

Kirklees Local Plan Examination Hearing Statement

Our ref 50579/JG/AJk
Date January 2018

Subject **Matter 37 Hearing Statement on behalf of Persimmon Homes West Yorkshire – Sites H662 and H508, and rejected site H231**

1.0 Introduction

1.1 This Hearing Statement has been prepared by Lichfields on behalf of Persimmon Homes West Yorkshire (“Persimmon”) and responds to the questions set by the Inspector in relation to sites H662 and H508 within Matter 37. In the context that additional sites will be required to meet objectively assessed housing needs, it also **promotes rejected site H231**.

1.2 This Hearing Statement should be read in conjunction with our representations submitted during the Local Plan Consultation (2016) on behalf of Persimmon (Lichfields representor ID: 969464, Persimmon representor ID: 975291).

Persimmon in Kirklees

1.3 Persimmon has control of the following proposed allocations and is committed to delivering residential development at these sites at the earliest opportunity in accordance with the emerging Plan:

- Housing allocations H102 and H660 at Netherton;
- Housing allocation H502 at Skelmanthorpe; and,
- Part of mixed use allocation MX1911 in Lindley

1.4 Persimmon also has control of Urban Green Space designation UGS2151 at Rumble Road in Dewsbury (also referred to as rejected housing allocation H357) where planning permission has recently been granted for 149 dwellings, as well as the following rejected housing allocations:

- H575 in Kirkburton;
- **H231 in Gomersal**; and,
- H476 in Mirfield

1.5 Given the need for additional sites to be identified in the Plan to address the full objectively assessed need for housing and make up for the shortfall in delivery from the three strategic allocations (H1747, H2089 and MX1905), as well as other sites which have been demonstrated to be undeliverable as proposed, Persimmon would welcome the opportunity to bring the above rejected sites into the Plan in order to help meet identified housing needs. A suite of technical information is available for each of Persimmon’s sites which show that they are suitable and deliverable for residential development.

1.6 As Site H231 is located within the Batley and Spen sub-area, this Statement contains information on that site which demonstrates that it is suitable, available and deliverable for housing development.

- 1.7 Although sites H575 and H476 are outside of the Batley & Spen sub-area, their inclusion in the Plan to help counteract the shortfalls which have been identified in this sub-area would have no significant change on the overall Spatial Development Strategy or policy PLP 3.

2.0 *Issue – Are the proposed Green Belt release housing allocations in the Batley and Spen Sub-Area justified, effective, developable/deliverable and consistent with national policy?*

Site H662 - Land at rear of 52, Upper Batley Low Lane

Question (a) - Is the site suitable for the proposed use?

- 2.1 Whilst it is considered that the site may be suitable for the proposed use in principle, the land is steeply sloping and this topography will prevent the estimated site capacity being delivered in full. However, notwithstanding this constraint, the site is subject to a restrictive covenant which at present precludes any residential development from taking place on site. This is discussed further in response to Question (c) below.

- 2.2 An additional housing site will need to be allocated to replace this site, and also the shortfall which will occur from the under-delivery of the three strategic sites (H1747/H351, H2089 and MX1905), as discussed in our separate Hearing Statements on those relevant Matters.

Question (b) - Is the indicative site capacity appropriate, taking account of constraints and the provision of necessary infrastructure?

- 2.3 No, the indicative site capacity included within the Plan is not appropriate as the site is steeply sloping with a significant fall across the site from west to east. This reduces the net developable area of the site, and, should the restrictive covenant ever be lifted, the target net density would not be achievable due to this severe topography.

Question (c) - Is the site available and deliverable in the timescales set out in the Council's housing trajectory?

- 2.4 As referred to in our response to Question (a) above, this site is not available due to the restrictive covenant which has been included on the land ownership title requiring the land not to be used for anything other than a restrictive covenant on the land ownership title requiring the land not to be used for anything other than:

'...residential amenity garden land or as grazing land with ancillary outbuilding and stables'

- 2.5 A copy of the title is included at **Annex 1**.

Question (d) - What effect would the proposed boundary change and allocation have on the Green Belt and the purposes of including land within it? Are there exceptional circumstances that justify altering the Green Belt? If so, what are they?

- 2.6 No comment.

Site H508 - Land to the west of Whitechapel Middle School, Cleckheaton

Question (a) - Is the site suitable for the proposed use?

- 2.7 No comment.

Question (b) - Is the indicative site capacity appropriate, taking account of constraints and the provision of necessary infrastructure?

- 2.8 No, the indicative site capacity for this site is not appropriate, and it is unlikely to deliver anywhere near the amount of dwellings stated within the Plan.
- 2.9 Like many large and medium sized proposed allocations, this site is stated to have a 100% gross to net site ratio (i.e. 100% of the site is shown in the Plan to be developable). This is despite the Plan itself listing a number of constraints which will limit the developable area of the site including:
- Public right of way crossing site – The public right of way (ref: SPE/42/10) bisects the middle of the site, as shown on the Council’s proposals maps. This will affect site layout or require land to be safeguarded for a diversion of the route;
 - Noise source near site – The M62 runs parallel to the north-western boundary of the site, and a noise buffer zone will need to be provided within the site to protect the amenity of future residents;
 - Site is close to a listed building – Whitechapel Church which borders the south of the site is Grade II listed. The development will need to respect the setting of this heritage asset, either through the provision of a buffer zone or lower density development; and,
 - Site affected by hazardous installations – The Technical Appraisal of the site (BP29) states that a small area of the site is affected by the inner, middle and outer zone of a high pressure gas pipeline. As this pipeline likely runs outside of the site, it will not be diverted to make way for this development, but the layout and net developable area of a future development will need to be reduced to allow a safe stand-off distance from the pipeline.
- 2.10 The site’s Technical Appraisal also states that there is sewerage infrastructure crossing the site, and that:
- ‘Stand off distances of between 3 and 6 metres will be required for each sewer which will affect the layout of any future development; as such the matter may be a material consideration in the determination of any future planning applications. The required width of any stand-off distance or other protective measure such as diversion will have to be determined on an individual site/sewer basis. Also it may not be acceptable to raise or lower ground levels over the sewerage, nor to restrict access to manholes.’*
- 2.11 Furthermore, there is a very steep slope across the site which means that almost half of the site is undevelopable.
- 2.12 The shape of the allocation suggests that access will be taken from a point on Whitechapel Road adjacent to the school entrance. This is considered to be inappropriate due to potential conflicts with school traffic and would create a convoluted approach into the site. In reality, access would need to be taken from a point between Whitechapel Church and the junction with Turnsteads Avenue, and thus the ‘leg’ of the site adjacent to the school entrance would become undevelopable.
- 2.13 As a result of each of the constraints discussed above, it is considered that there is no realistic possibility of the site delivering anything close to its stated capacity. We would estimate that the maximum capacity of the site is in the region of 85 units, and therefore the 85 unit shortfall would need to be provided from new additional allocations.

Question (c) - Is the site available and deliverable in the timescales set out in the Council's housing trajectory?

2.14 No comment.

Question (d) - What effect would the proposed boundary change and allocation have on the Green Belt and the purposes of including land within it? Are there exceptional circumstances that justify altering the Green Belt? If so, what are they?

2.15 No comment.

- i **Has the impact of the proposal on heritage assets been adequately assessed and addressed? Should protection and mitigation measures linked to the Heritage Impact Assessment (LE73) be specified in the Plan?**

2.16 No comment.

3.0 Site H231, Wheatley's Farm, Gomersal

3.1 In this Statement we have demonstrated that Site H662 is not available for residential development, and H508 is not deliverable to the full extent estimated and relied upon in the Plan. Consequently there will be a shortfall in the region of 120 dwellings in the Batley and Spennings Dale sub-area from these two sites alone. This is on top of the approximate 3,000 dwelling shortfall which we estimate will occur as a result of the under-delivery from the three strategic allocations at Bradley Golf Course, Dewsbury Riverside and Chidswell.

3.2 Persimmon has control of Site H231 at Wheatley's Farm in Gomersal, and, if allocated, this site could help deliver around 110 dwellings in the short term. Persimmon has previously submitted a masterplan for the site alongside detailed technical information to the Council as part of the Publication Draft Local Plan consultation, which shows how the site could be developed to provide approximately 110 dwellings and areas of public open space, whilst retaining the protected trees and woodland within the site. The site is within easy access of a good range of local services, including shops, schools and green spaces, and is within walking distance of high frequency public transport services.

3.3 As found in the Council's assessment of the site, the site presents an opportunity for settlement extension, and an independent Green Belt Review undertaken by Pegasus Group on behalf of Persimmon (also submitted to Publication Draft Local Plan consultation) found that whilst the gap between Gomersal and Birkenshaw is relatively small, strong separation is provided by the M62, and the motorway is considered to act as a much stronger and more enduring Green Belt boundary than Dewsbury Road to the south of the site.

3.4 A letter which sets out the credentials of the site, and which demonstrates its suitability for housing development is included at **Annex 2**.

3.5 As Site H231 will not itself make up for the shortfall in the Batley and Spennings Dale sub-area, and acknowledging the much larger shortfall which will occur elsewhere in the District, further additional sites will need to be allocated. We would therefore urge the Council to consider sites H575 in Kirkburton and H476 in Mirfield (referred to in our Matter 45 and Matter 34 Statements respectively) alongside any other sites which are deemed to be suitable and available to make up for the shortfall and meet the District's housing needs in full.



Annex 1: Upper Batley Low Lane Title

THIS IS A PRINT OF THE VIEW OF THE REGISTER OBTAINED FROM HM LAND REGISTRY SHOWING THE ENTRIES SUBSISTING IN THE REGISTER ON 17 JAN 2018 AT 16:38:00. BUT PLEASE NOTE THAT THIS REGISTER VIEW IS NOT ADMISSIBLE IN A COURT IN THE SAME WAY AS AN OFFICIAL COPY WITHIN THE MEANING OF S.67 LAND REGISTRATION ACT 2002. UNLIKE AN OFFICIAL COPY, IT MAY NOT ENTITLE A PERSON TO BE INDEMNIFIED BY THE REGISTRAR IF HE OR SHE SUFFERS LOSS BY REASON OF A MISTAKE CONTAINED WITHIN IT. THE ENTRIES SHOWN DO NOT TAKE ACCOUNT OF ANY APPLICATIONS PENDING IN HM LAND REGISTRY. FOR SEARCH PURPOSES THE ABOVE DATE SHOULD BE USED AS THE SEARCH FROM DATE.

THIS TITLE IS DEALT WITH BY HM LAND REGISTRY, NOTTINGHAM OFFICE.

TITLE NUMBER: WYK615751

There is no application or official search pending against this title.

A: Property Register

This register describes the land and estate comprised in the title.

WEST YORKSHIRE : KIRKLEES

- 1 (27.10.1997) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being land on the West side of Upper Batley Low Lane, Batley.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (27.10.1997) Proprietor: PAMELA NORMAN of Orchard Court, Upper Batley Lane, Batley, W Yorkshire, BRIAN LYNCH of The Gables, Upper Batley Lane, Batley, W Yorkshire, KENNETH MATHERS of Nethercroft, Upper Batley Lane, Batley, W Yorkshire and MALCOLM HARTLEY of 52 Upper Batley Low Lane, Batley, W Yorkshire.
- 2 (27.10.1997) RESTRICTION: No disposition by a sole proprietor of the land (not being a trust corporation) under which capital money arises is to be registered except under an order of the registrar or of the Court.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 A Transfer of the land in this title and other land dated 1 August 1997 made between (1) Pauline Stephenson Townend and Anna Downey (Transferors) and (2) Pamela Norman (Transferee) contains the following covenants:-

"THE Transferee with intent and so as to bind (so far as practicable) the Property into whosoever hands the same may come and to benefit and protect the adjoining property now or formerly belonging to the Transferor or any part thereof being the remainder of the land comprised in Title Number WYK578150 hereby covenants with the Transferor and also as a separate covenant with every person who is now the owner of any part of the adjoining property being the remainder of the land comprised in Title Number WYK578150 now or formerly belonging to the Transferor capable of benefiting thereby that he the Transferee and her successors in title will not carry out any development on or otherwise change the use of the Property but to use the same only as residential amenity garden land or as grazing land with ancillary outbuilding and stables".

Title number WYK615751

C: Charges Register continued

2 (27.10.1997) A Transfer of the land in this title dated 1 August 1997 made between (1) Pamela Norman (Transferor) (2) Pamela Norman and others contains the following covenants:-

"THE Transferee with intent and so as to bind (so far as practicable) the Property into whosoever hands the same may come and to benefit and protect the adjoining property now or formerly belonging to the Transferor or any part thereof being the remainder of the land comprised in Title Number WYK578150 hereby covenants with the Transferor and also as a separate covenant with every person who is now the owner of any part of the adjoining property being the remainder of the land comprised in Title Number WYK578150 now or formerly belonging to the Transferor capable of benefiting thereby that he the Transferee and her successors in title will not carry out any development on or otherwise change the use of the Property but to use the same only as residential amenity garden land or as grazing land with ancillary outbuilding and stables."

End of register



Annex 2: H231 – Site Summary Letter

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Date 19 December 2016
Our ref 50579/04/JG/AJK/12976635v3
Your ref

Dear Sir / Madam

Publication Draft Local Plan Consultation - Site H231: Wheatley's Farm, Gomersal

This letter has been prepared by Nathaniel Lichfield & Partners ("NLP") on behalf of our client Persimmon Homes West Yorkshire ("Persimmon") and comprises a formal representation to Kirklees Council's consultation on the Publication Draft Local Plan (PDLP).

This representation specifically relates to site H231 (Land at Wheatley's Farm, Gomersal) which has been rejected as a housing allocation in the PDLP. Persimmon contests the rejection of the site for housing, and considers that it is a suitable and sustainable location for residential development, which is vital for meeting the District's full objectively assessed housing needs (OAHN).

This representation should be read alongside our 'main' representation on the PDLP, which concludes that the PDLP is **unsound** as it will not meet the full OAHN for the District – principally due to errors in the calculation of the housing requirement in the Strategic Housing Market Assessment (SHMA), and also an overestimation of site yields and grossly optimistic lead-in times on large allocations. As a result, and in order to make the plan sound, further suitable housing sites will need to be identified to increase the prospects of meeting the OAHN in full. Site H231 represents such a site and should be allocated to assist in addressing the identified shortfall.

The Site

The site extends to an area of approximately 7 hectares (of which approximately 3.6 hectares is developable), and is located at the north of Gomersal, off the A652 Dewsbury Road. The entirety of the site is located within the Green Belt. An indicative masterplan has been produced (see **Appendix 1**) which shows how the site could be developed to provide approximately 110 dwellings and areas of public open space, whilst retaining the protected trees and woodland within the site.



The site is within easy access of a good range of local services, including shops, schools and green spaces, and is within walking distance of high frequency public transport services.

The Rejected Site Options report (November 2016) shows that officers appear to have rejected the site on the grounds of impact on the Green Belt and for environmental protection reasons. These matters are reviewed in more detail below.

Green Belt and Green Belt Edge

The site receives a 'red' score in the Green Belt category, and an 'amber' score in the Green Belt Edge category in the Rejected Site Options report, which states:

'This is an urban fringe area where built form is already present, but there are also sensitive environmental areas including extensive areas of protected trees and an open watercourse... The drive to the Gomersal Park Hotel/Wheatley Farm does not present a sufficiently strong feature on the ground to form a new defendable green belt boundary... This area of green belt forms a narrow gap separating Gomersal from Birkenshaw. However the presence of the M62 means that there is no risk of sprawl to the north and no risk of settlement merger. The existing settlement pattern and land use features present some opportunity for settlement extension although these are limited by natural features and protected trees.'

The findings of the Council's assessment highlights concerns regarding the new Green Belt boundary, should it be redrawn, but also notes that there is no risk of sprawl or settlement merger due to the presence of the M62 to the north of the site, and that there is an opportunity for settlement extension. The existing trees and watercourse are noted as sensitive environmental features.

A review of the Green Belt in this location has been undertaken by Pegasus Group and a copy of this report is enclosed with these representations (**Appendix 2**). This review concurs with the Council's assessment that, whilst the gap between Gomersal and Birkenshaw is relatively small, strong separation is provided by the M62, and the motorway is considered to act as a much stronger and more enduring boundary than Dewsbury Road to the south of the site.

It is agreed that the protected trees and watercourse which flow through the site are sensitive environmental features which need to be conserved, but they do not influence the perception or role of the Green Belt. The indicative masterplan for the site which has been produced shows how these features could be sympathetically integrated into a proposed layout to ensure their long term protection and continued contribution to the local environment.

Wheatley's Farm, the private dwellings which are adjacent to it, and the Gomersal Park Hotel and car park are urbanising features which further erode the role of the Green Belt in this location. Persimmon therefore consider that it would be more appropriate to redraw the Green Belt boundary along Moor Lane, thereby encompassing these existing urban features and site H231 as part of Gomersal. The presence of Oakwell Hall and Country Park to the east of Moor Lane mean that it is highly likely that the land to the east of Moor Lane will come under development pressure, and the new boundary would endure beyond the plan period.

Environmental Protection

The Rejected Site Options report claims that the development of the site will create a new Air Quality Management Area (AQMA). This reason for rejection is disputed.



An Air Quality Screening Assessment (**Appendix 3**) has identified that, whilst there may be the potential for exceedances of the annual mean NO₂ objective adjacent to the M62, it is considered unlikely that there will be exceedances beyond a distance of 10m from the site boundary. As shown on the indicative masterplan, no dwellings are proposed within a distance of at least 10m from the northern boundary of the site. Furthermore, it is noted that the PDLP is proposing to allocate the following sites for housing development, all of which border the M62:

- H601
- H218
- H508
- H1704
- H2066

All of the above sites are stated to have a 100% gross to net developable area in the Sites and Allocations PDLP document, and therefore no account has been taken of the need to provide a buffer zone from the M62 in these allocations. The Council's position that site H231 is unacceptable due to its position next to the motorway is therefore **unjustified**, and the capacity of the above allocations is likely to have been over-estimated, adding to the need to identify additional sites.

Similar concerns are raised in the Rejected Site Options report with regards to noise from the M62. A technical note on potential noise impacts at the site has been produced by WYG (**Appendix 4**) which outlines a number of potential measures to control the level of background noise within the curtilages of private properties. These include the installation of noise mitigation features, and the indicative masterplan includes space for such measures. Equally as effective however is the careful positioning of clusters of buildings, and the minimisation of separation distances between dwellings where possible. Dwellings would also be fitted with enhanced glazing and ventilation. Again, concerns regarding road noise do not seem to have prevented the five sites listed above from being put forward as potential housing allocations by officers.

Summary

NLP's wider representations on behalf of Persimmon demonstrate that additional housing sites need to be identified to ensure that the objectively assessed housing need is met in full, and for the plan to be considered sound.

Site H231 could provide approximately 110 dwellings along with the retention of the protected trees at the site and allowing for a buffer zone of at least 10m depth from the M62, which provides a strong and defensible future Green Belt boundary along the north of the site, preventing the merging of settlements. As found in the Council's assessment of the site, the site presents an opportunity for settlement extension, and Persimmon considers that Moor Lane would act as a defensible Green Belt boundary to the east of the site. Technical assessments have been undertaken to demonstrate that the site can be developed without significant air quality and noise impacts, and these matters have not prevented officers selecting other sites which adjoin the M62 for residential allocation. It is therefore considered that the rejection of site H231 is unjustified, and, in the context of the need to identify additional sites, it should be allocated for residential development in the next stage of the Local Plan.



Nathaniel Lichfield
& Partners

Planning. Design. Economics.

Yours faithfully

A handwritten signature in black ink, appearing to read 'A Jackson'.

Adam Jackson
Senior Planner

Copy Persimmon Homes West Yorkshire

Enclosed Indicative Masterplan
 Landscape & Visual and Green Belt Review
 Air Quality Screening Assessment
 Noise Impact Technical Note



Nathaniel Lichfield
& Partners

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Appendix 1 – Indicative Site Masterplan



PROPOSED PRIMARY STREETS

PROPOSED TERTIARY STREETS

INDICATIVE DWELLINGS

NOISE MITIGATION MEASURES

EXISTING FOOTPATHS

TREES TO BE RETAINED

PEDESTRIAN CONNECTIONS

PROPOSED VEHICLE ACCESS POINTS

EXISTING WATERCOURSE

POSSIBLE NOISE MITIGATION OPTIONS

MOUNDING

ACOUSTIC FENCE

PLANTING

SCREENING WITH BUILT FORM STAND-OFF

PUBLIC OPEN SPACE

0m 50m 100m

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