

30 June 2010

Mr Tony McAteer  
Lambert Smith Hampton  
79 Mosley Street  
MANCHESTER  
M2 3LQ

Our Ref: APP/M2325/A/09/2103453  
Your ref: AMcA/0074

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY THE KENSINGTON PT PARTNERSHIP  
SITE AT LAND SOUTH OF QUEENSWAY, ST ANNES, LANCASHIRE**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Phil Grainger BA(Hons) MRTPI, who held a public local inquiry between 24-27 November and 1–4 December 2009 into your clients' appeal against a failure by Fylde Borough Council ("the Council") to give notice within the prescribed period of a decision on an application for outline planning permission for a development of 1150 dwellings, provision of a 1.1ha school site and 34ha of parkland in accordance with application ref: 5/2008/0058.
2. 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 on 7 May 2009 because it involves proposals for residential development of more than 150 dwellings which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation and has decided to dismiss the appeal and refuse 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 Secretary of State has taken account of the updated Environmental Statement (ES) (dated September 2009) which accompanied the planning application in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. He agrees with the

Inspector (IR5) that the errors listed in Inquiry Document IN22 had not misled anyone and that there is no serious flaw in the updated ES sufficient to invalidate its conclusions. Taking account of that, and also the Inspector's conclusion at IR421 that, for the reasons given at IR419-420, there are no serious failings in the ES or the process by which it was produced to render it inadequate, the Secretary of State is satisfied that the ES as a whole is adequate and complies with the above regulations, and that sufficient information has been provided for him to assess the environmental impact of the application.

### **Matters arising after the close of the Inquiry**

5. Following the close of the Inquiry the Secretary of State received a number of representations about the application scheme. These are listed at Annex A. The Secretary of State has given very careful consideration to all the issues raised in this correspondence, and is satisfied that there is no need for him to refer back to parties for further representations on those matters prior to reaching his decision. Copies of the correspondence received following the close of the Inquiry are not attached to this letter, but can be made available on request to the address at the foot of the first page of this letter.
6. On receipt of the Inspector's Report, it became apparent to the Secretary of State that, as the site is linked functionally to the Ribble and Alt Estuaries Special Protection Area (SPA) (IR362), if he were minded to allow the appeal and grant planning permission it would first it would be necessary for him to undertake an appropriate assessment as required by the Habitats Directive (see paragraphs 10 and 21 below). Accordingly, the Secretary of State wrote to Natural England on 25 March 2010 to initiate the assessment process whilst considering the Inspector's recommendations, and he copied this letter to you and the other main parties on the same date saying that you would be given an opportunity to comment on the draft assessment in due course. However, as the Secretary of State has subsequently concluded that, for the reasons set out in this letter, and which are unrelated to any impact which the proposals may have on the SPA, he is not minded to allow the appeal and grant planning permission, he has not considered it necessary to complete his assessment.
7. The Secretary of State has also taken account of the Community Infrastructure Levy Regulations (CIL) which came into force on 6 April 2010 and which, as they apply to all planning application determined on or after that date, are a material consideration in this case. These Regulations introduced, amongst other things, three statutory tests which planning obligations must meet, and so are considered below at paragraph 18 in relation to the section 106 Unilateral Undertaking (UU) submitted by your clients.

### **Policy considerations**

8. In determining this application, 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. In this case, the development plan comprises the North West of England Plan Regional Spatial Strategy to 2021 (RS), which was published on 30 September 2008, and the saved policies of the Fylde Borough Local Plan (2005) (LP). The Secretary of State has also taken

account of Lancashire County Council's Local Transport Plan as a material consideration.

9. Other material considerations which the Secretary of State has taken into account include: Planning Policy Statement (PPS) 1: *Delivering Sustainable Development* and associated supplementary PPS: *Planning and Climate Change*; Planning Policy Guidance Note (PPG) 2: *Green Belts*; PPS3: *Housing*; PPG13: *Transport*; Circular 11/95: *Planning Conditions*; Circular 05/2005: *Planning Obligations*; and the Community Infrastructure Levy Regulations (CIL) which came into force on 6 April 2010 (see paragraph 18 below).
10. The Secretary of State has also taken into account Circular 06/2005: *Biodiversity and Geographical Conservation – Statutory Obligations and their Impact within the Planning System*, which provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England. This complements the expression of national planning policy in *Planning Policy Statement 9: Biodiversity and Geological Conservation* (PPS9) and the accompanying *Planning for Biodiversity and Geological Conservation: A Guide to Good Practice*. Together, these provide guidance on the application of the *Conservation (Natural Habitats &c) Regulations 1994* ("the Habitats Regulations") (now replaced by the *Conservation of Habitats and Species Regulations 2010*) which, in turn, transpose EU Directive 92/43/EEC (21 May 1992) on the conservation of natural habitats and of wild fauna and flora ("the Habitats Directive").
11. Furthermore, the Secretary of State has taken into account the draft document entitled *New Policy Document for Planning Obligations*, issued for consultation on 25 March 2010, and the consultation draft *Planning Policy Statement: Planning for a Natural and Healthy Environment*, issued on 9 March 2010. However, as these documents are still at consultation stage and may be subject to change, he affords them little weight.

## **Main issues**

### ***The development plan***

12. The North West of England Plan Regional Spatial Strategy is presently part of the development plan, but in reaching his decision the Secretary of State has also taken into account his letter of 27 May 2010 in which he advised of his intention to rapidly abolish Regional Strategies and return decision making powers on housing and planning to local councils.
13. Consequently, the Secretary of State affords less weight to the requirement in the RS for Fylde to provide 306 new houses per year (IR15) than the Inspector (IR313), and therefore more weight to the fact that, as the Inspector reports at IR300, the proposal conflicts with the LP in that the site is not allocated for development, lies outside the defined settlement boundary for St Annes and lies within an area where a policy applies which severely restricts development to categories which do not include those in the appeal proposal. Given this conflict, the Secretary of State has gone on to consider whether there are other material considerations to justify allowing the appeal.

### ***Housing matters***

14. The Secretary of State accepts (IR313) that, irrespective of the RS requirement, there is an overall shortfall in the supply of housing land in the Borough, and he notes that the main parties agree that, for the purposes of considering this appeal, the supply can be taken as being about 1.5 years. The Secretary of State also has no reason to disagree with the Inspector's conclusion (IR314-315) that, although the appeal site would be relatively expensive to develop, there seems to be every likelihood that the first phase of 375 houses would be built relatively quickly. However, the Secretary of State has also taken account of the concerns expressed by the Council and others (IR318) that allowing the appeal would greatly curtail the scope for greenfield allocations as part of their Local Development Framework (LDF) process. As the Inspector concludes (IR319 and 428), allowing the appeal would strictly limit the scope for other greenfield releases, and this is a matter which needs to be considered in the overall balance.
15. The Secretary of State has also taken account of the Inspector's conclusion at IR324 that, for the reasons given at IR321-323, the development would make an appropriate contribution towards the substantial affordable housing needs of the area as well as an appropriate mix of market housing. He has also taken account of the Inspector's conclusion at IR 330 that there are no design reasons for resisting the development. Overall, therefore, the Secretary of State concludes that the proposed housing would help to meet the undoubted needs in the area, including the provision of affordable housing, but that developing this site would limit the scope for other greenfield releases in the context of preparing the LDF.

### ***Design matters and effect on the character and appearance of the area***

16. For the reasons given at IR304-311, the Secretary of State agrees with the Inspector's conclusion at IR312 that there is no reason why this proposal should be any less acceptable, in terms of its overall design and effect on the character and appearance of the locality, than is normal for an urban extension. In coming to this conclusion, the Secretary of State also notes the Inspector's concerns about the possibility of buildings of more than 2-storeys in height standing out as intrusive vertical elements (IR311), but agrees with him that that would be a matter for the Council to deal with as part of any reserved matters submission.

### ***Highways***

17. The Secretary of State notes (IR26-28) that it is proposed to build a new east-west road to provide access to the development as well as a by-pass for Heyhouses Lane and a link to the M55. He also notes (IR26 and IR179) that the only matter for which approval is currently being sought relates to a proposed roundabout junction with Queensway together with the first (approximately) 300m of a proposed east/west link road, but that a second access would need to be provided via the eastern part of the east-west road and the M55 link before more than 375 dwellings could be occupied (IR27). The Secretary of State is also aware (IR344) that there is no extant planning permission for the M55 link road, but that, through the UU (IR27), the scheme provides sufficient funding for its completion.

18. The Secretary of State has also taken account of the fact that, in considering the merits of the appeal proposals, the Inspector has come to the conclusion (IR352) that the ability of the appeal scheme to make a contribution sufficient to pay for the construction of the M55 link and supply all the necessary additional land is a weighty consideration in its favour. However, the Secretary of State disagrees with this conclusion for two reasons. Firstly, as the road scheme neither has the benefit of an extant planning permission nor forms a part of the appeal application, there can be no certainty that planning permission will be forthcoming to enable it to be built. Secondly, having regard to the three statutory tests set out in Regulation 122 of the CIL Regulations 2010, while the Secretary of State agrees that it would offer one means of making the appeal scheme acceptable in planning terms, he does not consider that it is either directly related to the development (given that the principle of such a road predates the appeal scheme) or that the proposed functions of the road are fairly and reasonably related in scale and kind to the development. He has therefore given no weight to the road scheme in coming to a decision on this appeal.

### ***Connectivity***

19. For the reasons given at IR356-360, the Secretary of State agrees with the Inspector's conclusion at IR361 that, while the lack of connectivity to the existing urban area is not so serious as to be an overriding objection to the granting of permission in itself, it does mean that the appeal site is a less satisfactory location for a major housing development than its position next to one of the main settlements in Fylde might suggest. The Secretary of State considers that this is a matter of sufficient importance to be taken into account in assessing the overall balance.

### ***Other transport issues***

20. For the reasons given at IR332-336, the Secretary of State agrees with the Inspector that the proposals for diverting the no.14 bus service and the provision in the UU for a financial contribution would provide occupiers of the development with a high quality bus service, at least while the service remains as proposed, while having only a modest adverse impact on existing users. The Secretary of State also agrees with the Inspector (IR337-339) that the appeal scheme is capable of making adequate provision for travel by other non-car modes of travel.

### ***Nature conservation matters***

21. As indicated in paragraph 6 above, the Secretary of State accepts that, if he were minded to allow the appeal and grant planning permission, it would first it would be necessary for him (as the 'competent authority') to undertake an appropriate assessment as required under the Habitats Regulations in order to be able to verify the conclusion which the Inspector reaches at IR372 (based on the arguments at IR362-372) that the appeal scheme including mitigation would not, either alone or in combination with other projects, adversely affect the integrity of the Ribble and Alt Estuaries SPA. However, as the Secretary of State has concluded that he intends to dismiss the appeal irrespective of any potential impact on the integrity of the SPA, he sees no reason to complete his assessment.

### ***Green Belt considerations***

22. The Secretary of State agrees with the Inspector (IR377-378) that none of the proposed houses would be within the Green Belt; that the area between the road and the housing which would be within the Green Belt would be used for playing fields/open space/nature park which are acceptable uses in terms of openness; and that only the proposed east-west link road would therefore be contentious in Green Belt terms. The Inspector then goes on (IR378-391 and IR450-456) to consider whether there are very special circumstances to justify the construction of the road in the Green Belt. However, given the Secretary of State's conclusion at paragraph 18 above that no weight should be given to the construction of the road which does not form part of the proposed scheme before him, he considers that it would be inappropriate for him to conclude on the appropriateness of constructing the road in the Green Belt as that is a matter for the authority determining any future application relating to such a scheme.

### ***Flooding, airport related matters and other issues***

23. For the reasons given at IR392-402, the Secretary of State agrees with the Inspector's conclusion at IR403 that there are no issues concerning drainage and related matters that could not be dealt with satisfactorily by conditions.
24. For the reasons given at IR404-412, the Secretary of State agrees with the Inspector that none of the Airport related matters raised at the Inquiry represents a serious objection to the appeal scheme now that a Bird Hazard Control Plan has been agreed (IR406).
25. The Secretary of State agrees with the Inspector that none of the issues considered at IR413-425 is of such substance as to count significantly either for or against the proposal. With regard to the Inspector's views on prematurity (IR426-433), the Secretary of State considers that these have been overtaken by his letter of 27 May 2010 (see paragraph 12 above) and his conclusion on the status of the proposed M55 link road in relation to this appeal (see paragraph 18 above).

### ***Conditions and Planning Obligation***

26. The Secretary of State has considered the proposed conditions as set out in Annex 1 to the IR and the Inspector's comments at IR283-293. He is satisfied that the conditions recommended by the Inspector 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.
27. With regard to the UU (IR294-297), for the reasons given at paragraph 18 above, the Secretary of State gives no weight to the provisions relating to the construction of the M55 link road. In relation to the remaining provisions, the Secretary of State agrees with the Inspector that the proposals are fairly and proportionately related to the development proposed and accord with the policy tests in Annex B to Circular 05/2005. However, for the reasons set out above, he does not consider that these provisions are sufficient to overcome the concerns with these appeal proposals he has identified in this decision letter.

## **Overall Conclusions**

28. Although there is a recognised need for more housing in the Borough, including affordable housing, the release of this site would conflict with extant LP policies as well as restricting opportunities for identifying other greenfield developments as part of the LDF process. It is also a less than ideal location in terms of connectivity with the rest of the settlement. The Secretary of State has therefore gone on to consider whether there are any other particular benefits to be derived from allowing the appeal scheme. The Inspector considered the delivery of the M55 link road to be the weightiest consideration in favour of the scheme. However, as explained above, the Secretary of State does not feel able to give any weight to that consideration. He therefore concludes that those factors he has identified as weighing in favour of the proposed scheme are not sufficient to overcome the conflict with the development plan in terms of the site not being allocated for development, lying outside the defined settlement boundary for St Annes and lying within an area where policy severely restricts development.

## **Formal Decision**

29. Accordingly, for the reasons given above, the Secretary of State hereby dismisses your client's appeal and refuses outline planning permission for a development of 1150 dwellings, provision of a 1.1ha school site and 34ha of parkland in accordance with application ref: 5/2008/0058.
30. This letter serves as the Secretary of State's statement under Regulation 21(2) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

## **Right to challenge the decision**

31. 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.
32. A copy of this letter has been sent to Fylde Borough Council and all parties who appeared at the inquiry.

Yours faithfully

**Jean Nowak**

Authorised by Secretary of State to sign in that behalf

## **Annex A**

### **Post inquiry correspondence.**

<b>Mr Paul Bullock</b>	<b>24 November 2009</b>
<b>Carole Johnson</b>	<b>23 &amp; 24 November 2009</b>
<b>Mr JJM Staals</b>	<b>2 December 2009</b>
<b>Mrs S Markham &amp; Mrs S Johnson</b>	<b>7 December 2009</b>
<b>Cllr Barbara Paggett</b>	<b>15 December 2009</b>
<b>NJ and CF Steeden</b>	<b>30 December 2009 &amp; 30 April 2010</b>
<b>Michael Jack</b>	<b>14 January 2010</b>
<b>Queensway Environmental Defenders (QED)</b>	<b>06 May 2010 &amp; 10 June 2010</b>