

Report of the Chief Planning Officer -

CITY PLANS PANEL

Date: 26th March 2015

Subject: Appeal decision from the Secretary of State for the appeal lodged by Thornhill Estates against the non determination of Application 12/04046/OT Outline application for Residential Development on land at Calverley Lane / Bagley Lane, Farsley.

APPLICANT
Thornhill Estates

DATE VALID
06.08.2012

TARGET DATE
05.05.2012

Electoral Wards Affected:

Calverley and Farsley

☐ Yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

☐

Community Cohesion

☐

Narrowing the Gap

☐

RECOMMENDATION

The appeal was dismissed by the Secretary of State who agreed with the recommendation of the Planning Inspector that following the reopened Inquiry on November 2014 that the appeal should be dismissed and Outline planning permission refused. The Secretary of State's decision letter is appended to this report.

Members are advised that the appeal decision establishes the most up to date external review of the Council's 5 Year Housing Land Supply position. The Secretary of State advises the Council that he considers it has a supply of housing land able to provide around 26,500 dwellings for the 5 year supply period between April 2012 and 2019. The Secretary of State has agreed with the Council that it does have a 5 year supply of land as required by the NPPF and that it has an up to date Core Strategy. The required supply figure is 24,440 which includes the requirement for a 5% buffer and takes account of under delivery of housing in the last 2 years since the last 5 year supply requirement was published. Therefore the Council has around 2000 units in excess of the required 24,440 units.

1.0 INTRODUCTION

- 1.1 An outline planning application for residential development of up to 400 dwellings on a Protected Area of Search (PAS) site was submitted to the council on 21st September 2012. The applicant appealed against non-determination of the application on 25th June 2013 on the grounds of the Council failed to give notice of its decision within the appropriate period on an application for permission or approval. The City Plans Panel report of the 1st August 2013 established what decision Plans Panel would have made if they had been in a position to determine the application.
- 1.2 Members may recall that the Council put forward 3 separate reasons for refusal, firstly that the Council had a 5 year housing land supply, secondly that the development proposals in the absence of off site highways infrastructure to provide cycle access to schools and New Pudsey train station was located in an unsustainable location and thirdly that the applicant had not submitted a completed Section 106 Agreement to provide affordable housing, greenspace, education and public transport contributions. By the time of the appeal the second and third reasons for refusal had been addressed by the appellant and the Council's case focused on the Housing Land Supply argument.
- 1.3 Members should note that a residents group along with Councillor Carter and Councillor Wood; Farsley Residents Action Group (FRAG) took part in the appeal process and presented evidence at the Inquiry on a wide range of considerations, including ecology, village character and highways and drainage in addition to supporting the Council's position on housing land supply.
- 1.4 The appeal was recovered for the Secretary of State's (SoS) determination on 4 July 2013 because the appeal involves proposals for residential development over 150 units or on sites of over 5 ha, 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.
- 1.5 The Public Inquiry into the appeal was held on the 19-22nd November in Pudsey Civic Hall and then again on 28-29th November 2013 at Leeds Civic Hall. Following the initial close of the inquiry on 29 November, the Secretary of State wrote to the parties on 14 March 2014 seeking comments on the publication of the Planning Practice Guidance and again on 14 April 2014 affording an opportunity to comment on habitats issues which had been brought to his attention after the inquiry had closed. In the light of these comments, the Secretary of State then decided that the most appropriate way forward would be to reopen the inquiry. The Inquiry was reconvened on the 11th November 2014 for a further 4 consecutive days at Leeds Civic Hall.
- 1.6 Members may recall that the Outline application related to new residential development on a 17.8 ha site designated as a Protected Area of Search (PAS) in the Unitary Development Plan Review UDPR (2006-2014). Such sites were designated under policy N34 of the UDPR and are intended to ensure the long term endurance of the Green Belt and to provide for long term development needs if required. Members should note that following the adoption of the Core Strategy in November 2014 the Secretary of State agreed to the 'saving' of certain UDPR policies that would then accompany the Core Strategy and form part of the adopted Local Plan for Leeds. UDPR policy N34 is a saved policy in this regard.

- 1.7 Members may recall that the application was recommended for refusal and key considerations in reaching this recommendation were matters of housing land supply, sustainability and prematurity vis-à-vis preparation of the Site Allocations Plan. Whilst the City Council considered at the time of the August 2013 City Plans Panel meeting that it had an appropriate housing supply to meet the requirements of planning policy, the now withdrawn Interim Policy had been designed to facilitate the release of some PAS sites to strengthen the supply of achievable housing. The role of the Interim Policy was discussed in depth during the Inquiry and also in the conclusion of the Planning Inspector and Secretary of State. The findings will be discussed in this report below.
- 1.8 The Secretary of State considered that the main issues with the appeal were:
- a. whether there is a five year supply of housing land;
 - b. the release of the appeal site in the context of the spatial strategy for Leeds;
 - c. whether the development would be likely to result in harm to bats as a protected species; and
 - d. the sustainability of the appeal scheme and its impact on local character and identity.
- 1.9 Members should note that the recommendation to the SoS from the Planning Inspector after the closing of the Inquiry at the end of November 2013 was that the appeal should be allowed and Outline Planning Permission granted. At the time of writing his recommendation to the SoS in January 2014 the Inspector was of the opinion that the Council could not demonstrate a 5 year housing land supply in accordance with Paragraph 47 of the NPPF and that it did not have an up to date Core Strategy, therefore he applied the tests of paragraph 14 of the NPPF about the presumption to grant planning permission for sustainable development and considered that paragraph 49 of the NPPF came into effect. The SoS contacted the appeal parties to request their comments on the publication of updated guidance to accompany the NPPF in March 2014 and also to comment on the additional habitats information that have become apparent after the closing of the Inquiry in November 2013. The information that was supplied by the appeal parties led to a need to reopen the Inquiry to consider the new evidence. By the time the Inquiry was reconvened the Council was able to inform the SoS that it had adopted its Core Strategy. This is identified by the Planning Inspector in his second report to the SoS as a significant change in material planning circumstances, particularly in relation to the Core Strategy having been found sound at examination with regards to the 'step up' in housing delivery numbers.
- 1.10 The Planning Inspector recommended that the appeal be dismissed in light of the additional evidence presented to the reconvened Inquiry in November 2014. Although the issue around whether the site accommodated bat roosts was explored in the reconvened Inquiry and there is a possibility that a bat roost could exist on the site, as the appeal was in Outline, and there were no proposals to remove trees the Inspector was satisfied that he knew enough to allow him to recommend planning conditions to adequately cover any impacts on bats should the appeal have been allowed. The SoS agreed with this stance.
- 1.11 The SoS endorsed the Inspectors view which was promoted at the first sitting of the Inquiry by FRAG that the development of the site would harm the local character of the area and cause harm to the setting of the adjacent Farsley Conservation Area. Although the harm to the Conservation Area would have been 'less than substantial' the loss of the intrinsic value of the fields to the character and appearance of the area

would have been harmful. The Planning Inspector in his first recommendation to the SoS noted that the harm to local character would not outweigh the need to provide more housing as the Council had failed to demonstrate a 5 year housing land supply at the time he wrote his first report.

- 1.12 The main reasons for the SoS deciding to dismiss the appeal was the ability of the Council in November 2014 to demonstrate that it could provide a 5 year housing land supply. This was also coupled with the adoption of the Core Strategy (which was up to date in relation to the NPPF) along with evidence on completions, city centre/inner area viability, regeneration, empties and other sources of supply.
- 1.13 The Inspector considered that on the basis of housing delivery in Leeds exceeding targets for the first four of the last 10 years, a persistent under delivery of housing has not been proven as such the Council has had a 5% buffer applied to its housing delivery requirement rather than 20% which the NPPF states must be applied to those Authorities that are proven to have persistently under delivered. The five year housing requirement comprises about 24,440 dwellings which includes the under supply since April 2012 made up in this period and the application of a 5% buffer to both the base requirement and the under supply.
- 1.14 The Inspector considered that an overall supply figure of about 26,500 homes would be reasonable taking into account the Council's figure submitted during the Inquiry and in the intervening periods, adjusted to remove some empty homes and older persons housing and the totality of the contribution from prior approvals and student housing which he considered had not been properly evidenced during the Inquiry. The Inspector noted that this supply figure also allows flexibility on top of the 5% buffer so some under delivery on city centre and inner area sites (where the viability was questionable and the lack of developer interest might struggle to deliver the entire number of units the Council has identified in its 5 year supply) and lower build rates on prime sites such as Kirkstall Forge would not necessarily be fatal to the delivery of sufficient new homes.
- 1.15 The Inspector reasoned that overall the proposal remained contrary to Leeds UDP Policy N34 which is still a 'saved' policy post adoption of the CS. There would be adverse impacts on local character and identity, including less than substantial harm to the setting of the Farsley Conservation Area. The development is not fully compliant with the (now withdrawn) PAS Interim Policy which the Inspector identified as being a pragmatic and sensible informal policy guidance to help promote the range of housing land supply available. The Inspector concluded that granting planning permission would undermine the plan-led system promoted by the Framework at paragraph 47.
- 1.16 The Inspector supported the Council and FRAGs view that the Development was contrary to the Development Plan and that planning permission should be refused unless other material considerations indicate otherwise. The Inspector and SoS concluded that the conflict with the development plan, the starting point for decision making, and the adverse impacts on local character and identity are sufficient to outweigh the benefits of additional housing, including affordable homes. The presumption in favour of sustainable development does not apply as the proposal does not accord with the development plan.
- 1.17 The Inspector in his second report considers that the house builders view of the contribution that sites in the city centre and inner area can make to supply is too

pessimistic and that the City Council has made a reasonable assessment of the likelihood of them coming forward in the short term which is appropriate given the Core Strategy objectives. In terms of built out rates the Inspector concluded they should be based on a more optimistic but still realistic delivery than that put forward by the house builders within the policy framework set out by the Core Strategy.

- 1.18 The Inspector noted that the appellant's overall assessment indicates that SHLAA sites will deliver over 10,000 units less than the 2014 SHLAA figure. The Inspector considered that the published 2014 SHLAA is the best basis for assessing five year housing supply. Given that the Core Strategy has only just been adopted and should be given the opportunity to bed down and form the framework for housing supply, the Inspector preferred the Council's analysis as to do otherwise would undermine the chances of the Core Strategy being implemented.
- 1.19 The external recognition by the Secretary of State that the Council can demonstrate an up to date 5 year housing land supply and the importance attached to the adoption of the Core Strategy and its housing objectives are positive outcomes in the light of the appeals lodged against recent refusals of other PAS site across the city.



Department for
Communities and
Local Government

Mr Jonathan Dunbavin
ID Planning Limited
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31 King Street
Leeds
LS1 2HL

Our Ref: APP/N4720/A/13/2200640

10 March 2015

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY THORNHILL ESTATES:
BAGLEY LANE/CALVERLEY LANE, FARSLEY, LEEDS, WEST YORKSHIRE
APPLICATION REF: 12/04046/OT

1. I am directed by the Secretary of State to say that consideration has been given to the reports of the Inspector, Mark Dakeyne BA (Hons) MRTPI, who held a public local inquiry on 19 and 22 November and 28-29 November 2013 into your client's appeal against the failure of Leeds City Council (the Council) to give notice within the prescribed period of a decision on an application for outline permission for a residential development (about 400 dwellings and associated works) at Bagley Lane/Calverley Lane, Farsley, Leeds, in accordance with planning application ref: 12/04046/OT, dated 21 September 2012. This inquiry was then reopened on 11 November 2014 for four consecutive days.
2. The appeal was recovered for the Secretary of State's determination on 4 July 2013 in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals for residential development over 150 units or on sites of over 5 ha, 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, whose reports are enclosed with this letter, initially recommended that the appeal be allowed and outline permission granted but, in the light of his findings at the reopened inquiry, he subsequently recommended that it be dismissed and outline permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's final recommendation, dismisses the appeal and refuses planning permission. All paragraph numbers, unless

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otherwise stated, refer to the Inspector's reports (IR(i) for the earlier report and IR(ii) for the more recent report).

Procedural matters

4. The Secretary of State notes (IR(i)11-12) that an Environmental Statement was submitted voluntarily by the appellants and that the Inspector was satisfied at the time that it met the requirements of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The Secretary of State has also taken account of the update on environmental information referred to at IR(ii)7-9. Overall, the Secretary of State considers that sufficient information has been provided for him to assess the environmental impact of this appeal.
5. Following the initial close of the inquiry on 29 November 2013, the Secretary of State wrote to the parties on 14 March 2014 seeking comments on the publication of the Planning Practice Guidance and again on 14 April 2014 affording an opportunity to comment on habitats issues which had been brought to his attention after the inquiry had closed. In the light of these comments, the Secretary of State then decided that the most appropriate way forward would be to reopen the inquiry, as described at IR(ii)2-6. A list of the representations received is set out in an Annex to this letter, and copies can be made available on written request to the address at the foot of the first page of this letter.

Policy Considerations

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. At the time when the inquiry first opened, the development plan for Leeds comprised the Leeds Unitary Development Plan Review 2006 (LUDPR) and the Secretary of State agrees with the Inspector that the development plan policies relevant to the appeal were those identified at IR(i)17-18. Since then, Leeds have adopted their Core Strategy (CS) on 12 November 2014 (IR(ii)10). However, the Inspector points out (IR(ii)215) that the proposal remains contrary to LUDPR Policy 34 as that remains a saved policy following the adoption of the CS. Although the Council have subsequently resolved to withdraw this policy (as indicated in their letter of 11 February 2015 listed in the Annex to this letter), and the appellants have suggested in their letter of 5 February 2015 that that is an important material consideration in this case, the Secretary of State gives it little weight at this early stage in the Council's work towards preparing their Site Allocations Plan (SAP).
7. Other material considerations that the Secretary of State has taken into account include: *the National Planning Policy Framework* (the Framework) (March 2012) and the associated Guidance (March 2014); and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended.
8. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance conservation areas, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Main Issues

9. Having regard to the issues identified by the Inspector at IR(i)132 and IR(ii)182, the Secretary of State considers that the main considerations in this case are:
- a. whether there is a five year supply of housing land;
 - b. the release of the appeal site in the context of the spatial strategy for Leeds;
 - c. whether the development would be likely to result in harm to bats as a protected species; and
 - d. the sustainability of the appeal scheme and its impact on local character and identity.

Whether there is now a five year supply of housing land

10. As the appeal Inspector confirms (IR(ii)183), the CS has now been found to be sound, with a base requirement for the period from 1 April 2014 to 31 March 2019 of 20,380 dwellings – lower than his assessment at the time of the original session of the inquiry. However, as it forms the basis for an up-to-date development plan, the Secretary of State accepts it as an indisputable basis for the determination of appeals.
11. Like the Inspector, the Secretary of State has then gone on to consider the implications of the shortfall in provision against the base requirement. He agrees with the Inspector's reasoning at IR(ii)184-188, and with his conclusion at IR(ii)189, that the five year housing requirement comprises about 24,440 dwellings including the undersupply since April 2012 to be made up in this period and the application of a 5% buffer.
12. The Secretary of State has also carefully considered the Inspector's discussion on "Supply" at IR(ii)190-201 and agrees with his conclusion at IR(ii)202 that an overall supply figure of about 26,500 homes would be reasonable. The Secretary of State therefore also agrees with the Inspector's conclusion at IR(ii)203 that a supply of some 26,500 homes exceeds the requirement by just over 2,000 units, thereby indicating that a five year housing land supply can be demonstrated with scope for some flexibility. He also agrees (IR(ii)204) that the difference from the appeal Inspector's original conclusion is accounted for by the different approach accepted in the adopted CS along with evidence on completions, city centre/inner area viability, regeneration, empties and other sources of supply.

The release of the appeal site in the context of the spatial strategy for Leeds

13. The Secretary of State agrees with the Inspector with regard to the Council's spatial strategy at the time when the inquiry first opened in November 2013 (IR(i)133-135) and, like the Inspector (IR(ii)216), he recognises that the fact that a five year supply of housing has now been established in an up-to-date development plan represent a significant change in circumstances. He agrees with the Inspector that this means that paragraph 49 of the Framework does not take effect, and also agrees (IR(ii)219) that the test within paragraph 14 of the Framework does not come into play.

14. As indicated in paragraph 6 above, the Secretary of State gives little weight to the fact that the Council have indicated that they now intend to withdraw LUDPR Policy 34. The Secretary of State takes the view that, although that protects land not envisaged to be needed for development during the period covered by the housing policies of the LUDPR (IR(i)133), an intention to withdraw it does not necessarily imply that all such sites should be released immediately as there will be a number of other factors to be taken into account by the Council in preparing their SAP.

Whether the development would be likely to result in harm to bats

15. The representations received following the original close of the inquiry (as referred to at paragraph 5 above) included material from the Farsley Residents Action Group (FRAG) indicating that bats were potentially more prevalent on the appeal site than first thought, and including evidence that the site is used for roosting and by some rarer bat species (IR(ii)205). The Secretary of State therefore asked the Inspector to consider this matter as part of the reopened inquiry and, having carefully considered the Inspector's findings on this matter (IR(ii)206-208), he agrees with his conclusion at IR(ii)209 that, subject to the imposition of suitable conditions, the proposed development would be unlikely to result in harm to bats as a protected species.

Sustainability, local character and identity

16. Having carefully considered the Inspector's arguments at IR(i)144-149, the Secretary of State agrees with his conclusion at IR(i)150 that, despite some deficiencies in public transport provision and walking distances to services, the proposal would constitute a sustainable development. He also agrees that neither concerns raised relating to educational provision (IR(i)151) nor those relating to lack of health care provision (IR(i)152) would provide reasons to resist the development. Furthermore, for the reasons given at IR(i)153-160, the Secretary of State also agrees with the Inspector's conclusion at IR(i)161 that highways and drainage infrastructure would be acceptable subject to the measures proposed as part of the development.
17. However, taking account of the Inspector's comments at IR(i)163-166, the Secretary of State agrees with his conclusion at IR(i)167 that the proposal would result in an adverse impact on local character and identity and the loss of a site of intrinsic value. In coming to this conclusion, the Secretary of State has had particular regard to the desirability of preserving or enhancing the character or appearance of the Farsley Conservation Area, and gives appropriate weight to the significant change in character which the Inspector identifies.

Conditions and obligations

18. The Secretary of State has considered the Inspector's reasoning and conclusions on the proposed planning conditions at IR(i)194-197 and IR(ii)214. The Secretary of State is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, the Secretary of State does not consider that the conditions would overcome his reasons for dismissing the appeal.

19. The Secretary of State has also considered the Inspector's comments at IR(i)187-192 and IR(ii)212-213 on the proposed Obligations and is satisfied that these would meet the tests in CIL regulation 122. However, the Secretary of State does not consider that the terms of the Undertaking would overcome his reasons for dismissing the appeal. He also agrees with the Inspector at IR(i)193 that the suggestion that there should be a commitment to build the dwellings within the current five year supply period would be overly prescriptive and unreasonable.

Overall Conclusions

20. The Secretary of State is satisfied that the Council have now identified a five year supply of housing land in an up-to-date CS without the appeal site, so that the presumption in the Framework in favour of sustainable development does not apply. Furthermore, he considers that the adverse impacts on local character and identity count against the proposed scheme and considers it appropriate for the Council to proceed to identify the most sustainable sites through the preparation and adoption of their SAP.

Formal Decision

21. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's later recommendation at IR(ii)221. He hereby dismisses your client's appeal and refuses planning permission for the erection of 400 dwellings and associated works at Bagley Lane/Calverley Lane, Farsley, Leeds, in accordance with planning application ref: 12/04046/OT, dated 21 September 2012.

Right to Challenge the Decision

22. 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.

23. A copy of this letter has been sent to Leeds City Council. A notification letter/email has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

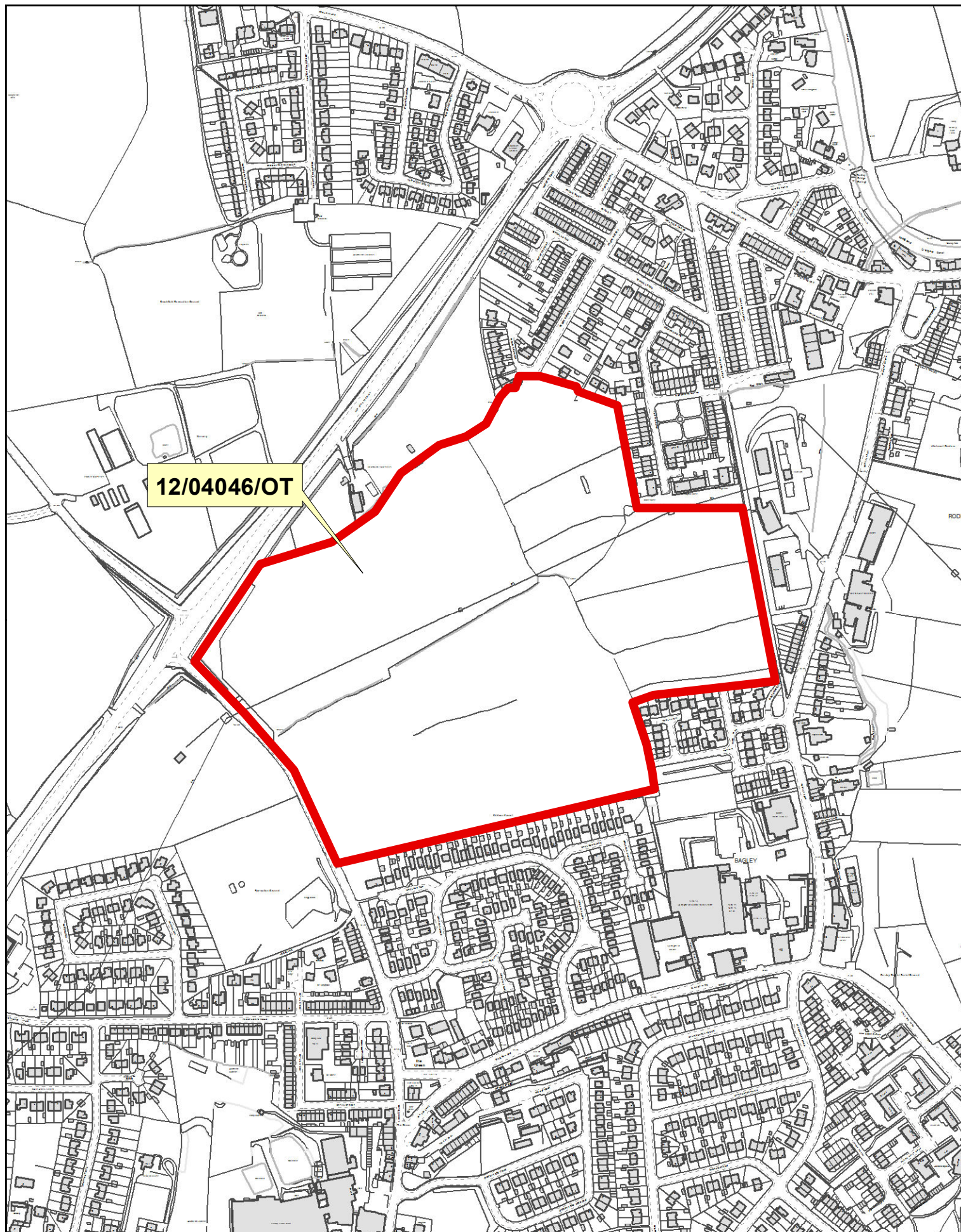
Jean Nowak

Jean Nowak

Authorised by the Secretary of State to sign in that behalf

Representations received by Secretary of State

Correspondent	Date
Cllr Andrew Carter	11/2/14; 14/3/14; 31/3/14; 9/4/14; 28/4/14
Stuart Andrew MP	14/2/14; 2/4/14; 23/6/14
ID Planning (appellants' agent)	14/2/14; 26/3/14; 7/4/14; 23/5/14; 2/6/14; 3/6/14; 13/6/14; 4/2/15; 5/2/15; 3/3/15
FRAG	31/3/14; 10/4/14; 14/5/14; 27/5/14
Leeds City Council	31/3/14; 28/4/14; 23/5/14; 30/5/14; 20/6/14; 11/2/15



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SCALE : 1/5000

