

Ms N Sayers  
Development Management  
Civic Centre  
Kirklees Metropolitan Borough Council  
PO Box 1720  
Huddersfield  
HD1 9EL

8 May 2025  
EP ref: 19-512

Dear Ms Sayers

**Re: Stage 1 PIP application 2025/59/90919/E - Land at Heator Lane, Upper Cumberworth, Huddersfield, HD8 8XJ**

We are instructed by our client, Mr Hitchens, in relation to the Stage 1 PIP application detailed above.

We are writing in response to a letter of objection, which has recently been uploaded to the Council's website; the letter itself is unattributed, undated and unsigned, although the Council's portal provides a date of 29 April 2025. Whilst we consider an effectively anonymous submission should not be taken into account in determining the application, we respond to the following matters in the order set out through the letter of objection:

- Whether a sustainable development for the purposes of paragraph 155(c) of the Framework.
- Whether the site is classified as 'Grey Belt'
- Lawfulness of the 'eastern half'
- Ecology

### Whether a sustainable development for the purposes of paragraph 155(c) of the Framework

Paragraph 155(c) requires development to be in a sustainable location with particular reference to paragraphs 110 and 115 of the Framework. The National Planning Practice Guidance (PPG) at para. 64-011 says this should be determined in light of local context and site or development-specific considerations and it also references paragraphs 110 and 115 of the Framework.

Paragraph 110 of the Framework says that:

*"Significant development should be focused on locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes". (our emphasis)*

It goes on to make it clear that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making. The question as to whether the appeal site is sustainably located requires a rounded judgement that recognises the scale of development proposed, local context and site-specific and development-specific considerations in accordance with the PPG and paragraphs 110 and 115 of the Framework.

We have referred to relevant appeal decisions through our Planning Statement in relation to this matter in the rural areas of Surrey. One of the appeal decisions relates to the Copthorne area of Surrey for 2 no. dwellings (Appendix EP2); although within the rural area (not in a village like our client's site is) and future occupants would be reliant on private vehicles, the Inspector noted that the scheme for just 2 no. dwellings would not generate a significant volume of a traffic and opportunities for sustainable transport solutions vary from an urban area to a rural area as per paragraph 110 of the Framework. We copy paragraphs 28-31 of the appeal decision letter below:

*28. "This section of Copthorne Bank has a rural character but, due to the presence of existing dwellings in the vicinity of the site, the proposed development would not be in an isolated location. Furthermore, the highway connects the site with nearby settlements including Copthorne with Burstow, Smallfield, and Domewood.*

*29. Whilst there are bus stops nearby, Copthorne Bank is subject to a 50mph speed limit and there are no footpaths along this section. Future occupants would therefore be dependent on use of a private car to meet their day-to-day needs. However, paragraph 110 of the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.*

*30. The proposal would result in a net increase of one dwelling on the site, and therefore the volume of traffic movements associated with the proposed development would be small. The proposed development would utilise the existing vehicular access and there would be space for the parking and turning of vehicles within the site. The local highway authority did not object to the proposal. Therefore, I am content the proposal would not have significant impacts on the capacity of the transport network, congestion, or highway safety.*

*31. Within the context of its rural location, I am satisfied the proposal would be in a sustainable location, as required by criterion (c) of Framework paragraph 155, that fulfils the requirements of paragraphs 110 and 115 of the Framework."*

The Inspector in the appeal decision at Appendix EP4 of our Planning Statement, relating to 4 no. dwellings in the Domansland area of Surrey, made the following conclusions at paragraphs 11 and 14:

*11. "Given the limited extent of facilities and services, it is likely that future occupiers would need to travel further afield to meet some of their day-to-day and other needs, likely by private vehicles. However, paragraph 110 of the Framework indicates that opportunities to maximise sustainable transport solutions will vary between urban and rural areas."*

*14. "..... In such circumstances I am satisfied that the proposal would not result in a significant impact on highway safety or the transport network, and safe and suitable access would be provided for all users."*

The quantum of development applied for (i.e. whether significant or not) and the locational context of the site (i.e. whether urban or rural) are key considerations for the purposes of paragraphs 110 and 115 of the Framework.

In the case of our client's scheme, the proposed development for just 4 no. dwellings cannot be said to generate 'significant' impacts for the purposes of paragraphs 110 or 115 of the Framework.

In terms of locational context, this must also be seen in the context of the Government's emphasis on planning positively for new housing in the rural areas through the Framework. This is reflected in the wording of paragraph 110. Paragraph 88 says that planning decisions should enable the retention and development of accessible local services and community facilities. Paragraph 89 says the following:

*"Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist."*

Furthermore, paragraph 83 of the Framework says the following and encourages development where it will help support the vitality and viability of rural communities and development in one village may support services in another village nearby:

*"To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby."*

Upper Cumberworth is 'inset' (i.e. not washed over) from the Green Belt through the Policies Map for the adopted local plan and this reflects the status of Upper Cumberworth as a suitable location in sustainability terms for new residential development. The local plan is permissive of new windfall residential proposals in the village and our client's site is functionally, physically and visually a part of Upper Cumberworth and linked to the 'core' via a dedicated footway along Rowgate. Indeed, the Council has granted planning permission for several housing proposals in the village over recent years and we are not aware of any housing scheme in the village whereby officers have raised concerns about locational sustainability:

- 2024/62/93130/E – 1 no. dwelling.
- 2023/62/93185/E – 2 no. dwellings.
- 2023/62/90282/E – 1 no. dwelling.
- 2018/92165/E – 4 no. dwellings.

There would be no justification for the LPA to come to a different conclusion in terms of locational sustainability for our client's application. Indeed, one of the applications listed above relates to part of this application site, namely 2023/62/90282/E, and the LPA has already accepted that this is a sustainable location for new housing development for the purposes of paragraph 155(c) of the Framework<sup>1</sup>. The Council has previously refused planning permission in 2021 for the erection of 2 no. dwellings on part of the application site in a different Green Belt planning policy context, although no concerns were raised about locational sustainability; Schedule 35 (b) the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended)

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<sup>1</sup> The additional net 3 no. dwellings now sought does not trigger 'significant impacts' for the purposes of paragraphs 110 or 115) and the same conclusions apply.

requires the decision notice to set out clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision.

In terms of site-specific and local context for the purposes of paragraph 64-011, circa. 50% of the application site is previously developed land (brownfield) with a lawful use certificate as a general storage and builders yard and this has been accepted by the Council in the past. It has also historically accommodated a mill complex as set out through the Planning Statement. The proposal seeks to make efficient and effective use of land that has already been partly developed, and this is also relevant to the question of locational sustainability at paragraph 155(c) of the Framework.

We summarise the position in relation to paragraph 155(c) of the Framework below:

- The LPA has already accepted that the application site, and other locations in Upper Cumberworth, are suitable for residential development in locational sustainability terms.
- The proposed scheme cannot be said to generate 'significant impacts' for the purposes of paragraphs 110 or 115 of the Framework.
- Our client's site is functionally, visually and physically part of Upper Cumberworth village and this settlement is 'inset' from the Green Belt through the adopted Policies Map where policies are permissive of new windfall residential development in locational sustainability terms.
- The proposed scheme would help to maintain existing and support new services in Upper Cumberworth (e.g. bus services, public house, primary school), as well as nearby villages (e.g. Denby Dale and Shepley), and the vitality and viability of this thriving rural community would be supported in accordance with paragraphs 83, 88 and 89 of the Framework.
- Paragraph 110 of the Framework recognises the different opportunities for sustainable transport solutions that exist in rural areas compared to urban areas and this reflects paragraphs 83, 88 and 89 of the Framework. If the same standards for accessibility were applied in the rural areas as for the urban areas, there could effectively be a moratorium on new housing in villages, contrary to local and national planning policy in relation to housing in the rural areas.
- We have also referred to relevant appeal decisions in support of our client's case.

The letter of objection takes an extremely narrow and selective approach to whether the site is a sustainable location, which is contrary to local and national planning policy:

- The reference to 1.6 miles to the nearest train station only serves to highlight the surprisingly wide range of services available in the locality for existing and future residents of Upper Cumberworth village. It is unrealistic to think that all new housing in the rural areas should be adjacent to a train station or indeed within walking distance of all essential services.
- Bus service provision reflects the location of the village in the rural area, although the availability of such services to destinations such as Wakefield, Holmfirth and the surrounding village network highlights the suitability of new housing in Upper Cumberworth.
- The reference to 200m to the nearest bus stop in the Planning Statement should read 'Barnsley Road' bus stop, and the second nearest bus stop remains within 5 minute walking distance i.e. Star Inn Public House. The relevant point is that there is a bus stop within a 2 or 3 minute walk of the application site via a dedicated and safe footway with services to destinations such as Holmfirth, Wakefield and other nearby villages.
- The relevance of footways along Carr Lane or Birk House Lane is not clear; future residents would typically use the dedicated and safe footway along Rowgate to access the 'core' of the village of Upper Cumberworth rather than walking northwards into the open countryside.

## Whether the site is classified as 'Grey Belt'

The letter of objection suggests that 'grey belt' has no basis in national planning policy and no definition through the Framework. However, 'grey belt' is clearly defined in Annex 2 of the Framework and further guidance is provided at paragraphs 64-001 to 014 of the PPG. It is a matter of fact that the application site is 'grey belt' given that parts (a), (b) and (d) at paragraph 143 of the Framework relate to towns only and Upper Cumberworth is a village rather than a town. We copy the definition of 'grey belt' so that there are no misunderstandings below and we have addressed the PPG guidance through our Planning Statement:

*"For the purposes of plan-making and decision-making, 'grey belt' is defined as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143. 'Grey belt' excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development."*

The site does not all need to constitute previously developed land (or even previously developed at all), or the development constitute limited infilling, for the site to be 'grey belt' land for the purposes of the definition at Annex 2 of the Framework.

## Harm to openness of the Green Belt

The letter of objection suggests that openness is a relevant consideration 'even if' the proposed development is paragraph 155 compliant. This is incorrect. The Courts have held that openness is not a relevant consideration where a scheme has already been found to not comprise inappropriate development (e.g. paragraph 155 complaint) and this is also made clear at footnote 55 of the Framework.

## Lawfulness of the 'eastern half'

The factual point made through the Planning Statement is that there is a lawful development certificate for half of the application site; this land can lawfully be used for the storage of building materials and plant, limited to the storage of stone, bricks, flags, kerbs, slates, timber, shuttering, topsoil, bulk fill, hardcore and similar materials, stored to a height not exceeding 3m, and to the storage of plant not exceeding 3 vehicles and 3 site-offices or site-cabins at any one time. The LPA has accepted that this half of the site comprises previously developed land; the point that the land is currently vacant does not mean that the land cannot be used lawfully in accordance with the positive certificate of lawfulness granted.

The points about the western half of the site, planning enforcement and legal proceedings are not relevant to the question of whether the site is 'grey belt' land or not. See our earlier comments on this point and the definition provided through the Framework.

In terms of the reference to a mill complex historically through the Planning Statement, the letter of objection acknowledges this to be the case although it says that there was only a reservoir on the western half. However, the site was historically a single planning unit (i.e. mill buildings and 'mill pond') and it cannot be viewed looking back to this time period as 2 no. isolated and distinct parcels. Nevertheless, the point was to provide some historical context, and the use of the land during this time period is irrelevant to the question of whether the site is 'grey belt' land or not for the purposes of Annex 2 of the Framework.

## Ecology

The site does not fall within the Lower Jane Well LWS. All matters relating to ecology, including biodiversity net gain, will be resolved at the Stage 2 Technical Details PIP application and are not valid reasons for withholding the grant of consent at this initial stage.

We trust this clarifies our position in relation to paragraph 155 of the Framework. Should you require any further information, please do not hesitate to contact us.

Yours sincerely  
Emery Planning

Director

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