Planning Inspectorate

Appeal Decision

Site visit made on 25 June 2024

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2025

Appeal Ref: APP/X4725/W/23/3331703
Land East of Thistle Hill Drive, Whinney Lane, Streethouse. Wakefield WF7 6GA

- The appeal is made under section 78 of the Town Country Planning Act 1990 (as amended) against the failure of the local planning authority to give notice within the prescribed period of a decision on a hybrid application for full and outline planning permission following the service of a non-validation notice under Article 12(3)(ii) of the Town and Country Planning (Development Management Procedure (England) Order 2015 (as amended).
- The appeal is made by Mr D Richardson of Yorkshire Mining Company Limited against Wakefield Metropolitan District Council.
- The application Reference is: 23/01292/FUL.
- The development proposed is described as: Hybrid planning application comprising: Full application: Remediation of land including stabilising the old mine workings by excavation of the coal and fireclay and back filling in layers for compaction, treating four old mine shafts, capping off the colliery spoil with engineered backfill and the provision of inert earth at the surface as a capping layer for the future development of the site. Outline application: Construction of 92 residential dwellings.

Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters and Main Issues.

2. The planning application form gives the site address as “Former Whitwell Main Colliery, Land east of Whitwell Drive, Off Whinney Lane, Streethouse, Wakefield WF7 6GA.” Following the submission of the planning application the appellant and the Council agreed on the address “Land East of Thistle Hill Drive, Whinney Lane, Streethouse, Wakefield, WF7 6GA.” Although the Article 12 Notice and the subsequent Non-Validation Notice both give the site address as “Former Whitwell Main Colliery Whinney Lane Streethouse Wakefield”, and the Appeal Form uses a variation of the address agreed following the submission of the planning application, the address agreed by the parties is the most relevant and accurate identification of the appeal site and I have, therefore, used that for the purposes of this decision.

3. In December 2024 the Government published a revised version of the National Planning Policy Framework. The views of the parties were sought on the implications of the revised Framework on their respective cases. Comments were received from the appellant but not from the Council. I have taken these comments into account. I have made my decision based on the most recent version of the Framework.

4. The appeal relates to a non-validated application, with the appeal provisions falling under Section 78(2) of the Town and Country Planning Act 1990 (as

amended) (the Act) on account of the consequential failure of the Council to reach a decision on the proposal within the relevant statutory period.

5. The appeal is in respect of a hybrid planning application for the extraction of coal and fireclay to stabilise a former colliery site, and for the subsequent construction of 92 dwellings. It is set out that planning permission is sought in outline only for the residential development.

6. Hybrid planning applications are not defined in statute. It is at the discretion of the Local Planning Authority if it is prepared to accept an application in this form. The appeal proposal is a resubmission of a previous planning application, referenced 20/02760/FUL, that was submitted in this form and for which planning permission was refused on 8 July 2022. In the absence of any submissions to the contrary, it can reasonably be assumed that the Council was prepared to consider the proposal in a hybrid form.

7. The appeal is essentially predicated on Article 12 of the Town and Country Planning (Development Management Procedure)(England) Order 2015 (the DMPO) which addresses disputes over whether documentation/information required by a local validation list is required.

8. The Planning Practice Guidance sets out that in cases such as this, the appeal will consider both the merits of the validation dispute and the appeal itself[1]. Hence the appeal determination must first resolve that dispute about the need for the required information and the validity of the application before going on, if necessary, to consider whether a grant of planning permission is justified.

9. In the first instance, the principal disputed matter is whether or not there is a valid planning application on which the Council could have made a determination.

10. If the planning application was validly made it would be necessary to consider the planning merits of the proposal. In situations where the Council has not given notice of its decision within the relevant time period, the planning application is deemed to have been refused. The Council has not put forward any putative reasons for refusal. However, from the Council's submissions the principal concerns relate to the proposal's compliance with the development plan in terms of the location of new residential development; the effect of the proposal on existing residential properties adjoining the appeal site in terms of noise and dust; and the effect of the nearby railway line on the proposed new houses in terms of noise.

11. Having regard to the above, the main issues in this appeal are:

- Whether there was a valid planning application before the Council, and if so;
- Whether the appeal site is a suitable location for new residential development having regard to the provisions of the development plan;
- The effect of the proposed development on the living conditions on the occupiers of nearby residential properties, with particular regard to noise and dust; and

[1] PPG - Making an Application - Paragraph: 053 Reference ID: 14-053-20140306

- Whether the proposed development would provide suitable living conditions for the future occupiers with particular regard to noise.

Reasons

12. The appeal site comprises approximately 3.2 hectares of land adjacent to the village of Streethouse. It is bounded to the west by an existing development of modern housing around Whitwell Main and Thistle Hill Drive, and to the south by a footpath running parallel to the railway line between Wakefield to Pontefract. The eastern and northern boundaries partly follow the line of a public footpath (Footpath 27) and a small watercourse but also includes to the north east an undefined area of land which is currently incorporated into an arable field.

13. The majority of the site is naturally re-generated, with trees, shrubs and grassland present. In the northern part of the site is an attenuation pond. Historically the site formed a colliery yard. An area in the northern part of the site has previously been subject to coal extraction by surface mining in the mid 1970's and the evidence indicates that there are four abandoned mine shafts in the southern section of the site. Part of the site area is subject to a Tree Preservation Order (TPO) that was made on 10 October 2022 and confirmed on 20 March 2023. The TPO description is mixed species woodland.

Whether the planning application was valid

14. By way of background, on 8 July 2022, the Council refused planning permission on the same site as the present appeal site for a proposal described as "Hybrid planning application comprising: Full application: Remediation of land including stabilising the old mine workings by excavation of the coal and fireclay and back filling in layers for compaction, treating four old mine shafts, capping off the colliery spoil with engineered back fill and the provision of inert earth at the surface as a capping layer for the future development of the site. Outline application: Construction of 102 residential dwellings".

15. This planning application was refused for six reasons including *inter alia* that the proposed development would be inconsistent with the Council's spatial development strategy; insufficient information in respect of noise and traffic impacts; loss of biodiversity and insufficient information in respect of the effect on trees; lack of recreational facilities; and lack of provision of affordable housing. This decision was not subject to an appeal to the Secretary of State and on 6 July 2023 the appellant submitted a further planning application to the Council via the Planning Portal.

16. The planning application form described the proposed development as "A full application for the remediation of the site to remove minerals from shallow workings and re-engineer the site with compacted backfill material in layers of 250mm to 500 mm in 5 phases whilst at the same time to uncover the old mine shafts closed in 1913 and treat under the supervision of the Coal Authority and a mining engineer. To remove coal and fireclay and stockpile on site for transport to end users such as the steam heritage railway preservation societies and brickworks that are local to West, South and North Yorkshire. To extract minerals and backfill the land to a suitable condition for the construction of 92 houses on the site for which an outline application is being submitted for the access off

Thistle Hill Drive." The Planning Portal confirmation email refers to an application for full planning permission[2].

17. No fee was paid in connection with the planning application, with the appellant relying on Regulation 9 of The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended)[3] (hereinafter the Fees Regulations). At the relevant time this provided a fee exemption in respect of "an application for planning permission which is made following the refusal of planning permission (whether by the local planning authority or by the Secretary of State on appeal or following the reference of the application to the Secretary of State for determination) on a valid application for planning permission made by or on behalf of the same applicant."

18. This exemption is subject to a number of conditions which are set out in Regulation 9(2) namely, in so far as they relate to the current proposal:

- that the application is made within 12 months of the date of the refusal;
- that the application relates to the same site as that to which the earlier application related, or to part of that site, and to no other land except land included solely for the purpose of providing a different means of access to the site; and
- that the local planning authority to whom the application is made are satisfied that it relates to development of the same character or description as the development to which the earlier application related (and to no other development).
- that the fee payable in respect of the earlier application was paid

19. The application was accompanied by a suite of supporting documents, including technical reports and drawings.

20. Although the email string included with the Appellant's Appeal Statement of Case[4] does not appear to include all of the messages, it is apparent that between the submission of the application and 11 July 2023, the Council queried the description and/or nature of the proposed development.

21. On 11 July the appellant responded clarifying that the proposal was a hybrid application and agreeing that the description of the proposal could be: "Hybrid Planning Application Comprising: Full Application: Remediation of Land Including Stabilising the Old Mine Workings by Excavation of the Coal and Fireclay and Back Filling in Layers for compaction, Treating Four Old Mine Shafts, Capping off the Colliery Spoil with Engineered Back Fill and the Provision of Inert Earth at the Surface as a Capping Layer for the Future Development of the Site. Outline Application: Construction of 92 Residential Dwellings at Former Whitwell Main Colliery, Capricorn 2, Land East of Thistle Hill Drive, Whinney Lane, Streethouse, Wakefield, WF7 6GA."

[2] This is most likely due to the fact that the Planning Portal does not support the submission of hybrid planning applications, or for applications for mineral extraction .

[3] Whilst Regulation 9 of the Fees Regulations was subsequently revoked in December 2023, it was in still in force at the relevant time for the purposes of this appeal.

[4] Appendix C No.2 to the Appellants Statement of Case

22. On 12 July 2023, the Council advised the appellant that it considered that the application was invalid as no Arboricultural Assessment had been submitted with the supporting documents and no fee had been paid. The Council's rationale was that the tree survey was identified during pre-application discussions as being necessary for the application to be deemed valid, and that to qualify for the exemption under the Fees Regulations, the application must be deemed valid within the 12 month period allowed to re-submit.

23. There are particular requirements in respect of the form in which planning applications are to be made. These are set out firstly in Section 62(2) of the Act but more precisely in the DMPO, which was made pursuant to Section 62(1) of the Act.

24. Article 7(1) of the DMPO sets out the general requirements for planning applications. These are that the application must be made in writing to the local planning authority on a form published by the Secretary of State (or a form to substantially the same effect) and include the particulars specified or referred to in the form. Article 7(1)(c) sets out a number of other provisions including that the application must be accompanied by a plan which identifies the land to which the application relates, and any other plans, drawings and information necessary to describe the development which is the subject of the application.

25. Section 62(3) of the Act sets out that a local planning authority may require that an application for planning permission must include such particulars as it thinks necessary, and such evidence in support of anything in, or relating to, the application as it thinks necessary. Such information is referred to as local information requirements. Article 34(6)(c) of the DMPO relates to local information requirements and requires them to be reasonable having regard, in particular, to the nature and scale of the proposed development; and are about a matter which it is reasonable to think will be a material consideration in the determination of the application.

26. DMPO Article 9 requires that applications for major development[5], must be accompanied by a design and access statement that sets out the design principles and concepts that have been applied to the development; and how issues relating to access to the development have been dealt with.

27. DMPO Articles 13 and 14 relate to the service of notice of the application on any owner or tenant, other than the applicant, of the land to which the application relates and the provision of a certificate that this requirement has been satisfied. Section 65(5) of the Act sets out that a local planning authority shall not entertain an application for planning permission unless this requirement has been satisfied.

28. Article 11(2) of the DMPO sets out that when a local planning authority receives an application that, *inter alia*, complies with Article 7, includes the certificate required by Article 14, contains any local information requirements, and the fee required to be paid in respect of the application, it must as soon as is reasonably practicable, send to the applicant an acknowledgement of the application. Article 11(5) sets out that where, after sending an acknowledgement as required by paragraph (2), the local planning authority consider that the application is invalid,

[5] e.g. applications for 10 or more dwellinghouses, the winning and working of minerals, or which have a site area of 0.5 hectares or more as defined by Article 2 of the DMPO.

they must as soon as reasonably practicable, notify the applicant that the application is invalid.

29. The above points are summed up in the PPG[6] which sets out that a valid application for planning permission requires:

(a) a completed application form

(b) compliance with national information requirements

(c) the correct application fee

(d) provision of local information requirements

30. DMPO Article 12 sets out a procedure to be followed where there is a dispute over validation requirements in respect of local information requirements. This allows an applicant for planning permission who considers that any particulars or evidence required by the Council do not meet the requirements set out in Article 34(6)(c) to serve a notice setting out why they consider this so and request that the requirement to include those particulars be waived.

31. The Council has Guidance on Local Validation Requirements, and it is common ground that this guidance was published, or re-published, during the two year period immediately before the date on which the application was made. This guidance sets out the circumstances in which a tree survey would be required to accompany an application, namely "Where there are trees within the application site, or on land adjacent to it that could influence or be affected by the development (including street trees)."

32. The appellant subsequently submitted a Tree Survey on 18 August 2023. However, disagreement remained over the requirement for an application fee and the Council did not validate the planning application. In mid-September, the LPA advised the appellant that, because no fee had been paid, it intended to return the planning application to the appellant on 21 September 2023.

33. Prior to its submission on 18 August, the requirement for a tree survey had not been called into question. However, on 28 September 2023, the appellant served a notice under Article 12 of the DMPO disputing the requirement for the Tree Survey as a pre-requisite to validating the planning application.

34. The LPA issued a Non-Validation Notice under the same provisions on 6 October 2023 re-iterating its position that the application was invalid and setting out its reasons why it considered this was so. The reasons given in the notice set out that a tree survey was required in connection with the application and that, whilst a tree survey had been submitted, this was submitted outside the 12 month period during which a re-submitted application for an essentially similar application would be exempt from an application fee under Regulation 9(1)(b) of the Fees Regulations.

35. On 20 October 2023, the appellant, lodged the current appeal against the failure of the Council to give notice of its decision on the application within the prescribed time period.

[6] PPG Making an Application - Paragraph: 016 Reference ID: 14-016-20140306

36. In terms of the Article 12 dispute, whether a tree survey was required to make the application valid is somewhat of a moot point as the appellant had submitted a tree survey to the Council prior to the service of the Article 12 Notice. Nevertheless, for completeness, I will consider this matter.

37. Although it is at the discretion of the Council whether to accept a hybrid application, the Council has not stated that it was unwilling to entertain the proposal in this form. The proposal is, however, unusual in that the two components which comprise the hybrid application relate to the same areas of land but one element, the surface mining and land consolidation, would have to be implemented and completed before the other element, the residential development, could be begun. Although a hybrid application contains elements of both a full planning application and an outline planning application, it is a singular entity and in the first instance has to be considered as a whole.

38. This equally applies to the validation requirements. In order to be considered valid, the application would need to meet all of the requirements for an application for mineral extraction and the requirements for a residential development. Leaving to the side for the time being the matter of the application fee, to which I shall return in due course, with the exception of the disputed tree survey, it is not argued by the Council that the application submission was defective with regard to any of the other requirements of the DMPO.

39. The Council's Guidance on Local Validation Requirements does not set out the information requirements for applications by the type of application, rather it sets out the types of information that may be required and, for each type, the circumstances in which it should be provided and what should be submitted. With regard to tree surveys, this guidance sets out that a tree survey is required where there are trees within the application site, or on land adjacent to it, that could influence or be affected by the development (including street trees).

40. There is a confirmed TPO that encompasses all of the trees on the application site. I saw when I visited the site that there are a large number of trees present and many of these trees are relatively large and well established. These would clearly be affected by the development.

41. The appellant's Article 12 Notice challenging the requirement for the tree survey is dated 29 September 2023, approximately 6 weeks after the tree survey was submitted to the Council. No explanation is provided as to why it is being argued that a survey which has already been submitted is not required.

42. The requirement for an Arboricultural Impact Assessment Survey & Report as part of the application was raised by the Council as part of its pre-application enquiry response dated 9 June 2023. In correspondence with the Council in early July 2023[7], the appellant sets out reasons why that there had been a delay in providing the tree survey, but that work was on-going to provide it. Although the appellant does state in this correspondence that they were not aware that an arboricultural statement for a site with a TPO on it is a requirement for validation, the requirement is not expressly challenged, as no reasons were put forward at that time as to why it would not be necessary, and the Tree Survey was subsequently submitted to the Council.

[7] Appendix C No.2 to the Appellants Statement of Case

43. The appellant suggests that the trees on the site do not warrant a TPO. However, the TPO has been confirmed and it is not within my remit in the context of a Section 78 planning appeal to revisit or challenge a confirmed TPO. A TPO may only be challenged by way of application to the High Court on a point of law. In any event, the appellant would have been notified of the making of the TPO and given the opportunity to make representations in respect of it before it was confirmed. I have no evidence before that would indicate that the appellant made any such representations.

44. The appellant claims that Regulation 14(1)(a)(vii) of The Town and Country Planning (Tree Preservation)(England) Regulations 2012 provides an exception which would negate the need for a tree survey. Whilst the effect of this regulation is that the implementation of a grant of planning permission essentially overrides any TPO within the application site, it is implicit in this that the effect on the protected trees would have been considered as part of the determination of whether planning permission should be granted. Without a tree survey the effects on the protected trees could not be properly assessed.

45. The reasons put forward in the Article 12 Notice also pre-suppose that the mineral extraction element of the application will be permitted as submitted and as such it would be necessary to remove all of the trees. Prior to the consideration of the planning application, this is not a given. Trees that should be retained because they could be incorporated into the subsequent housing layout may require amendments to the proposal, and in the absence of a tree survey the proposal could not be properly assessed.

46. The present conditions of the site, its appearance, and its biodiversity value are in part derived from the trees present on the site. Given that the site covers a not insignificant area of land, and a large number of protected trees would be affected, it is reasonable to request that these trees be properly surveyed, and the effect of their total removal would be a material consideration in considering whether the proposal should be permitted.

47. Consequently, I find that the requirement for a tree survey was reasonable having regard to the nature and scale of the proposed development, and that it is a matter which would be a material consideration in the determination of the application. This notwithstanding, because the tree survey had been submitted, as a result, the application became complete in terms of the information requirements on 18 August 2023.

48. The matter of whether a fee is payable falls outside of the procedure in DMPO Article 12 for dealing with disputes in connection with information requirements. The payment of a fee is not a local information requirement. However, whether a fee has been paid, or is required to be paid, is germane to whether there is a valid planning application on which a substantive appeal can be predicated.

49. At the time when the application was submitted, Regulation 9 of the Fees Regulations was still in effect. Although it was subsequently revoked, the savings provisions in The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023, which came into force on 6 December 2023, state that this revocation does not apply to applications made before it came into force. This matter, therefore, falls to be determined with regard to the provisions of Regulation 9.

50. It is not in dispute that no fee has been received in connection with the planning application. DMPO Article 11(2) makes it clear that the fee "required to be paid" is a prerequisite for a planning application to be considered complete. Article 34(4) and Article 34(5) of the DMPO define a valid application and non-validated application respectively for the purposes of calculating the time periods for the Council to make a decision on an application. In both cases the fee required to be paid is a part of the definition.

51. However, it must be borne in mind that the operation of Regulation 9 of the Fees Regulations may, in certain circumstances, indicate that the fee required to be paid is, in effect, £0.

52. It is also important to note the language of Regulation 9 of the Fees Regulations. This refers to "an application for planning permission which is made following the refusal of planning permission….on a valid application for planning permission made by or on behalf of the same applicant." The Fees Regulations refer to an application which is "made". They do not refer to such an application as being "validly made". The only reference to validity is in respect of the previous application for which the application in question is a re-submission.

53. It is therefore necessary to determine when a planning application is considered to have been made. This matter was considered by the courts in *The London Borough of Camden v A.D.C. Estates Limited* (1990) WL 755127, (1991) 61 P.&C.R. 48.

54. Although this case related to whether there was an entitlement to compensation under the then provisions of Section 169 of the Town and Country Planning Act 1971, the matter turned on whether the planning application in question was made before the date that an amendment to the 1971 Act came into effect which would have removed the entitlement to compensation. The court held that the date on which an application is made is "the date of the earliest moment when the application is received by its intended recipient."

55. More recently, the judgement in *Camden* was followed in *R (on the application of Morris Homes (North) Ltd.) v Bolton Council & Ors* 2025] EWHC 657 (Admin). That case concerned whether a planning application was made before 12 February 2024 when the requirement for biodiversity net gain became mandatory. The court held that the application was considered to have been made on the day that it was received by the Council irrespective of the fact that it was later found to be initially invalid .

56. The making of a planning application and the process of validation are different and separate steps. Validation occurs after the application is made. The wording of Regulation 9 simply requires an application to be made within 12 months of the date of the refusal of the previous application. It does not require the application to be valid.

57. The 12 month anniversary of the refusal of the previous application was 8 July 2023, meaning that any application seeking to rely on Regulation 9 would have to be submitted by 7 July 2023 to be within 12 months and qualify for the fee exemption. The e-mail confirmation from the Planning Portal of the submission of the application is time stamped at 02:04 on the morning of 6 July 2023. The Council accepts that the application was submitted to it one day before the 12

month period expired on 7 July. Therefore, the Council was in receipt of a collection of documents, reports, and drawings which purported to be an essentially similar planning application within 12 months of the date of refusal of the previous planning application.

58. Apart from the 12 month deadline, the Council does not contend that the submission failed to meet the other requirements of Regulation 9(2). Nor, with the exception of the tree survey, does it contend that the application was deficient in any of the other information and notification requirements of the DMPO, or that the submission was so hopelessly defective that it could not be considered an application for planning permission at all.

59. As the application was made within the relevant time period and met the other relevant provisions of Regulation 9(2) of the Fees Regulations, the “required fee” for the purposes of Articles 11 and 34 of the DMPO would be no fee at all. Once the tree survey was received on 18 August 2023, the application would have been complete, and the Council should have proceeded to validate and determine it. I therefore find that the planning application was valid.

60. In these circumstances it is, consequently, necessary to consider the planning merits of the proposal. The application proposes to remove coal and fireclay from the site to remove former shallow coal workings and stabilise the site. It is also proposed to consolidate and properly cap four mine shafts present on the site. Following the extraction of the minerals and the consolidation of the site, it is proposed to construct up to 92 dwellings. The residential element of the proposal has been submitted in outline only. It is not stated within the application or supporting documents what if, any matters, are reserved for future approval. Included within the submitted drawings is a site layout drawing showing a housing development of 92 units arranged around a series of culs-de-sac leading from an estate distributor road. This drawing also shows access to the proposed new development as being from Thistle Hill Drive at a point where the existing carriageway terminates near the application site boundary. This drawing is clearly marked as indicative, and I have treated it as such. In the absence of any indication otherwise, I have considered the residential element of the proposal as being in outline with all matters[8] reserved for future approval.

Whether the appeal site is a suitable location for new residential development

61. The appeal site is located outwith, but immediately adjacent to the settlement boundary for Streethouse. The site is excluded from the Green Belt that otherwise surrounds the settlement.

62. Policy SP2 of the Wakefield District Local Plan 2024 (the WDLP) sets out a settlement hierarchy for the district. Streethouse is classified as a village within this hierarchy. WDLP Policy SP3 seeks to deliver the spatial development strategy for the district and expects most new development, including most housing to take place within the Urban Areas identified in Policy SP2 which include the city of Wakefield and the larger towns. In settlements identified as Villages by Policy SP2, small scale development would be permitted where it would help to meet identified local needs within the existing boundaries of the settlement.

[8] Access, layout, appearance, scale, and landscaping

63. Although excluded from the Green Belt, the appeal site is identified in the WDLP as safeguarded land. The supporting text to WDLP Policy SP4 sets out that some land has been safeguarded on the edge of settlements to ensure that the Green Belt boundary lasts beyond the plan period. It goes on to state that the land is not required for development during the plan period because other suitable development sites have been identified. Whilst the supporting text does not form part of the Policy itself, it sets out how it is expected that the policy will be implemented.

64. Policy SP4 makes it clear that land is safeguarded to meet longer term development needs beyond the period of the current development plan and that it is not intended to be developed during the period of the current development plan. This is in line with the guidance at Paragraph 149 of the Framework. During the plan period, Policy SP4 restricts development on safeguarded sites to that which is necessary for the operation of existing uses, together with such temporary uses that will not prejudice the possibility of long term development. The WDLP was adopted in January 2024 and covers the period to 2036.

65. Taking the appeal proposal as a whole, it is clear that it envisages permanent development of the appeal site in the form of residential development. As such the proposal would conflict with Policies SP3 and SP4 of the WDLP.

66. The appellant suggests in their original planning submission that reductions in site capacity on two sites in the area, at Knottingly and South Featherstone arising from recommendations of the Inspector that examined the Local Plan, justify releasing the appeal site to help meet the Council's housing supply. However, the WDLP was subsequently adopted which strongly implies that even with these reductions the Council considered that sufficient land was allocated to meet its housing needs. In any event, no substantive evidence has been put to me in respect of the Council's housing land supply or housing need.

67. WDLP Policy SP5 which sets out the Council's housing requirement does make an allowance for housing on windfall sites. The appellant suggests that the site could be viewed as a windfall site. Although windfall sites are not defined in the WDLP, the Framework defines windfall sites as "sites not specifically identified in the development plan". Whilst the appeal site is not allocated for a particular purpose in the WDLP, it is identified as a safeguarded site on which permanent development is effectively precluded during the plan period. Consequently, I do not find the suggestion that the site can be considered a windfall site a compelling one.

68. In any event, even if I were to accept that the site is a windfall site, Policy SP5 sets out that in Villages (such a Streethouse) limited amounts of additional houses will be built to meet local needs, up to a maximum scheme size of 10 dwellings, provided that development fills the whole land parcel or site. The appeal proposal does not meet this requirement.

69. It is not contended that the Council cannot demonstrate a 5 year supply of deliverable housing sites and the most recent Housing Delivery Test[9] results indicate that the Council delivered 161% of its housing requirement. In the light of

[9] Housing Delivery Test: 2023 Measurement, published December 2024

this, there is no overriding reason why the site would be required to meet the Council's housing land supply or housing delivery targets.

70. The Framework sets out that local authorities should take a proactive role in identifying and bringing forward land that may be suitable for meeting development needs including suitable sites on brownfield registers. It also states that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated, or unstable land.

71. Notwithstanding that, in policy terms, the site is not within the settlement as it is outside the settlement boundary, it is a matter of dispute between the parties as to whether the site constitutes previously developed (brownfield) land. The appellant contends that the site is previously developed due to its former use as a colliery and that part of the site has previously been surface mined, but that these uses were not subject to any restoration scheme through the planning process. The Council's position is that the site is excluded from the definition of previously developed land in the Framework because whilst it was previously developed, where the remains of the permanent structures and fixed surface structure have blended into the landscape.

72. The evidence shows that historically the site was developed as part of a colliery and that surface mining and removal of a spoil heap occurred in the mid 1970's. There is no evidence that the site has been developed or used for any other purpose in the past approximately 50 years. I saw when I visited the site that it is heavily vegetated, supporting a variety of grass and plant species and a large number of well-established trees. There were no visible remains of any structures and only one very small area of hardstanding was discernible on the site. From what I saw, an ordinary and reasonable person would be most likely to conclude that any remains of permanent structures or fixed surface structure have blended into the landscape. I therefore find that the site does not fall within the definition of previously developed land as defined by the Framework.

73. Nor is there is no compelling evidence that the appeal site is in need of reclamation at this time. It does not have the appearance of a derelict site and from what I saw when I visited the site, it has every appearance of being well used as a local recreational amenity. The site is not identified in the WDLP as a land reclamation site.

74. The only technical evidence in respect of ground contamination is a ground investigation report dating from 2007 prepared for an earlier development. Some contamination was identified, primarily elevated levels of arsenic on parts of the site. Whilst these in some instances exceed the levels for residential gardens, they, with one exception, do not exceed the levels for open space. The report concludes that although there are marginally elevated soil contamination levels, this is not in sufficient quantities to require significant remedial action. There is little in this report that would indicate that urgent remediation of the site is required in the event that the residential use does not proceed.

75. The rationale for removing the coal and fireclay from the site is to stabilise the land and make it suitable for residential development. Policy SP19 makes

allowance for the working of mineral resources from land reclamation schemes to provide secondary aggregates and other minerals in association with restoration and/or development wherever practicable and environmentally acceptable. Nevertheless, the site is not identified as a land reclamation scheme in the WDLP.

76. WDLP Policy LP41 sets out that proposals for coal extraction will not normally be permitted unless the coal resource would otherwise be sterilised by another form of development. Whilst there may be recoverable coal underlying the site that would be sterilised were it to be developed, it has been estimated that there is approximately 10,000 tonnes of coal and 25,000 tonnes of fireclay present, there is no compelling evidence that the site is required for development at this time.

77. In the alternative, Policy LP 41 does allow for coal extraction where any viable fireclay resources will also be recovered and either, the proposals are environmentally acceptable, or can be made so by planning conditions or obligations, or if not; the proposal provides national, local or community benefits which clearly outweigh the likely impacts of the development. However, it is not suggested that the mineral extraction element of the proposal would be capable of being a standalone development, rather it is an integral part of the residential development of the site. It has not been put to me that it could be disaggregated from the hybrid application. I, therefore, find little support for the proposal in Policies SP19 and LP41.

78. There are a number of shops and other facilities in the village. The presence of the railway station and bus services also allow for relatively easy access to other nearby larger settlements where there are a broader range of shops, services and employment opportunities. Nevertheless, these factors alone do not overcome the fundamental conflict with other policies in the development plan.

79. Having regard to all of the above, I conclude that the appeal site is not a suitable site for new residential development, having regard to the provisions of the Development Plan. It would conflict with the relevant requirements of WDLP policies SP2, SP3, SP4, and SP5.

Living conditions of the occupiers of nearby residential properties

80. The appeal site is located immediately adjacent to existing residential properties on Thistle Hill Drive, Whitwell Drive, and Thistle Hill Close. A short distance to the south of the site, beyond the railway line there are further residential properties on Whinney Lane and Red Lane.

81. The primary effects of the proposal on existing residential occupiers would arise from the mineral extraction operation. Whilst there would inevitably be some noise and disturbance arising from the subsequent construction of houses on the site, this could be mitigated through appropriate planning conditions, including a construction management plan.

82. The mineral extraction element of the proposal would give rise to potential effects in the form of noise and dust arising from the extraction of the coal and fireclay and the restoration and consolidation of the site. Additional noise and disturbance would arise from vehicle movements transporting the extracted materials off site and the loading of these vehicles.

Noise

83. The application was accompanied by a Mineral Noise Impact Assessment report (MNIA). This was based on a noise survey at the site which established baseline background and ambient noise levels.

84. The Planning Practice Guidance (PPG) sets out that for normal operations, a noise limit that does not exceed the background noise level by 10dB(A) during normal working hours should be aimed for. It goes on to state that, in any event, the total noise from operations should not exceed 55dB(A) $L_{Aeq,1\ hour}$. This is however caveated by the statement that care should be taken to avoid any of these suggested values being implemented as fixed thresholds as specific circumstances may justify some small variation being allowed.[10]

85. The PPG does recognise that some activities such as soil stripping, construction and removal of baffle mounds and storage mounds, and the construction of new permanent landforms may give rise to particularly high, short term, noise levels. In these instances it allows for the consideration of increased temporary daytime noise limits of up to 70dB(A) $L_{Aeq\ 1hour\ (free\ field)}$ for periods of up to 8 weeks in a year for site preparation and restoration work, and construction of baffle mounds where it is clear that this will bring longer-term environmental benefits to the site or its environs.

86. The PPG also sets out that in line with the Explanatory Note of the Noise Policy Statement for England, assessment of noise should include identifying whether the overall effect of the noise exposure would be above or below the significant observed adverse effect level and the lowest observed adverse effect level for the given situation.

87. The MNIA concludes that whilst during all working phases noise emissions from the site would exceed the background noise level plus 10dB, the 55dB threshold for normal working would not not exceeded. It also concludes that the temporary operations noise limit of 70dB is exceeded in phases 4 and 5, although it is stated that this would be for a short duration and is necessary to access the land on the boundary with existing residential properties and to provide an acoustic bund.

88. Although a maximum appropriate noise level of 55dB is suggested in the PPG, the guidance is clear that the starting point is the background noise level plus 10dB. The MNIA does not set out why it would be difficult to achieve the background level plus 10dB without imposing unreasonable burdens on the mineral operator but rather treats not exceeding the upper limit of 55dB as acceptable. Nor does the MNIA identify whether the overall effect of the noise exposure would be above or below the significant observed adverse effect level and the lowest observed adverse effect level in terms of the nearby residential properties.

89. In addition to this, the MNIA does not account for all machines it is stated would be used at the site. The calculations are based on one bulldozer, one dump truck, and one excavator. However, the supporting statement refers to two dump trucks and a front end loader in addition to the bulldozer and excavator. It also refers to two different types of roller for compaction of soils. It is implied, although not specified in the supporting statement that the rollers will be pulled by the bulldozer

[10] PPG Minerals - Paragraph: 021 Reference ID: 27-021-20140306

as opposed to being separate machines. However, it is not clear whether these rollers have any kind of noise characteristic that should have been assessed. Whilst I appreciate that the rollers may not be operational at all times, due to the proposed phasing and operation of the site, these will potentially be operating at the same time as other machines are excavating material from the adjacent phase.

90. It is set out that there would be 22 daily lorry movements transporting materials at the site. The potential for noise from these has not been assessed as part of the NMIA, nor has noise from the loading operations.

91. The addition of further noise sources would result in an increase in noise generated by the site. What this increase may be is unknown as a number of the noise sources have simply not been assessed.

92. There is an inconsistency between the submitted plans with regard to a proposed noise bund on the boundary of the site with the residential properties on Whitwell Drive and Thistle Hill Drive. Plan 9, which purports to show noise barriers and fencing to footpaths, shows a five metre high soil bund on the western boundary of the appeal site adjacent to the houses on Whitwell Drive and Thistle Hill Drive that runs the full width of the Phase 5 area. However, this is not shown on the working plans for Phases 1 to 3 (Plans 1 to 3) and the working plan for Phase 4 shows a noise bund in the southern part of Phase 5 but settlement ponds in the northern part. During the working of Phase 5, closest to the residential properties, it would not be possible to accommodate the noise bund shown on Plan 9 as this would be within the working area. It is, therefore, not clear when, if at all, the bund shown on Plan 9 would be present.

93. It is suggested that the fireclay stockpile would act as a noise bunds during the working of Phases 1 to 3. Nevertheless, there is no indication of the height of the stockpile and the nature of a stockpile, plus the intention to load and remove material from the site during operations, would indicate that the stockpile will change in height and configuration. This would alter its effectiveness in acting as attenuation for site generated noise during these phases and there is no evidence that any attenuation would be at a consistent level.

94. The PPG makes allowance for temporary noise levels of up to 70dB for 8 weeks in a year. The proposal sets out that the extraction of minerals would last for up to a year. It does not, however, adequately quantify the duration of any works that may qualify for the higher noise limit. The proposal would involve the relocation of the fireclay stockpile several times and the construction on two occasions of settlement lagoons in addition to the soil stripping, backfilling and restoration works. Consequently, it is not clear whether all of the qualifying works could be carried out within the 8 weeks allowed for.

95. Given the above, I am not satisfied that the MNIA has adequately assessed the potential noise that would be generated by the mineral extraction operations or that the site generated noise would not have an adverse effect on the occupiers of nearby residential properties.

Dust

96. The application included an Air Quality Assessment (AQA) which included a survey of existing dust deposition at the site to establish the background conditions. The background levels of PM_{10} and $PM_{2.5}$ particulate matter were derived from national data held by the Department of the Environment, Food and Rural Affairs. The AQA concludes that there is a negligible risk of dust impact at any of the nearby residential properties and that, when the mineral extraction was occurring, the annual mean concentration of PM_{10} and $PM_{2.5}$ particulate matter would not exceed the Air Quality Objectives of a 24 hour mean of 50µg/m³ and an annual mean of 40 µg/m³ for PM_{10}, or an annual mean criterion of 25 µg/m³ for $PM_{2.5}$.

97. Dust from mineral workings becomes an issue when there are dry and windy conditions. The submitted evidence indicates that the prevailing winds in the area are from the west and south west which would tend to blow dust away from the nearby residential areas to the south and west of the site. The evidence also indicates that the overburden is clay soil that will have a relatively high moisture content when removed and will crust over when stockpiled or returned to a void. It is also proposed to work the site in phases with the vegetation and soil stripping occurring before each phase is worked to minimise the amount of exposed ground.

98. A range of dust mitigation measures are proposed including avoiding soils tripping and overburden handling in dry windy conditions, use of water to dampen and seal bared ground, removing stockpiled coal from the site as soon as practicable, minimising drop heights of coal from the loader into the transport trucks, implementing a 15mph speed limit on the site, compaction and regular grading of the site roads, sheeting of vehicles, and using a road sweeper on the access road with water as a dust suppressor if required. It is also stated that in the event of a failure of the dust mitigation measures the dust generating activity would be suspended until appropriate mitigation measures are implemented or there is a change in the weather conditions.

99. The Council has not submitted any substantive evidence that challenges the conclusions of the AQA. Appropriate dust mitigation measures could be incorporated into a dust management plan and secured by a planning condition.

Conclusion on living conditions of nearby residents

100. Although dust generated at the site would be capable of being managed in such a way that it would not result in adverse effects on nearby residential properties, it has not been adequately demonstrated that noise from the proposed mineral extraction would not have a detrimental effect.

101. I therefore find that the proposed development would cause harm to the living conditions of the occupiers of nearby residential properties, with particular regard to noise. It would not comply with the relevant requirements of WDLP Policies LP37 which seeks to ensure that mineral extraction does not have an unacceptably adverse impact in relation to noise and vibration LP56 which expects new development to have no significant detrimental impact on the amenity of neighbouring users or residents.

Living conditions of the future occupiers

102. The Council identify that the appeal site is located close to an active railway line and railway station and suggest that this has potential to cause noise disturbance to the future occupiers of the proposed residential development. However, the Council has not submitted any further substantive evidence in respect of this and I note that the Council's Environmental Health Officer did not raise any objection in this regard.

103. The application was accompanied by a Residential Noise Impact Assessment (RNIA) report. This assessed the effect of noise on the proposed new residential properties. The report used the same survey data as the MNIA to determine the background noise levels. The RNIA was carried out based on a layout plan which, although it is very poorly reproduced in the report, appears to be broadly similar to the layout plan submitted with the application. I am, however, mindful that that, in the absence of any evidence to the contrary, I am proceeding on the basis that the detailed layout of the proposed housing development is reserved for future approval. The report also used room and window dimensions for the proposed house types to calculate the predicted internal noise levels. Although no house type drawings were submitted and so I am unable to verify the accuracy of these dimensions, I have no reason to believe that they are not representative of the dwellings that could be constructed at the site.

104. BS 8233:2014: Guidance on Sound Insulation and Noise Reduction for Buildings sets out a guideline for acceptable internal noise levels within residential buildings of $35dB_{LAeq,T}$ (40dB for dining areas) from 07:00 -23:00 and 30dB for bedrooms between 23:00 and 07:00. BS 8233:2014 does not set a guideline for external areas, however, the World Health Organisation Guidelines for Community Noise 1999 set out that it is desirable in external amenity spaces for noise levels to not exceed $50dB_{LAeq,T.}$ The Guidelines also include an upper guideline value of $55dB_{LAeq,T}$ which may be appropriate for sites adjoining the strategic transportation network.

105. The RNIA specifies windows with a certain glazing type and acoustic trickle vents to provide noise attenuation. Using this specification and based on the prevailing noise measurements for the site, the modelling indicates that the guideline internal noise levels set out in BS 8233:2014 could be achieved. From the noise survey data, external noise levels are generally just below the World Health Organisation guidance level, although there would be occasional slight exceedances.

106. In the absence of any substantive evidence to the contrary and given that the final layout and design of the proposed residential development is reserved for future approval, I have no reason to find that a suitable residential environment in terms of noise could not be achieved. Details of noise attenuation, including glazing specifications, could be secured by way of a condition.

107. I therefore conclude that the proposed development would provide suitable living conditions for the future occupiers, with particular regard to noise. It would comply with the relevant requirements of WDLP Policy LP56 which expects new development to have no significant detrimental effect on prospective users, notwithstanding that the mineral extraction element of the proposal would conflict with this policy in terms of its effect on existing residents.

Other Matters

108. For the purposes of the mineral extraction, it is proposed that the site would be accessed from Whinney Lane, the principal road through the village, adjacent to the level crossing for the railway line. From the evidence, this was historically where the access to the former colliery yard was located.

109. Adjacent to the proposed access point is a footway which provides access to one of the platforms of Streethouse railway station. A well-worn, trampled earth, track leads from Whinney Lane into the site along the same course as the proposed access road. This track continues as a mix of trampled earth and a mown grass corridor parallel to the railway line across the southern part of the site. This route is claimed as a public right of way but has not, as of this time, been added as such to the Definitive Map and Statement. There is an existing dropped kerb, approximately 8 metres in extent, present at the proposed access point.

110. The appellants submissions indicate that between 16 and 22 two way heavy goods vehicle (HGV) movements would be generated each day by the site in connection with the exporting of minerals from the site. This equates to approximately 1 or 2 movements per hour. The proposed access route meets Whinney Lane at an acute angle that would preclude HGVs approaching from the east or leaving the site to travel east on Whinney Lane. It is thus stated that all HGV movements would be on a left turn in/right turn out basis. It is proposed to accommodate the route of the claimed footpath adjacent to the vehicular access with a protective fence to prevent conflict between pedestrians and vehicles. Whilst this would reduce the width of the vehicular access to a one way flow where it joins Whinney Lane, it is proposed that vehicles entering the site would have priority over those leaving. Due to the highway geometry, there would be sufficient forward visibility to the west that egressing vehicles would be able to see if there was an incoming vehicle with adequate time to wait on a wider section of the access road.

111. HGVs leaving the site would travel west on Whinney Lane/High Street before turning south on Cow Lane to join the A645 Weeland Road. Vehicles travelling to the site would approach on this same route from the A645. The Council have not raised any objection to the proposed HGV route and accepts that the vehicle flows resulting from the mineral exportation form the site would not have any significant effect on the operation of the highway network in the vicinity of the site.

112. The proposal sets out that, to restore the site following the extraction of the coal and fireclay, it will be necessary to import soils and other inert fill materials to cap and cover the backfilled voids and provide topsoil for gardens. No details are provided in respect of vehicle movements required in connection with this part of the operation. Nevertheless, it is reasonable to assume that the volume of imported material for restoration would be broadly similar to the volume of extracted minerals, which would result in a roughly equivalent number of HGV vehicle movements. This would equate to an additional 1 to 2 vehicle movements per hour. There is nothing in the evidence which would suggest that a combined 2 to 4 HGV movements per hour would have a detrimental effect on the highway network.

113. The Council do not suggest that the required visibility splays from the junction, 2.4 by 43 metres, are not achievable but note that these are not shown on the plans.

From what I saw when I visited the site, visibility in both directions is good and I have no reason to believe that the required visibility splays could not be accommodated. The Council also note that there are no details of the surfacing of the proposed internal access road or of parking within the site for operatives and site vehicles.

114. Network Rail have commented that additional construction traffic and subsequent residential traffic, would increase the usage of the level crossing on Whinney Lane crossing and also increase the risk of traffic queues forming from the junction of Whitwell Main/Whinney Lane, back over the level crossing. In order to try and mitigate this risk and to keep the crossing clear, Network Rail have recommended that yellow box markings must be provided at the level crossing.

115. These are matters of technical detail that could be addressed through appropriately worded planning conditions or legal agreements in the event that the appeal was to be allowed.

116. The residential development would be accessed from an existing spur of road at the end of Thistle Hill Drive. The Council has not raised any objections in principle to the use of this access point or suggested that the residential element of the scheme would have any adverse effects on highway safety or the safe and efficient operation of the highways network in the vicinity of the site.

117. The site lies within Flood Zone 1 as identified by the Environment Agency. As the site area exceeds 1 hectare, a Flood Risk Assessment is required that demonstrates that development of the site would not increase the risk of flooding elsewhere.

118. A site specific Flood Risk Assessment for the proposed development has not been provided. The appellant's submissions set out that a Flood Risk Assessment for a previous application made in 2007 was submitted with the application, although a copy of this was not included in the appeal submissions.

119. The Lead Local Flood Authority (LLFA) have commented that this Flood Risk Assessment, which appears from its comments to have been submitted in support of the previously refused application, is out of date as since that time, design guidance, legislation and modelled flood data have all changed. The appellant contends that the site, its surrounds and features on site have not changed since the 2007 Flood Risk Assessment was prepared and that it is still relevant. It is suggested that a Flood Risk Assessment could be provided as part of the reserved matters submissions once the layout of the housing development is finalised and that this could be secured by way of a condition.

120. The LLFA comments note that the indicative residential layout does not allow sufficient site area to accommodate the additional surface water attenuation volume required to accommodate the existing development and the proposed development. The comments also note that in order to avoid increasing downstream flood risk, compensatory flood plain will be required where flood water is displaced from the site, which would be in addition to the surface water attenuation required. No proposals for compensatory storage have been submitted. The LLFA have commented that it does not appear that a satisfactory compensatory storage solution can be achieved with the submitted indicative layout.

121. In these circumstances the requirements for surface water management would influence the final layout and quantum of the housing scheme. Moreover, it is not a given that a new Flood Risk Assessment would demonstrate that the proposal would not increase the risk of flooding elsewhere. If the present application were to be permitted, it would be the planning permission for the site, as reserved matters are submissions to satisfy conditions. Flood risk should be addressed at the planning permission stage and not post-permission when conditions are being discharged. I am not satisfied that there is sufficient information to determine whether or not the proposal would increase the risk of flooding elsewhere. This adds to my other concerns set out above.

122. The appeal site is subject to a TPO which covers most of the appeal site. The appeal proposal would, based on the appellants submissions, result in the loss of all of the protected trees. WDLP Policy LP54 sets out, among other matters, that development that would damage or result in the loss of trees, areas of woodland or hedgerows, will only be permitted if it can clearly be demonstrated that either the development cannot reasonably be redesigned to retain trees and hedgerows or be located on an alternative site, or the need for development clearly outweighs any harm to the ecological value and landscape quality of the area.

123. The purpose of a TPO is to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. The application included a Tree Survey of the existing trees on the site.

124. The submitted Tree Survey identifies that a number of trees could be retained and that some groups, consisting predominantly willow and silver birch or hawthorn are likely to be lost by any level of site remediation. However, it does not assess the effect of the loss of the protected trees on the local environment or its enjoyment by the public.

125. I saw when I visited the site that it appears to be well used by local people for informal recreation. I am however mindful that the site is in private ownership and that this use is, therefore, most likely, permissive. The trees on the site do, however, contribute towards its medium habitat value identified in the updated Preliminary Ecological Appraisal Report, submitted with the appeal, and to the appearance of a relatively attractive semi-natural open space adjacent to the village. As such their loss would be harmful.

126. As set out under the first main issue, there is no need to develop the site for housing because it is safeguarded from development and there is no overriding housing need that would warrant the loss of protected trees. This loss of amenity value also weighs against the proposal.

127. An updated Preliminary Ecological Appraisal Report (PEAR) was submitted as part of the appeal. Whilst this indicates that no protected species are likely to be affected, it does recommend that additional surveys for water vole and great crested newts are carried out. The report indicates that the site contains largely medium but also some high value habitats that would be lost if the development proceeds.

128. The PEAR also recommends that an Ecological Impact Assessment (EcIA) is carried out. Whilst the EcIA prepared in connection with the previously refused

application was submitted with the planning application this is now more than two years old and carries little weight.

129. Although the submitted ecological information indicates that it may potentially be possible to develop the site without resulting in any longer term harm, on the basis of the submitted evidence this is not definitively made out.

130. A completed Unilateral Obligation (UU) has been submitted which addresses the provision of affordable housing and Biodiversity Net Gain (BNG). The appellant has also suggested a condition requiring the submission for approval of a scheme for affordable housing.

131. Although the UU does not make reference to this appeal, this is not a fatal omission as it does refer to the original planning application that is under consideration. Notwithstanding that the appellant's suggested condition and the UU both refer to the definition of affordable housing in Planning Policy Statement 3 (PPS3), which was cancelled in 2012 when the Framework was published, the obligation does refer to future guidance that replaces PPS3 which would allow the obligation to be read in the light of the definition of affordable housing in the Framework. The weight which can be given to the provision of affordable housing is reduced by the fact that the site is safeguarded for development beyond the plan period and is not required for development at this time. In addition, no substantive evidence in respect of the need for affordable housing has been adduced in the submissions. Nonetheless, the provision of affordable housing weighs moderately in favour of the proposal.

132. The application pre-dates the mandatory requirement for 10% BNG, however, the appellant states that the proposal will make biodiversity improvements at the site, although no specific details are provided. However, the obligation in the UU is flawed. The way in which it is worded, "To deal with all Biodiversity Net Gain requirements at the Reserved Matters Stage of the Detailed Planning Application," is contradictory. The detailed application element of the hybrid application is the mineral extraction, and, in any event, full (or detailed) planning permissions do not have Reserved Matters.

133. Even allowing for a benign reading of the obligation, there is at best a tenuous link between BNG and the matters that would be reserved for future approval on the housing scheme. As with flood risk, the present application, if permitted, would be the planning permission for the site and substantive matters such as BNG should be resolved as part of this process rather than as part of satisfying any conditions that may be attached to a planning permission. Whilst there is a potential benefit in the form of BNG, as this is not quantified, I can give little weight to it.

134. WDLP Policy LP41 allows for coal extraction if the proposal provides national, local, or community benefits which clearly outweigh the likely impacts of the development. The Framework recognises that mineral resources should not be sterilised by non-mineral development where this can be avoided, and encourages the prior extraction of minerals, where practical and environmentally feasible, if it is necessary for non-mineral development to take place. However, the Framework also advises that planning permission should not be granted for the extraction of coal unless the proposal is environmentally acceptable. If it is not environmentally acceptable, and cannot be made so by planning conditions,

then it must provide national, local, or community benefits which clearly outweigh the likely impacts of the development.

135. It is stated that the coal extracted from the site is likely to be used in the heritage railway sector and in the cement industry where it is blended with other coal to achieve the optimum calorific value. There are no operating deep coal mines, or legally operating surface mines, in the UK and indigenous coal production is very limited. The appellant advises that heritage railways use approximately 30,000 tonnes of coal per annum and are currently sourcing suitable coal from Kazakhstan and Poland. Coal for the steel and cement industries is currently imported from the USA, Canada, South Africa, and Australia.

136. The volume of coal from the site is estimated to be between 10,000 to 17,000 tonnes. Burning of the coal will produce CO_2 emissions. However, the potential end users are presently using imported coal that would have the same CO_2 potential but would also have added CO_2 emissions arising from transporting the coal from the point of origin to the seaboard, transhipment to the UK, and then transport from the port of entry to the end user. Consequently, although CO_2 would be produced, overall, it would be less than using the equivalent amount of imported coal.

137. Nevertheless, as set out above, the evidence indicates that the proposal would not be environmentally acceptable in terms of its noise impact, effect on protected trees and likely effects on flood risk and ecology. The proposal would produce fireclay that could be used in the brickmaking industry and for the manufacture of clay pipes and tiles, and coal that could supply heritage railways. There would also be some small scale economic benefit from employment during the remediation stage and moderate economic benefits during the construction of the housing. Whilst the scheme would increase the supply of housing, including affordable housing and it is not in dispute that the site is relatively well located in relation to shops, services and other facilities, employment opportunities and public transport links, there is no compelling evidence that indicates that either market or affordable housing is required in this location. In any event, these benefits are modest in scale do not clearly outweigh the likely impacts that the proposal would have.

Conclusion

138. I have found that the appeal site would not be a suitable location for new residential development and that the mineral extraction element of the proposal would cause harm to the living conditions of the occupiers of nearby residential properties due to noise. As such, it would conflict with WDLP Policies SP2, SP3, SP4, SP5, LP37 and LP56. These are important matters which lead me to conclude that the development is contrary to the development plan when taken as a whole, notwithstanding that the proposal may comply with other policies in the development plan.

139. The proposal would result in some modest benefits, however, even taken together, these benefits would not amount to material considerations that would indicate that planning permission should be granted for a proposal which conflicts with the development plan.

140. For the above reasons, I conclude that the appeal should be dismissed, and that planning permission should be refused.

John Dowsett

INSPECTOR