

04 August 2010

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CW12 1LB

Our Ref: APP/D0121/A/09/2117326

Your Ref: 09/P/1486/O

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY RG & AS JONES AND FLP  
AT LAND EAST OF FAILAND, FAILAND, NORTH SOMERSET  
APPLICATION: REF 09/P/1486/O**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mary T O'Rourke BA (Hons) DipTP MRTPI, who held a public local inquiry on dates between 9 and 31 March 2010 into the above appeal against non-determination of an application by North Somerset Council for a proposed residential development of up to 500 dwellings, 60 no. C2 residential apartments with care for persons aged 60 or over, single form entry primary school, B1 employment space, convenience store, doctor's surgery / consulting rooms, public open space, landscaping, highway and associated infrastructure works at land east of Failand, Failand, North Somerset in accordance with application ref 09/P/1486/O dated 17 August 2009.
2. On 25 November 2009, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990. This was for the reasons set out at paragraph 3 of the Inspector's Report.

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

3. The Inspector recommended that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with her recommendation. 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. At the inquiry an application for costs was submitted by North Somerset Council against the appellants. That application is the subject of a separate decision letter.

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

5. Following the close of the Inquiry, the Secretary of State received a representation from North Somerset Council dated 27 July 2010. The Secretary of State has taken account of this representation in his determination of this appeal but does not consider that it raises any matters that would affect his decision or require him to refer back to parties for further representations prior to reaching his decision. Copies of the correspondence can be made available upon written request.
6. Regional Strategies, including RPG10 which formed part of the development plan at the time of the inquiry, were revoked by the Secretary of State on 6 July 2010. The Secretary of State has had no regard to RPG10, or the Inspector's conclusions on the extent to which the scheme gains support from or conflicts with RPG10, in his determination of this appeal. Following his revocation of Regional Strategies, the Secretary of State has also had no regard to the policies in the draft revised Regional Spatial Strategy (RSS) for the South West. The Secretary of State does not consider that either his revocation of Regional Strategies, or his decision not to take account of policies in the adopted or emerging Regional Strategies for the South West in his determination of this appeal, raises any matters which would require him to refer back to parties for further representations prior to reaching his decision.

### **Policy considerations**

7. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case, the development plan comprises the saved policies of the 2002 Joint Replacement Structure Plan which covers the former Avon area (SP) and saved policies of the 2007 North Somerset Replacement Local Plan (LP). The Secretary of State considers that the development plan policies most relevant to this appeal are those set out by the Inspector at IR29 – 37.
9. The Secretary of State has taken account of the North Somerset Core Strategy Consultation Draft document (CSCD - IR50 – 56). However, as this is a draft document, drawn up when the development plan included Regional Strategies, he has afforded its policies very little weight.
10. Other material considerations which the Secretary of State has taken into account include Planning Policy Statement (PPS) 1: *Delivering Sustainable Development*; PPS: *Planning and Climate Change* (supplement to PPS1); Planning Policy Guidance (PPG) note 2: *Green Belts*; PPS3: *Housing*; PPS5: *Planning for the Historic Environment*; PPS7: *Sustainable Development in Rural Areas*; PPS9: *Biodiversity & Geological Conservation*; PPG13: *Transport*;

PPS25: *Development & Flood Risk*; Circular 11/95: *The Use of Conditions in Planning Permission*; Circular 05/05: *Planning Obligations*; Circular 6/2005: *Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System*; the *Community Infrastructure Levy (CIL) Regulations*, which came into force on 6 April 2010; the *Conservation of Habitats and Species Regulations*, which came into force on 1 April 2010, the adopted Supplementary Planning Guidance documents referred to by the Inspector at IR57 – 58, and the Good Practice Guidelines referred to at IR60.

### **Main issues**

11. The Secretary of State considers that the main issues in this case are those listed by the Inspector at IR375.

### **Whether the principle of development accords with adopted and emerging planning policies**

12. As explained at paragraph 6 above, the Secretary of State had had no regard to RPG10, or the Inspector's analysis of the scheme's compliance with it. He has taken account of the Inspector's comments at IR377 and agrees with her that the current Green Belt (GB) boundary is as set out in the SP, and that policies 1 and 2 of the SP directs development to the main urban areas. The Secretary of State agrees with the Inspector's reasoning and conclusions, as set out at IR378 - 380 on whether the principle of development accords with policies in the SP and LP. Whilst the Inspector attributed considerable weight to the emerging RSS (IR385), as set out at paragraph 6 above, the Secretary of State has had no regard to this document. In relation to the CSCD, the Secretary of State has had regard to IR389 – 390, although he considers that those considerations now attract very little weight. Having taken account of the relevant considerations set out at IR391 – 398, the Secretary of State agrees with the Inspector that the appeal scheme is contrary to the relevant policies and provisions of the development plan, including policy 2 of the SP and policies GDP/1 and H1 of the LP (IR401). He further agrees that the appeal is for development in the countryside, outside of any settlement boundary, and contrary to national and local policies (IR401). With regard to the scheme's location within the GB, the Secretary of State has gone on to consider this matter in the paragraphs below.

### **The effect on the Green Belt**

13. The Secretary of State has had regard to the Inspector's reasoning and conclusions, as set out at IR402 – 409, with respect to the effect of the proposal on the GB. He agrees that the proposal would be inappropriate development in the GB which is, by definition, harmful (IR402). For the reason given at IR403, the Secretary of State shares the view of the Inspector that the scheme would significantly diminish the existing sense of openness and thus cause harm to the most important attribute of the GB. With respect to the harm to the purposes of including land in the GB, he agrees that the proposal would encroach into the countryside, that it would not check urban sprawl, and that it would not assist in urban regeneration (IR404). He has gone on to consider the scheme's compliance with LP, SP and national policies below.

#### The effect on the character and appearance of the area

14. The Secretary of State agrees with the Inspector's reasoning and conclusions with regard to the effect of the proposed scheme on the character and appearance of the area, as set out at IR410 – 415. Setting aside his other objections to the scheme, the Secretary of State agrees with the Inspector that the appeal proposal establishes principles that could be developed to form an acceptable scheme that would not materially harm the character and appearance of the area, in accord with national and local policies (IR415).

#### The impact of the development on the highway network

15. The Secretary of State agrees with the Inspector's reasoning and conclusions, as set out at IR416 – 422, with respect to the impact of the development on the highway network. Like the Inspector, he concludes that in the absence of evidence that the appeal scheme would have an unacceptable impact on the highway network either around the site or further afield or that it would give rise to conditions of highway danger, this is not a matter that weighs against the appeal proposal (IR422).

#### Whether the development would be accessible to a range of travel modes and would promote sustainable transport choices

16. The Secretary of State agrees with the Inspector's reasoning and conclusions in respect of whether the development would be accessible to a range of travel modes and would promote sustainable transport choices (IR423 – 431). He agrees that whilst the Travel Plan and the support for new bus services would encourage sustainable travel choices and promote a range of travel modes, they are designed to overcome the 'local' effects of the development and cannot transform Failand into a suitable location for a sustainable urban extension as argued by the appellants (IR431). In that the development would not reduce the need to travel and would continue to contribute to out commuting, the Secretary of State agrees that it would not comply with PPS3 and PPG13, with saved SP Policy 2, and with the requirements of LP policies GDP/1 and H/1 (IR431). He also agrees with the Inspector at IR425, that the scheme would conflict with LP policy H/7.

#### Whether a sustainable community would be delivered

17. The Secretary of State agrees with the Inspector's reasoning and conclusions, as set out at IR433 – 438, with regard to whether the proposed development would deliver a sustainable community. He agrees that in some respects the appeal proposal would go some way towards delivering a sustainable community in that it would deliver a good mix in terms of house size, type and tenure and be socially inclusive (IR438). However, he also agrees that in physical terms, the development would double the size of Failand yet it would add little by way of facilities to have a meaningful impact on the current function and character of the settlement (IR438). Like the Inspector, the Secretary of State considers that Failand would be substantially larger but would remain a dormitory settlement where residents are heavily reliant on the private car, contrary to the objectives of

LP policy H/1 and the objectives of national policy, including guidance in PPS3 and PPG13.

The impact on habitat protection, protected species and biodiversity

18. The Secretary of State has considered the impact of the proposal on habitat protection, protected species, and biodiversity and agrees with the Inspector's reasoning and conclusions as set out at IR439 – 470. He agrees that the appeal proposal would be unlikely to have a significant effect on the internationally important interest features of the North Somerset and Mendip Bats SAC or on those of the Avon Gorge Woodlands SAC (IR470). He is not satisfied that the development would harm the European protected bats that currently use the site (IR470). Like the Inspector, he finds no conflict with the objectives of PPS9 or LP policies ECH10, ECH11 and ECH12 (IR470).

Whether harm to the Green Belt and any other harm would be clearly outweighed by other considerations

19. The Secretary of State has concluded (at paragraph 13 above) that the appeal proposal is inappropriate development in the GB which is, by definition, harmful. The Secretary of State attaches substantial weight to this harm. The Secretary of State has also concluded that the scheme would significantly diminish the existing sense of openness and thus cause harm to the most important attribute of the GB, and that it would harm three of the purposes of including land within the GB (paragraph 13 above). In addition, the Secretary of State has concluded that the scheme is located in the countryside, outside of any settlement boundary. It would not reduce the need to travel, and would contribute to out commuting, with Failand remaining a dormitory settlement, with residents heavily reliant on the private car. The scheme would thereby conflict with LP, SP and national policies (paragraphs 12, 16 and 17 above). The Secretary of State considers that, cumulatively, these matters amount to very weighty set of objections weighing against the appeal scheme

20. Like the Inspector, the Secretary of State has considered, in turn, each of the twelve considerations put forward by the appellants in favour of the appeal proposals (IR486 – 498). Matters (a) and (b) relate to requirements set out in the revoked RPG10 and the draft revised RSS, and the Secretary of State affords them no weight (IR487 – 488). He agrees that matter (c) is one which lends very minimal weight in favour of the appeal scheme (IR489). He considers that matters (d), (e) and (f) relate largely to requirements set out in the emerging RSS, and he attributes no weight to them in his determination of the appeal proposal (IR490 – 492). Matter (g) relates to the provision of 35% affordable housing which exceeds the 30% provision sought by the LP and is a matter to which the Secretary of State assigns significant weight in support of the proposal (IR493). With regard to matter (h) (IR494), the Secretary of State acknowledges that, notwithstanding his revocation of Regional Strategies, the proposal would make some contribution to Bristol's role as an economic centre. However, for the reasons given by the Inspector (IR494), he attaches only minimal weight to this benefit. He agrees with the Inspector, for the reason she gives, that matters (i) and (j) weigh in favour of the appeal proposal (IR495 – 496). For the reasons given by the Inspector, in respect of matter (k), the Secretary of State fails to see

how the key attributes of the GB would be maintained by the proposed development (IR497). With respect to matter (l) (IR498), the Secretary of State deals below with the issue of whether very special circumstances exist in this case.

21. The Secretary of State agrees with the Inspector that the factors set out at IR499 weigh in favour of the appeal development. With regard to the matters considered by the Inspector at IR500 - 501, the Secretary of State draws no conclusion as to whether, following his revocation of Regional Strategies, a five year housing land supply exists in North Somerset. However, he agrees with the Inspector, for the reasons she gives, that the lack of a 5 year housing supply in this particular case would not add weight in favour of the proposal (IR501).
22. The Secretary of State has had regard to the advice in PPG2 that states that substantial weight will attach to the harm to the GB and that very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations (IR504). He has concluded that the harm to the GB and the other harm which the scheme would cause amount to a very weighty set of objections. In contrast he has found the benefits offered by the appeal scheme, both individually and cumulatively, to be relatively modest. In common with the Inspector, the Secretary of State concludes that those benefits would be insufficient to clearly outweigh the harm that would be caused and very special circumstances do not exist in this case (IR506). Given this conclusion, the Secretary of State also concludes that the proposal to develop this GB site is in conflict with LP policy RD/3, SP policies 2 and 16, and with national policy in PPG2.

#### Conditions & Planning Obligation

23. The Secretary of State has had regard to the suggested and revised planning conditions, and the Inspector's assessment of these, as set out at Annex A of the IR, the list of recommended planning conditions at Annex B of the IR and the policy tests in Circular 11/95. He agrees with the Inspector that the conditions set out in Annex B are reasonable and necessary and comply with the provisions of Circular 11/95. However, he does not consider that they overcome his reasons for dismissing the appeal.
24. The Secretary of State has had regard to the planning obligation as executed by the appellant and made by Unilateral Undertaking under s106 of the Town and Country Planning Act 1990, the CIL Regulations 2010, and Circular 05/2005. He agrees with the Inspector's assessment of the undertaking as set out at IR472 – 481 and is satisfied that the obligations within the unilateral undertaking comply with the tests in set out in Regulation 122 (2) of the CIL regulations (IR473), and that they are lawful and comply with the policy tests in Circular 05/2005 (IR481). However, he does not consider that the provisions in the undertaking would overcome his reasons for dismissing the appeal.

## **Overall Conclusions**

25. The Secretary of State has concluded that the benefits offered by the appeal scheme, taken either individually or cumulatively, would not clearly outweigh the harm to the GB, and that there are no very special circumstances in this case that would justify inappropriate development in the GB. He has found that the scheme would conflict with national policies and with policies set out in the LP and SP. He concludes that there are no material considerations of sufficient weight which require him to determine the application other than in accordance with the development plan.

## **Formal Decision**

26. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses this appeal and refuses planning permission for residential development of up to 500 dwellings, 60 no. C2 residential apartments with care for persons aged 60 or over, single form entry primary school, B1 employment space, convenience store, doctor's surgery / consulting rooms, public open space, landscaping, highway and associated infrastructure works at land east of Failand, Failand, North Somerset in accordance with application ref 09/P/1486/O dated 17 August 2009.

## **Right to challenge the decision**

27. 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.

28. A copy of this letter has been sent to North Somerset District Council and all parties who appeared at the inquiry.

Yours faithfully

**Christine Symes**

Authorised by Secretary of State to sign in that behalf