



Department for Communities and Local Government

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Our Ref: APP/Z4718/A/12/2170080
Your Ref: DSA132312

14 January 2013

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR HOWARD COOK MBE
SITE AT LAND OFF SMITHIES LANE, HECKMONDWIKE, WF16 0PN
APPLICATION REF: 2011/60/92060/E**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Brendan Lyons BArch MA MRTPI IHBC, who held a public local inquiry on 10 - 13 July and 10 August 2012 into your client's appeal against the refusal of Kirklees Metropolitan Borough Council ("the Council") to grant outline planning permission for a continuing care retirement community eco complex (CCRC) at land off Smithies Lane, Heckmondwike, in accordance with application ref: 2011/60/92060/E, dated 28 July 2011.
2. On 2 March 2012, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves proposals for significant development in the Green Belt.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed. For the reasons given below, **the Secretary of State disagrees with the Inspector's conclusions and recommendation, dismisses the appeal and refuses planning permission.** A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The Inspector notes (IR3) that the appellant reported at the opening of the inquiry that recent searches had revealed that ownership of a small part of the application site was unknown. The Secretary of State is satisfied that, as described in IR3, the correct procedures were then followed and that, as no objection had been received when the adjourned inquiry was reconvened, no interests have been prejudiced.

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Policy considerations

5. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
6. In this case, the development plan comprises the *Yorkshire and Humber Plan - 2008 (Regional Spatial Strategy – RSS)* and the saved policies of *the Kirklees Unitary Development Plan* adopted in 1999. The Secretary of State agrees with the Inspector (IR20) that the emerging Core Strategy is at too early a stage in its preparation to be given weight in this appeal. He also agrees with the Inspector that the most relevant development plan policies are those referred to at IR21 and 22.
7. The Localism Act 2011 provides for the abolition of Regional Strategies (RSs) by Order. The Secretary of State has announced his intention to lay an Order shortly revoking the RS for Yorkshire and the Humber, which comprises the RSS and the Regional Economic Strategy for Yorkshire and the Humber, subject to saving certain policies which are not relevant to this application. However, the Secretary of State does not consider that the intention to revoke the RS changes his view on the appeal before him and he sees no reason to go back to parties on the matter.
8. Other material considerations which the Secretary of State has taken into account include *the National Planning Policy Framework (the Framework)* (March 2012); *Technical Guidance to the National Planning Policy Framework* (March 2012); Circular 11/1995: *Use of Conditions in Planning Permission*; and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.

Matters arising after the close of the inquiry

9. Two electronic representations were received by the Secretary of State after the close of the inquiry from Mr Darren Williams on behalf of Brilliant Advice Limited (dated 4 December 2012) and from Mr Darren Williams on his own behalf (dated 5 December 2012). The Secretary of State has taken account of this correspondence in his consideration of the appeal before him, but is satisfied that it does not raise any relevant issues which had not already been considered at the inquiry. Copies can be made available upon written request to the address at the foot of the first page of this letter.

Main issues

Harm to the Green Belt

10. The Secretary of State agrees with the Inspector (IR126) that the proposal would, by definition, constitute inappropriate development in the Green Belt and that substantial weight must be given to the harm which that would cause. The Secretary of State also agrees with the Inspector (IR127) that, although there is an inherent inconsistency between the Council's initial reason for refusal, which referred solely to harm by reason of inappropriateness, and the fact that the Council subsequently raised other concerns in its Statement of Case relating to additional harm, these wider concerns are legitimately raised and must be taken into account.

11. For the reasons given at IR128-130, the Secretary of State agrees with the Inspector that the introduction of the proposed buildings, access roads and ancillary features would have a clear impact on the openness of that part of the Green Belt in which the appeal site lies, and that the harm to openness would not be mitigated by the low overall density of the proposed development. He agrees that the effect on openness must take into account the entire pattern and scale of the development and that the proposal would place a significant amount of built development and infrastructure on what is currently the most open part of the site.
12. The Secretary of State agrees with the Inspector (IR131-132) that, while the proposed development would be in conflict with the Green Belt purpose of safeguarding the countryside from encroachment, the adverse impression of urban sprawl could be mitigated by emphasising the alignment of the site's southern edge with that of Norristhorpe. The Secretary of State also notes (IR133) that the Council has accepted that development would not undermine the role of this section of the Green Belt in preventing the merger of Heckmondwike and Mirfield and, having regard to the Inspector's reasoning at IR134-139, he agrees with the Inspector's conclusion at IR140 that the character of the landscape should not be regarded as of high value.
13. Overall, with regard to harm to the Green Belt, the Secretary of State agrees with the Inspector at IR140 that, in addition to the harm by definition due to inappropriateness, there would be some inevitable harm to openness and conflict with the purposes of safeguarding the countryside from encroachment and checking the unrestricted sprawl of built-up areas. He therefore also agrees (IR141-142) that it is necessary to consider the other factors which need to be balanced against the harm to the Green Belt to determine whether very special circumstances exist to justify the appeal proposal.

Need

14. The Secretary of State notes that the Council brought forward little evidence of its own with regard to any of the "other considerations" relevant to this appeal proposal (IR141) and that the Inspector considers (IR143) that the need for the scheme stands well above the remainder of the other considerations. The Secretary of State has taken account of the potential scale of the shortfall figure for meeting the need for accommodation for older people in the borough (IR144) and notes that there are indications that the need for a greater proportion of extra care housing could soon be reflected in a policy in the emerging core strategy (IR145). However, given the early stage in the preparation of the core strategy, the Secretary of State does not feel that there is sufficient evidence to enable him to support the Inspector's conclusion at IR153 that the appeal proposal will meet a serious need for which there is no viable alternative solution. Although the Secretary of State accepts that there are indications of a general need for additional provision across the borough, he does not consider that the evidence before him conclusively demonstrates that it is sufficient to outweigh the harm to the Green Belt.
15. The Secretary of State has taken account of the Inspector's conclusions (IR151-152) that the ability of the appeal scheme to contribute to meeting need is to some degree dependent on the appellant's ownership of the site and that this would allow benefits to be brought forward with considerable costs attached and which would not be relevant to another site. However, the Secretary of State does not see these financial benefits as being relevant to consideration of the need for the appeal scheme, but

rather to any benefits which might arise from the potential for interaction with Ponderosa Park and wider regeneration benefits.

Links with Ponderosa complex

16. The Secretary of State agrees with the Inspector's conclusion at IR154 that the potential benefit to the residents of the proposed CCRC of interaction with the Ponderosa complex does not add significant weight in favour of the proposal but that, for the reasons given at IR155, the ability of the CCRC to add scope to the established care project at Ponderosa adds modest weight in favour of the appeal proposal. He also agrees with the Inspector's conclusion at IR162 that, for the reasons given at IR156-161, the support which the appeal scheme would offer towards the continued operation of the services offered by Ponderosa, as a contribution to a sustainable local community consistent with the social role of sustainable development outlined in the Framework, weighs in favour of the appeal project. However, while agreeing with the Inspector in principle on that point (and noting the Inspector's confidence with regard to the financial arrangements for Ponderosa – IR156-159), the Secretary of State gives it only modest weight in the light of the uncertainties as to whether the whole project will be capable of operating on a sustainable basis (see paragraph 17 below).

Contribution to physical, social and economic regeneration

17. For the reasons given at IR163-170, the Secretary of State agrees with the Inspector's conclusion at IR170 that, although the appeal scheme is potentially capable of playing a significant role in the delivery of the physical, social and economic regeneration of the Lower Spen Valley, the remaining unknown factors mean that only modest weight can be given to that project's potential benefits at this stage.

18. Similarly, for the reasons given at IR172-174, the Secretary of State agrees with the Inspector that only limited weight can be given to the ability of the appeal proposal to deliver the predicted number of job and apprenticeship opportunities.

19. The Secretary of State agrees with the Inspector that, for the reasons given at IR175-178, the footpath/cycleway link (which would help to create a network of routes in the Lower Spen Valley) adds significant weight in favour of the proposal. He also agrees (IR179-180) that the benefits to be obtained from the proposed creation of wetland habitat and contribution to the enhancement of biodiversity weigh in favour of the proposal, as well as with the Inspector's conclusions on the various matters considered at IR181-184.

Balance of considerations

20. The Secretary of State has given careful consideration to the Inspector's conclusions at IR186-187. He agrees that there would be substantial harm to the Green Belt through inappropriateness and other harm – particularly lack of openness, and has therefore gone on to consider whether there are very special circumstances to outweigh the harm caused. He has taken account of the Inspector's conclusion but disagrees that, taken as a whole, the appeal proposal's unique relationship with existing and proposed projects and its ability to contribute to development plan objectives do amount to very special circumstances sufficient to justify the scheme. He disagrees with the Inspector's conclusion that the appeal proposal's contribution to meeting need could be regarded on its own as outweighing the potential harm to the

Green Belt. Furthermore, given the uncertainties surrounding the funding of the schemes with which the appeal scheme is intended to interact, the Secretary of State is concerned that there is a risk that the harm caused to the Green Belt by the appeal proposal may not necessarily secure the benefits claimed. The Secretary of State acknowledges that the position is finely balanced, but he considers that the caveats surrounding the proposed benefits advanced to justify the scheme mean that, whether considered individually or as a whole, they do not amount to very special circumstances or tip the balance in favour of the scheme.

Conditions and obligations

21. The Secretary of State has considered the Inspector's reasoning and conclusions on conditions as set out at IR188-196. He is satisfied that the conditions recommended by the Inspector at Annex 1 to the IR are reasonable and necessary and meet the tests of Circular 11/95. However, he does not consider that these overcome his reasons for refusing the appeal.
22. The Secretary of State has also considered the Inspector's reasoning and conclusions on the planning obligations set out in the Unilateral Undertaking, as set out at IR197-202. He agrees with the Inspector's conclusion (IR201) that those referred to at IR199-200 meet the relevant requirements set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the policy set out in the Framework and should be accorded due weight. However, for the reasons set out above, he does not consider that these provisions are sufficient to overcome his concerns with these appeal proposals he has identified in this decision letter. He also agrees with the Inspector (IR202) that the proposed covenant on local employment would not be effective, could not be properly enforced, and so no weight should be attached to it.

Overall Conclusions

23. The Secretary of State concludes that the benefits of the scheme advanced by the appellant do not, either individually or collectively, outweigh the acknowledged harm to the Green Belt by virtue of inappropriateness and the other harm identified by the Inspector so as to justify the appeal scheme.

Formal Decision

24. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses outline planning permission for a continuing care retirement community eco complex at land off Smithies Lane, Heckmondwike, in accordance with application ref: 2011/60/92060/E, dated 28 July 2011.

Right to challenge the decision

25. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

26. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

JEAN NOWAK

Authorised by Secretary of State to sign in that behalf



Report to the Secretary of State for Communities and Local Government

by **Brendan Lyons** BArch MA MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 11 October 2012

TOWN AND COUNTRY PLANNING ACT 1990

KIRKLEES METROPOLITAN BOROUGH COUNCIL

LAND OFF SMITHIES LANE, HECKMONDWIKE, WEST YORKSHIRE WF15 7PQ

APPEAL BY MR HOWARD COOK MBE

Inquiry held on 10, 11, 12, 13 July and 10 August 2012

Land off Smithies Lane, Heckmondwike, West Yorkshire WF15 7PQ

File Ref: APP/Z4718/A/12/2170080

File Ref: APP/Z4718/A/12/2170080

Land off Smithies Lane, Heckmondwike, West Yorkshire WF15 7PQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Howard Cook MBE against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2011/60/92060/E, dated 28 July 2011, was refused by notice dated 16 January 2012.
- The development proposed is described as a continuing care retirement community eco complex.

Summary of Recommendation:

That the appeal be allowed and outline planning permission granted subject to conditions

Procedural Matters

1. The planning application that has given rise to this appeal was made on behalf of Mr Howard Cook MBE ('the appellant') on 28 July 2011. The application sought outline planning permission for the development of a 'continuing care retirement community eco complex' on land off Smithies Lane, Heckmondwike, West Yorkshire WF15 7PQ. The application was refused by Kirklees Council ('the Council') on 16 January 2012.
2. An appeal against the refusal was made on 3 February 2012. By letter dated 2 March 2012, the parties were informed that the Secretary of State had directed, in accordance with his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, that he himself should determine the appeal. The reason for the Secretary of State's direction was that the appeal involves proposals for significant development in the Green Belt.
3. The Inquiry opened at Dewsbury Minster on 10 July 2012 and continued on the three succeeding days. At the opening of the Inquiry, the appellant reported that recent searches had revealed that ownership of a small part of the application site was unknown.¹ A revised Certificate D had been submitted and the application advertised.² Revised Certificates were also provided in respect of two other ownerships, one being the appellant's own company.³ These had not produced any objection. The Inquiry was adjourned on 13 July to allow time for response to the advertisement. No objection had been received when the Inquiry resumed on 10 August 2012. The Inquiry closed on that day.
4. The appeal was accompanied by the appellant's draft Unilateral Undertaking ('UU')⁴ which included obligations in respect of a number of matters. At the opening of the Inquiry, the Council provided a copy of advice from counsel⁵ which was critical of one of the key supporting elements of the UU, namely the formation of a charitable trust. Whilst further amendments to the UU were submitted during the course of the Inquiry⁶, the appellant requested the

¹ APP16

² APP16

³ APP16

⁴ APP17

⁵ LPA4

⁶ APP23

opportunity of the adjournment to re-work the UU in response to the objections raised. On resumption of the Inquiry, a certified copy of the executed revised UU⁷ was provided.

5. On the day before the Inquiry opened, I conducted a tour of the appeal site and adjoining sites accompanied by the appellant and representatives of the Council. Immediately following the adjournment of the Inquiry, I carried out an unaccompanied visit to view the site from other locations that had been identified in evidence.
6. Since the appeal was submitted, national policy guidance has been updated by the publication of the National Planning Policy Framework ('the Framework')⁸ and the cancellation of relevant former Planning Policy Statements and Guidance Notes, including Planning Policy Guidance 2: *Green Belts*, which is referred to in the Council's reason for refusal. The appeal statements and the evidence to the Inquiry are all based on the up-to-date guidance of the Framework rather than on the superseded guidance.

The Site and Surroundings

7. The site lies in the Lower Spen Valley within the Green Belt at the edge of the built-up area of the town of Heckmondwike. The site, which extends to some 8.6 hectares, comprises open pasture land, together with the remains of a former sewage treatment works, a former quarry, wooded banks sloping down to the valley of the adjacent River Spen and part of the Smithies Lane access road. A public footpath runs along the southern boundary of the site and another path crosses it from north to south.
8. The land forms part of the wider Ponderosa Park complex, which occupies some 28 hectares. As well as providing the base for the appellant's building firm, Ponderosa Park comprises a range of other facilities⁹ including: a Visitor Centre made up of a rare breeds farm, play barn and outdoor spaces, estimated to attract some 120,000 visits per year by the public and school groups,¹⁰ a restaurant, visited by over 60,000 people per year; a business park and conference centre, used by some 7,000 people per year; and the Ponderosa Therapeutic Centre, which provides services, including horticultural and craft activities, for some 70 adults with disabilities and learning difficulties.
9. An industrial area lies to the north of the site, beyond which is the town centre. At the end of the industrial Spen Vale Street, immediately to the north-east of the site, former railway land is being reclaimed as the base for the Able 2 project, which is a partnership aimed at providing training and employment opportunities for disadvantaged client groups, such as young offenders, and will also include a lake and café opening onto the adjoining Spen Valley Greenway.¹¹
10. The next progression of the Able 2 project is seen as the transformation of the redundant waste water treatment works to the east of the appeal site as the Dewsbury Domes project, in which former filtration tanks would be adapted to

⁷ APP26

⁸ CD50 Chapter 9

⁹ A fuller statement of the Ponderosa complex can be found at APP8 Appendices 1-3

¹⁰ Visitor/user numbers taken from CD12- Financial report

¹¹ More detail on the Able 2 and Dewsbury Domes projects can be found at APP11

house fish farming and horticulture, with training offered to a broad range of target groups. A Yorkshire Water pumping station would remain operational next to the Domes site.

11. Further to the east lies the residential area of Dewsbury Moor, while to the south of the appeal site are the building firm, the Therapeutic Centre and the Visitor Centre buildings, beyond which is open Green Belt land. The residential area of Norristhorpe lies to the west.

The Proposal

12. The proposal is submitted in outline, with the principle of development and access to the site as the only matters for full approval at this stage. The layout, scale and appearance of the development and the landscaping of the site are reserved for later approval. The submitted Design and Access Statement ('DAS')¹² provides parameters of scale for the different buildings, and the submitted indicative plans¹³ give sufficient information on the approximate location of buildings, routes and open spaces to allow the proposal to be assessed.
13. Permission is sought for the erection of a Continuing Care Retirement Community ('CCRC'), made up of 145 extra care housing units and a 50 bed residential care home. The CCRC concept is an established model of supported housing for older people, allowing independent living with access to a tailored package of care and to communal facilities, with the ability to avail of occasional, or later full, residential care in the care home.¹⁴
14. In this case the housing would comprise a mix of one-bedroom bungalows and two-bedroom houses arranged in clusters of up to 8 units off a central spine footpath. Residents would all be over 60 years of age, with support needs. The communal hub would provide a minimum of a 'village hall' meeting space, a restaurant and bar, a library, treatment rooms and a small shop. Externally there would be ponds, gardens and seating areas and a bowling green.
15. Treatment of external spaces would form part of a landscaping strategy which would also be intended to include the enhancement of biodiversity by the use of selected native planting and the creation of wetland habitats as part of a sustainable drainage scheme.¹⁵ Such measures would form part of the proposal's intended 'eco' credentials, along with the potential use of renewable energy and sustainable construction. Evidence has been submitted suggesting that the finished scheme could achieve Level 5 of the Code for Sustainable Homes.¹⁶
16. Access to the CCRC would be gained by means of a steeply graded new road off Smithies Lane close to the entrance to the Ponderosa complex. The proposal also includes the provision of a bridge link to the Able 2 site, which would allow unrestricted access to that site by all classes of vehicles. The bridge would facilitate the proposed creation of a cycleway/footpath along the eastern edge of

¹² CD2

¹³ CD1

¹⁴ CD15; CD16 p33; APP4 para 4.1; APP6 para 2.3

¹⁵ CD1 Plan No.10370/01K

¹⁶ CD4

the Ponderosa site, linking into the local strategic network of greenways. Access to the Dewsbury Domes site would open off the eastern side of the site.

17. Commitments to the implementation of these access enhancements are set out in the submitted UU. Other covenants relate to the lease of the Ponderosa Therapeutic and Visitor Centres to a new charitable company and the payment of a series of contributions to the company; the provision of a bus service to serve the CCRC and the implementation of a travel plan; criteria for the occupation of the CCRC, the provision of care to residents, and the provision of the communal facilities and open spaces; the use of sustainable drainage to provide a water supply to the Dewsbury Domes project; and the recruitment of local labour and trainees. The weight to be given to the provisions of the UU is considered later in this report.

Planning History

18. The application was submitted following the refusal in May 2011 of a similar previous application,¹⁷ for the same reason. The current proposal is for a slightly reduced number of units, with a defined hub of communal facilities. The proposed care home is also slightly smaller.¹⁸
19. The history of other applications for the Ponderosa complex is set out in the Statement of Common Ground.¹⁹

Planning Policy

20. The development plan comprises the Yorkshire and Humber Plan: Regional Spatial Strategy to 2026 ('RSS') published in May 2008, and the saved policies of the Kirklees Unitary Development Plan ('UDP'), adopted in March 1999. Relevant policies are identified in the Statement of Common Ground. It is agreed that the emerging Core Strategy²⁰ is at too early a stage in its preparation to be given weight in this appeal.
21. RSS policies provide a broad context for consideration of the appeal proposal. Those of most relevance include Policy H5, which calls for the provision of homes for a mix of households that reflects the needs of the area, including older persons, to create sustainable communities. Policy YH9 confirms the valuable role of Green Belts in supporting urban renaissance, transformation and concentration, as well as conserving the countryside, and seeks to preserve their general extent. Policy YH1 sets out the aim to transform economic, environmental and social conditions in the Regeneration Priority areas, which take in the older industrial areas of West Yorkshire, including the appeal site. Policy ENV8 supports the enhancement of biodiversity.
22. UDP Policy G1 seeks to secure regeneration through developments which, among other things, increase employment opportunities, improve their surroundings, benefit the economically deprived parts of the district and improve the district's image. Policy BE1 requires all development to be of good quality design that helps to create or retain a sense of place, is visually attractive, promotes a

¹⁷ Application ref 2009/60/91312/E1

¹⁸ CD5

¹⁹ CD9. RSS extracts at CD10; UDP extracts at CD11

²⁰ CD31; CD32

healthy environment and is energy efficient. Policy EP11 promotes ecological enhancement in landscaping proposals. Policy H1 states that housing needs will be met by, amongst other measures, providing land to meet the requirements of a range of house types. Policy H16 sets criteria for the approval of residential homes for the elderly, including the effect on the character of the area. Policy T18 defines strategic routes for cyclists and pedestrians, including Mirfield to Cleckheaton through the Spenn Valley.

23. National policy set out in the Framework gives priority to the achievement of sustainable development, whose three dimensions of economic, social and environmental roles are explained.²¹ The policy context for the protection of the Green Belt is set out. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.²² Designation of land as Green Belt may provide grounds to resist proposals that would otherwise merit approval as sustainable development.²³

Matters Agreed

24. The Statement of Common Ground confirms the main parties' agreement that the proposal would constitute inappropriate development in the Green Belt and that the Council finds no other harm. The only area of disagreement is said to relate to the very special circumstances claimed by the appellant.
25. It is common ground that the development of a CCRC would contribute to the wider physical, social and economic regeneration of the Lower Spenn Valley, delivered through the Able 2 and Dewsbury Domes projects and the Ponderosa Therapeutic Centre, with possible operational linkages between the three projects and the future operation of the CCRC. It is agreed that there is a potential synergy between these three projects through the opportunities they could provide for employment, training, skills, education and rehabilitation.
26. It is agreed that the CCRC development could create approximately 150 construction jobs and, when operational, could deliver in the order of 100 jobs, both full and part-time. The development could also deliver some 200 apprenticeships through a National Skills Academy training scheme.
27. The development could facilitate the implementation and use of a significant stretch of strategic pedestrian/cycleway identified in the UDP, with the potential to extend between Heckmondwike and Mirfield and link with the Spenn Valley Greenway.

The Case for the Appellant

28. The main points of the appellant's case²⁴ are:

Main issue

29. As the proposal would comprise development classed as inappropriate in the Green Belt, the main issue is whether the potential harm by reason of

²¹ CD50 paras 6-7

²² CD50 para 87

²³ CD50 para 14

²⁴ Taken largely from APP30 Closing Submissions

inappropriateness, and any other harm, is clearly outweighed by the benefits of the proposal.

Law / Policy

30. The Green Belt policy test is set out in the Framework.²⁵ Policy must be applied from case to case keeping in balance the countervailing principles (a) that policy is not a rule but a guide and (b) that like cases ought to be treated alike.²⁶ The 'case by case' approach is extremely relevant in this case, which is particularly unusual in its factual matrix.
31. The need for consistency is relevant given the approach of the Secretary of State in the *Stoneswood House* case²⁷ in which the Inspector's conclusions²⁸ were accepted as providing very special circumstances: acknowledged need for extra care housing; no clear practical or viable alternative sites; acknowledged problems in making extra care facilities viable when they are forced to compete with higher value end uses (housing in that case). While that case may not be directly parallel, those factors were given weight. In the present case the need for both the extra care housing and the care home are acknowledged by the Council, as is the absence of previously developed alternative sites. No other suitable, available or deliverable site has been suggested by the Council, or even hinted at.
32. 'Very special' does not imply the circumstances must in themselves be necessarily rare - the test is a qualitative one. Respect for the 'home' is a commonplace notion but it is also special.²⁹ Meeting needs for a special sector in society, namely the elderly, has been recognised by the Secretary of State in the *Stoneswood House* case as potentially being very special circumstances. In the present case it goes further, where the Council's planning witness has expressly accepted that providing for the continued functioning of the therapeutic centre is capable of being very special circumstances. The therapeutic centre is anything but commonplace - it is on any view a very special place.
33. If a series of factors are said to cumulatively amount to very special circumstances then while the decision maker does not have to quantify the weight given to each element there is a need to address the elements individually and together.³⁰
34. Personal circumstances can be very special circumstances.³¹ Conventionally this turns upon the circumstances of the appellant. Again this case is unusual because it is not hardship to the appellant that is put forward, but rather the fact that his financial viability cannot be divorced from the well being of others on the Ponderosa site, namely those who attend the therapy centre (those with special needs and probationers) and those who benefit from the visitor attractions, which have a disproportionately greater significance for those on low incomes. As a

²⁵ CD50 Chapter 9

²⁶ APP30: *FSS v. Sainsbury's Supermarkets Ltd* [2005] EWCA Civ 520 para 16

²⁷ APP19: *Stoneswood House, Oldham*: Appeal Ref APP/W4223/V/07/1201856

²⁸ APP19: IR 155-163

²⁹ APP30: *Wychavon DC v. SoSCLG* [2008] EWCA Civ 692 paras 21, 24-25

³⁰ APP30: *SoSCLG v. Royal Borough of Kingston upon Thames* [2009] EWHC 2674 paras 31-34

³¹ APP30: *South Bucks DC v. Porter* [2004] UKHL 33 paras 31 and 37-41

matter of law, the personal circumstances of all of these people are material considerations of overwhelming weight.

35. Financial considerations are capable of being material considerations both by reference to the consequences of not granting the permission sought and also by reference to the potential benefits of granting a permission.³² An individual company's needs, in part financial, to remain and expand in the Green Belt has been recognised by the courts and allowed in the planning balance.³³
36. The three tests by which a planning obligation may constitute a reason for granting planning permission are set out in Reg. 122 of the Community Infrastructure Levy Regulations 2010. Some guidance by the Court of Appeal³⁴ suggests that proximity and linkage are relevant factors and that the overall benefits can be taken into account.
37. Here the red line involves the access road to Able 2 and the bridge and the site is immediately proximate to the rest of the Ponderosa complex. It is the appellant's primary submission that meeting the need for specialist accommodation on this site combined with the opportunities for interaction between the proposed facility and the rest of the Ponderosa complex is itself a set of very special circumstances such as to justify the grant of planning permission in this case.
38. The other elements of the proposal- the provision of access to Able 2, the bridge, the cycleway, the water provision for the Domes and the financial underwriting of the Therapeutic Centre- are before the Inquiry first and foremost because the appellant wishes to support those various projects, which is consistent with the pattern of his conduct over many years. But if additional matters are sought to weigh in the planning balance in favour then all of those additional elements are capable of amounting to or contributing to very special circumstances. That was acknowledged by the Council in cross-examination. If that is correct then the necessity for very special circumstances to exist means that they must be secured by a legal obligation and by definition they are each potentially necessary and directly related to the development. Without them the development cannot exist and in each case there is an immediate physical proximity. The cycleway provision follows on from development plan policy; the land within the red line is the key to enhanced access to Able 2 and to opening up the Domes; the proposal cross-funds the Ponderosa complex. The relationships are incontestable.

Harm

39. The harm by reason of inappropriateness is acknowledged. No other harm is identified in the reason for refusal or in the Statement of Common Ground.³⁵ The Council now makes a case of harm to openness and of landscape and visual harm, which has never been expressly authorised by Council members and appears not to be supported by officers. If there is anything in these additional reasons, it is odd that they were not identified by members, who carried out two site visits. It is acknowledged that the Council can raise these issues, but their

³² APP30: Encyclopaedia of Planning Law 2-3277(4)

³³ APP30: *R (on the application of Siraj) v. Kirklees MBC* [2010] EWCA Civ 1286

³⁴ APP30: *Derwent Holdings Ltd v. Trafford BC, Tesco Stores and Lancashire Cricket Club* [2011] EWCA Civ 832 paras 18-19

³⁵ CD9

evolution and context suggests they are of limited merit. The Council's letter of 5 July 2012³⁶ merely says that the Council sought to reflect the importance given to openness by the Framework, but as the Framework did not significantly change policy in this respect, this does not offer a coherent explanation.

Openness

40. It is acknowledged that the proposal must, in absolute terms at least, lead to some reduction in openness. That is a point that can be made against almost any proposal to develop in the Green Belt. However, the site is seen in an urban context: it has development to the north and west while the land to the east accommodates a redundant waste water treatment facility and is earmarked by this Council for the Domes project. In reality this is a low density proposal, with a built footprint at 15.4%.
41. Concern about encroachment into the countryside also has an almost universal quality. But in the present case only about one third of the site is virgin greenfield land, with the rest comprising a disused waste water treatment facility and an abandoned quarry. Moreover, the harm is limited due to the landscape and visual characteristics of the site.
42. Mr Furnell struggled to illustrate the concern about unrestricted urban sprawl- the reality is that there is scope for firm landscaped boundaries to the site. Moreover, he expressly agreed that the role of the Green Belt in this location is to separate Dewsbury Moor, Heckmondwike and Norristhorpe from Mirfield. He did not seek to suggest that this purpose would in any way be compromised.

Landscape and visual amenity

43. The Council officer's report concluded only slight harm to landscape and visual amenity, and no such harm is claimed in the reason for refusal. Mr McKenna accepted that the site lies within an urban fringe area with a 'fragmented' character (Batley and Dewsbury Type E). However his approach is fundamentally flawed, as he starts on the basis that the landscape should be regarded as 'High' quality because it is Green Belt. Green Belt is not a landscape character designation and Mr McKenna was unable to draw the Inquiry's attention to any advice, document or decision that supported his approach. In fact the area has no landscape designation and no official notation by reference to cultural, historical or other value. Its local value is not disputed but to ascribe a high value to it is no more than unsupported assertion.
44. Mr McKenna's visual analysis succeeded in demonstrating only the obvious fact that, from close to, the development will be visible in varying degrees (View 1 = 5m; View 2 = circa 200m). Both views are taken from a footpath which is locally used but there is no evidence that the footpath has any higher order function. View 2 in fact has to be read with caution as the bulk of the development will in fact be hidden behind a hedge.
45. Mr McKenna's longer distance views did not help his case. Viewpoint 3 sought to suggest the possibility of a view over a scrapyards, but the appellant's submitted cross-section³⁷ reveals that there will be little or no visibility even on Day 1. His

³⁶ Letter on appeal file

³⁷ APP18

Views 4 and 5 are agreed: all they show is that at circa 800m distance there would be a series of private views which would see the development in an urban context. It would not appear in any way incongruous. In short, the visual impact evidence underlines just how localised the impact of the proposal would be.

Very Special Circumstances

Extra care housing / Care home facility

46. The benefits of extra care housing are unchallenged.³⁸ Kirklees Council is aware of the need for extra care facilities and is seeking to secure the delivery of more through the emerging Core Strategy.³⁹ The number of units needed is not certain (530-980)⁴⁰ but the scale of need is alarming. An objection that the facilities on this site will not address the need of those dependent on social support does not diminish the need of the potential occupants. The need for care home facilities is also unchallenged and compelling.⁴¹
47. The proposed location is special in that it permits for the development of a synergy between the proposal and the rest of the complex.⁴² It is acknowledged that such synergies cannot be enforced by the planning regime. However, Mr Fletcher has very considerable experience in the field of the provision of accommodation for the elderly. He was clear that this proposal provides a 'unique' opportunity for elderly residents to engage more widely with the Park complex. He believes, based on experience, that such engagement would be likely. There would thus be a direct and mutually beneficial relationship between the proposal and the wider complex.⁴³
48. The economics of bringing forward a CCRC are challenging.⁴⁴ Developers and/or operators must either take an unusually long view in respect of capital returns or find sites with a low or nil land value for conventional valuation purposes. Competitive land values on urban sites tend to make such sites non-viable.⁴⁵ In the present case the Council accepts there is no alternative previously developed site and does not suggest any alternative non-Green Belt sites. It is not suggested that the Council is under any obligation to identify non-Green Belt sites but the absence of even a 'broadbrush' suggestion of a reasonable prospect of such sites being available is telling. The UDP Proposals Map shows that very large parts of Kirklees are in the Green Belt.
49. The Council's case singularly fails to engage with the issue of need. The appellant's primary submission remains that the ability of this site to meet clear and compelling needs in the absence of any realistically available alternative sites amounts to very special circumstances sufficient to allow the appeal.

³⁸ APP6 paras 5.12-5.19; CD15; CD37; CD46; APP19 -Secretary of State's decision in Stoneswood House, Oldham

³⁹ CD31 Policy SCS27, as amended by CD32 pp 8-9

⁴⁰ APP6 para 6.28; CD30 p27

⁴¹ APP6 para 6.26; CD16 paras 47-48

⁴² APP6 para 3.3

⁴³ For the purposes of Reg. 122 of the Community Infrastructure Levy Regulations 2010

⁴⁴ APP4

⁴⁵ APP19 -Secretary of State's decision in Stoneswood House, Oldham

Ponderosa Therapeutic Centre

50. The Therapeutic Centre does work of incalculable social and human value. The evidence is clear - if this appeal fails the banks will foreclose and the overwhelming likelihood is that the Centre will close. The Council has offered no reassurance that new and adequate care facilities will be found. Indeed they could not, not least because many of the centre's clients have been attending for many years. It is a community and self-evidently to break it up would be contrary to the notion of a 'Big Society'.
51. Mr Heath was clear under cross-examination that there is no evidence to suggest that the banks might not await the conclusion of the planning process. He had been present when Mr Cook had been given the necessary assurances from the bank who will take over the debt financing should this appeal succeed.
52. In response to the suggestion that capital to underwrite circa 20 years of continuance for the Centre should not weigh significantly, it is acknowledged that 50 years or 100 years would be better, but 20 years, which represents a generation, would be welcomed by the Centre's clients, given the lack of any suitable alternative.
53. The Articles of Association of the new charitable company formed to take over the running of the Centre have been drafted to include as one of the Objects of the company the promotion of integration of the Centre's users with the local community and in particular 'the immediately adjacent communities'.⁴⁶ This emphasises the proposal's direct relationship with the Centre and the ability to deliver the clients' engagement in the operation of the CCRC.

Able 2

54. The project has planning permission that is being lawfully implemented, but its access constraints are undeniable. The net effect of allowing the appeal would be not simply to allow for improved access but in doing so to widen the opportunities for a full and effective use of the site.⁴⁷ There has been very substantial public investment in Able 2. It would be regrettable if opportunities were not taken to optimise the potential benefits of the scheme.

Dewsbury Domes

55. Dewsbury Domes is an ambitious project that has yet to receive planning permission but it has the support of Kirklees Council and Yorkshire Water, and of the Green Business Network which has an impressive track record. A significant amount of public money has been committed to the project.⁴⁸ Large regeneration projects always face multiple challenges, but there is no reason at this stage to conclude that, given time and the will of interested parties, the Domes project cannot happen.
56. However it is clear that without access and water from this site the scheme is unlikely to come to fruition. There is no 'Plan B' on access to the Domes site and no suggestion of CPOs etc being made if necessary. This appeal therefore permits

⁴⁶ APP28 Appendix 2 para 5.4; APP29

⁴⁷ APP11 section 8

⁴⁸ APP11 section 7

two important links in the delivery chain to be secured and to that extent increases the chances of delivery of the project. While not of determinative weight, it does add markedly to the planning benefits side of the balance.

Employment and training

57. The submitted UU requires reasonable endeavours to be used to recruit local labour, contractors and sub-contractors. Targets are set for local labour and trainees, with all vacancies to be advertised locally and notified to the Council. Open book monitoring is envisaged. Contrary to the Council's criticism, the appellant has done everything reasonably possible within the limits of the planning system.

Cycleway

58. Provision of the cycleway link as proposed would contribute significantly to the development plan policy aims. The value of the link relative to the impact of the appeal proposal is not questioned in the Council officer's report. Significantly, the Council has not suggested how else the relevant stretch might be delivered in the absence of the proposal. The high value placed by the Council on the scheme is shown by the approval at The Marmaville.⁴⁹

Leeds City Region Green Infrastructure Strategy

59. The Council officer's report noted the contribution to wetland habitat as a valuable planning benefit. The Council has produced no evidence to contradict this assessment.

The Case for the Council

60. The main points of the Council's case⁵⁰ are:

Green Belt policy

61. The Council has presented evidence on the issue of Green Belt policy only. A query was raised in correspondence as to the extent of the Council's evidence in light of its Statement of Case and the Statement of Common Ground, to which the Council responded by letter dated 5 July 2012.⁵¹ The Council's position has further been criticised by the Appellant in the cross-examination of Mr Furnell.
62. The Council submits that when considering the balance between inappropriate development and very special circumstances, it is necessary to understand the totality and nature of harm and the totality and nature of the claimed special circumstances. A quantum of harm must be established to weigh against benefits of any established very special circumstances. As a basis for the former the Council has, in evaluating the purposes of including the land in the Green Belt and the character and appearance of the area, sought to reflect the importance that the Framework gives to openness underpinning inappropriateness. Other harm identified relates to the landscape and visual impacts of the development and hence evidence is provided to complete the Council's analysis of the Appeal proposal against current Framework and Development Plan policies.

⁴⁹ APP15 para 5.29; LPA10

⁵⁰ Taken largely from LPA12 Closing Submissions

⁵¹ Letter on appeal file

63. In the area of Green Belt policy, the definition of sustainable development set out in the Framework⁵² merely reflects the longstanding balancing of very special circumstances against inappropriateness: chiefly social and economic factors balanced against environmental factors.
64. The appeal proposals are inappropriate development and as such are harmful to the Green Belt. The evidence of Mr Furnell⁵³ highlighted that two purposes for the inclusion of land in the Green Belt are engaged in this appeal: checking the unrestricted sprawl of large built up areas and to assist in safeguarding the countryside from encroachment.
65. In assessing the harm to these purposes Mr Furnell goes on to consider the effect of the appeal proposals on the maintenance of the openness of the Green Belt. The site is an integral part of the open land which surrounds it and as such forms an important barrier to the further outward spread of the existing urban area. Its current low degree of visual impact would be undermined. Proposed landscape screening and mitigation will in itself introduce an alien form of development into this setting. The appeal proposal will amount to a substantial amount of built development on the site which will harm the openness of the Green Belt and conflict with the purposes of including land in it. There is a presumption against the appeal proposal in terms of Framework Green Belt guidance.

Landscape and visual impact

66. Mr McKenna has developed a consideration of the landscape character of the area from reviewing previous studies.⁵⁴ Using widely accepted guidance, the Condition, Value and Sensitivity to Change of the landscape have been determined to be High, High and Medium respectively. The landscape impact has therefore been assessed as High and of Moderate/Substantial adverse significance.
67. A visual impact assessment of the appeal proposals has concluded that users of footpaths approaching the site would be subject to a High level of impact with a Substantial level of significance. Views from residential properties across the valley would be subject to a Low level of impact but bearing in mind the highly sensitive nature of such receptors would suffer a Moderate adverse significance.
68. The evidence of Mr McKenna has relied upon a clearly structured and transparent methodology. As noted in evidence, the field is one that requires an informed but nonetheless subjective judgement. The methodology employed allows that judgement to be carried out consistently and with clarity.
69. In contrast the evidence of Mr Denton⁵⁵ has relied upon his own methodology, which presents two potentially conflicting definitions in both the areas of Significance of Landscape Impact and in the Significance of Visual Impact. It became apparent in cross-examination that the descriptive and tabular definitions of Impact operate independently. More confusing still, the evidence uses vague undefined terminology in grading Magnitude so that the conclusions are vague at best.

⁵² CD50 para 7

⁵³ LPA3

⁵⁴ LPA2

⁵⁵ APP13

70. Mr Denton has sub-divided the site into sub-areas which show that the site is predominantly 'Pasture and Grazing Land' despite the focus of his evidence upon degraded 'urban fringe' aspects of the site. In his table 4, this most significant sub-area is simply considered to suffer a 'Moderate' impact on the basis that the introduction of the appeal dwellings into the Pasture area would simply be a change of Medium Magnitude. This underlying assumption is clearly unsustainable when set against the nature of the development to be introduced to this most rural and undisturbed part of the site.
71. The Council also takes issue with Mr Denton's evidence in terms of urban grain. The introduction of suburban knots of dwellings into a landscape which the Council considers to be rural fringe bordering onto industrial land to the north would provide an entirely alien grain.
72. The assessments of individual viewpoints at section 8 of Mr Denton's proof also show disturbing inconsistencies: some residential receptors are highly sensitive whilst others are merely medium in their receptivity and several are shown differently in the summary table.⁵⁶ Mr Denton conceded some of the more significant impacts.
73. The fundamental point, agreed by both witnesses, is the subjectivity of such assessments. The methodologies used are frameworks through which to grade and classify essentially subjective views. In such circumstances it is unsurprising that despite their differing methodologies and contrary conclusions on individual factors the witnesses came to only narrowly different conclusions overall. The conclusion of the appeal with regard to the visual and landscape impacts will rely upon informed but subjective views. The Council would recommend the methodology of Mr McKenna over that of Mr Denton. Mr McKenna's approach has the advantage of presenting a clearly defined methodology without any of Mr Denton's undefined terms and without the apparent inconsistencies of Mr Denton's evidence and approach.

Very special circumstances

74. The appellant has disclosed the financial vulnerability of the Ponderosa Park leisure complex including the Visitor Centre and Therapeutic Centre and its admirable work in the social care sector. The Council does not and has not disputed the social value of the activities going on at Ponderosa Park nor the substance of the financial summary put forward by the appellant. However, the Council expressed concern that no connection was provided between the appeal proposals and the Ponderosa Park bar current common ownership and physical proximity.
75. The appellant has since sought to give comfort to all parties by setting in motion the creation of a charitable company to manage the future of the Therapeutic and Visitor Centres. The Council remains concerned by the guarantees this gives for these facilities' futures. The endowment which the appellant has put forward is limited and on the evidence of his own accountant can maintain the centres for less than twenty years. Even without payment of rent, as now proposed, the endowment is limited. This must be considered in light of the essentially permanent impact of the development upon the Green Belt and its openness.

⁵⁶ APP13 Table 5 p39

76. At the same time it should be remembered that the centres are in an apparently parlous state financially whilst the security promised by the endowment will only come with staged payments which first arise after the occupation of the care home component. The financial security promised by the endowment is therefore a number of years off when the centres, the banks and the country itself are experiencing a period of unprecedented financial uncertainty. The Council does not agree that the medium term security of Ponderosa Park is of sufficient weight in the balance of very special circumstances.
77. Much weight has been put upon the synergy of the appeal proposal with the other facilities and proposed enterprises neighbouring the site. The aim is admirable but as became apparent in evidence the appellant's training and employment goals (with regard to local employment and apprenticeships) remain aspirational. The Council does not doubt the appellant's wish to develop local jobs but there is no mechanism to guarantee the likelihood of such benefits coming forward.
78. Similarly, the appellant points to a synergy whereby residents of the appeal proposal can become involved with the work of the Visitor Centre and Therapeutic Centre at Ponderosa Park. As the appellant's own witnesses noted (Messrs Puckering and Fletcher) the interaction of the appeal site residents with the existing good work of the Ponderosa Park can only be a hoped for consequence: the residents will do as they wish. This particular synergy is an unquantifiable and 'unguaranteeable' aspiration.
79. The Council has noted in evidence⁵⁷ that the regeneration which will flow from the appeal project is a highly localised benefit to a relatively discrete corner of Heckmondwike.
80. The cycleway provision proposed is a small benefit when compared to the impact of the appeal proposals on this prominent piece of Green Belt land. Regardless of any comparison with another site in the borough, it remains a minor benefit in relation to this site and this proposal.
81. The appellant has explained that the removal of the Dewsbury Domes remediation scheme from the S106 obligation was because the responsibility for remediation remained with Yorkshire Water and that for the appellant to take on such a commitment would potentially involve highly expensive and extensive works. The Council cannot disagree with this assessment but the significant works still required to bring forward Dewsbury Domes, which the Council accepts is an admirable project, undermine the deliverability of that proposal and the synergies which once again are fundamentally aspirational.
82. The Council does not consider that the sum of all the circumstances put forward by the appellant, including wider regeneration, employment and training opportunities, cycleway provision and Fresh Aire contribution, are sufficient to outweigh the harm to the Green Belt. The appellant's very special circumstances are admirable but largely aspirational and their links to the appeal proposals weak, despite all the efforts of the appellant to portray them otherwise.

⁵⁷ LPA3

The case for others who appeared at the Inquiry

Supporters

83. Craig Walker is operations manager for the West Yorkshire Probation Trust, which is responsible for all probation services in the county, with 1200 staff dealing with some 12000 offenders at any one time, and annual government funding of some £42m.
84. At the time of the Inquiry, the Trust was supervising 1857 offenders in Kirklees, of which 366 came from postcodes close to the site, including the Dewsbury Moor estate. The local area suffers from multiple deprivation. The most effective way of fulfilling the Trust's mandate to tackle crime, reduce re-offending and protect the public is through employment. Education and training are key.
85. The Trust's interest in the proposal is based on the potential for substantial employment and training of local offenders offered by the Able 2 and Dewsbury Domes projects. This will result in less offending, fewer victims and less cost to society. The proposal offers the opportunity for access to and development of the sites of these projects.
86. The development of the site would offer construction jobs targeted at local residents. The Trust supports the Able 2 work on green building technology and is investing in the Green Future Building and Domes projects. While it is not certain that these projects would cease if the appeal proposal were rejected, the proposal represents a great opportunity.
87. David Dove and his wife are the appellant's nearest neighbours, having lived on Smithies Lane for 25 years. Mr Dove previously owned a farm at Carr Lane and could confirm that Carr Lane was totally unsuitable as an access to the Domes site.
88. Although the site is in the Green Belt, it has an industrial past. Over the years, the character of the area, which had been very neglected, has been substantially improved by the appellant. He supported the proposal because it would provide a quiet use of the site. He had no concerns about traffic from the Domes and Able 2 sites passing close to his home.
89. Chris Jenkinson has lived in Dewsbury Moor for 12 years. Over time he has seen the decline of the area, with problems of anti-social behaviour and abuse, to the point where the area is now perceived as one of the most deprived in the country. He and other residents have started initiatives to improve the area and had secured £1m in lottery funding.
90. The appeal proposal represents a once in a lifetime opportunity to change the history of Dewsbury Moor and help bring an end to lawlessness and drug abuse. Able 2 could get 10-20, or even 30, young people into employment and training. This would be more beneficial than the lottery funding. The development site consists of one small field. The trade-off in improvement to the area would be worth 1000 fields and make thousands of people happy.
91. Reverend Kathy Robertson is Team Vicar at St John's Church, Dewsbury Moor. The area is one of high social deprivation, with problems including worklessness and lack of facilities for children. Low aspirations compound difficulties in accessing training and employment.

92. The Able 2 and Green Future Building projects are addressing the issues. The proposal would give further opportunities for training and raising aspirations, giving skills and personal satisfaction, while growing personal responsibility. These projects work with probation referrals, helping to reduce re-offending, and with long-term unemployed, for whom training opportunities are few.
93. The proposal would provide a leisure and education resource, accessed on foot, encouraging appreciation of heritage and natural beauty. The use of the redundant filtration tanks would remove an eyesore and danger to children, while creating an opportunity for work and training. The local economy would be boosted by the sale of produce and by innovative technology, attracting visitors. Reverend Robertson understands the concern about the CCRC, but high environmental standards are key to the proposal.
94. Karen Batley is an assistant manager at the Ponderosa Therapeutic Centre. She described the work of the Centre with adults of a range of disabilities and age groups. The Centre provided a way of life for its users, many of whom had been attending for more than 9 years, with the longest attendance of over 20 years. For many who lived with elderly parents, the Centre provided their only social life. A range of activities was provided, based on user choice. Her own son has attended for several years and loved the Centre. Closure of the Centre would greatly affect the users, who need continuity of care.
95. Paula Downes is a local resident whose son was on a work placement in joinery with Green Future Building. He had completed an initial trial following release from a short prison sentence and now hoped to secure an apprenticeship. The project had transformed her son's outlook and behaviour. The Able 2 site, with its lake and café, will create opportunities open to all, young and old.
96. Councillor David Sheard⁵⁸ has been a ward councillor for Heckmondwike since 1982. He is now a Cabinet Member and Deputy Leader of Kirklees Council, and is aware of the issues through his previous responsibility for Regeneration and through membership or chairmanship of Planning, Environment and Social Services Committees. He has family connections with the former Spensborough sewage treatment works and with Ponderosa.
97. As a local resident, with over 60 years' experience of playing and walking on the site, he has seen improvement from its industrial past as Ponderosa has developed. He appreciates the planting done by Ponderosa and the permissive paths created. The proposal would not involve diversion of any formally designated path.
98. As a ward councillor he has been lobbied by those both for and against the proposed development. He sees the proposal as a possible alternative to the release of two local plots of Provisional Open Land identified in the emerging Core Strategy. He was marginally opposed to the previous application, owing to the inclusion of family housing and the high visibility of the field at the top of the hill, but now supports the current proposal.
99. Given the proximity of the former sewage works, he does not believe that the proposal would result in the merger of settlements, but this would not outweigh

⁵⁸ IP5: Note of Councillor Sheard's statement

the presumption against development in the Green Belt. The main 'special reason' in favour of the proposal is the symbiotic relationship with the Able and Domes projects. When other factors are added, such as the brownfield nature of much of the site and the growing need for this type of accommodation, the balance tips further in favour.

100. The Council Cabinet priorities are the creation of jobs and homes. It strongly supports the Able 2 project. The development of this site and the Able 2 project would provide economic, social and environmental benefit to the area.
101. John Double is a retired professor of cancer research. He has known the appellant for many years as a passionate advocate, and Ponderosa as an exceptional centre for people with a disability or learning difficulties. His late brother was a full-time service user for the last 6 years of his life and found it much better than other centres. The appellant now wants to expand the range of provision and client groups, delivering care in a more sustainable way.
102. The proposal would allow retired people to be independent and would be justified by special reasons. Only 15% of the site would be built on, consisting of untidy scrub land and a disused quarry. A precedent is provided by the many houses nearby in the Green Belt. The substantial community benefits could not be secured on a brownfield site. The bridge would provide a vital link, guaranteeing fulfilment of the project's aspirations. The proposal would be a flagship for Kirklees and the local area.
103. Waseem Riaz is a local resident who works for the Kirklees Faith Network, which has recently been set up to tackle community cohesion issues. Ponderosa has facilitated the project by allowing free office space, from where projects are run with local young people. The museum at Ponderosa will reflect the cohesion theme, with work on Asian heritage.
104. Until the 1990s, Heckmondwike was thriving, and the Council had little interest in regeneration. In current difficult times, it has become a virtual ghost town, and Dewsbury is also suffering. The appeal proposal, with the Able 2 project, could only improve local quality of life and would help the Faith Network to bring local residents together.

Objectors

105. Terence Tordoff is a researcher for Mike Wood MP, on whose behalf he spoke at the Inquiry. The concerns expressed in Mr Wood's letter⁵⁹ about inadequate very special circumstances, vague aspirations and dubious financial planning still stood.
106. He was puzzled by hearing it suggested at the Inquiry that a Kirklees planning officer had encouraged Mr Cook to apply for permission for housing on the Green Belt to help pay for a £2.5m bridge to lift two railway carriages onto Kirklees Council land. In commercial terms, this provided very poor justification. He had heard of incompetence and bad faith by Kirklees Council, including subversion of its own planning policies, which the Secretary of State should note.

⁵⁹ Letter of objection dated 2 May 2012, on the appeal file.

107. When asked about a letter from Mike Wood MP to Professor Double⁶⁰, in which Mr Wood outlined his involvement in the project and stated that he had advised Mr Cook how to proceed to secure his application, Mr Tordoff replied that giving advice to a constituent was part and parcel of an MP's role. Much of the advice had been conveyed by Mr Tordoff himself as an experienced caseworker and had been that many of the special circumstances put forward were weak. He did not agree that the letter suggested that Mr Wood supported the proposal. There was no inconsistency with Mr Wood's support for Able 2, which is an established successful Kirklees project. The Domes project now appeared to have firmer funding and prospects than at the time of Mr Wood's objection.
108. Lisa Drake⁶¹ is a resident of Norristhorpe and the organiser of the informal group *Save Norristhorpe Green Belt*. Although the access to the site is off Smithies Lane, it is actually situated off Lodge Lane in Norristhorpe.
109. The previous application was almost unanimously rejected in May 2011. Almost 300 residents objected as well as two ward councillors. A Strategic Housing Officer's report was very critical of the proposed care home. In recent years, several planning applications in the Norristhorpe area have been rejected as inappropriate development in the Green Belt.
110. Applications for CCRCs are on the increase. Neither of the two CCRCs granted permission in Kirklees, at Storthes Hall and Mirfield 25, has yet come forward, calling into question the need for such development. The latter site was placed on the market at greatly increased valuation.
111. The application is not a genuine proposal to provide specialist housing but an attempt to manipulate the planning laws that prevent building on Green Belt land. The proposal should be sited on previously developed land, where it would create similar job opportunities. The developer claims no other sites are suitable, only because he does not own them. Maximising profit is not a reason to allow Green Belt development.
112. The site is steeped in wildlife, many of whose habitats would be destroyed. It is a beautiful, tranquil, rural area, well used by all generations of the local community.
113. Approval of the proposal would set a precedent for speculation in the Green Belt and would be contrary to the purposes of preventing sprawl and separating neighbouring urban areas. It would prejudice the emerging Local Development Framework.
114. Alan Brown stated that he appeared on behalf of residents of Norristhorpe. Many local people were not well off and could not afford to visit national parks and countryside further afield. They relied on local green space, all of which should be protected. The Spen Valley Greenway is already very heavily used. Loss of other local paths would increase pressure on the Greenway to an unacceptable degree.
115. Residents fear that the proposal will be the thin end of the wedge. The only special reason put forward for development is the financial difficulty of the

⁶⁰ APP21

⁶¹ IP3: Note of Ms Drake's statement

appellant, who is a builder who has acquired a lot of farm land. As local farmers also get into difficulty, pressure for development will escalate.

116. Gordon North⁶² spoke as a former councillor and as Vice-Chairman of the Spen Valley Civic Society, which had actively participated in the UDP's identification of Green Belt, open land and development sites. The UDP allocations, including the need to separate small communities in the area, are still relevant. The emerging LDF suggests loss of some Green Belt land for employment and housing, but not the appeal site.
117. Planning gain for future projects cannot be treated as very special circumstances. The Domes project may have great merit, but is only an aspiration at this stage. The expansion of Able 2 cannot be used to justify development, when permission exists for the project on its existing access.
118. The appellant may have been encouraged to bring forward the proposed development, but his financial position cannot comprise very special circumstances. The Ponderosa complex may benefit from the proposal, but there is no guarantee that sufficient economic benefit would arise or that the funds would have to be used for that purpose.
119. As the proposal is in outline, there is no detail of how Code Level 5 would be achieved, but as national standards are already rising, by the time the development would actually be built that target would not be seen as exceptional. As an employee of Sustrans, Mr North strongly supports the provision of the cycleway link, which is a UDP proposal, but feels that it could be secured by other means. Neither issue provides very special circumstances.
120. If there is a demand for retirement complexes, they should stand commercially and not rely on building in the Green Belt. The financial viability of the scheme cannot be accepted as very special circumstances.
121. Keith Beaumont spoke as a long-standing local resident, who had observed the expansion of activities on the Ponderosa site over the years. His view is that the proposal was purely an attempt to exploit Green Belt land to assist with the appellant's financial difficulties. He does not accept that the Ponderosa complex is in danger of closure as it is a well established viable concern. Care activities on the site also attract funding.
122. The Domes project sounds very worthwhile, but Kirklees Council, which would be the main funder, would not be able to afford the project. It should not be seen as relevant to the current proposal.
123. Mollie Rainford is a local resident and regular user of Lodge Lane. The current views of the whole valley from near Norris House would be spoiled by the proposed care home.

Written Representations

124. The appeal attracted some 50 written representations.⁶³ The great majority of these support the proposal, primarily on the grounds of economic and

⁶² IP4: Note of Mr North's statement

⁶³ Copies on the appeal file

regeneration benefits that the project might bring, particularly in terms of training and employment for local people. Many writers also note the good work carried out at Ponderosa and believe that the CCRC would provide a welcome facility for elderly residents. Those opposed to the development tend to focus on the use of Green Belt land and to question the need for the proposed accommodation. Concern is also raised on traffic grounds.

125. Written representations at the planning application stage, as summarised in the Council officer's report,⁶⁴ were more evenly balanced in numbers, with some 124 letters of objection, of which 112 were in the same form, and 128 letters of support.

⁶⁴ Report and copies of representations on file with Questionnaire documents

Inspector's Conclusions

[Numbers in square brackets denote source paragraphs above]

Main Issue

126. The reason for the Secretary of State's direction was that the appeal involves significant development in the Green Belt. It is common ground that the proposal, as new building in the Green Belt which would not come within any of the exceptions defined by the Framework,⁶⁵ would constitute inappropriate development. The proposal would, by definition, be harmful to the Green Belt and substantial weight must be given to this harm.⁶⁶ The main issue in the appeal is whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances that would justify the development.⁶⁷
127. Therefore, the Council is correct to say [62] that all potential harm must be weighed in the balance against other considerations. The additional harm cited by the Council includes harm to the openness of the Green Belt and to the purposes of including land within it, and harm to the landscape quality of the area. However, it is noteworthy that the reason for refusal of the application⁶⁸ refers to no other harm than that by reason of inappropriateness. This stance is confirmed by the Statement of Common Ground.⁶⁹ There is thus an inherent inconsistency in the Council's position that is not readily explained by any change in national policy arising from the replacement of former guidance by the Framework. [39] The absence of objections on these grounds in the reason for refusal tends to reduce the force that they now carry. Nevertheless, the appellant accepts [39] that these concerns, which formed part of the Council's Statement of Case for the appeal,⁷⁰ are legitimately raised and must be taken into account.

Green Belt/Harm

Openness

128. The proposal is submitted in outline, with the final layout reserved for later approval. However, in accordance with procedure,⁷¹ sufficient information is given by the submitted Design and Access Statement⁷² and indicative plans to locate the approximate area intended for development. This part of the appeal site consists of open land. The limited surviving evidence of the former sewage treatment works on part of the site has very little effect on its openness. The introduction of the proposed buildings, access roads and ancillary features would have a clear impact on the openness of this part of the Green Belt.
129. Openness of the Green Belt is a discrete concept, independent of visual concerns. The context provided by adjoining development is not critical. [40] Land

⁶⁵ CD50 para 89

⁶⁶ CD50 paras 87-88

⁶⁷ CD50 para 88

⁶⁸ CD7

⁶⁹ CD9 p4

⁷⁰ Statement of Case on appeal file

⁷¹ Town and Country Planning (Development Management Procedure) (England) Order 2010

⁷² CD2

close to the edge of the Green Belt will often be near relatively highly developed urban areas. The existence of such context tends to reinforce rather than diminish the value of keeping land open. The appellant's view that some loss of openness is a virtually inevitable consequence of development [40] does not alter the fact that any such loss must be seen as harmful. The Framework reiterates former guidance that openness and permanence are the essential characteristics of the Green Belt.⁷³

130. Harm to openness would not be mitigated by the claimed low overall density of the proposed development. The fact that the footprint of the actual buildings would occupy a relatively small percentage of the total site area [40] is of little consequence. Much of the site comprises wooded banks and the former quarry, which would not be developed. The effect on openness must take into account the entire pattern and scale of development, including roads and ancillary areas. The proposal would place a significant amount of built development and infrastructure on the currently most open part of the site.

Purposes

131. Notwithstanding the former uses of part of the site [41], and its urban fringe character [43], this area currently forms part of the countryside between settlements. Therefore its development would be in conflict with the Green Belt purpose of safeguarding the countryside from encroachment.[66]
132. The valley of the River Spen forms a clear edge to the urban areas of Dewsbury Moor and Heckmondwike. The introduction of development on the opposite side of the valley would appear as an extension of the built-up area into the currently open block of countryside to the west. There would be an impression of urban sprawl, contrary to this purpose of including land in the Green Belt.[65] However, the urban edge of Norristhorpe is less strongly marked by physical features. The adverse impression of urban sprawl could be mitigated by emphasising in the final layout the alignment of the site's southern edge with the southern edge of Norristhorpe to create a strong Green Belt boundary.[42]
133. The Council has accepted that development would not undermine the role of this section of the Green Belt in preventing the merger of Heckmondwike and Mirfield.[42]

Landscape and visual impact

134. Green Belt is not in itself a landscape designation [43] and the Framework no longer advises particular protection of its 'visual amenities'. But the Green Belt purpose of safeguarding the countryside from encroachment implicitly acknowledges the landscape value of the countryside that comprises most of the Green Belt. Recognition of the intrinsic character and beauty of the countryside forms part of the Framework's core principles.⁷⁴
135. However, the appellant is correct to say that assessment of Green Belt landscape impact should not assume a high value as a starting point. The Council acknowledges the fragmented character of the wider urban/rural fringe landscape and of the landscape within the site itself. [43]

⁷³ CD50 para 79

⁷⁴ CD50 para 17

136. The Council also acknowledges that, despite its criticisms of the appellant's submission, both expert landscape impact assessments before the Inquiry have come to only narrowly differing conclusions, and that a degree of subjectivity is inherent in the process.[73]
137. In terms of landscape character, the key difference appears to relate to the magnitude of change. The majority of the site area to be built upon lies in the zone characterised by the appellant as pasture and grazing land that extends beyond the site to the south. There is agreement that the sensitivity to change should be classed as medium. However, the change to a fully developed residential/institutional character must be seen as of high rather than medium magnitude. This would support an outcome of moderate/substantial effect, as assessed by the Council, rather than moderate.
138. With regard to visual impact, there is agreement that the most significant impacts would arise in short distance views from public footpaths to the south of the site. Whilst these paths do not form part of any designated route [44], they appear to be well used by local people, including by Norristhorpe residents who spoke at the Inquiry. [112, 121, 123] In the context of the densely built urban area, it is understandable that the open views afforded should be well valued locally. A substantial adverse effect is agreed for the short term. In the longer term, much would depend on the detailed proposals for landscape mitigation and the final layout of the site. The indicative plans suggest that the CCRC units and access road would be very close to the southern boundary, with limited space for screen planting, and that the care home, whose final design is not fixed, would be prominently sited at the brow of the hill.
139. The appellant's photomontages⁷⁵ suggest that mitigation could be very effective in longer distance views from the south-west (View 2), but less so from the east. The projected view from Heckmondwike Road (View 1), which would be similar to that experienced by some residents of Dewsbury Moor (View 8), shows that the development would be likely to have an intrusive effect in the middle distance, replacing the current green slope. The effect would be greater than the slight impact predicted, but not severely adverse.

Conclusion on harm

140. In addition to the harm by definition due to inappropriateness, there would be some inevitable harm to the openness of the Green Belt due to the nature and extent of the proposed development, and conflict with the purposes of safeguarding the countryside from encroachment and the checking of the unrestricted sprawl of built-up areas. Through the introduction of built development, there would be a moderate to substantial effect on the character of the landscape, which should not be regarded as of high value. Local visual impact would be substantial at short range from public footpaths, but could be significantly mitigated by detailed design and landscaping proposals. Longer distance impacts would be moderate at worst.

⁷⁵ APP18

Other considerations

141. The Council's case has brought forward little evidence of its own with regard to other considerations, but has mainly confined itself to questioning the appellant's claimed benefits for the proposal. Given the areas of agreement set out in the Statement of Common Ground, it is clear that the Council's reservations are in most cases a matter of degree: positive outcomes are accepted but the weight to be given to these is called into question.
142. In order to meet the test laid down by the Framework, by which the very special circumstances needed to justify development will not exist unless the potential harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations, it is necessary to examine in turn the other considerations put forward, before carrying out a balancing exercise.

Need

143. The appellant's primary submission is based on the issue of need. In considering the justification for the proposed development, this issue stands well above the remainder of the other considerations.
144. Improved housing choices and support for older people are included in the national housing strategy, including improved provision of accessible retirement housing and extra care housing.⁷⁶ The local context is provided by the Council's accommodation strategy for its older population, which sets out the levels of predicted increase in the older age population of the borough. While the level of predicted housing need might not be 'alarming', as summed up by the appellant, the strategy concedes that the overall needs are 'formidable'.⁷⁷ In the category of housing with care, even the lower shortfall figure for the borough of 530 units by 2015 rather than the figure of 980 suggested by researchers, shows the scale of the problem. [46]
145. Provision of a greater proportion of extra care housing forms part of the accommodation strategy. There are indications that this could soon be reflected in local planning policy through the emerging Core Strategy. [46]
146. The appellant has demonstrated significant short-term and longer-term need for both extra care housing and residential care, both in the local catchment area and in the wider administrative area. The calculations take into account the potentially increased supply from previously approved schemes which have not yet come forward.⁷⁸
147. The appellant has also produced evidence of the potential demand for the extra care component of the proposed CCRC. Evidence of other schemes elsewhere suggests that the majority of residents come from a relatively local catchment.⁷⁹ Lack of demand does not appear to have been the determining factor in other previously approved schemes coming forward, as suggested by some objectors to the proposal. [110]

⁷⁶ CD21 Chapter 6 para 33

⁷⁷ CD16 p17

⁷⁸ APP6 paras 6.17-6.30

⁷⁹ APP4 para 9.0

148. The Council does not challenge the scale of the identified need. Nor has the Council sought to suggest any other sites suitable to accommodate the need. There is no dispute that the proposed CCRC would make a significant contribution to meeting the identified need for both extra care housing and residential care. In the absence of potential alternatives, the issue therefore becomes a compelling point in favour of the proposal.
149. While no two cases are precisely comparable, it is notable that the scale of need and the inability to meet it elsewhere were accepted by the Secretary of State as a consideration of weight in the *Stoneswood House* appeal. [31, 32]
150. The *Stoneswood House* decision also acknowledged the importance of the existing ownership of the site in allowing the development to come forward.⁸⁰ The Council's approval of a previous CCRC proposal at Mirfield accepted viability issues in developing a CCRC on sites with market housing potential.⁸¹ However, there was insufficient evidence before the current Inquiry to test the proposition that the viability of a CCRC development is virtually reliant on a constrained site and could not compete commercially with other higher value uses. Each case must be considered on its own particular circumstances.
151. In the present case, a conventional development appraisal to produce a residual valuation for the site has not been provided. But the evidence suggests that the projected surplus from the development would be less than that required to purchase another site of equivalent area while still attracting funding and sustaining a reasonable profit.⁸² The ability to contribute to meeting the identified need is therefore to some degree dependent on the appellant's ownership of the site.
152. The absence of a site purchase cost owing to the appellant's existing ownership would result in the generation of a surplus, which allows benefits to be put forward that would not be relevant to another site. These would have considerable costs attached to them, particularly the bridge and the contribution to Ponderosa.
153. I conclude on this issue that the proposal's contribution to meeting acknowledged serious need and the lack of any identified viable alternative solution could on its own outweigh the potential harm to the Green Belt.

Links with Ponderosa

154. The potential for interaction with Ponderosa Park has two strands to it. First is the potential benefit to CCRC residents of the ability to use the facilities of the Visitor Centre, including the small museum, and perhaps to become involved in the work of the Therapeutic Centre. The closeness of the Visitor Centre to the site does provide a unique context for the proposal, and it is very likely that residents would avail themselves of the facilities if they were freely offered. Whether that would extend to active involvement in the work of the Therapeutic Centre is more open to question. Notwithstanding the confidence of the appellant's experienced witnesses that this would happen, and the evidence of the range of involvement

⁸⁰ APP19 para 16 and IR 161

⁸¹ APP15 paras 6.14-6.16, 6.19; LPA8

⁸² APP9 para 2.4; Oral evidence Mr Heath

of residents of an established CCRC at Hartrigg Oaks,⁸³ the outcome in this case would depend on the individual choices of residents. The Council's more cautious interpretation must hold sway. [78] This aspect does not add significant weight in favour of the proposal.

155. The second strand relates to the potential for involvement by Therapeutic Centre clients in the life of the proposed CCRC. There would be clear opportunities for direct involvement in activities such as grounds and building maintenance and catering. There would also be scope for food grown at Ponderosa to be used by the CCRC. The vision expressed by the appellant and other witnesses suggests a strong possibility of such interaction coming to fruition.⁸⁴ The potential for operational linkages is accepted by the Council in the Statement of Common Ground. The ability of the CCRC to add scope to the established care project at Ponderosa adds modest weight in favour of the appeal proposal.

Support for Ponderosa

156. It is clear that the growth of both the care and visitor facilities at Ponderosa has fundamentally relied over the years on investment and subsidy by the appellant, his building firm and his family. The evidence that this is no longer sustainable is unchallenged. [74]

157. The appellant's proposed vehicle for placing the complex on a standalone charitable footing changed significantly over the course of the Inquiry. [4] The Council now appears to accept that the newly constituted charitable company would provide a suitable model for the future independent operation of the Visitor and Therapeutic Centres. [75] In cross-examination, the Council's planning witness agreed that the proposed future support for the company from the proceeds of development was a consideration that was capable of being taken into account. [32]

158. The Council's reservations now focus on the effectiveness of the proposed endowment and its ability to sustain the project. However, contrary to the Council's interpretation, the financial evidence gives confidence that, with prudent management and reasonable assumptions, the transfers proposed would support the projected period of at least 20 years,⁸⁵ with longer term projections too difficult to predict. I accept that this is a reasonable time frame, which would allow long term planning and development of the project to take place. [52]

159. The appellant is able to refute the Council's other concern that the time lag before the intended payments became available could be fatal to the project. [51].

160. The value of the service offered at Ponderosa is not disputed by the Council. Compelling personal testimony was given to the Inquiry of the appreciation felt by service users and their families. The award of Council contracts for care confirms that high standards are achieved.

⁸³ CD41

⁸⁴ APP6 paras 3.2-3.6

⁸⁵ APP9 para

161. The social content of the activities of the Visitor Centre are less easy to quantify, but again the Council does not dispute the appellant's account of the value of local affordable recreation facilities in an area of high deprivation.
162. I conclude that the support offered for the continued operation of an established valuable social and leisure project would weigh in favour of the appeal proposal. It is not a matter of the personal circumstances of users of the Therapeutic Centre, and indeed of the Visitor Centre, important though those are acknowledged to be. [34] The important factor is the continuation of the services offered, as a contribution to a sustainable local community, consistent with the social role of sustainable development outlined in the Framework.⁸⁶

Physical, social and economic regeneration

163. The potential value of the Able 2 project, in which the Council is a major funding partner, is not disputed by any party to the appeal. The main physical element of the project, which is the formation of the lake and café, was well advanced on site at the time of the Inquiry.
164. The access to the site at the end of Spen Vale Street, which passes close to the group of houses that terminate the otherwise industrial street, is very constrained.⁸⁷ Clarification was provided at the Inquiry that the access, which has full permission, was approved on the basis of limited usage by vehicles.⁸⁸ The evidence of John Beaumont, as the project's promoter, is that the bridge from Smithies Lane was always envisaged as a key part of the project, and that the approved access was intended only as a temporary measure.
165. Were the main purpose of the bridge to allow importation of two railway carriages, as feared by Mike Wood MP, its value would be questionable. [105] However, the evidence to the Inquiry is that the bridge would have very significant benefits in expanding the range of training activities and employment generation that could be accommodated on the Able 2 site, particularly if fish farming activity were later successfully moved to the Dewsbury Domes site. [105]
166. The Dewsbury Domes project appears to have the potential to be a model of sustainable development, involving as it would the productive re-use of redundant infrastructure, harvesting of sustainable drainage, training and rehabilitation outputs and economic return through sales of products.
167. Without any criticism of its merits, the Council and other objectors, including Mike Wood MP, point to the project's relatively early stage of gestation and the current inability to confirm the predicted benefits.
168. The project clearly has some significant hurdles to cross before moving to implementation. However, it has already attracted significant funding, including from European and national sources. [55] This gives some confidence that the project has been independently evaluated and is seen as having reasonable prospects of progression.

⁸⁶ CD50 para 7

⁸⁷ APP2 paras 2.3.1-2.3.5

⁸⁸ LPA7

169. It was confirmed at the Inquiry that there is no potential alternative water supply for the project other than the run-off from the proposed CCRC and further evidence of the feasibility of this aspect was submitted.⁸⁹ Site inspections have confirmed that there is no alternative means of access to the site other than via Smithies Lane. [56] There is therefore an inextricable link between the project and the appeal proposal, whose approval would take the project significantly further forward. Similar to the relationship with the Therapeutic Centre, there would also be clear potential longer term links in opportunities for involvement of trainees in the operation of the CCRC site and as an outlet for food produced by the project.
170. The Council has accepted the synergy between the Able 2 and Domes projects, the Therapeutic Centre and the appeal proposal in the delivery of physical, social and economic regeneration of the Lower Spen Valley.⁹⁰ Provision of the bridge would greatly contribute to that objective by allowing greater exploitation of the Able 2 site's potential and it therefore weighs in favour of the appeal proposal. The Domes project has similar or greater potential. But in the light of other as yet unknown factors, not least the agreement of remediation of the site, only modest weight can be given to the project's potential benefits at this stage.
171. The precise extent of the Lower Spen Valley was not agreed at the Inquiry, but it seems inconsistent for the Council now to complain that regeneration benefits would be confined to a small geographical area. [79] The harm to this part of the Green Belt would be similarly local in its effect.

Employment and training

172. The Council does not doubt the predicted number of job and apprenticeship opportunities for local people or the appellant's wish to provide them, but questions their deliverability.
173. The mechanism to secure local jobs and apprenticeships is set out in the UU. It is based on the premise of 'reasonable endeavours' by the appellant and by contractors and suppliers. Many of these have already provided the appellant with informal undertakings of the number of apprenticeships they would create should they be involved in implementation of the project.⁹¹
174. The only firm requirement of the UU covenant is to report regularly to the Council on progress in meeting the stated targets for local labour. This gives some reassurance that pressure to recruit locally would be sustained over the life of the project. However, the general reliance on 'reasonable endeavours' rather than strictly enforceable commitments means that the weight that can be given to this potential benefit must be greatly reduced.

Footpath/cycleway link

175. The implementation of the footpath/cycleway link would contribute to a UDP objective. [22] There is no dispute that its provision would help to create a network of routes in the Lower Spen Valley, allowing sustainable access to and between key sites and projects in the area.

⁸⁹ APP24; APP27

⁹⁰ Statement of Common Ground p4

⁹¹ APP8 paras 7.2-7.3, Appendix 5

176. Provision of the footpath/cycleway link forms another strong reason to support the construction of the bridge, which the link would share with the access to the Able 2 site. Given the cost of the bridge, including the opportunity cost of deferred implementation of part of the Ponderosa Business Park,⁹² the implementation of the link must be seen as a project of significant scale. The continuation of the proposed link south of the appeal site to the boundary of the appellant's ownership adds value to the proposal, beyond simple compliance with UDP policy.
177. Despite confidence expressed by objector Mr North that the route could be funded by other means, [119] no alternative source of funding was before the Inquiry. Implementation would still require the co-operation of the landowner.
178. Precise comparisons cannot be made with the Council's previous approval at The Marmaville. [58, 80] But taking the current proposal on its own merits, provision of the proposed link adds significant weight in favour of the proposal.

Green Infrastructure

179. The proposed creation of wetland habitat and contribution to the enhancement of biodiversity would be consistent with RSS and UDP policy. [21, 22] A detailed commentary on the measures likely to be taken is set out in the Council officer's report.⁹³ The potential to restore species not currently found on the site and to enhance bat and bird breeding would help to address concerns raised by local residents about the proposal's impact on wildlife. [112]
180. The objection now raised by the Council is that any benefit obtained would be highly localised, remote from the River Aire.⁹⁴ However, the 'Fresh Aire' strategy⁹⁵ covers the extensive Leeds city region, so that it is inevitable that some parts will be more remote than others. The benefits obtained would appear to be no more localised than the harm due to loss of open Green Belt land, and would weigh in favour of the proposal.

Other issues

181. A number of objectors see the proposal as a tactic to open up development of the site rather than as a genuine intention to provide a CCRC. [111, 121] There was no indication before the Inquiry of any such tactic. The appeal proposal must be assessed on its own merits. Any alternative proposal would have to be justified in the same way.
182. Similarly, the concern that approval of the proposal would not serve as a precedent for other landowners in the area [113,115] would not be borne out, as any further proposals would have to make out a detailed case in line with Green Belt policy, as they would now.
183. The personal circumstances of the appellant [115, 118], including the potential risk to his own home,⁹⁶ are not matters of weight in the appeal. They are distinct

⁹² APP8 para 6.7; APP9 para 2.5

⁹³ Report on file pp326-327

⁹⁴ LPA3 para 4.11

⁹⁵ CD55

⁹⁶ APP8 para 11.9

from the effect on the continued operation of the Ponderosa complex and on the circumstances of its users, which are considered above.[162]

184. There is no reason to conclude that the proposal would give rise to traffic or highway safety problems in the Norristhorpe area. [124] The Council raises no objection on access or highways grounds. Residents' car usage is predicted to be low⁹⁷. Evidence of at least one established CCRC is that usage will tend to decline with availability of the dedicated bus service.⁹⁸

Conclusion on other considerations

185. Many of the considerations put forward weigh in favour of the proposal. The contribution to meeting identified need weighs very strongly. Considerable weight should also be attached to the proposal's support for the charitable company to take over the Ponderosa Therapeutic and Visitor Centres, to its facilitation of improved access to the Able 2 site, to the provision of the strategic footpath/cycleway link and to the enhancement of biodiversity. More modest weight attaches to the proposal's provisions for the Dewsbury Domes project and to its potential employment and training links with Ponderosa. Less weight should be given to the potential links for CCRC residents with Ponderosa activities.

Balance of considerations

186. The Framework advises that substantial weight should be given to any harm to the Green Belt.⁹⁹ As outlined above, in addition to the harm due to inappropriateness the development would almost inevitably result in harm to openness and to two of the purposes of including land in the Green Belt. The substantial degree of harm would also take into account the adverse effect on landscape character and visual impact. [140]
187. As also outlined above, the chief benefit of the proposal in addressing need for elderly persons' accommodation could alone outweigh the total harm caused. However, the policy test requires that the harm must be '*clearly* outweighed' (emphasis added). In this case, the additional merits of the appeal proposal would add significantly to the principal benefit. Taken as a whole, the benefits would clearly outweigh the harm caused. The proposal's unique relationship with existing and proposed projects, and its ability to contribute to development plan objectives, together amount to very special circumstances that would in my judgement justify the development.

Conditions and Planning Obligation

Conditions

188. The Statement of Common Ground included a list of 42 potential conditions agreed between the main parties. At the Inquiry, it was agreed that 5 of these were not necessary, in the case of highway provision because the matter was more fully addressed by the submitted UU. It was also agreed that several other conditions could be amalgamated to avoid duplication. Subject to some

⁹⁷ Transport Assessment Table 4

⁹⁸ APP22 IR paras 29, 93

⁹⁹ CD50 para 88

amendment in the interests of precision, the remaining conditions, as set out in Annex 1 to this report, would meet the tests of Circular 11/95.¹⁰⁰

189. Conditions 1-4 are the standard recommended conditions on the approval of reserved matters and the commencement of development. Condition 5 is necessary to fix the relative heights of the development and Condition 6 to confirm the final choice of materials, as this is not clear from the Design and Access Statement.
190. Conditions 7-9 require remediation proposals, which are necessary in view of the site's history and the intended use. Condition 10 is needed to protect ground water and Condition 11 to ensure that the final closure of the adjoining waste water treatment works (on the proposed Dewsbury Domes site) is finally decommissioned before residential use is increased on the site, in order to provide satisfactory living conditions.
191. Conditions 12-15 cover the drainage of the site and are necessary in the interests of public health and the protection of the environment, particularly to ensure details of sustainable drainage measures are implemented.
192. Conditions 16-17 are necessary to amplify the submission of the landscaping reserved matter and to ensure implementation of the approved measures and their subsequent maintenance. Condition 18 is needed to confirm the provision of, and access to, public open space on the site and its subsequent maintenance.
193. Conditions 19-23 require the approval and implementation of detailed proposals for nature conservation on the site, in the interests of the protection and enhancement of biodiversity.
194. Conditions 24-28 are needed to ensure that safe access to the site is achieved and that no environmental harm results during the construction phase or by the later operation of public lighting on the site. Condition 24 confirms that no access shall be taken from Lodge Lane, in order to protect the rural character of the lane.
195. Conditions 29-32 are needed to ensure that the development achieves a high standard of sustainability. Condition 29 requires approval and implementation of the final Travel Plan, based on the Interim plan submitted with the appeal proposal. Conditions 30 and 31 are required to confirm the development's environmental performance and Condition 32 to ensure that the scheme is designed and implemented to minimise opportunities for crime.
196. Should the Secretary of State be minded to allow the appeal and grant outline planning permission, the conditions set out in Annex 1 are recommended.

Planning obligation

197. The amendments that were made to the UU have addressed many of the concerns raised in advance of and at the Inquiry. The most significant change, not strictly part of the UU itself, has been the change to a charitable company for the future operation of the Ponderosa Therapeutic and Visitor Centres. The

¹⁰⁰ DoE Circular 11/95 *The use of conditions in planning permissions*

Council now raises no objection to the construction or drafting of the UU, while continuing to question the need for and effectiveness of some of its covenants.

198. I have considered the completed UU in the light of the tests set out in the Framework¹⁰¹ and the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.
199. The obligations set out in the UU with regard to the occupation of the units, the care and community facilities to be provided and the provision of open space are necessary to confirm the special nature of the proposal, which is a key part of its justification. The commitments to the provision of a shuttle bus service and the implementation of a Travel Plan are important aspects to ensure the proposal would provide a sustainable form of development, and without which the proposal's location would not be acceptable. The bus service provision was significantly amended in the final draft to guarantee its availability a minimum of ten times each day and its free use by members of staff as well as residents.
200. The obligations with regard to the support for Ponderosa, the provision of the bridge and of the footpath/cycleway, access to and water supply for the Domes site and the 'Fresh Aire' contribution are necessary as these form, to considerably varying degrees, parts of the other considerations that cumulatively contribute to the very special circumstances necessary to justify approval of the proposal. Given the scale of the project and its financial projections, these contributions would be fairly and reasonably related in scale and kind to the development.
201. All of the above covenants would meet the statutory and policy tests and full weight can be accorded them in support of the proposal.
202. As outlined earlier in the report, the proposed covenant on local employment would not be effective and could not be properly enforced. Weight cannot be attached to this covenant, which should not be taken into account in the determination of the appeal.

Final conclusion and recommendation

203. Subject to the conditions set out above, and having regard to the provisions of the UU, I conclude that the acknowledged harm to the Green Belt and the other harm I have identified would be clearly outweighed by other considerations, such that very special circumstances exist to support approval of the proposal. I therefore recommend that the appeal be allowed and outline planning permission be granted.

Brendan Lyons

INSPECTOR

¹⁰¹ CD50 para 204

Annex 1: Schedule of Conditions

Appeal Ref APP/Z4718/A/12/2170080

Land off Smithies Lane, Heckmondwike, West Yorkshire WF15 7PQ

Reserved matters / Commencement

1. Development shall not commence until details of the following reserved matters have been submitted to and approved in writing by the Local Planning Authority: layout, scale, appearance and the landscaping of the site.
2. Application for approval of all the reserved matters shall be made before the expiration of three years from the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of two years from the date of the approval of the last of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
4. Plans and particulars of the reserved matters referred to in Condition 1 above, relating to the layout, scale, appearance and the landscaping of the site, shall be submitted in writing to the Local Planning Authority and development shall thereafter be carried out in full accordance with the approved plans.
5. Detailed plans indicating existing and proposed site, road and building levels related to Ordnance Datum or an identifiable temporary datum shall be submitted to and approved in writing by the Local Planning Authority before development commences. The development shall be carried out in accordance with the approved details.
6. No development shall take place until samples of all facing and roofing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out using the approved materials.

Contamination/Pollution risk

7. Development shall not commence until a Phase II Intrusive Site Investigation Report has been submitted to and approved in writing by the Local Planning Authority.
8. Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to Condition 7, development shall not commence until a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered (in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report) is identified or encountered on site, all works on site (save for the site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Unless otherwise agreed in

writing with the Local Planning Authority, works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.

9. No part of the site shall be brought into use until such time as the remediation measures for the whole site have been completed in accordance with the approved Remediation Strategy or any approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority.
10. No development shall take place until details of piling or any other foundation designs using penetrative methods that could pose an unacceptable risk to groundwater have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
11. No building shall be brought into use/occupied without the prior written consent of the Local Planning Authority until a scheme, including a timetable, has been agreed to secure the permanent closure of the Spenborough Waste Water Treatment Works for the purposes of treating and disposing of waste water.

Drainage

12. The site shall be developed with separate systems of drainage for foul and surface water on and off site.
13. No building or other obstruction shall be located over or within 5m either side of the centre line of the sewers which cross the site.
14. No development shall take place until full details of a scheme for surface water drainage of the site have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented and subsequently retained, in accordance with the time / phasing arrangements embodied within the scheme.
15. No development shall take place until details of the proposed means of disposal of foul water drainage, including details of any balancing works and off-site works, have been submitted to and approved in writing by the Local Planning Authority. No buildings shall be occupied or brought into use prior to the completion of the approved foul drainage works.

Landscaping/ Open space

16. Details of landscaping submitted pursuant to Condition 1 of this permission shall include tree/shrub planting, including the indication of all existing trees and hedgerows on and adjoining the site and details of any to be retained, together with measures for their protection in the course of the development. The details shall specify a scheme of phasing and maintenance of the landscaping and planting. The works comprising the approved scheme shall be implemented in accordance with the approved phasing. The maintenance scheme shall include the method of site improvement, removal of weed

species, ground preparation and details of new tree and shrub planting and maintenance and an implementation schedule. The approved landscaping scheme shall be maintained in accordance with the approved schedule for a period of five years from its completion. If, within this period, any tree, shrub or hedge shall die, become diseased or be removed, it shall be replaced with other of similar size and species unless the Local Planning Authority gives its written consent to any variation.

17. No construction works on any building forming part of the development hereby permitted shall commence until a scheme detailing the boundary treatment of the site has been submitted to and approved in writing by the Local Planning Authority. No building within the development shall be brought into use until the works comprising the approved scheme have been completed. The approved boundary treatment shall thereafter be retained.
18. No development shall take place until details of the provision of any public open space to serve the development have been submitted to and approved in writing by the Local Planning Authority.

The details shall cover the following matters: -

- (a) the layout and disposition of the public open space.
- (b) the timescale for the implementation and completion of the works to provide the public open space.
- (c) the mechanism for ensuring that the public open space will be available for public use in perpetuity.
- (d) maintenance of the public open space in perpetuity.

The development shall be carried out in accordance with the approved details and the public open space retained thereafter.

Nature conservation

19. No development shall take place until a plan for the protection and/or mitigation of damage to otter, water vole and bat habitats, both during construction works and once the development is completed and including management responsibilities, has been submitted to and approved in writing by the Local Planning Authority. The habitat protection plan shall be carried out in accordance with a timetable for implementation as approved.
20. No development shall take place until details of a scheme for the provision of 20 new bat roost opportunities, integral to the new buildings hereby permitted, has been submitted to and approved in writing by the Local Planning Authority. The works comprising the approved scheme shall be implemented prior to the occupation of any dwelling unit/ building within which these works are located and shall be so retained thereafter.
21. The removal of vegetation within the site shall be carried out to avoid harm to breeding birds. If any work is proposed to be carried out within the bird breeding season (March to August inclusive), a nest search by a suitably qualified ecologist shall be undertaken immediately preceding the proposed works. If any active nests are found to be present, work which may cause destruction of nests or disturbance to the resident birds shall not take place until the young have fledged.

22. No development shall take place until details of a scheme for the provision of 20 bird nesting opportunities, integral to the new buildings hereby permitted, and 10 'woodcrete' boxes of the Schwegler-type on mature trees, have been submitted to and approved in writing by the Local Planning Authority. The works comprising the approved scheme shall be implemented prior to the occupation of any dwelling unit/ building/ curtilage within which these works are located and shall be so retained thereafter.
23. Public access around the balancing pond hereby permitted in the area of the former quarry shall be restricted to the southern shoreline and be for no more than 60% of the total shoreline. The remaining north shoreline shall be developed as a breeding refuge for wildlife and people excluded from this area at all times, details of which shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The works comprising the approved scheme shall be implemented prior to the occupation of any dwelling unit/ building and retained thereafter.

Access/Transport

24. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended (or any Order revoking or re-enacting that Order) there shall be no vehicular access at any time to the development from Lodge Lane.
25. No development shall take place until details of the treatment, including surfacing, alignment and boundary treatments of public footpaths and bridleways, including Smithies Lane, together with details of all improvements have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained thereafter.
26. Before development commences a scheme detailing the proposed design, construction and stability of all retaining walls adjacent to the public highway shall be submitted to and approved in writing by the Local Planning Authority. The works comprising the approved scheme shall be completed prior to the commencement of any other works forming part of the proposed development and retained thereafter.
27. No development shall commence on any phase of the development hereby permitted (including pre-construction / demolition) until a construction management plan for that phase including details of construction site accesses, parking and locations of site compounds, has been submitted to and approved in writing by the Local Planning Authority. The development of each phase shall be carried out in accordance with the approved details.
28. No development shall take place until a scheme for the lighting of the entire development, including street lights and floodlights, which also indicates the measures to be taken for the control of any glare or stray light arising from the operation of artificial lighting, has been submitted to and approved in writing by the Local Planning Authority. Thereafter the lighting shall be operated in accordance with the approved scheme.

Sustainable development

29. The Local Planning Authority shall be notified once the development has achieved 50% of full occupancy. Within 3 months of that date, a Final Travel Plan shall be submitted to the Local Planning Authority for approval. In advance of the implementation of the Final Travel Plan, the development shall be operated in accordance with the details set out in the Interim Travel Plan dated May 2011. The Final Travel Plan shall be based upon the criteria/content of the Interim Travel Plan. The Final Travel Plan shall be operated from the time of approval for the lifetime of the development, unless otherwise approved in writing by the Local Planning Authority.
30. An independent post-build assessment by a certified assessor and a certificate verifying the achievement of level 5 of the Code for Sustainable Homes, based on the poorest performance of a unit of build at the site, shall be submitted to and approved in writing by the Local Planning Authority before occupation of any of the extra care dwelling elements of the development hereby permitted.
31. An independent post-build assessment by a certified assessor and a certificate verifying achievement of BREEAM excellent or above for the BREEAM category Multi-Residential or Bespoke shall be submitted to and approved in writing by the Local Planning Authority before occupation of the residential care home element of the development hereby permitted.
32. No development shall take place until a scheme of measures to minimise the risk of crime and meet the specific security needs of the development has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in accordance with the approved scheme and retained thereafter.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Anthony Gill of Counsel	Instructed by Vanessa Redfern, Acting Assistant Director, Kirklees Council
He called:	
David McKenna MA BEng(Hons) CMLI	Principal Landscape Architect Taylor Young Ltd
Tim Furnell BA(Hons) MRTPI	Principal, TF Planning Associate of Taylor Young Ltd

FOR THE APPELLANT:

David Manley QC	Instructed by Kate Butterfield, Solicitor, Gordons LLP
He called:	
Eric Appleton BEng(Hons) DMS CEng MICE MIHT	Highway Engineer HY Consulting
James Puckering BA(Hons) MRTPI	Development Director Retirement Villages Group Ltd
Peter Fletcher BA Hons (Oxon) MCIOH	Principal Peter Fletcher Associates Ltd
Howard Cook MBE	Appellant
Scott Heath	Chartered Accountant Mitten Clarke Chartered Accountants
John Beaumont	Director Green Future Building Ltd
Guy Denton BA(Hons) DipLA(Hons) CMLI AOU	Director Re-form Landscape Architecture Ltd
David Storrie DipTP MRTPI	Principal David Storrie Associates Ltd

INTERESTED PERSONS:

Craig Walker	West Yorkshire Probation Trust
David Dove	Local resident
Terence Tordoff	On behalf of Mike Wood MP
Lisa Drake	Save Norristhorpe Green Belt
Alan Brown	Local resident
Gordon North	Spenn Valley Civic Society
Keith Beaumont	Local resident
Mollie Rainford	Local resident
Chris Jenkinson	Local resident
Rev Kathy Robertson	Team Vicar, St John's Church, Dewsbury Moor
Karen Batley	Assistant Manager, Ponderosa Therapeutic Centre
Paula Downes	Local resident
Councillor David Sheard	Member, Kirklees Council
Professor John Double	Supporter, Ponderosa Therapeutic Centre
Waseem Riaz	Local resident, Kirklees Faith Network

DOCUMENTS

Council's Documents

- LPA1 David McKenna: Proof of Evidence
- LPA2 David McKenna: Landscape and Visual Impact Analysis
- LPA3 Tim Furnell: Proof of Evidence
- LPA4 Letter to PINS dated 9 July 2012 enclosing Counsel's advice dated 4 July 2012, copy of Trust Deed: The Ponderosa Park Settlement and draft Unilateral Undertaking
- LPA5 Opening Submissions on behalf of the LPA
- LPA6 Landscape Character Types Plan showing Rural Fringe
- LPA7 Able 2 Project: Council's note on Access issues, with supporting documents including Transport Assessment, Committee report, Outline Planning permission Ref 2009/60/91718/E1, Letters dated 29 September 2010 and 6 January 2011 and plans re discharge of conditions
- LPA8 Mirfield 25: Committee report, Travel Plan, Planning permission Ref 2008/60/90695/E3 and S106 Agreement
- LPA9 Storthes Hall: S106 Agreement
- LPA10 The Marmaville: Committee report, UDP Proposals Map extract, Planning permission Ref 2001/62/91786/E4 and S106 Agreement
- LPA11 E-mail to PINS dated 7 August 2012 re position of Graham Wiles
- LPA12 Closing Submissions on behalf of the LPA

Appellant's Documents

- APP1 Eric Appleton: Summary Proof of Evidence
- APP2 Eric Appleton: Proof of Evidence
- APP3 James Puckering: Summary Proof of Evidence
- APP4 James Puckering Proof of Evidence
- APP5 Peter Fletcher: Summary Proof of Evidence
- APP6 Peter Fletcher: Proof of Evidence
- APP7 Howard Cook: Summary Proof of Evidence
- APP8 Howard Cook: Proof of Evidence
- APP9 Scott Heath: Proof of Evidence (Financial feasibility report)
- APP10 John Beaumont: Summary Proof of Evidence
- APP11 John Beaumont: Proof of Evidence
- APP12 Guy Denton: Summary Proof of Evidence
- APP13 Guy Denton: Proof of Evidence
- APP14 David Storrie: Summary Proof of Evidence
- APP15 David Storrie: Proof of Evidence
- APP16 Land Ownership: Note on Service of Notices, Schedules of Land Ownerships and Title Documents; Copies of Certificates D and B; Letter dated 6 July 2012 from Howard Cook Builders Ltd, confirming receipt of Notice
- APP17 Draft Unilateral Undertaking
- APP18 Guy Denton: Proof of Evidence- Plans and views at A3 size; View 7 Sections
- APP19 Stoneswood House, Oldham: Appeal Ref APP/W4223/V/07/1201856- Secretary of State's Decision Letter and Inspector's Report
- APP20 Highways Statement of Common Ground
- APP21 Letter dated 17 January 2012 from Mike Wood MP to Professor John Double
- APP22 Storthes Hall: Appeal Ref APP/Z4718/V/06/1198039- Secretary of State's Decision Letter and Inspector's Report
- APP23 Revised draft Unilateral Undertaking

- APP24 Dewsbury Domes: Note on water attenuation
- APP25 Letters to PINS dated 1 and 2 August 2012 enclosing revised draft Unilateral Undertaking and supporting information on charitable company
- APP26 E-mails to PINS dated 7 and 8 August 2012 re further minor amendment to revised draft Unilateral Undertaking
- APP27 Dewsbury Domes: Note on water usage
- APP28 Certified copy of executed Unilateral Undertaking
- APP29 Summary of Articles of Association of new charitable company
- APP30 Appellant's Closing Submissions, with appended case law reports

Interested Persons' Documents

- IP1 Letter of objection: Mr and Mrs Whiteley
- IP2 Letter of objection: Betty Croxford
- IP3 Lisa Drake: Note of statement and views of site
- IP4 Gordon North: Note of statement
- IP5 Councillor Sheard: Note of statement
- IP6 Letter to PINS dated 16 July 2012 from Spen Valley Civic Society

Core Documents

- CD1 Planning application – Forms, site location plan and indicative layout
- CD2 Design & Access Statement
- CD3 Supporting Planning Statement
- CD4 Environmental Code for Sustainable Homes, Pre-Assessment Estimator Summary Report
- CD5 Officer Report to 1 December 2011 Heavy Woollen Planning Sub Committee
- CD6 Officer Report to January 2012 Planning & Highways Committee
- CD7 Decision Notice
- CD8 Appellant's Rule 6 Statement of Case
- CD9 Statement of Common Ground
- CD10 Relevant Regional Spatial Strategy Policies
- CD11 Relevant Kirklees Unitary Development Plan Policies
- CD12 Financial Report by Mitten Clarke submitted with the application
- CD13 Kirklees Council Annual Performance Report 2010/2011
- CD14 ABLE Project – Kirklees Council Cabinet Report 16 May 2007
- CD15 Models of Extra Care and Retirement Communities – Department of Health (2004)
- CD16 A Place To Live Life To The Full: Accommodation Strategy for older people in Kirklees 2010-2015 – Kirklees Council and NHS Kirklees (2010)
- CD17 Raising the Stakes: Promoting Extra Care Housing – PFA and RRCA (2007)
- CD18 Putting People First: A shared vision and commitment to the transformation of adult social care – Ministers, Local government, NHS, Social Care Professionals and Regulatory Organisations (2007)
- CD19 Homes For The Future: More Affordable, More Sustainable – Communities and Local Government (2007)
- CD20 Lifetime Homes, Lifetime Neighbourhoods; A National Strategy for housing in an ageing society – Communities and Local Government, Department of Health and Department of Work and Pensions (2008)
- CD21 Laying the Foundations: A Housing Strategy for England – Communities and Local Government (2011)

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- CD22 Independence, Well- Being and Choice: Our Vision for the Future of the Social Care for Adults in England – Department of Health (2005)
 - CD23 Our Health, Our Care, Our Say: A New Direction For Community Services – Department of Health (2006)
 - CD24 Vision For Adult Social Care: Capable Communities and Active Citizens – Department of Health (2010)
 - CD25 Housing Our Ageing Population Panel For Innovation (HAPPI) Report – Homes and Communities Agency, Communities and Local Government and Department of Health (2009)
 - CD26 E- News from the Housing, Learning and Improvement Network – December 2010
 - CD27 Vision for Older People in Kirklees – 2008
 - CD28 Kirklees Private Sector Stock Condition Survey –Kirklees Council (2010)
 - CD29 Affordable Warmth Strategy – Kirklees Council (2007)
 - CD30 Projected Need for Long-Term Residential care and Care with Housing for Older People in Kirklees – Planning 4 Care (2011)
 - CD31 Local Development Framework Core Strategy Proposed Submission – Kirklees Council (Nov 2011)
 - CD32 Proposed Amendments to the Core Strategy – Kirklees Council (March 2012)
 - CD33 Kirklees Unitary Development Plan: Saved Policies with effect from 20 September 2007 - Proposed replacement by LDF policies (Nov 2011)
 - CD34 Health and Well-being, Key Issues for the People of Kirklees: Kirklees Joint Strategic Needs Assessment – Kirklees Partnership (2010)
 - CD35 Living Life to the Full with Dementia: A Dementia Strategy for Kirklees – Kirklees Council and NHS Kirklees (2009)
 - CD36 Commissioning Strategy for Housing 2009-2012: Executive Summary – Kirklees Partnership and Kirklees Council (2010)
 - CD37 Social Well-Being in Extra Care Housing – Evans and Valley for the Joseph Rowntree Foundation (2007)
 - CD38 Making the Case for Retirement Villages – Centre for Housing Policy, University of York for the Joseph Rowntree Foundation (2006)
 - CD39 Reeve Court Retirement Village: Executive Summary of Evaluation – S Garwood and St Helen’s Council (July 2008).
 - CD40 Telling the Story of Hartfields: A New Retirement Village for the Twenty-First Century – K Croucher and M Bevan for the Joseph Rowntree Foundation (2010)
 - CD41 Do Retirement Communities Work? Hartrigg Oaks: The First Ten Years – Joseph Rowntree Foundation (2009)
 - CD42 Strategic Housing Market Assessment – Outside Consultants (2009)
 - CD43 Kirklees Factsheet 2011: Older People – Kirklees Council (2011)
 - CD44 Long Term Care Needs for the Elderly Needs Assessment Report – Pinders (2011)
 - CD45 More Choice, Greater Voice – CLG and CSIPDH (2008)
 - CD46 Strategic Housing for Older People: A Resource Pack – ADASS and Housing LIN (2011)
 - CD47 Hanson Surveyors independent assessment of submitted financial information
 - CD48 Manual for Streets
 - CD49 Whitelaw & Turkington: Landscape Strategy WT1838R02 rev D-April 2009.
 - CD50 National Planning Policy Framework
 - CD51 TD42/95: Geometric Design of Major/Minor Junctions
 - CD52 PPS1 Companion guide ‘By Design’

- CD53 PPS3 Companion guide 'Better Places to Live'
- CD54 Able 2 planning permission
- CD55 Leeds City Region Green Infrastructure Strategy 'Fresh Aire' – October 2010.
- CD56 National Character Area No 37, Natural England.
- CD57 Construction Skills Council letter
- CD58 Plan showing the extent of the deliverable strategic footpath/cycleway
- CD59 RTPI Good Practice Note 8 (2007)
- CD60 Yorkshire Water e-mail regarding sale of Dewsbury Domes site
- CD61 Plan of Marmaville section of strategic footpath/cycleway
- CD62 Bridge Link Design Details



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.