

SCHEDULE A: Applications with Recommendation

16/0362

Item No: 07

Date of Committee: 25/11/2016

Appn Ref No:
16/0362

Applicant:
Persimmon Homes
Lancashire

Parish:
Wetheral

Agent:

Ward:
Wetheral

Location: Land adjacent Alexandra Drive, Durranhill Road, Carlisle

Proposal: Variation Of Condition 22 (Roads/Occupation Of Dwellings) Of
Previously Approved Application 10/0792 (Retrospective)

Date of Receipt:
25/04/2016

Statutory Expiry Date
25/07/2016

26 Week Determination

REPORT

Case Officer: Angus Hutchinson

1. Recommendation

- 1.1 Unless the scheme is suitably revised, it is recommended that this application is refused.

2. Main Issues

- 2.1 Whether the suggested re-wording of condition 22 complies with paragraph 206 of the Framework.
- 2.2 Whether the approved/implemented housing scheme, based on the revised proposal, would amount to sustainable development.

3. Application Details

Background

- 3.1 In 1998, under application 96/0964, full planning permission was given for the erection of 82 semi, terraced and detached houses with garages. This development was carried out and can be seen on site in the form of Pasture Walk and Alexandra Drive.

- 3.2 In October 2011, following the satisfactory completion of a Section 106 Agreement, full planning permission was given under application number 10/0792 for the erection of 49 dwellings on land immediately to the north east of Alexandra Drive with access from Durranhill Road. This development is now referred to as Barley Edge. Condition 22 stipulated that:

"No dwellings hereby approved shall be occupied until the following works have been constructed and brought into full operational use:

- 1. The creation of a new pedestrian footpath along the southern side of Durranhill Road, which shall link the application site with the existing pedestrian footway on Durranhill Road; and*
- 2. The provision of a pedestrian island on Durranhill Road to the north of Pastures Walk.*

Prior to development commencing construction drawings detailing the aforementioned works shall be submitted to and approved, in writing, by the Local Planning Authority."

- 3.2 In the context that the development at Alexandria Drive had been completed, the apparent intention of condition 22 was to ensure the provision of a footpath along the south side of Durranhill Road linking Barley Edge to the playground at Alexandria Drive; and a pedestrian island opposite Durranhill Lodge to help people cross from the north side of Durranhill Road and thereby gain access to the public footpath that runs southwards under the railway bridge to Harraby.
- 3.3 In the backdrop of on-going work leading to the actual implementation of 10/0792 complications have arisen because of the restricted width of the verge along the relevant stretch on the south side of Durranhill Road. This has also been combined with the relative narrowness of Durranhill Road itself.

The Proposal

- 3.4 Subsequent discussions between the developer and the Highway Authority have led to the submission of the current application suggesting that the wording of condition 22 is revised to state:

"No dwellings hereby approved shall be occupied until the following works have been constructed and brought into full operational use:

- 1. The creation of a new pedestrian footpath along the southern side of Durranhill Road, which shall link the application site with the existing pedestrian footway on Durranhill Road, including appropriate crossing points."*

- 3.5 The application is also accompanied by a drawing which shows, amongst other things, footpath improvements along the northern side of Durranhill Road; the provision of new dropped kerb crossings; and erection of six

lighting columns.

4. Summary of Representations

4.1 This application has been advertised by means of a site notice. In response, fourteen objections have been received, which make the following points:

- That no information has been made available to justify why the existing requirements (of Condition 22 of 10/0792) have not been met and justification as to why it is necessary to amend the condition;
- At the time of granting the approval for 49 dwellings at Barley Edge, it was considered that Condition 22 met the six tests, implying that such provision was necessary to make the development acceptable;
- The Proposed Plan (A062781-C005) indicates that instead of providing a footpath link of the southern side of Durranhill Road, alterations will be made to existing footway provision on the Northern side of Durranhill Road. However, this is subject to land ownership meaning that the proposals put forward may not be capable of implementation in any case;
- The inclusion of dropped kerb crossing points is welcomed however these do not adequately address the concerns of local residents regarding safe pedestrian movement between the various housing sites, school, facilities and local open space provision. Given the current context, and firm proposals for future development in the area the provision of necessary infrastructure is of paramount importance, further development along Durranhill Road will only further exacerbate existing problems with regards to safe and accessible pedestrian access in around the development site;
- Saved Policy CP16, contained within the Carlisle Local Plan 2001-16, clearly states that “priority should be given to the provision for safe and convenient pedestrian and cycle access” and that the proposals as submitted are contrary to this policy as they will not provide a safe and convenient access for pedestrians;
- The Emerging Local Plan also contains policies designed to promote safe pedestrian movement, Policy IP2 states that “New development that will be accessible to the public will be required to prioritise safe and convenient access for cyclists and pedestrians and to take opportunities to contribute to the creation and enhancement of an integrated and continuous sustainable transport network”;

5. Summary of Consultation Responses

Cumbria County Council - (Econ. Dir. Highways & Transportation): - Having viewed the submitted documentation we have concerns that the proposed variation of the footpath may have road safety implications and are therefore investigating whether other alternatives are available which may result in the footpath being constructed on the original alignment. The Highway Authority

would recommend that the application be deferred.

Clerk to Wetheral PC: - No observations.

6. Officer's Report

Assessment

- 6.1 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 a local level, the development plan comprises the recently adopted Carlisle District Local Plan 2015 - 2030 (CDLP 2015-2030) of which the relevant policies comprise SP6, SP9 and IP2. Criterion 5 of Policy SP6 ("Securing Good Design") requires all components of a proposal, inclusive of new connections, are accessible and inclusive to everyone, safe and well related to one another. Policy SP9 encourages all development to create inclusive environments that support people in making healthy choices. Policy IP2 ("Transport and Development") states that all new development must demonstrate/provide convenient access. In the case of IP2 criterion 4 reads:

"the site will safely and conveniently connect to public and green transport routes and contributes to creating a multifunctional and integrated green infrastructure network."

- 6.2 At a national level, other material considerations include the National Planning Policy Framework, March 2012 (the Framework/NPPF); Planning Practice Guidance (April 2014); the requirements of the public sector equality duty under Section 149 of the Equality Act 2010; the Design Manual for Roads and Bridges TD 91/05 "Provision for Non-Motorised Users"; The Manual for Streets (DfT, 2007); and the "Guidelines for Public Transport In Developments" (1999) and "Reducing Mobility Handicaps" (1991) both prepared by the Chartered Institution of Highways & Transport CIHT).
- 6.3 In relation to the CDLP 2015-2030 paragraph 215 of the NPPF highlights that due weight should be given to policies in such existing development plans according to their degree of consistency with the Framework. Paragraph 216 explains the weight that can be afforded to the policies of emerging plans.
- 6.4 Paragraph 6 confirms that the policies set out in paragraphs 8 to 219 of the Framework, taken as a whole, constitute the meaning of sustainable development. Paragraph 7 identifies three dimensions to sustainable development, namely: economic; social; and environmental. The social role including the creation of a high quality built environment with accessible local services. Paragraph 9 goes on to explain that pursuing sustainable development involves seeking positive improvements in the quality of the built environment as well as in people's quality of life including improving the conditions in which people live, work, travel and take leisure.

- 6.5 Paragraph 17 of the Framework identifies 12 core planning principles including planning actively managing patterns of growth *"to make the fullest possible use of public transport, walking and cycling..."*. Paragraph 29 emphasises that the transport system should be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. Paragraph 35 goes on to say that developments should have access to high quality public transport facilities and consider the needs of people with disabilities by all modes of transport.
- 6.6 Paragraph 206 of the Framework explains that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other aspects. These six tests are re-iterated in the Planning Practice Guidance (PPG). Paragraph 004 of the PPG highlights the following key considerations for each of the tests:
- i) **Necessary** - Will it be appropriate to refuse planning permission without the requirements imposed by the condition? A condition must not be imposed unless there is a definite planning reason for it, i.e. it is needed to make the development acceptable in planning terms. If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.
 - ii) **Relevant to planning** - Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?
 - iii) **Relevant to the development to be permitted** - Does the condition fairly and reasonably relate to the development to be permitted? It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted. A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.
 - iv) **Enforceable** - Would it be practicably possible to enforce the condition? Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control.
 - v) **Precise** - Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it?
 - vi) **Reasonable in all other respects** - Is the condition reasonable? Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness. Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable.
- 6.7 Paragraph 215 of the NPPF highlights that due weight should be given to the relevant policies in existing Plans according to their degree of consistency with the NPPF (the closer the policies in the Plan to the policies in the Framework, the greater the weight that may be given). Paragraph 216 of the National Planning Policy Framework identifies that:

“From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”.*

The CDLP 2015-2030 was adopted on the 8th November 2016 and therefore its policies carry full weight.

6.8 Section 149(1) of the Equality Act 2010 establishes a duty to have due regard to three identified needs in the delivery of public services and the exercise of public powers, namely:

- a) to eliminate discrimination, harassment, victimisation etc;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics include age, gender, disability and race.

6.9 When assessing this application the two main issues revolve around:

1. whether the suggested re-wording of condition 22 complies with paragraph 206 of the Framework; and
2. whether the approved/implemented housing scheme, based on the revised proposal, would amount to sustainable development with particular reference to the effect on accessibility

Condition 22

6.10 On the matter of the suggested wording, it is apparent that the development at Barley Edge has been completed with the dwellings occupied. Furthermore, the suggested re-wording refers to a new pedestrian footpath along the southern side of Durranhill Road, whereas the submitted plan shows the new sections of footway to be on the northern side of Durranhill Road; and indicates including *“where appropriate crossing points”*. On this basis, serious doubts exist over whether the suggested condition can be considered to be enforceable, precise or reasonable. The more appropriate alternative would be for the condition to state what work is to be undertaken and for compliance to be achieved within a stated time period.

Accessibility

- 6.11 The Framework encourages the location of development where the need for travel will be minimised and the use of sustainable transport modes can be maximised (paragraph 34). The Framework goes on to explain that developments should be located and where practical to give priority to pedestrian and cycle movements, and have access to high quality public transport facilities. Furthermore, the NPPF states that *"...key facilities such as primary schools and local shops should be located within walking distance of most properties."* (paragraph 38)
- 6.12 The Design Manual for Roads and Bridges (DMRB) TD 91/05 "Provision for Non-Motorised Users" states in paragraph 2.3 that *"walking is used to access a wide variety of destinations including educational facilities, shops and places of work, normally within a range of up to 2 miles. Walking and rambling can also be undertaken as a leisure activity, often over longer distances"*.
- 6.13 The potential for pedestrian use was supported by The Manual for Streets (DfT, 2007), for example Section 4.4.1 states that *"walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes (up to 800m) walking distance of residential areas"*. However, it is also noted that this is not an upper limit and that *"walking offers the greatest potential to replace short car trips, particularly those under 2km"*.
- 6.14 The CIHT (1999) guidelines, when discussing "Developments Served By New Bus Services Or Diversions From Existing Services" and "Bus Stop And Car Park Locations" considers that the walking distance to a bus stop should not exceed 400 metres and preferably no more than 300 metres. Table 2 (page 26) of the CIHT (1991) guideline recommends that for wheelchair users and the visually impaired the recommended distance from a bus stop to the furthest desired destination should be no more than 150 metres; for stick users the respective distance should be 50 metres; and for those that are ambulatory without a walking aid, the distance is 100 metres.
- 6.15 In effect walking and cycling are the most sustainable modes of transport and their encouragement not only reduces the overall vehicular travel demand but also has major health benefits. As well as replacing short journeys by car, walking (and cycling) can be part of a longer journey by public transport. It is recognised that there is no guaranteed method of predicting how the occupiers or visitors will choose to travel. Similarly, the attractiveness or otherwise of public transport will depend to a large degree on matters, such as timetabling, which are outside the control of the planning system.
- 6.16 When considering walking and the current application, it is evident that the neighbouring development at Alexandra Drive has a play area with a footpath/cycle link under the Carlisle/Newcastle railway line to Keenan Park Playing Fields, the temporary site for Newman School, Pennine Way Primary School, and the Harraby Campus. The approximate distances being 130 metres to Keenan Park; 340 metres to Newman School, and 540 metres to the Harraby Campus. The Alexandra Drive development also benefits from

good pedestrian connectivity to Durranhill Industrial Estate via Eastern Way. Rosehill Industrial Estate and Scotby Primary School are respectively 700 metres and 1.4 km to the west of Alexandra Drive.

- 6.17 In this context, the currently proposed solution would involve the residents of Barley Edge crossing Durranhill Road, walking along the proposed length of footway, and then crossing Durranhill Road again to access the playground at Alexandra Drive and the footpath/cycle link to Keenan Park, Newman School, and the Harraby Campus as well as the pedestrian links leading to Durranhill Industrial Estate. Whilst the additional distance involved, when compared to having a footway on the south side of Durranhill Road, is relatively minor the prospect of having to cross the same (relatively busy) road would not be convenient for either able bodied pedestrians or disabled people. In addition, it would raise perceptions, if nothing else, on the safety of such a route particularly for children. In effect there are concerns that the currently proposed scheme does not represent an effective solution because it would hamper the choice for residents at Barley Edge to walk to local facilities and thereby involve a greater reliance on the use of private cars.
- 6.18 When considering access to public transport, Members should note that the Barley Edge development is directly served by a bus stop on Durranhill Road.
- 6.19 In overall terms, it is considered that the current proposal involves a footway route that is not convenient for either able bodied pedestrians or disabled people and, therefore, does not represent an effective solution because it would hamper the choice for residents at Barley Edge to walk to local facilities and thereby involve a greater reliance on the use of private cars. The proposal is therefore contrary to the underlying objectives of criteria 1, 2, 4 and 5 of Policy IP2, criterion 5 of SP6, and criteria 1 and 2 of Policy SP9 of the CDLP 2015 - 2030; and the social role of sustainable development as set out in paragraph 7 of the NPPF.

Conclusion/Planning Balance

- 6.20 Paragraph 14 of the Framework says that at its heart there is a presumption in favour of sustainable development. Paragraph 7 identifies the three dimensions to sustainable development: economic, social and environmental. The three roles being mutually dependent and should not be taken in isolation (paragraph 8).
- 6.21 In relation to the economic role, the applicant has not argued that the provision of the pavement as originally intended would be likely to have significant financial implications for it. In effect the economic benefits of the proposal largely remain. The environmental implications of the development (outside of transport related issues) remain unchanged.
- 6.22 When considering the social role of sustainable development, it is considered that the currently proposed scheme would demonstrably hamper the choice to use a more sustainable form of transport for the majority of the households at Barley Edge such that residents would have a greater reliance on private

cars. The proposal is therefore contrary to the underlying objectives of criteria 1, 2, 4 and 5 of Policy IP2, criterion 5 of SP6, and criteria 1 and 2 of Policy SP9 of the CDLP 2015 - 2030 and the social role of sustainable development as set out in paragraph 7 of the NPPF. Furthermore, it is considered that the proposed re-wording of condition 22 does not comply with the provisions of paragraph 206 of the Framework.

- 6.23 At the time of preparing the report, discussions are on-going with the respective parties to continue to try and resolve matters. This is in the context that the application was submitted in April 2016.

7. Planning History

- 7.1 In October 2011, following the satisfactory completion of a Section 106 Agreement, full planning permission was given under application number 10/0792 for the erection of 49 dwellings.

8. Recommendation: Refuse Permission

1. **Reason:** The proposal involves a footway route that is not convenient for either able bodied pedestrians or disabled people and therefore does not represent an effective solution because it would hamper the choice for residents at Barley Edge to walk to local facilities and thereby involve a greater reliance on the use of private cars. The proposal is therefore contrary to the underlying objectives of criteria 1, 2, 4 and 5 of Policy IP2, criterion 5 of SP6, and criteria 1 and 2 of Policy SP9 of the Carlisle District Local Plan 2015 - 2030; and the social role of sustainable development as set out in paragraph 7 of the National Planning Policy Framework.
 2. **Reason:** The suggested re-wording of condition 22 fails to meet the tests as identified in paragraph 206 of the National Planning Policy Framework.
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Drawing Title: OFFSITE HIGHWAYS WORKS

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