned to Green Belt);
- b. SAF18 is classified in the Council's SHLAA as "Category 2" in light of deliverability issues whereas YLL's site is regarded as "Category 1", a higher deliverability rating; and
- c. A Landscape Statement prepared by Smeeden Foreman on behalf of YLL, which is included in my instructions, supports the proposition that in landscape terms, the development of YLL's site should be regarded as preferable to the development of SAF18;
- d. Oxspring Parish Council has written to the Council to request that SAF18 be re-designated as Green Belt land.

21. The Hunningley Lane site is considered within the "Urban Barnsley and Royston" report within the Green Belt review. The site lies within general area UB12, which was assessed overall to "strongly fulfil" the purposes of the Green Belt (paragraph 14.1.1). Arup concluded that the Green Belt boundary in this general area was "relatively weak" and that the operational railway line which traverses the area could constitute a strongly durable boundary should the area be considered for sub-division (p 93-4). Arup also noted that "a small-scale area of natural consolidation exists to the south of the Lockeafish Cemetery, on the land bounded by the operational railway and to the south by Dob Sike" (p 94). This conclusion only aids in further strengthening the role of the operational

railway line as a potential permanent Green Belt Boundary. UB12 was identified as serving “to protect the strategic gap of less than 1.5km between Urban Barnsley and Wombwell” (p 94). The report also notes a role for this area in preserving the setting and special character of historic assets at Swaithe. On the basis of these features, the general area was not further assessed for partial release from the Green Belt (14.1.2).

22. Those instructing me consider that YLL’s site has not properly been considered for development in the Green Belt review. They regard the site as representing a logical “rounding off” of Urban Barnsley, with defensible boundaries. A Landscape Statement has been prepared by Smeeden Foreman on behalf of YLL and included in my instructions, which argues that the site would be suitable for development without compromising the strategic gap. Those instructing me consider that, when assessed on its own (as opposed to being assessed as part of general area UB12), the Hunningley Lane site does not fulfil the purposes of the Green Belt. Evidence, in the form of interest from major national housebuilders, has been obtained that the site is deliverable (despite being rated as “Category 2” in the SHLAA<sup>3</sup>).

(iii) Analysis

23. The starting point in any assessment of the adequacy of a Green Belt review is to observe that national policy states that changes to Green Belt boundaries should only be altered in “exceptional circumstances”. However, it is clear from the consultation draft BLP that in Barnsley’s case development on the Green Belt is regarded as necessary to meet the area’s housing and economic needs. Having reached that conclusion, it is clear that any review of the Green Belt should be comprehensive to ensure that appropriate development land is released to meet the identified need without compromising the overall function of the Green Belt.

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<sup>3</sup> It appears to me that the SHLAA classification of “Category 2” could, in fact, not withstand scrutiny. Aside from the clear evidence of deliverability, the site should properly be treated as being within Urban Barnsley.



24. It seems to me that there are two general criticisms which could be made of the Council's review, with reference to YLL's two sites. First, the review does not consider the appropriateness of safeguarded land for inclusion in the Green Belt in substitution for other sites. Second, the review does not consider sites at a sufficiently detailed level but rather excludes certain suitable development sites through the rejection of the relevant "general area" as unsuitable for release.
25. As to the first criticism, it seems to me that the purpose of the review was not to identify new areas of land for inclusion in the Green Belt. As is clear from *Solihull MBC v Gallagher Estates Ltd* [2015] JPL 714, the fact that a particular site is unsuitable for development does not mean that it should be included within the Green Belt (see [36]). I therefore do not consider that the failure to assess all safeguarded sites in respect of the role that those sites might play in fulfilling the purposes of the Green Belt is a necessary step in a robust Green Belt review, predicated on the need to release land from the Green Belt.
26. That said, the fact that a particular site such as SAF18 is unsuitable for development (in landscape terms) and/or undeliverable could be regarded as supporting the development of land elsewhere to meet the needs of the area. In this case, it appears that there are real planning objections to the development of SAF18, including from the Parish Council which is promoting a Neighbourhood Plan. Those instructing me note that SAF18 lacks defined boundaries and falls within a wider area which is recognised as meeting Green Belt purposes. Given that the NPPF provides that safeguarded land may only be developed following its allocation in a local plan, the existence of these unresolved objections is material to whether SAF18 should be allocated for development, or alternatively should be included in the Green Belt through the Local Plan process. Given the position with respect to SAF18, it follows, in my view, that proper consideration must be given to meeting Oxspring's growth needs in other ways (i.e. through the release of Green Belt land).

27. It is striking that this issue is not engaged with in the Green Belt review. It would seem to me that the fact that the growth requirements<sup>4</sup> of the settlement cannot properly be met outside the Green Belt designation would strengthen considerably the case for a careful review of all options for development within the Green Belt. To this extent, I would respectfully suggest that the Arup reports fall short.
28. Further, on the facts relating to the two YLL sites, it would seem to me that there has been a clear failure properly to analyse the merits of releasing land from the Green Belt consisting of smaller areas than the general areas identified in the review. Whilst in other locations the Green Belt review process leads to an analysis of “resultant parcels” where release could be considered, there is no such analysis in respect of the YLL sites. I consider this at least arguably unsound given that in the case of both PEN11 and UB12, the Arup reports recognise (a) the absence of defensible boundaries for the whole of the general areas but (b) the existence of features within the general areas which *could* form defensible Green Belt boundaries. It seems to me that a sound Green Belt review should, when faced with that evidence, go on to consider whether the purposes of the Green Belt in that location could be served by adjusting the boundary to reflect the defensible boundaries identified (i.e., the Trans Pennine Trail in PEN11 and the operational railway line in UB12). I can see no consideration whatsoever of that possibility.
29. The effect of this lack of analysis is particularly acute given that neither of the YLL sites appears to fulfil the purposes of Green Belt as identified in the NPPF.
30. In those circumstances, my view is that the Arup Green Belt review lacks robustness, at least in respect of the two sites which YLL promotes for development. In the case of Oxspring Fields, the Arup analysis fails to take into account the planning merits of the development of SAF18, and thus fails to

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<sup>4</sup> See further below, at paragraphs 40 and following.

recognise the potential need for Oxspring's housing needs to be met within the Green Belt. Further, it fails to consider the consequences of its own conclusions that general area PEN11 lacks defensible boundaries but that such a boundary does exist within the allocation.

31. In respect of Hunningley Lane, the Arup analysis falls short for failing to assess the consequences of the conclusion that the operational railway would form a defensible Green Belt boundary. Arup fails to consider, for instance, whether the function of the Green Belt in this location in providing a strategic gap between Urban Barnsley and Wombwell would be equally served if the Green Belt boundary were adjusted to follow the operational railway (thereby removing the YLL site from the Green Belt).
32. It appears from my instructions that the allocation of the Hunningley Lane site for development would still leave a 1.5km "gap" between Barnsley and Wombwell, so this function of the Green Belt in this area would be unaffected by its development. In any event, the BLP would allocate site UB16 for development, which would have a greater effect on the "gap" than the development of the Hunningley Lane site. In other words, any material erosion of the "gap" would arise from the development of area UB16, rather than development of YLL's site. Again, this appears to be left out of the Arup analysis.
33. Further, as noted above, there is evidence that the Hunningley Lane site is capable of delivering housing within the first five years of the plan period, and that housing would lie within Urban Barnsley, which is a key location for growth in the BLP.

#### **Distribution of housing growth to villages**

34. The essential point of concern for those instructing me is that the draft BLP is restrictive of housing growth in villages. In particular, policy H2 identifies only



2% of new homes being delivered in settlements other than the principal settlements, all from existing consents and windfall sites. Policy LG2 prevents village development unless consistent with Green Belt policy or necessary to meet local needs. Those instructing me note that the approach to development in villages is proposed to be more restrictive than had been contemplated in the pre-NPPF development plan process (i.e., the Core Strategy and abortive Sites and Places Plan).

35. In respect of Oxspring, an independent study by URS<sup>5</sup> has identified the need to deliver 53 to 68 homes in the period to 2026 to meet Oxspring's local needs. Over the course of the BLP plan period (to 2033), this might be extrapolated to a need for up to 96 new homes.
36. In my opinion the URS study is plainly a material consideration which the Council must take into account in preparing the BLP. Given the fact that it has been independently prepared by a specialist consultancy, and has specifically grappled with the question of Oxspring's local needs, I would suggest that it should be given full weight in considering the need for new housing in Oxspring.
37. Those instructing me also explain, on the basis of firm evidence, that there are no sites within the existing village boundary capable of delivering housing at this scale (or indeed more than 15 units), and there is considerable local opposition to the development of SAF18 (coupled with the planning and technical objections explained above). If it were established that a substantial new development area were to be required in Oxspring and SAF18 were not to be supported, then clearly Oxspring Fields would become a strong candidate for development. My instructions also note that the smaller sites within the existing village boundary are unlikely to support any affordable housing.

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<sup>5</sup> This study was commissioned as part of the ONP process and funded by Planning Aid.

38. In my opinion, the error of analysis on the part of the Council in respect of development in villages is closely linked to the approach to Green Belt. The Council has failed, it would seem, to consider the needs of individual villages in (a) reviewing its Green Belt and (b) setting restrictive development policies for villages. I can see no evidence in the documents provided to me that there has been proper consideration of meeting local needs in Oxspring. I agree with those instructing me that the approach to the BLP appears to conflict with the URS study which identifies some relatively substantial need for market and affordable housing in Oxspring.
39. The Council's approach is at least arguably inconsistent with paragraph 52 of the NPPF, which notes that the supply of new homes may be best achieved through, amongst other things, extensions to existing villages. This approach is also supported by paragraph 28 of the NPPF, which notes the importance of viable villages in promoting sustainability. It follows in my view that the provision of new housing in the form proposed by YLL at Oxspring should properly be regarded as a sustainable form of development.
40. Accordingly, in my opinion the BLP as currently drafted appears to fail properly to consider (a) the development needs of Oxspring, as evidenced by the URS report (b) whether those needs, including the provision of affordable housing, can be best met through extension to the village. It may be that this approach is predicated on a false assumption that SAF18 *must* be allocated for development in the BLP, such that other substantial housing sites in Oxspring are not required. There is no requirement that SAF18 is allocated for development in this plan period. The sustainability of that solution should be assessed against other options, including Oxspring Fields. A failure to carry out such an assessment could render the BLP unsound.

### **Delivery of identified housing needs**

41. I am instructed that the SHLAA report carried out by Peter Brett Associates identified that to meet the area's housing needs, the BLP would have to release 240 to 310 hectares of land from the Green Belt. The BLP proposes to release 190 hectares of Green Belt land, substantially less than that identified as being required to meet housing needs. As a starting point, this raises a serious concern about the soundness of the BLP in terms of allocating land for housing development.
42. A particular concern of those instructing me is that, as a result of the under-allocation of Green Belt land for development, the BLP is unlikely to meet the qualitative needs in terms of the provision of larger "executive" homes to meet the Council's economic strategy. There appears to be strong evidence that there is unmet demand for such housing, and that its provision is important to meeting the Council's economic objectives.
43. Paragraph 50 of the NPPF states that local planning authorities should, amongst other things, "identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand". This clearly anticipates a need to grapple with the nature of housing that is provided and the ability of allocated sites to deliver housing in that form. In my view it is material to note that where a site is allocated for housing, unless express provision is made in the development plan for the size and type of housing to be delivered at the allocated site, the mix is likely to be determined by the developer. Accordingly, the size and type of housing which is likely to be delivered on allocated sites is a relevant consideration in assessing the soundness of the BLP.
44. In my view the Council clearly must ensure that the BLP is consistent with the Housing Strategy, which identifies a need for c. 2500 larger family/higher value homes in the plan period. Whilst it would not be necessary for the BLP to include a policy requirement to deliver this number of houses, it clearly should be demonstrated that the housing policies of the BLP *will* deliver this element



of the Housing Strategy. The evidence referred to in my instructions would seem to suggest that there is a real risk that this element of the housing needs of the area will not be met through the proposed allocations, because of their inability to deliver such high value housing.

45. In those circumstances, in my opinion there is a good case for the Council reviewing whether the proposed housing allocations are able to deliver the identified requirement of c. 2500 larger family/higher value homes. If they cannot deliver that requirement, then there is plainly a case for allocating additional or alternative sites which can meet those requirements.

46. Further, the Council appear to proceed on two assumptions about housing delivery upon which YLL and others have cast considerable doubt. First, the Council's assumption about the density of new housing sites arguably does not recognise the need described above to provide larger homes. Those instructing me argue that a more appropriate density assumption would be 30 dwellings per hectare. If such an assumption were applied, some 25% more housing land would be required in the plan period. Second, a number of the Council's proposed allocations lie in poorer performing housing areas, where there are doubts about deliverability, build-out rates and the ability of the sites to meet market demand. It is clear that a sound plan must provide housing in the areas in which the housing demand arises. Both of these assumptions call into question the soundness of the BLP as drafted.

47. In addition, those instructing me raise a number of doubts as to the ability of the BLP to deliver a sufficient quantity of new homes within the plan period. A particular concern relates to the reliance of the BLP on delivery through large scale allocations (over 500 homes). The evidence provided to me (in the form a report from Savills in October 2014) suggests that allocations of such size have a lead time of four years from allocation to first delivery of dwellings, and then that build-out rates of 60 to 120 homes per annum can be expected. On that basis, two of the BLP's large allocations (MU1 and AC12) would not be built out

in the plan period, resulting a quantitative shortfall of 1,862 homes over the plan period. This seems to me to cast serious doubt on the soundness of the BLP, unless strong contrary evidence can be adduced to show that these sites will deliver housing sooner and at a higher build-out rate than would normally be expected. An obvious way in which to ensure that sufficient homes would be delivered would be through the additional allocation of smaller sites such as the two YLL sites in issue here, where deliverability has been established.

48. For those reasons, in my opinion there is doubt as to whether the BLP can be considered sound in terms of its ability to meet the area's housing needs both quantitatively and qualitatively. The information provided in my instructions confirms that both YLL sites are capable of delivering larger family homes at an early stage of the plan process, contributing to meeting the apparent qualitative and quantitative deficiencies in the BLP as drafted.

#### **Changes to the BLP before the publication draft**

49. The Council's position is that including the Oxspring Fields and Hunningley Lane sites in the BLP cannot be achieved at the stage of publication of the submission draft BLP; such changes would necessitate the publication of a preferred options local plan, delaying the plan process by 6 months.

50. In short, I do not agree with the Council's position. There is no requirement to consult on a "preferred options" plan, either in the statutory scheme pursuant to the Planning and Compulsory Purchase Act 2004 or in the Council's adopted Statement of Community Involvement. Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012/767 requires the Council to invite representations in the preparation of the plan, but does not require consultation on preferred options. Regulation 19 requires publication of a draft and provision for representations on the publication draft. Those representations are then subjected to independent examination.

51. In my view there is no prohibition on changes being made to the BLP before its publication. Indeed, it would make a nonsense of the consultation on preferred options if the Council were bound to publish under regulation 18 the plan which was consulted on, without any modifications. A consultation must be capable of making changes to the consultation draft otherwise it would be meaningless (and perhaps even unlawful in public law terms).
52. Accordingly, my clear view is that if the Council is persuaded that modifications should be made to the publication draft for the reasons set out above, it can make those changes without delaying the BLP adoption programme. It might be added that if the Council does not make these changes, but the examining Inspector is persuaded that such changes should be made to make the plan sound, this might engender delay to allow consultation on main modifications. Thus to the extent that the Council's reluctance to change the BLP is motivated by a fear of delay, the risk of such delay is greater by failing to make the appropriate changes at this stage.

### **Conclusion**

53. On the basis of the information before me and my consideration of the evidence supporting the BLP, I consider that there is a real risk of the BLP as drafted not being found to be sound in the process of the examination. Such a finding would be likely to result in substantial delay to adoption, as is clearly evidenced from the experience in other authorities (see e.g. the plan processes in Cheshire East and Medway, to name just two). There is an opportunity at this stage to make changes to the BLP to address the deficiencies identified above in respect of the Green Belt review and housing numbers so far as these matters impinge on YLL's sites. If that opportunity is missed, the same points are likely to be raised during the examination by Counsel and will have a strong prospect of persuading the Inspector that adoption cannot be recommended.



54. I have nothing to add as presently instructed, but if those instructing me would prefer the above analysis to be provided on a more focused basis, please do not hesitate to contact me.

**28 April 2016.**

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- 3.17 This process of improving and 'greening' rundown environments in and around the urban areas, and creating new employment land from dereliction in areas attractive to modern industries is central to the Strategy and will be pursued in the Regeneration Area.

## **Green Belt**

- 3.18 Although it has also been necessary in the UDP to release land from the Green Belt for employment developments, the overall trend since the 1970's has been to add land to the Green Belt in Barnsley District. Since 1974, 2,590 hectares has been added in local plans (an increase of about 12%) whilst 182 hectares including proposed employment sites has been deleted (i.e. about 1%). The proposals in the UDP add a further 365 hectares to the Green Belt and delete 213 hectares.
- 3.19 Much of the land added to the Green Belt was colliery related or former mineral railways, whilst most of that deleted is for employment purposes. In effect, the Green Belt changes represent an exchange of the old employment locations for the new ones, aiding the major structural changes taking place in the economy of Barnsley.

## **GREENSPACE OBJECTIVES**

1. **Protect key environmental resources to contribute to the achievement of sustainable development.**
2. **Reclaim derelict land for new development wherever suitable and feasible.**
3. **Comprehensively improve major tracts of derelict, despoiled and neglected land in the urban areas, and provide open space and recreation facilities.**
4. **Improve the physical environment in industrial and commercial areas and along main road corridors.**
5. **Improve the environment in housing priority areas, particularly in unpopular and substandard estates.**
6. **Protect the open character of land around and between settlements.**
7. **Protect and enhance areas of high quality landscape, nature conservation value, archaeological significance.**
8. **Protect and enhance a network of green corridors linking urban and rural areas.**
9. **Protect valuable areas of open space within the urban areas.**
10. **Improve the quality and provision of open space within the urban areas.**