

Mr Matthew Woodward  
Development Management  
Investment and Regeneration Service  
PO Box B93  
Market Street  
HUDDERSFIELD  
HD1 2JR

Our ref: SaveMirfield

23<sup>rd</sup> October 2018

Dear Mr Woodward,

**RE: Balderstone Hall Fields, land off Woodward Court - planning application 2017/93935.**

I am instructed by the Save Mirfield group in relation to their objection to planning application 2017/93935.

I have been passed a copy of your officers report which is to be presented to planning committee on Thursday 25<sup>th</sup> October 2018.

I have read the report and I believe that the way the application has been assessed is erroneous and these errors would be challengeable through the courts. I therefore write to place the Council on notice that we will challenge any approval of planning consent. I set out below one error which we believe is challengeable. There may be additional errors which form part of our challenge however this is the one we wish to raise with the Council at this stage.

At paragraph 10.10 of your report you state:

*“At the time of writing, the Council are unable to demonstrate a 5 year housing land supply as required by para 73 of the NPPF. Therefore, it is considered that the ‘tilted balance’ presumption in favour of sustainable development as advocated by para 11 of the NPPF applies in this case. This provides that planning permission should be granted unless the adverse effects of doing so would significantly and demonstrably*

*outweigh the benefits, when assessed against the policies of the NPPF taken as a whole.”*

Paragraph 11 of the 2018 NPPF provides:

*“Plans and decisions should apply a presumption in favour of sustainable development.*

*...*

*For decision-taking this means:*

*c) approving development proposals that accord with an up-to-date development plan without delay; or*

*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>7</sup>, granting permission unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

Footnote 7 confirms:

*“This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.”*

As acknowledged within your report the proposal does not accord with the Development Plan. Therefore you look to (d) of paragraph 11. There are relevant development plan policies as identified within your report so the first part of (d) is not engaged and you then look at whether the “policies which are most important for determining the application are out-of-date”. You have concluded that the lack of 5 year housing land supply means that this ‘tilted balance’ is engaged.

However, the most relevant policies to this application (as set out within your report) are not housing land supply policies and therefore the policies most important for determining the

application are not out-of-date simply because the Council have not got a 5 year housing land supply. The titled balance is not triggered in this case by the lack of a 5 year housing land supply.

In **Suffolk Coastal District Council v. Hopkins Homes Limited and another [2017] UKSC 37** the Supreme Court made it clear that policies which are housing policies and which are deemed out of date where an Local Planning Authority cannot demonstrate a 5 year housing land supply are policies that deal *“only with the number and distribution of new housing, and excluding any other policies in the development plan dealing generally with the disposition or restriction of new development in the authorities area...”* paragraph 48 of the judgement.

The most relevant policies are therefore not out of date and as such the titled balance is not triggered. The development is contrary to the development plan and in accordance with section 38(6) Planning and Compulsory Purchase Act 2004 permission should not be granted.

In any event the lack of a 5 year housing land supply cannot even begin to justify the approval of the application. Any weight in favour of the application due to the provision of housing in a period of low supply does not even begin to earn the significance of “indicating otherwise” under section 38(6).

The presumption under the development plan should therefore remain and permission should be refused if the statutory test was correctly applied.

Yours sincerely