

the front leading onto the Harker to Rockcliffe road. Further to the west and adjacent to the application site, are five recently constructed detached properties

Background

- 3.2 Planning permission was granted in 2015 for residential development. Various planning applications followed for the development of the land including that submitted in 2018 for the “Erection Of 5no. Detached Dwellings With Associated Access And Landscaping (Revised Application).” This was subject to condition 6 which reads:

“A 2m wide footway shall be provided that links continuously and conveniently to the nearest existing footway.

The whole of each access area bounded by the carriageway edge, entrance gates and the splays shall be constructed and drained to the specification of the Local Planning Authority in consultation with the Highway Authority.

Reason: *In the interests of road safety. To support Local Transport Plan Policies LD5, LD7 and LD8.”*

- 3.3 An application for the removal of conditions subsequently submitted for the removal of conditions 3 (provision of footway) and 6 (land drainage/ ordinary watercourse consent) relating to previously approved permission 16/0315 (application reference ref 16/1025). The removal of condition 6 was approved; however, the removal of condition 3 was refused as it was considered that the non-provision of a public footpath to serve the development would demonstrably hamper the choice for residents (including able bodied and disabled persons) to walk to local facilities providing a safe access to the existing public transport system and thereby involve a greater reliance on the use of private cars.
- 3.4 Subsequently, an application was submitted in 2018 under application reference 18/0980 which sought permission for the “*Erection Of 5no. Detached Dwellings With Associated Access And Landscaping Without Compliance With Condition 6 Of Previously Approved Application 18/0446 Which Will Be Varied To Remove The Requirement For The Public Footpath*”. The application was approved on 1st April 2019.
- 3.5 Planning permission was first granted for the development of this application site in 2016 when outline planning permission was granted. This permission was subject to condition 7 which required the same provision of a footpath as required by the condition for the adjacent land. This was carried through to subject applications for full planning permission with application 20/0868 being implemented and condition 12 of that application requiring the footpath. Since then, as outlined in the preceding paragraph, the condition on the adjacent land has been removed.

The Proposal

- 3.6 Planning permission is sought to remove the planning condition requiring the provision of a footway which will link continuously and conveniently to the nearest footway from the application site.

4. Summary of Representations

- 4.1 This application has been advertised by means of a site notice, a press notice and direct notification to the occupiers of seven properties. In response, no representations have been received.

5. Summary of Consultation Responses

Rockcliffe Parish Council: - with reference to the removal of Condition 12; connection of footpaths to an existing footpath, the applicant has stated there currently is no footpath to connect to. Rockcliffe Parish Council have, on numerous occasions stated the lack of footpaths within the parish making it difficult for pedestrians to access the parish hub i.e. community centre, church and pub. For the purpose of parity omitting the footpath would exacerbate the problem with safe pedestrian routes, not attempt to ameliorate it.

The parish is growing, the amount of vehicular traffic is increasing, the likelihood of increased commercial traffic is very real. The developer should include a footpath and terminate it where future footpaths would link to it. Someone has to make a start somewhere.

The parish council are of the opinion that all current and future developments should take into account the necessity for safe pedestrian access and egress within the parish.

To that end the parish council cannot support the application to remove condition 12 as it would send the wrong message to future developments and set a dangerous precedent;

Cumbria County Council - (Highways & Lead Local Flood Authority): - response awaited.

6. Officer's Report

Assessment

- 6.1 Section 70(2) of the Town and Country Planning Act 1990/ 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.
- 6.2 The Development Plan for the purposes of the determination of this application is The National Planning Policy Framework (NPPF) and the Planning Practice Guidance (NPPG) are material planning considerations in

the determination of this application together with the Carlisle District Local Plan 2015-2030 from which Policies SP6, SP9, HO2 and IP2 are of particular relevance. The proposal raises the following planning issues.

1. Whether The Principle Of Development Is Acceptable And Whether Condition 12 Meets The Requirements Of The NPPF And The NPPG

- 6.3 Paragraph 3 of the NPPF confirms that the policies set out in the Framework shall be taken as a whole. Paragraph 10 of the NPPF states that at the heart of framework is a presumption in favour of sustainable development. Paragraph 8 identifies the three dimensions to sustainable development: economic, social and environmental. The three roles being mutually dependent and should not be taken in isolation. The social role includes the creation of a well designed and safe built environment with accessible services. Paragraph 9 goes onto confirm that the objectives should be delivered through the application of policies in the framework; they are not criteria against which every decision can or should be judged. Planning decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.
- 6.4 Two of the key objectives of the NPPF is to promote healthy and safe communities, and, to promote sustainable transport. Paragraph 110 of the NPPF confirms that when assessing specific applications for development it should be ensured that: appropriate opportunities to promote sustainable transport modes can be or have been-taken up, given the type of development and its location; safe and suitable access to the site can be achieved for all users; and, any significant impacts from the development on the transport network or on highway safety can be cost effectively mitigated to an acceptable degree. Paragraph 111 states that development should be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 6.5 Paragraph 112 of the NPPF goes onto confirm that applications for development should a) give priority first to pedestrian and cycle movements and second to facilitating access to high quality public transport, b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport, c) create places that are safe, secure and attractive, d) allow for the efficient delivery of goods and access by service and emergency vehicles, and, e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.
- 6.6 Paragraph 56 of the NPPF states:
- “Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision-making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear*

justification.”

- 6.7 These tests are re-iterated in the NPPG and paragraph 003 states that conditions should be kept to a minimum and only used where they satisfy the following tests:
1. necessary;
 2. relevant to planning;
 3. relevant to the development to be permitted;
 4. enforceable;
 5. precise;
 6. reasonable in all other respects.
- 6.8 The nearest footpath is approximately 100 meters to the east of the application site and the junction with the Laings of Harker entrance. The intervening frontages being mown grass verges. The furthest house to the west built under the planning permission for the adjacent land is approximately 260 metres from the footpath.
- 6.9 The application for the removal of the planning condition on the adjacent land included a supporting statement which confirmed that the surface water from the highway discharges into the highway verge and percolates into the ground. The applicant's engineer for that application identified that due to the absence of existing road gullies the proposed footpath would have to be designed to include a means of storing the surface water before it discharges via a culvert that crosses under the highway opposite the property known as "Waverley". Once the footpath has been formed and taking into account existing services located beneath the footpath, there would be insufficient space to store the run-off water to enable it to be discharged through the culvert at a controlled rate. There was no additional land available to the applicant or the Highway Authority to store surface water prior to it being discharged through the culvert. Thus taking into account the physical/technical constraints there was no practical means of enforcing the condition.
- 6.10 It was also argued that a footpath of approximately 260 metres in length placed a disproportionate financial burden on the development taking into account the low level of pedestrian footfall and the fact that pedestrians are capable of safely walking along the highway. Cumbria County Council as the Local Highways Authority supported the application and permission was granted for the removal of the condition.
- 6.11 The parish council has raised an objection on the basis that the lack of footpaths means that pedestrians are unable to access the community centres, churches and public houses. Whilst this may be the case in other locations, this is not the case for the site where there are no such community facilities. Residents would be able to conveniently access the bus stop on the A7 and the local coffee shop.
- 6.12 Outline planning permission was granted for the erection of up to 300 houses was approved by the Planning Inspectorate under application 15/0812 at Harker Industrial Estate to the west of the application site. This decision

included an additional drawing submitted at the appeal illustrating off-site highway improvement works. The requirement for their implementation is subject to a planning condition, this includes the provision of a footpath on the southern part of the county highway. Although works have not yet commenced, material weight must be afforded to this matter.

- 6.13 Given the number of dwellings and low number of pedestrians from this development, the fact that a similar condition on adjacent land has previously been removed by way of an application, and likely highway improvement works from a nearby housing site, the continued imposition of the condition is considered to be unnecessary and unreasonable in all other respects.

2. Whether The Development Would Amount To Unsustainable Development And The Effect On Accessibility And Highway Safety

- 6.14 The NPPF encourages the location of development where the need for travel will be minimised and the use of sustainable transport modes can be maximised. It 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.

- 6.15 When considering walking and the current application, it is evident that the moderate range of services that are in Harker are located approximately 100 metres to the east of the application site. The bus stops which link Harker to the Carlisle and Longtown are located approximately 160 and 150 metres respectively to the east of the application site. There are currently no public footpaths linking the application site to the existing services in Harker or to the existing bus stops. In such circumstances the application site at present does not benefit from good pedestrian connectivity. It is however appreciated that the existing roadside verge is wide and is in relatively good condition and given the relatively short distance, would allow use by some pedestrians.

- 6.16 Whilst the parish raises concerns relating to potential conflicts between highway users, Cumbria County Council has previously accepted the removal of the condition requiring a footpath to serve five dwellings further from the nearest footpath. Whilst the provision of a public footpath may be desirable, based on the foregoing it is not confirmed that its removal would be unacceptable on sustainability or highway safety grounds.

3. Other Matters

- 6.17 This application has been submitted under section 73 of the Town and Country Planning Act 1990 to vary a condition associated with a planning permission.
- 6.18 Paragraph: 015 Reference ID: 17a-015-20140306 Revision date: 06 03 2014 of the Planning Policy Guidance states:

“Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended.”

A decision notice describing the new permission should be issued, setting out all of the conditions related to it. To assist with clarity decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. Further information about conditions can be found in the guidance for use of planning conditions.

As a section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission. If the original permission was subject to a planning obligation then this may need to be the subject of a deed of variation.”

- 6.19 The time limit condition is not relevant as the development has commenced and the remaining conditions are further reimposed with reference to details which have been discharged where appropriate.

Conclusion

- 6.20 In overall terms the principle of development on the site has been established through the grant of the previous permission. The removal of a similar condition has been accepted on the adjacent site. The assessment in this report identified the planning issues and on balance the continued imposition of this condition would fail to meet the relevant tests which a planning condition is required to satisfy and the removal of the condition is acceptable.
- 6.21 Through the imposition of conditions relating to the remaining conditions, other issues raised and considered by this development would be adequately addressed.
- 6.22 In all aspects the proposal is considered to be compliant with the objectives of the relevant local plan policies.

7. Planning History

- 7.1 Outline planning permission was granted for residential development in 2016.
- 7.2 In 2019, an application was approved for the erection of 2no. dwellings (reserved matters application pursuant to outline consent 16/0754).
- 7.3 Also in 2019, an application was submitted to discharge of conditions 8 (means of access); 10 (vehicle turning space); 11 (surface water discharge) and 14 (details of boundary treatments) of previously approved application 16/0754 but was withdrawn.
- 7.4 Planning permission was granted for the erection of 2no dwellings in 2021.
- 7.5 Later in 2021, an application was approved to discharge conditions 3 (levels); 4 (surface water drainage); 5 (foul drainage) & 6 (levels) of the

previously approved permission 20/0868.

- 7.6 Also in 2021, an application was approved to discharge conditions 7 (parking/ turning/ loading & unloading of vehicles) and 8 (materials) of the previously approved application 20/0868.
- 7.7 An application was submitted in 2021 to for erection of 2no. detached garages to serve 2no. dwellings previously approved under 20/0868 but was withdrawn.
- 7.8 In 2022, planning permission was granted for the erection of 2no. detached garages to serve 2no. dwellings previously approved under application 20/0868.
- 7.9 Earlier this year, an application was approved to discharge of conditions 9 (hard surface details); 10 (boundary treatments); 11 (landscape scheme) & 13 (infrastructure) of the previously approved application 20/0868.

8. Recommendation: Grant Permission

1. The development shall be undertaken in strict accordance with the approved documents for this Planning Permission which comprise:
 1. the Planning Application Form received 18th December 2020 approved as part of application 20/0868 as amended by the Planning Application Form received 30th November 2022;
 2. the Site Location Plan received 18th December 2020 approved as part of application 20/0868;
 3. the Site/ Block Plan As Proposed received 23rd April 2021 (Drawing no. 4656-2) approved as part of application 20/0868;
 4. the Floor Plans As Proposed received 18th December 2020 (Drawing no. 4654-1) approved as part of application 20/0868;
 5. the Floor Plans & Typical Sections received 18th December 2020 (Drawing no. 4652-1) approved as part of application 20/0868;
 6. the Elevations As Proposed received 18th December 2020 (Drawing no. 4653-1) approved as part of application 20/0868;
 7. the Elevations As Proposed received 18th December 2020 (Drawing no. 4655-1) approved as part of application 20/0868;
 8. the Visibility Splays received 17th May 2021 approved as part of application 20/0868;
 9. the Historic Statement 18th December 2020 approved as part of application 20/0868;
 10. the Notice of Decision;
 11. any such variation as may subsequently be approved in writing by the local planning authority.

Reason: To define the permission.

2. The development hereby approved shall be undertaken in strict accordance with the ground and finished floor surface levels required by condition 3 of application 20/0868 and approved as part of application 21/0721.

Reason: In order that the approved development overcomes any problems associated with the topography of the area in accordance with Policies SP6 of the Carlisle District Local Plan 2015-2030.

3. The development hereby approved shall be undertaken in strict accordance with the surface water drainage scheme required by condition 4 of application 20/0868 and approved as part of application 21/0721.

Reason: To ensure a satisfactory form of development and to prevent an undue increase in surface water run-off and to reduce the risk of flooding in accordance with Policies SP6 and CC5 of the Carlisle District Local Plan 2015-2030 and to promote sustainable development, secure proper drainage and to manage the risk of flooding and pollution in accordance with policies within the National Planning Policy Framework and National Planning Practice Guidance.

4. The development hereby approved shall be undertaken in strict accordance with the foul drainage scheme required by condition 5 of application 20/0868 and approved as part of application 21/0721.

Reason: To prevent pollution of the water environment in accordance with Policy IP6 of the Carlisle District Local Plan 2015-2030.

5. The development hereby approved shall be undertaken in strict accordance with the ground and finished floor surface levels required by condition 6 of application 20/0868 and approved as part of application 21/0721.

Reason: In order that the approved development is appropriate to the topography of the site and neighbouring properties in accordance with Policies SP6 and HO2 of the Carlisle District Local Plan 2015-2030.

6. The development hereby approved shall be undertaken in strict accordance with the parking, turning and loading and unloading of vehicles visiting the site, including the provision of parking spaces for staff and visitors facilities required by condition 7 of application 20/0868 and approved as part of application 21/0899.

Reason: To ensure that vehicles can be properly and safely accommodated clear of the highway in accordance with Policies SP6 and HO2 of the Carlisle District Local Plan 2015-2030.

7. The development hereby approved shall be undertaken in strict accordance with the external materials required by condition 8 of application 20/0868 and approved as part of application 21/0899.

Reason: In the interests of visual amenity in accordance with Policies

HO2 and CM5 of the Carlisle District Local Plan 2015-2030.

8. The development hereby approved shall be undertaken in strict accordance with the hard surface details required by condition 9 of application 20/0868 and approved as part of application 22/0813.

Reason: In the interests of visual amenity in accordance with Policies SP6 and HO2 of the Carlisle District Local Plan 2015-2030.

9. The development hereby approved shall be undertaken in strict accordance with the boundary details required by condition 10 of application 20/0868 and approved as part of application 21/0899.

Reason: To ensure that the appearance of the development will be in keeping with the locality and to protect visual amenity, in accordance with Policy SP6 of the Carlisle District Local Plan 2015-2030.

10. The development hereby approved shall be undertaken in strict accordance with the landscaping scheme required by condition 11 of application 20/0868 and approved as part of application 21/0899.

Reason: To ensure that a satisfactory landscaping scheme is implemented, in the interests of public and environmental amenity, in accordance with Policies SP6 and GI6 of the Carlisle District Local Plan 2015-2030.

11. The development hereby approved shall be undertaken in strict accordance with the underground service ducts required by condition 13 of application 20/0868 and approved as part of application 21/0899.

Reason: To maintain the visual character of the locality in accord with Policy IP4 of the Carlisle District Local Plan 2015-2030.

12. No work associated with the construction of the residential units hereby approved shall be carried out before 0730 hours on weekdays and Saturdays nor after 1800 hours on weekdays and 1600 hours on Saturdays (nor at any times on Sundays or statutory holidays).

Reason: To prevent disturbance to nearby occupants in accordance with Policy CM5 of the Carlisle District Local Plan 2015-2030.

13. Prior to the occupation of each dwelling hereby permitted suitable receptacles shall be provided for the collection of waste and recycling in line with the schemes available in the Carlisle district.

Reason: In accordance with Policy IP5 of the Carlisle District Local Plan 2015-2030.

14. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported

in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the local planning authority. Site investigations should follow the guidance in BS10175.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority.

Reason To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Policy CM5 of the Carlisle District Local Plan 2015-2030.

15. The development shall not commence until visibility splays providing clear visibility of 165 metres east and 215 metres west measured 2.4 metres down the centre of the access road and the nearside channel line of the carriageway edge have been provided at the junction of the access road with the county highway. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) relating to permitted development, no structure, vehicle or object of any kind shall be erected, parked or placed and no trees, bushes or other plants shall be planted or be permitted to grown within the visibility splay which obstruct the visibility splays. The visibility splays shall be constructed before general development of the site commences so that construction traffic is safeguarded.

Reason: In the interests of highway and pedestrian safety.in accordance with Policies SP6 and HO2 of the Carlisle District Local Plan 2015-2030.

16. The access drives shall be surfaced in bituminous or cement bound materials, or otherwise bound and shall be constructed and completed before the development is occupied into use.

Reason: In the interests of highway and pedestrian safety.in accordance with Policies SP6 and HO2 of the Carlisle District Local Plan 2015-2030.

17. A 2.4 metre x 2.4 metre pedestrian visibility sight splay as measured from the highway boundary (or footpath boundary), shall be provided on both sides of the vehicular access. There shall be no obstruction above a height of 600mm as measured from the finished surface of the access within the area of the visibility sight splays thereafter.

Reason: To provide adequate inter-visibility between the pedestrians and users of the access and the existing public highway for the

safety and convenience of users of the highway and of the access in accordance with Policies SP6 and HO2 of the Carlisle District Local Plan 2015-2030.

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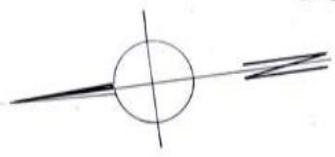


High Harker Farmhouse,
 High Harker,
 Carlisle,
 CA6 4DS

OS MasterMap 1250/2500/10000 scale
 Wednesday, December 9, 2020, 10: 5W1-00924254
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ACCESS

The existing access will be retained to site 1 and the track into the site adapted as shown. A new access is proposed to site 2 from the public road. It will have a splayed entrance with tarmac surface leading to the vehicle driveway and parking area. Clear visibility from a point 2.4m from the carriage way edge is uninterrupted across a 4m wide grass verge, 1.60m to the east and the road junction with the A7, and unlimited to the west. All internal driveways to have a 50mm gravel surface on a compacted hard-core base.

DRAINAGE

Foul drains from the houses to be routed to a new disconnecting chamber before connection to main sewers in the roadway. All SW drainage from roofs and hard standing surfaces piped to the main SW drain in road.

LANDSCAPING

New 2m high screen fences to be erected along the east and western boundaries and a post and rail timber fence along the northern edge of the plots where shown. The existing Oak tree to be retained and to be fully protected during site work. The existing boundary hedge to be retained and new planting of a similar species to be carried out where needed after the work is completed. All other areas of the plots are to be laid to grass.



Site Plan 1:200

Title SITE at HIGH HARKER Carlisle.			
Project Proposed New Detached Houses. Sites 1 and 2.			
Drawing Site/Block Plan as Proposed.			
Drwg. No.	Scale	Date	Drwg.
4656-2	1:200	8.3.2021...	5 of 5
Amendments			
Drwg. Amended 8.3.2021. To show parking area for 3 cars.			
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