

## SCHEDULE A: Applications with Recommendation

14/0135

Item No: 04

Date of Committee: 16/05/2014

**Appn Ref No:**  
14/0135

**Applicant:**  
Persimmon Homes  
Lancashire

**Parish:**  
Cummersdale

**Agent:**

**Ward:**  
Dalston

**Location:** L/A Peter Lane bounded by Dalston Road, Cummersdale, Carlisle, Cumbria

**Proposal:** Variation Of Condition 28 (Highway Improvement Scheme) Of Previously Approved Permission 00/0439

**Date of Receipt:**  
27/02/2014

**Statutory Expiry Date**  
23/04/2014

**26 Week Determination**

---

### REPORT

**Case Officer:** Richard Maunsell

#### 1. Recommendation

1.1 It is recommended that this application is approved with conditions.

#### 2. Main Issues

2.1 The Principle Of The Variation Of The Condition And The Impact On Highway Issues

#### 3. Application Details

##### The Site

3.1 This application seeks consent for the variation of a planning condition on land bounded by Peter Lane and Dalston Road, Carlisle. This land is situated to the north west of the junction of Dalston Road with Peter Lane, at the western periphery of Carlisle and measures 4.73 hectares in area.

3.2 The site, which is broadly square in shape, extends 240 metres along its frontage with Dalston Road and 210 metres along Peter Lane. The land

forms part of a larger site that is allocated for residential development in the Carlisle District Local Plan (CDLP). It is situated approximately 3 kilometres to the west of the city centre on the fringe of the urban area.

- 3.3 The site was undeveloped 'greenfield' land and comprises two fields that were in agricultural use but currently being developed as a housing site. Its defining features are the mature hedgerows that align the road frontages and a stream that runs through the north eastern portion of the site. There are two residential properties that are situated immediately adjacent to the site at its eastern and western corners. The surroundings to the site are predominantly rural in character.

## **Background**

- 3.4 Outline planning consent was granted in 2012 for residential development. This permission was subject to several planning conditions including number 28 which reads:

"Before the commencement of development the applicant/ developer shall enter into and complete an agreement with the Highway Authority under Section 278 of the Highways Act 1980 (as amended) which shall make provision for the completion of a highway improvement scheme along Dalston Road and Peter Lane in accordance with details to be agreed beforehand by the Local Planning Authority. The aforementioned scheme (which will include the provision of footways, road lighting, and, the widening and strengthening of the existing carriageways) shall be completed before any development work starts on site."

## **The Proposal**

- 3.5 The current application seeks consent to vary this condition and substitute its wording with the following:

"Before the commencement of development the applicant/ developer shall enter into an agreement with the Highway Authority under Section 278 of the Highways Act 1980 (as amended) which shall make provision for the completion of a highway improvement scheme along Dalston Road and Peter Lane in accordance with details to be agreed beforehand by the Local Planning Authority. The aforementioned scheme (which will include the provision of footways, road lighting, and, the widening and strengthening of the existing carriageways) shall be completed before any unit on the site is occupied."

## **4. Summary of Representations**

- 4.1 This application has been advertised by means of a site notice and direct notification to the occupiers of 4 of the neighbouring properties. No representations have been received.

## **5. Summary of Consultation Responses**

Cumbria County Council - (Econ. Dir. Highways & Transportation): - no objection but there is a minor alteration suggested to the wording of the condition;

Cummersdale Parish Council: - the Council wishes to re-iterate it's previous concerns primarily due to the increased traffic generated from this development and requests that the highway improvement scheme along Dalston Road and Peter Lane is completed before the commencement of the development.

It has always been understood that an adequate infrastructure would be in place to cope with the extra traffic flows and population using the surrounding roads, foot paths, cycle ways. The removal of the condition, delaying the highway improvements would be detrimental to the area;

Northern Gas Networks: - no objection.

## 6. Officer's Report

### Assessment

- 6.1 The relevant planning policies against which the application is required to be assessed are the National Planning Policy Framework (NPPF) and Policies CP5 and T1 of the Carlisle District Local Plan 2001-2016. The proposal raises the following planning issue.

#### 1. The Principle Of The Variation Of The Condition And The Impact On Highway Issues

- 6.2 Members will be aware outline planning permission exists for the development of the site for housing and the principle of development is not under consideration as part of this application. The sole issue for Members is whether the proposal would have any adverse impact on highway issues and therefore whether the principle of the variation of the condition is acceptable.

- 6.3 To assist Members, the original condition is reproduced with the omitted text lined through and the proposed replacement text highlighted in bold:

“Before the commencement of development the applicant/ developer shall enter into ~~and complete~~ an agreement with the Highway Authority under Section 278 of the Highways Act 1980 (as amended) which shall make provision for the completion of a highway improvement scheme along Dalston Road and Peter Lane in accordance with details to be agreed beforehand by the Local Planning Authority. The aforementioned scheme (which will include the provision of footways, road lighting, and, the widening and strengthening of the existing carriageways) shall be completed before any ~~development work starts on site~~ **unit on the site is occupied.**”

- 6.4 The Parish Council has raised objections to the application and reaffirms its view about the increased traffic that the development would generate and

that the infrastructure improvement works should be completed before development is commenced. Moreover, it is stated, the removal of the condition would be detrimental to the area.

- 6.5 This application is solely for the variation of the condition and does not seek its removal. The proposed rewording would allow work to commence on site without the additional highway improvement works being completed; however, it still would require the developer to enter into the relevant agreement with the Highway Authority and would further require the works to be completed before any property is occupied. This would still provide the necessary improvements to the highway network for residents of the scheme and users of the highway.
- 6.6 It is key for Members to note that the Highway Authority who are the party involved in the S278 agreement with the developer, has raised no objection to the proposal. The Highway Authority has suggested that the wording of the condition is amended slightly to require the works to be completed “to the satisfaction of the LPA”. In this instance, this phraseology would be too ambiguous and the proposed wording of the condition by the developer remains reasonable and enforcement and otherwise meets the relevant tests required in Circular 11/95: Use Of Conditions In Planning Permission.
- 6.7 In summary, this current application seeks approval to vary the wording of Condition 28 of the outline approval, which relates to the developer entering into an agreement with the Highway Authority and the subsequent timing of the completion of the highway improvement works. The proposal does not seek to remove but moreover vary the condition. The revised condition would still require the developer to enter into an agreement with the Highway Authority and would also require the provision and completion of the works prior to the occupation of any property. The minor change is acceptable and the Highway Authority has raised no objection. In all aspects the proposal would be compliant Circular 11/95: Use of Condition in Planning Permission and with the objectives of the relevant Local Plan policies.

## **7. Planning History**

- 7.1 Outline planning permission was granted in 2012 for residential development.
- 7.2 An application for reserved matters approval for 103 dwellings is currently being considered.

## **8. Recommendation: Grant Permission**

1. The development shall be begun not later than the expiration of 3 years beginning with the date of the grant of this permission.

**Reason:** In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 ( as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The approved documents for this Planning Permission comprise:

1. the Planning Application Form received 20th February 2014;
2. the Site Location Plan received 27th February 2014;
3. the Notice of Decision.

**Reason:** To define the permission.

3. With the exception of condition 28, the development shall be carried out in accordance with the remaining conditions attached to the "Outline" permission approved under application 00/0439.

**Reason:** For the avoidance of doubt.

4. Before the commencement of development the applicant/ developer shall enter into an agreement with the Highway Authority under Section 278 of the Highways Act 1980 (as amended) which shall make provision for the completion of a highway improvement scheme along Dalston Road and Peter Lane in accordance with details to be agreed beforehand by the Local Planning Authority. The aforementioned scheme (which will include the provision of footways, road lighting, and, the widening and strengthening of the existing carriageways) shall be completed before any unit on the site is occupied.

**Reason:** To ensure that the surrounding highway network is capable of carrying the volumes of vehicular and pedestrian traffic likely to be generated by the proposed development.

---

