

Kirklees Local Plan Examination Hearing Statement

Our ref 50772/JG/ATu
Date November 2017

Subject: Matter 24: Hearing Statement on behalf of M62 Developments Limited – Green Belt and Open Space Policies

1.0 Introduction

- 1.1 This Hearing Statement has been prepared by Lichfields on behalf of M62 Developments Limited and responds to the questions set by the Inspector in relation to Matter 24.
- 1.2 M62 Developments Limited is the landowner of site H523: Land at White Lee Road, Batley and has previously promoted it through the planning system jointly with Jones Homes (Yorkshire) Limited. This Hearing Statement should therefore be read in conjunction with the representations submitted during the Local Plan Consultation (2016) in relation to Land at White Lee Road, Batley (representor ID: 968476) and the Hearing Statements submitted to Stage 1 of this Examination in Public (Examination Documents M2.7, M3.5, M4.6, M5.4 and M8.6).

2.0 Issue – Does the Plan set out positively prepared policies for protecting the Green Belt and open spaces which are justified, effective and consistent with national policy? [Policies PLP 54 – 63]

Questions (a) – (f)

- 2.1 M62 Developments Limited has no comment to make in relation to Question 24 (a) – (f).

Question (g) – Are the criteria in Policy PLP 61 relating to Urban Green Space, justified and in line with paragraph 74 in the NPPF?

- 2.2 The criteria in Policy PLP 61 relating to Urban Green Spaces (UGS) are not justified and do not align with paragraph 74 of the National Planning Policy Framework (NPPF).
- 2.3 Firstly, the NPPF does not contain any reference to UGS. We therefore have concerns that the UGS designation as a whole does not align with the definition of open space contained within the NPPF. Paragraphs 19.39 to 19.50 of the Publication Draft Local Plan – Strategies and Policies document set out the reasoned justification for Policy PLP61 and paragraph 19.42 in particular confirms that Urban Greenspace (UGS) constitutes all green spaces in excess of 0.4ha and of ‘identifiable value’ irrespective of ownership. Therefore, in addition to playing fields and public open space, the UGS designation also extends to private land with no public access (as is the case with site H523: Land at White Lee Road, Batley). This designation includes parks, recreation grounds, school grounds with playing fields, allotments, woodlands, natural and semi natural greenspaces, public and private playing fields, other outdoor sports facilities such as bowling greens and tennis courts, children’s play areas, amenity green space, cemeteries and churchyards. Paragraph 19.43 suggests that Policy PLP61 will also apply to sites below 0.4ha in size although these areas are not shown on the Proposals Map.

2.4 The overall effect of the UGS allocation and Policy PLP61 is therefore to maintain all open land within urban areas by preventing development and encouraging open land uses. The policy applies regardless of whether the allocated land allows public access or provides public benefit. The designation includes accessible public open spaces that need to be protected within an urban area but also includes land that is considered to contribute to character and amenity. This approach is highly questionable, particularly within the context of a need to provide additional housing sites to meet identified development needs and the draft Local Plan’s proposed release of Green Belt land to achieve this. In line with national planning policy and the guidance contained within the Government’s Housing White Paper, UGS sites, such as H523: Land at White Lee Road, Batley, should be released for development before Green Belt land is considered for development.

2.5 Figure D1 in the adopted Unitary Development Plan (UDP) shows that, at the time of adoption of the UDP, 1,577 hectares of land was subject to UGS policy. This equates to 4% of the total plan area, and 15% of the urban area, as shown in Table 1 below.

Table 1 Kirklees UDP Land Uses

Policy breakdown of the plan area	Hectares	%	%
a. Total plan area (i.e. Kirklees excluding area within national park)	36398	100	-
b. Area subject to green belt policy	25718	71	-
c. (=a-b) Non-green belt area, i.e. “urban area”	10680	29	100
d. Area subject to urban greenspace policy	1577	4	15
e. Area subject to provisional open land policy	332	1	3
f. Urban open land sites in excess of 0.4 hectares without policy notation	141	-	1
g. Land allocated for development	681	2	6

Source: Unitary Development Plan, Figure D1

2.6 During Stage 1 of the Local Plan examination, it was explained by the Council that 6 UGS sites with a combined area of 7.49 hectares have been proposed for housing allocations in the emerging Local Plan. This will have an almost imperceptible change on the overall amount of land within the urban area which is designated as UGS (still 15%), and, when combined with the extensive amount of Green Belt land which performs the same open land and amenity functions, substantially exceeds any normal requirement for open space within an urban area.

2.7 The effect of such an extensive designation will be to enforce an almost complete ban on the development of undeveloped open land within the urban area. This is exemplified by the inclusion of unused land, land that contributes to character and visual amenity and private land as well as smaller sites and large swathes of land, which essentially means that this policy can be related to any piece of land within the urban area. This is a serious concern.

2.8 Furthermore, the Kirklees Open Space Study does not provide a realistic assessment of the availability of certain types of UGS, in particular ‘natural and semi natural greenspace’ to the local population. In particular, large areas of accessible land falling within the natural and semi natural greenspace typology are located close to the defined urban areas but are excluded from the assessment on the basis of their planning policy designation i.e. they are not allocated as UGS. The planning designation is however irrelevant in identifying the supply of accessible and available land within this category. The relevant matter is actually the proximity and availability of spaces which meet the primary purposes and definitions of the typology to the UGS. This is

particularly important in Kirklees where a large proportion of the authority's area is located in the Green Belt and large stretches of the urban area directly abut designated Green Belt land. The findings of the Kirklees Open Space Study cannot therefore be relied upon. A robust assessment would actually demonstrate a substantial oversupply of some typologies of UGS such as natural and semi natural greenspace. This is apparent just from the extent of land that falls within the designation.

- 2.9 On this basis, it is concluded that draft Policy PLP61 does not accord with the NPPF and is not justified.
- **Is the requirement in criterion (b) relating to accessibility necessary?**
- 2.10 Paragraph 74 of the NPPF requires replacement open space to be provided in a 'suitable location'. Criterion (b) goes beyond this, requiring replacement sites to have equal or better accessibility and to also be located within an easily accessible location for existing and potential new users.
- 2.11 There is no detail provided within the policy or supporting text on how accessibility or a catchment area for the UGS will be measured. As described in further detail below, our client has serious reservations regarding the Council's assessment of provision of and accessibility to open space, given that Green Belt land has been excluded from this assessment. However, this reservation notwithstanding, it is considered that the requirement in criterion (b) relating to accessibility goes beyond the requirements of the NPPF and is therefore unnecessary.
- **Does criterion (e) accord with national guidance?**
- 2.12 Criterion (e) allows for development on UGS sites where the development results in a substantial community benefit which outweighs the harm resulting from the loss of the existing green space. The supporting text to the policy at paragraph 19.49 adds that this criterion will only be engaged in exceptional circumstances but, other than that, provides little detail or clarity as to what may be constituted as a community benefit, or to which types of UGS sites it may apply.
- 2.13 It is considered that further detail should be provided in this regard which sets out the types of community benefit which the Council would deem acceptable. Furthermore, to accord with paragraph 204 of the NPPF, and Regulation 122 of the Community Infrastructure Levy 2011 (as amended), it is considered that such community benefits should only be sought where there is a loss of a function or facility which can be fairly calculated into an appropriate level of specific community benefit.
- **Do the criteria provide an effective framework for assessing proposals on sites with no public access and public sporting / recreation function?**
- 2.14 The criteria within draft policy PLP61 do not provide an effective framework for assessing proposals on sites with no public access and public sporting / recreation function.
- 2.15 Paragraph 74 of the NPPF is directed at accessible open space, which has specific functions for sport and recreation, as is also the case with paragraph 73 of the NPPF. It is incorrect to apply these paragraphs to any area of open land and in our view they are not relevant to land that has no public access. As currently worded, the policy confuses public open space within urban areas with an objective to maintain open and undeveloped land.

- 2.16 It has been accepted two Inspectors at Public Inquiry¹ and also conceded by the Council at Public Inquiry² that paragraph 74 of the NPPF does not apply to open space that is protected for its visual amenity or landscape value as this could not realistically ever be deemed to be ‘surplus to requirement’ or replaceable by ‘equivalent or better provision’ in common sense terms. This would also apply to any other land that did not have public access.
- 2.17 In the Strata Homes appeal decision³, the Inspector reaches the following conclusions:
- ‘It is hard to see how such land protected mainly for visual amenity or landscape value could normally be regarded as ‘surplus to requirements’ in any common sense or practical view, or that it could be replaced by ‘equivalent or better provision in terms of quantity or quality in a suitable location’, in the way that, for example, a playing field, formal recreational ground, play area or park could’ (paragraph 20).
- ‘The danger is that the strict application of such tests framed in this way would preclude development on large swathes of land protected mainly for their visual amenity within the Plan Area. It would severely restrict opportunities for new development because it would require that land primarily protected for its visual qualities would have to be re-provided elsewhere in alternative suitable locations, or found to be ‘surplus’ to requirements. I am not convinced this is a realistic or appropriate approach given the severe housing land supply shortage in Kirklees’ (paragraph 21).
- ‘Nor am I persuaded that it was the Framework’s intention to sterilize such land from development, especially given the requirement to boost significantly the supply of housing and to ensure that the planning system does not act as an impediment to sustainable growth. In my view, paragraph 74’s purpose is not primarily concerned with landscape protection, especially given that other provisions of the Framework deal with such matters. Hence, I am not convinced that the strict application of the tests in paragraph 74 is particularly relevant or appropriate in this case. It follows too, therefore that I do not consider the weighted presumption of paragraph 14 should be displaced’ (paragraph 22).
- 2.18 Additionally, the NPPF definition of open space is focused upon land that is accessible, i.e. that provides a sport and recreational function and also acts as a visual amenity (our emphasis). The visual amenity element of the definition should be read as a conjunct to sport and recreational use. To imply that any land of visual amenity alone should be regarded as open space does not make sense as most open undeveloped land will have some degree of visual amenity, which may be valued by the public; this cannot therefore be the intention of the NPPF.
- 2.19 Additionally, Policy PLP61 is not consistent with the NPPF and goes beyond its requirements. Whilst PLP61 is a criteria-based policy, there is a key distinction between the two approaches. NPPF paragraph 74 applies to “*existing open space, sports and recreational buildings and land, including playing fields*”. The definition of “*Open Space*” at Annex 2 of the Framework is “*All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity*”. The NPPF therefore does not apply the criteria-based approach to land with a broader green space function but rather to land with a recreational function. Broader green space functions are addressed in paragraphs 109 – 123 of the NPPF. On this basis, these criteria should not be applied to land with visual amenity value.

¹ APP/Z4718/W/16/3147937 and APP/Z4718/W/16/3162164

² APP/Z4718/W/16/3162164

³ App/Z4718/W/16/3147937

2.20 For these reasons, the criteria set out within draft policy PLP61 does not provide an effective framework for assessing proposals on sites with no public access.

Question (h) - By whom and at what stage will the open space assessments referred to in paragraph 19.43 of the Plan be executed?

2.21 Paragraph 001 Reference ID:37-001-20140306 of the Planning Practice Guidance makes clear that it is the Council's responsibility to assess the need for open space and opportunities for new provision in their areas. It is therefore the Council's responsibility to provide the appropriate evidence base to justify any Urban Greenspace designation and in doing so, designate any land which meets the relevant criteria for such a designation. It is not appropriate for the Local Plan to state that there are sites which are subject to Policy PLP61 but not identify where these are or show them on the Proposals Map.

2.22 As this question alludes, paragraph 19.43 is very ambiguous. As drafted, it seems to imply that other open land could be assessed by the Council, or, perhaps, another party, at a later date as having an UGS function, and would then be subjected to policy protection under Policy PLP61. This is wholly inappropriate, and would not provide a robust planning framework.

2.23 For clarity, only those sites which are shown on the Proposals Map as being designated as UGS should be subjected to Policy PLP61.

Questions (i) and (j)

2.24 M62 Developments Limited has no comment to make in relation to Questions 24(i) and (j).

Summary

2.25 On the basis of the above, M62 Developments Limited considers that the proposed Plan is not positively prepared, effective or justified and does not fully address national planning policy guidance. The Plan is therefore unsound.

Proposed Change

2.26 To overcome the objection and address soundness matters, the Plan should:

- Re-assess all natural and semi-natural UGS sites following a review of the Kirklees Open Space Study which entails the inclusion of Green Belt or other open land which meets the definition of natural and semi-natural greenspace.
- Provide additional clarity on what may constitute a 'substantial community benefit' as described in Policy PLP61, and describe in what situations this provision would be appropriate.
- Show all UGS sites on the Proposals Map, regardless of size.