

## Briefing Note

21/11/2017

Ref No:281

The second hearing of an appeal, ongoing since 2013, has been allowed and consent granted for the delivery of up to 200 dwellings and associated works at Land off Driffield Road, Allaston Road and Court Road, Lydney, Glos.

The decision comes after the appeal was first recovered by the Secretary of State in November 2014, because it was for a residential development of over ten dwellings in an area where a Neighbourhood Plan was under preparation (and subsequently 'made' in 2016).

The Secretary of State's initial decision (Dec 2015) to dismiss the appeal was challenged and later quashed by the High Court in June 2016.

The application was originally refused by the LPA on the basis that:

- i) The site lies in open countryside outside the defined settlement boundary for Lydney;**
- ii) Proposal would be prejudicial to potential archaeological remains on the site owing to lack of a proper field evaluation;**
- iii) Inefficient use of land owing to low density development;**
- iv) Failure to secure necessarily contributions and delivery of affordable housing**

The development proposal was then amended to include 40% affordable housing, 10% self-build, market housing and also with local labour and local procurement obligations.

During the first Inquiry, the Council accepted that it did not have a five year supply of housing land. A local action group, Stop Allaston Developments, (SAD), objected and became a 'Rule 6 party' to the appeal, and provided evidence on planning, landscape and highways matters.

An Inspector recommended the appeal be allowed, and cited as a basis for the decision, the absence of a five year housing land supply in the District, the proposal's compliance with all three dimensions of sustainable development, and also that the totality of harm was considered to fall short of the requirement to significantly and demonstrably outweigh the benefits of development.

The Secretary of State rejected the Inspector's recommendation and refused planning permission, considering the appeal proposals would in fact significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Following legal challenge, a second Inquiry was held in April 2017. The Council again accepted it could not demonstrate a five year supply of housing land, nor could they demonstrate a three year supply in light of the Written Ministerial Statement of December 2016.

The Inspector recommended the appeal be allowed, and this decision was this time supported by the Secretary of State on the basis that the appeal site was not regarded as a valued landscape within Paragraph 109 of the Framework, and the tilted balance of Paragraph 14 remained intact.

Counsel for the Appellants, Chris Young of No.5 Chambers, considered the decision to be important for a number of reasons:

- i) The SoS considered provision of a diverse mix of homes as carrying significant weight;**
- ii) Despite the appellants forming one of the 25 claimants in the Judicial Review of the Written Ministerial Statement, heard in the High Court, the appellants were successful and demonstrated that getting involved in litigation against the Government does not prejudice your appeal prospects.**

The outcome of this decision, in practice, highlights that the tilted balance remains intact in all aspects of Neighbourhood Development Plans, regardless of the Written Ministerial Statement of 2016.

DLP Planning Ltd and its Strategic Planning & Research Unit (SPRU) have extensive experience in assessing the five-year supply position and objectively assessed housing need of local planning authorities, using the most up to date sources and modelling. Such assessments are often critical to the successful promotion of sites for residential development.

### Contact us:

Strategic Planning Research Unit, Ground Floor, V1 – Velocity, Tenter Street, Sheffield, S1 4BY

t 0114 228 9190 e sheffield@dlpconsultants.co.uk

www.dlpconsultants.co.uk