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# Appeal Decision

Inquiry on 27 February 2018

**by William Fieldhouse BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 March 2018**

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**Appeal Ref: APP/E0915/W/17/3179674**

**Harker Industrial Estate, Low Harker Road, Carlisle CA6 4RF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Kingmoor Park Properties Ltd against the decision of Carlisle City Council.
  - The application ref 15/0812, dated 28 August 2015, was refused by notice dated 9 January 2017.
  - The proposal is an outline planning application with all matters reserved for a residential development of up to 300 dwellings including associated open space and infrastructure.
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## Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 300 dwellings including associated open space and infrastructure at Harker Industrial Estate, Low Harker Road, Carlisle CA6 4RF in accordance with the terms of the application ref 15/0812 dated 28 August 2015 subject to the conditions set out in Annex C.

## Preliminary Matters

2. The application sought outline planning permission with all matters reserved for subsequent approval. A site masterplan<sup>1</sup> was submitted with the application but this is for illustrative purposes only rather than a formal part of the proposal.
3. The site is allocated for residential development in the Carlisle District Local Plan 2015-2030 adopted in November 2016 ("local plan"). The planning application was refused by the Council's planning committee against the recommendation of officers on the grounds that the proposal would fail to make an adequate contribution towards education provision and would fail to achieve a mixed and inclusive neighbourhood due to a lack of affordable housing provision.
4. Subsequent to the appeal being made, discussions took place between the appellant, the Council and Cumbria County Council, the local education authority. As a result of those discussions, agreement was reached between all three main parties about what provision could be made with regard to affordable housing and education whilst maintaining the financial viability of the proposal. By the end of the Inquiry, both the Council and County Council confirmed that they were satisfied that the reasons for refusal would be overcome provided that a draft section 106 agreement<sup>2</sup> was finalised. An

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<sup>1</sup> Site masterplan ref 11042-03A.

<sup>2</sup> INQ3.

executed section 106 agreement, dated 13 March 2018, was duly submitted shortly after the close of the inquiry in accordance with my agreed timetable<sup>3</sup>. This contains planning obligations which meet the requirements of the Council and County Council.

### **Main Issues**

5. In light of the above, the main issues are whether the proposal would make appropriate contributions towards:
  - meeting identified local housing needs, including for affordable housing; and
  - the provision of additional school places and school transport.
6. I will consider these two main issues in the context of relevant policies in the local plan and the National Planning Policy Framework ("NPPF") and the requirements of the Community Infrastructure Levy ("CIL") Regulations 2010 (as amended).

### **Reasons**

#### *The Site and its Surroundings*

7. The appeal relates to 10.7 hectares of former Ministry of Defence land which is currently partly in use as an industrial estate. Low Harker Road runs along its northern boundary, and around 250 metres to the south, beyond agricultural land and the M6 motorway, is the edge of the urban area of Carlisle.

#### *Local Housing Needs*

8. Local plan policy HO1 states that in bringing forward allocations, developers will need to demonstrate that their proposals contribute to the overall dwelling types, sizes and tenures which help meet identified local housing need and the development of mixed and sustainable communities. Appendix 1 of the local plan advises that redevelopment of the appeal site would yield a significant amount of affordable housing.
9. Policy HO4 requires 20% of the dwellings on the site to be affordable housing comprising 50% for social or affordable rent and 50% intermediate housing. A lower proportion and/or different tenure split may be permitted where it can be clearly demonstrated that the development would not otherwise be financially viable.
10. Viability evidence submitted by the appellant during the course of the planning application and updated during the appeal has been subject to independent verification on behalf of the Council and I have no reason to doubt its findings. This evidence shows that the maximum amount of affordable housing that the proposal could viably deliver would be between 5% and 15% of the total number of dwellings. The actual amount within that range would depend on the number of dwellings proposed at reserved matters stage; the scale of the financial contributions that would be required towards education provision and transport; and on whether abnormal costs would exceed the amount assumed in the agreed viability assessment. The executed planning agreement contains

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<sup>3</sup> INQ5.

effective mechanisms to ensure the delivery of the maximum amount of affordable housing within that range having appropriate regard to those variables.

11. Based on the County Council's latest evidence about the costs of providing the necessary increases in school capacity and assuming no significant increase in abnormal costs, approximately 9% of the dwellings would be provided as affordable homes. Whilst the affordable housing provision would clearly be below the 20% referred to in policy HO4, it would still represent a significant contribution to meeting identified needs and comply with the requirements of that policy which allows for a lower level of provision if justified on viability grounds.
12. The Council is satisfied that an appropriate mix of market housing, in terms of house types, sizes and tenures, to meet identified local needs could be achieved at the reserved matters stage and I have no reason to disagree.
13. I conclude on the first main issue that the proposal would make an appropriate contribution towards meeting identified local housing needs, including for affordable housing, in accordance with local plan policies HO1 and HO4 and national policy<sup>4</sup>.

#### *Education Provision*

14. As the application is for outline planning permission for up to 300 dwellings with all matters reserved, the actual number, type and scale of dwellings are not known at this stage. However, based on the indicative masterplan and relevant guidance<sup>5</sup>, the Council, County Council and appellant agree that there would likely be an additional 61 primary school aged children and 43 secondary school aged children in the locality if the development went ahead.
15. The nearest relevant schools to the site are Blackford Primary School and Trinity Secondary School. The former is around 2.5 kilometres away in the countryside north of the site, and the latter over 6 kilometres away close to the city centre.
16. Blackford School has some spare capacity that could accommodate a proportion of the additional children likely to require places as a result of the proposal. However, taking account of other planned developments in the area as well as any capacity in other local primary schools, there is also an identified need to provide an additional primary school in the north of the city. The County Council has acquired a site, costed the development of a new school, and secured financial contributions from three other developments towards its construction.
17. There is no spare capacity in existing secondary schools in the local area available to accommodate the additional demand likely to be generated by the proposal. However, a number of options to expand local secondary schools so that collectively they can accommodate the additional demand arising from planned developments have been identified by the County Council. Financial

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<sup>4</sup> NPPF section 6.

<sup>5</sup> Cumbria County Council Planning Obligations Policy 2013.

contributions have been secured from two other developments to help bring one or more of these forward.

18. The executed planning agreement contains effective mechanisms to ensure appropriate financial contributions towards providing the additional primary and secondary school capacity required as a result of the current proposal. Those contributions take account of existing spare capacity at Blackford School and would be based on identified build costs and the expected number of additional children having regard to the actual quantity and size of dwellings that would be built on the site following approval of reserved matters.
19. Provided that facilities for pedestrians and cyclists along Low Harker Road are improved the County Council, as local education and highway authority, is satisfied that safe and suitable access would be available to reach Blackford School on foot, bicycle or public transport as well as by private motor vehicle. This could be ensured by the imposition of a planning condition if permission were to be granted.
20. Due to the distance between the site and local secondary schools not many journeys would be likely to be made by bicycle and even fewer, if any, would be made on foot. Additional bus services would, therefore, need to be provided to avoid high dependency on the use of private motor vehicles and to ensure a reasonable travel option was available for all students. This could be ensured by a planning obligation that requires a financial contribution of £152,000 based on the normal cost of providing such a service in the area.
21. In light of the above, I am satisfied that the financial contributions for education provision and transport to school required by the executed planning agreement are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Furthermore, the evidence before me indicates that the "five obligation limit" imposed by the CIL regulations would be complied with.
22. I conclude on the second main issue that the proposal would make appropriate contributions towards the provision of additional school places and school transport in accordance with local plan policy CM2, national policy<sup>6</sup> and the CIL regulations.

#### *Other Matters*

23. A travel plan was submitted with the planning application and this sets out various measures to encourage future residents of the site to make use of means of transport including walking, cycling and buses. A planning obligation would require that £6,600 be provided to ensure the effective implementation of the travel plan. I am satisfied that that contribution would be in accordance with local plan policy IP2 and national policy.
24. Given my findings on the two main issues, and because there is no evidence before me to indicate that the development would have any adverse equality impacts on persons with protected characteristics, there is no reason to

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<sup>6</sup> NPPF paragraphs 32, 72 and 204.

conclude that the proposal would be contrary to the provisions of the Equality Act 2010 as alleged in the Council's decision notice.

25. A number of additional concerns have been raised by local residents and parish councils. However, the principle of redeveloping the site for housing is established in the recently adopted local plan, and subject to planning obligations and planning conditions it is clear from the technical evidence before me that the site could be developed in a satisfactory manner without causing significant harm in planning terms.

#### *Planning Conditions*

26. A list of planning conditions was discussed at the Inquiry<sup>7</sup>. This forms the basis of the conditions set out in Annex C, although I have made some changes to the detailed wording in the context of national policy and guidance<sup>8</sup>.
27. In addition to the standard conditions relating to the stipulation and timing of reserved matters and the commencement of development, a number of conditions are required that relate to issues that fall outside the scope of the reserved matters. The reasons for those conditions are as follows.
28. Whilst landscaping of the proposed development is a reserved matter, an ecological management scheme is necessary to ensure that existing ecological interests are appropriately dealt with during demolition, clearance and construction works. The timing of demolition needs to be controlled for the same reason to ensure that any nesting birds or other species are not disturbed.
29. A construction method statement needs to be submitted, agreed and adhered to throughout the period of demolition, clearance and construction in order to safeguard the local environment and the living conditions of local residents. The hours during which demolition, clearance and construction works are carried out need to be controlled for the same reasons.
30. Details of proposed ground and floor levels need to be approved to protect the character and appearance of the area and the living conditions of local residents.
31. Appropriate arrangements for the disposal of surface water from the site need to be made in the interests of highway safety and to prevent flooding and pollution.
32. Whilst a desk-based assessment suggests that archaeological interest in the site may be minimal, further evidence may become available following site clearance works. It is therefore necessary to require a programme of archaeological work in order to afford reasonable opportunities for further investigation.
33. Given the nature of existing development on and previous uses of the site, conditions are needed to ensure that contamination is appropriately dealt with in the interests of safety and the local environment.

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<sup>7</sup> INQ2.

<sup>8</sup> NPPF paragraphs 203 and 206 and Planning Practice Guidance ID-21a.

34. Finally, whilst access is a reserved matter, it is necessary to impose a condition to ensure that the off-site highway improvements along Low Harker Road proposed on plan ref 5013-45 revision A are implemented before any of the dwellings are occupied. This is to ensure the provision of safe and suitable access to and from the site for all people, including school children.

**Conclusion**

35. For the reasons set out above, I consider that the planning conditions and planning obligations that I have described would ensure that the proposal would be acceptable and accord with the development plan and national policy meaning that planning permission should be granted.

36. I therefore conclude that the appeal should be allowed.

*William Fieldhouse*

INSPECTOR

**ANNEX A**

**Appearances at the Inquiry**

*For Kingmoor Park Properties Ltd*

Jonathan Easton	of Counsel
John Powell	Operations Director, EPDS Consultants

*For Carlisle City Council*

Freddie Humphreys	of Counsel
Rachel Lightfoot BA (Hons) BTP PGDip MRTPI	Director, Penrith Farmer's and Kidds PLC

*For Cumbria County Council*

Christian Hawley	of Counsel
Andy Smart	School Places Manager, Cumbria County Council

*Interested Persons*

Jean Grubb	Local resident
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## **ANNEX B**

### **Documents Submitted at the Inquiry**

- INQ1      Education statement of common ground 23 February 2018.
- INQ2      Revised list of planning conditions 27 February 2018.
- INQ3      Draft section 106 agreement 27 February 2018 incorporating:
- (a)      City Council comments.
  - (b)      County Council comments.
  - (c)      City Council and County Council comments.
- INQ4      Proposed footway / cycleway plan ref 5013-45 revision A dated March 2016.

### **Documents Submitted after the Inquiry**

- INQ5      Executed section 106 agreement dated 13 March 2018.



## **ANNEX C**

### **Schedule of Planning Conditions**

1. Details of the layout, scale, access, appearance and landscaping (including existing trees and hedges to be retained and how they will be protected during construction) (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. No demolition, site clearance or construction shall take place until an ecological management scheme, which shall include an implementation timetable, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the agreed timetable.
5. No demolition or site clearance shall take place other than between 1 September and 28 February unless a scheme and implementation timetable has been submitted to and approved in writing by the local planning authority. If such a scheme is submitted and approved it shall be implemented in accordance with the agreed timetable.
6. No demolition, site clearance or construction shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the period of demolition, site clearance and construction. The Statement shall provide for:
  - a) the parking of vehicles of site operatives and visitors;
  - b) loading, unloading and storage of plant and materials;
  - c) the erection and maintenance of security hoarding;
  - d) wheel washing facilities;
  - e) measures to control the emission of dust and dirt;
  - f) a scheme for recycling / disposing of waste; and
  - g) the timing and routing of traffic associated with demolition, site clearance and construction.
7. No demolition, site clearance or construction work shall take place on the site outside 07.30 hours to 18.00 hours on Mondays to Fridays and 07.30 hours to 13.00 hours on Saturdays. No demolition, site clearance or construction work shall take place at any time on Sundays or Bank Holidays.
8. Development shall not begin until details of the existing ground levels, proposed finished ground levels, and proposed finished floor levels have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

9. Development shall not begin until a surface water drainage scheme, which shall include an implementation timetable, has been submitted to and approved in writing by the local planning authority. The scheme shall be fully implemented in accordance with the approved timetable.
10. Development shall not begin until a written scheme of archaeological investigation, works, analysis, recording and reporting, along with an implementation timetable, has been submitted to and approved in writing by the local planning authority. The archaeological scheme shall be implemented in accordance with the approved timetable.
11. Development shall not begin until an investigation and risk assessment of contamination on the site has been carried out and the results reported to and approved in writing by the local planning authority. If the approved report indicates that remediation is necessary then a remediation scheme, which shall include an implementation timetable, shall be submitted to and approved in writing by the local planning authority before development begins. The remediation scheme shall be implemented, and a site completion report submitted, in accordance with the approved timetable.
12. If during the course of development any contamination is found which had not been previously identified in the investigation carried out prior to development starting, then all works on site (save for investigation works) shall cease immediately and the local planning authority shall be notified in writing within two working days. Works shall not recommence until either (a) a remediation scheme, which shall include an implementation timetable, has been submitted to and approved in writing by the local planning authority, or (b) the local planning authority has confirmed in writing that remediation measures are not required. Any remediation scheme shall be implemented, and a site completion report submitted, in accordance with the approved timetable.
13. None of the dwellings hereby permitted shall be occupied until the off-site highway improvements shown on plan ref 5013-45 revision A dated March 2016 have been implemented in accordance with details to be submitted to and approved in writing in advance by the local planning authority.

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*End of schedule of conditions*