



## Appeal Decision

Inquiry Held on 22-25 and 29 January 2019

Site visit made on 25 January 2019

**by J Wilde C Eng MICE**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 13<sup>th</sup> March 2019**

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### **Appeal Ref: APP/N4720/W/18/3203770**

#### **Land off Main Street, Carlton, Wakefield WF3 3RW**

- 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 Miller Homes against the decision of Leeds City Council.
  - The application Ref 18/00370/OT, dated 16 January 2018, was refused by notice dated 9 May 2018.
  - The development proposed is outline planning application (with all matters reserved except for partial means of access to, but not within, the site) for the development of circa 129 dwellings.
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### **Decision**

1. The appeal is allowed and outline planning permission is granted for the development of circa 129 dwellings (with all matters reserved except for partial means of access to, but not within, the site) at Land off Main Street, Carlton, Wakefield WF3 3RW in accordance with the terms of the application, Ref 18/00370/OT, dated 16 January 2018, subject to the conditions contained within the attached schedule.

### **Procedural matters**

2. The application was made in outline with access to the site to be determined at this stage and all other matters reserved for later determination.
3. In addition to my accompanied site visit on 25 January I also conducted an unaccompanied site visit, both to the village of Carlton and its environs on 21 January at about 15.30 hours.

### **Main Issue**

4. Whether or not, having regard to local and national planning policy for the delivery of housing, the appeal site is an appropriate location for the proposed development.

### **Reasons**

#### *The site*

5. The appeal site lies directly to the south of Main Street, Carlton, and effectively consists of three separate sections: an overgrown rectangular area to the west; an area with existing buildings to the east; and a large field to the south of

these. The site is bounded by Main Street to the north and by existing development to the west and east, with the development to the east being more sporadic than that to the west. To the south the site is bordered by an unmade lane known as Pitfield Road.

6. Carlton has an historic core but much of the village consists of more recent development. The village has a farm shop on its outskirts, selling a range of products, a pub, a post office, social club and primary school. There is also a playground and football and cricket clubs.

*Planning policy*

7. There are a number of relevant local development plans and emerging plans that are pertinent to the appeal. The Council's decision letter referenced two policies, SP1 and N34. The former is a spatial strategy policy contained within the Core Strategy (CS) which was adopted in November 2014. The latter is a saved policy contained within the Leeds Unitary Development Plan review (UDPR) which was adopted in July 2006 with an end date of 2016. This policy relates to safeguarded land.
8. There are also two emerging local plans relevant to this appeal. There is an emerging Leeds Site Allocations Plan (SAP), and this identifies the western rectangular section of the appeal site as an identified housing site under policy HG1-410 with a capacity of 15 units, and the eastern section that contains buildings also allocated for housing under policy HG2-182 and shown as having a capacity of 36 units.
9. The larger southern section is denoted as HG3-26 and comes under policy HG3 which relates to safeguarded land. It is not therefore intended that the designation of this part of the site will change under the new policy regime. There is also an emerging Leeds Core Strategy Strategic Review (CSSR).
10. The Council's decision letter had three separate reasons for refusal. These related to the location of the proposed development in relation to the development plan's spatial strategy, and the possible effect on the emerging development plans in terms of prematurity and the plan led system. I will deal firstly with the location of the proposed development.

*Location/accessibility*

11. Policy SP1 of the CS sets out the spatial strategy for the area and indicates that the largest amount of development will be located in the main urban area and major settlements. The policy goes on to confirm that smaller settlements will contribute to development needs, with the scale of growth having regard to the settlement's size, function and sustainability. Development in smaller settlements is not therefore prohibited per se.
12. Carlton is not specifically mentioned in Table 1 (identification of settlement types) that accompanies the policy and is therefore classed as a village, at the bottom of the settlement hierarchy. The village lies in the Outer South Housing Market Character Area (HMCA). The justification for the policy makes clear in several places (paragraphs 4.1.4, 4.1.6 and 4.1.7) that the strategy is designed to direct development to the most sustainable locations.

13. Policy T2 of the CS requires that new development is located in accessible locations that are adequately served by existing or programmed highways, by public transport and with safe and secure access for pedestrians, cyclists and people with impaired mobility. Appendix 3, Table 2 to the policy gives a range of accessibility standards. These have been analysed in the highways statement of common ground (HSoCG) and this document indicates that, with the introduction of a further No 444 bus service (as proposed by the appellants and included within the Section 106 Agreement) that would increase frequency to every 15 minutes, then the majority of the standards required by the policy would be met.
14. Having said that, the standards have to be assessed against the context of any individual site. In this particular case the post office, pub, shop and primary school would all be readily accessible from the proposed development, and certainly for the post office, primary school and pub walking would be the most obvious choice. In terms of the secondary school, although the HSoCG shows this as a 21 minute walk, the walk would be along country roads well outside of the community of Carlton, and it seems to me that this journey would be most likely to be undertaken by car.
15. Similarly, primary health care would be located in Rothwell and although this would be only a 20 minute walk, the nature of the walk indicates to me that the car would be the most likely mode of transport, although I do acknowledge that a 15 minute frequency bus service would be available. My attention was also drawn to the fact that whilst a 15 minute frequency bus service would be available to both Leeds and Wakefield, the journey times would be such as to be likely to deter most commuters. Furthermore, in practical terms combining journeys would be difficult, with the nearest doctors, dentists, employment and leisure facilities generally in disparate locations.
16. To my mind therefore, whilst with the improvement proposed to the bus services the proposed development would meet the majority of the accessibility standards, given the disparate location of the various services, the appeal site cannot be deemed to be in the most accessible of locations.
17. Notwithstanding that however, the Council have allocated two of the areas within the appeal site for housing (51 units) in an emerging Site Allocations Plan (which I will investigate later in this decision). It follows that the Council must consider at least part of the site as being suitable in locational terms for the 51 units of housing. The question that then arises is the effect of the extra 78 units as proposed in the appeal application.
18. It is therefore necessary to return to the wording of policy SP1, and there are two sections that are, to my mind, pertinent to this appeal. Firstly the policy stipulates that development may be undertaken in the smaller settlements as long as regard is had to the size and function of the settlement (my underlining).
19. The number of existing dwellings was not agreed by the parties. The Council considered that the proposed development would increase the number of dwellings by 43% while the figures in the report by Rural Solutions (RSR) would indicate an increase of about 25%. The difference seems to stem from different interpretations of the exact limits of Carlton. However even taking

the lesser figure, the proposed development would result in a reasonably significant increase in housing within the village. In respect of function, the village is at the bottom of the settlement hierarchy.

20. Policy SP1 also requires that development should respect and enhance the local character and identity of places and neighbourhoods. It seems to me that the mention of character in this context should not be confused with appearance, and that the increase of housing in a village at the minimum 25% is likely to have an effect on its character. The RSR suggests that the village currently has an imbalance in age distribution and that the proposed development would improve this. However, there is no guarantee of this and I can give this possibility very little weight. Overall however, whilst I consider that the character of the village would change I have been given very little significant evidence to persuade me that this would be so harmful as to indicate conflict with policy SP1.
21. I am aware that the site has been considered by Inspectors in both 2001 and 2006 when considering the Leeds Unitary Development Plan (UDP) and its subsequent review. Whilst those Inspectors were assessing the site against now superseded national policy they nonetheless found it suitable for development, having considered the village's location relative to services and other settlements. Indeed, the 2001 Inspector observed that Carlton *is not situated in the heart of the countryside* and also that development of the site *would be unlikely to encourage significantly more use of cars for commuting than many other locations around Leeds*. Furthermore, I note that in the emerging SAP, whilst the site is designated as safeguarded land, it is also shown as having a potential capacity of 115 units, albeit as a potential reserve for the future.
22. With respect to policy SP1 overall, I am acutely conscious that the Council consider two areas of the appeal site are suitable for development. Whilst I acknowledge the status of the settlement, that the number of houses over and above the Council's proposed numbers could result in some further journeys by private car and that the character of the village could change due to its increased size (as detailed above), I nonetheless find, from the evidence before me, that these potential changes would not be so harmful as to indicate overall conflict with policy SP1 or the spatial strategy as a whole.
23. In arriving at this conclusion, I note that there was conflict between the main parties as to whether the locational priorities contained in (ii) of the policy should be taken as hierarchical or not. To my mind that is not a determining factor, as, whilst the policy makes clear that these are priorities, it does not automatically preclude development from areas at the lower end of the hierarchy.

*Prematurity/plan led system*

24. The Council's issue with prematurity and the plan led system is to an extent conflated with policy N34, which I will now address.
25. Policy N34 of the UDPR denotes the southern section of the appeal site as safeguarded land. The policy makes clear that within such areas *development will be restricted to that which is necessary for the operation of existing uses together with such temporary uses as would not prejudice the possibility of long term development*. The justification for the policy makes clear that this is

- to ensure the long term endurance of the Green Belt and that the suitability of safeguarded sites for development will be comprehensively reviewed as part of the preparation of the Local Development Framework. Meanwhile it is intended that no development should be permitted that would prejudice the possibility of longer term development.
26. Policy N34 is a saved policy and therefore the proposed development would be in conflict with this policy.
27. However, the main parties have agreed in a statement of common ground that the Council can only demonstrate a 4.3 year supply of housing. Paragraph 11 (d) of the National Planning Policy Framework 2018 (the Framework) makes clear by virtue of footnote 7 that in such situations the policies that are most important for determining the application should be considered to be out of date. The Framework goes on to state that consequently planning permission should be granted unless there are specific policies within the Framework (identified in footnote 6) or any adverse impacts of doing so would significantly or demonstrably outweigh the benefits. Both main parties agree that policy N34 of the UDPR is a most important policy in relation to the application and that consequently it should be considered to be out of date, and I have no evidence before me that would lead me to a different conclusion.
28. The question then arises as to the amount of weight that can be attributed to an out of date policy. Guidance is given on this matter in paragraph 213 of the Framework which indicates that due weight should be given to policies according to their degree of consistency with the Framework. Paragraph 139 of the Framework states that *where necessary development plans should identify areas of safeguarded land between the urban areas and the Green Belt in order to meet longer-term development needs stretching well beyond the plan period*. The next section of the paragraph indicates that planning permission should only be granted on such sites following an update to a plan which proposes the development. The emerging SAP has looked at this site and does not propose to change its status.
29. Policy N34 is therefore largely consistent with the Framework and, notwithstanding being deemed out of date by virtue of paragraph 11(d), should, in my view, be afforded considerable weight. Conflict with the Framework would also therefore occur.
30. In arriving at this view I am aware that there have been a number of previous decisions regarding the weight to be attributed to policy N34, including two Secretary of State decisions (Collingham<sup>1</sup> and Tingley<sup>2</sup>), that have arrived at conflicting views. All of these were however assessed against the previous Framework where the determining factor as to whether a policy should be considered to be out of date was whether or not it was a policy relating to the supply of housing rather than one that was most important for determining the application. I also note that between the Collingham and Tingley decisions there was case law which to an extent changed the definition as to what constituted a policy for the supply of housing. None of the foregoing decisions can therefore be taken as compelling precedents for the current appeal.

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<sup>11</sup> APP/N4720/W/14/3001559

<sup>2</sup> APP/N4720/W/17/3169594

31. There has however been one decision since the introduction of the revised Framework<sup>3</sup>. This decision found policy N34 to be out of date due to paragraph 11(d) of the Framework and concluded that the weight to be given to policy N34 was diminished. However, the Inspector in that decision makes no reference to paragraph 213 of the Framework and the weight that can be attributed to a policy if it is in line with policies in the Framework.
32. The emerging SAP, as previously noted, continues the presumption that the southern section of the appeal site will remain as safeguarded land. The SAP is at an advanced stage with consultation on Main Modifications being undertaken between 21 January and 4 March 2019. Paragraph 48 of the Framework makes clear that the amount of weight given to relevant policies in emerging plans relates to how advanced the emerging plan is, the extent to which there are unresolved objections to relevant policies and the degree of consistency of those policies with the Framework. Taking these factors into consideration I consider that the emerging plan can be afforded significant weight.
33. However, paragraph 49 of the Framework indicates that for an application to be considered premature the emerging plan has to be at an advanced stage and (my underlining) the development proposed has to be so substantial, or its cumulative effect so significant that to grant planning permission would be to undermine the plan making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan.
34. The proposed development is for 129 dwellings of which the Council consider 51 to be acceptable in time. The residual number is therefore 78. This would amount to only about 3% of the requirements for the Outer South HMCA and about 0.1% of the overall Core Strategy Requirement. In terms of the cumulative effect on safeguarded sites, this would amount to about 600 dwellings, or about 1% of the CS housing requirement to 2028. This cannot, to my mind, be construed as to be so significant as to be harmful to the spatial strategy or indeed undermine the plan making process.
35. I acknowledge that there are several other developments proposed on safeguarded land in the planning system at the current time and that cumulatively the total number of dwellings on safeguarded land could rise to over 700 units. However, these other sites fall to be considered on their own merits. Furthermore, less than 1000 units is still a very small percentage of the overall housing allocation in both the CS and the emerging CSSR, which I note is based on a lower calculation of need.
36. In arriving at this conclusion I also acknowledge that, within the emerging SAP, the southern section of the appeal site would be the only safeguarded site left in the Outer South HMCA, and that this could, potentially, lead to further intrusion into the GB at a later date. This does not however lead me to an alternative overall conclusion on the issue of prematurity.

*Other matters*

37. Carlton is located within what is known as the rhubarb triangle and the appeal site is still involved in the production of forced rhubarb, which forms a tourist attraction in its own right. There is also an annual rhubarb festival which takes

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<sup>3</sup> APP/N4720/W/17/3186216 (The 'Linton' decision)

place towards the front of the appeal site and involves closure of the road through Carlton. Local residents expressed concern that the proposed development would signal the end of the festival and the economic activity generated by it which is important to the local businesses. There was also a concern that the identity and character of Carlton would be eroded by the loss of the rhubarb connection.

38. I have some sympathy with these concerns. However, there is no guarantee that rhubarb production would continue on the site in the event that the development didn't go ahead. Furthermore, I am not persuaded that allowing the proposed development would signal the end of the festival. The limits of the road closure may have to move, or the festival may have to find another venue, but the festival could still continue.
39. My attention has been drawn to the fact that the Carlton Village Neighbourhood Forum are currently involved in producing a Neighbourhood Plan for the village and that in their eyes the safeguarded land would be a good location for a replacement primary school. However, the plan is at a very early stage and can be given very little, if any, weight at the present time.
40. Comments were also made regarding the effect of the proposed development on local services such as surgeries and schools. However, a Community Infrastructure Levy is in place such that the appellant could be required to contribute to a range of services should the Council deem it necessary.
41. I acknowledge that the Local Housing Assessment carried out by arc4 found there to be a need for only 19 new homes in Carlton to fulfil local needs. This does however overlook the nationwide need for housing and the Framework's stress on significantly boosting the supply of housing.
42. Traffic was also an issue for local residents, particularly the congestion caused outside the school at dropping off and picking up times. However, the proposed site would be close enough to the school such that it would be more than likely that children would be walked to and from school. As regards traffic generally the highway authority had no objections to the scheme provided that contributions were provided to improving junctions on the A61 and a pedestrian access was provided on to Ashton Crescent. I have been supplied with no significant evidence that would lead me to a different view.

#### *Planning Obligations*

43. I have been supplied with an Agreement and a Unilateral Undertaking (UU), both under Section 106 of the Town and Country Planning Act 1990 (as amended). The former of these would secure, amongst other things, the necessary affordable housing provision and greenspace (and its future maintenance) and contributions towards bus stop improvements, an improved bus service, off-site highway works and a Residential Travel Plan Fund. The latter UU would ensure the contribution towards the pedestrian crossing improvement works. The obligations are not disputed by the appellant.
44. Community Infrastructure Levy (CIL) Regulation 122 makes clear that it is unlawful for a planning obligation to be taken into account in a planning decision on a development that is capable of being charged CIL if the obligation does not meet all of the following tests. These are that the obligation is necessary to make the development acceptable in planning terms, is directly

related to the development, and is fairly and reasonably related in scale and kind to the development.

45. From the information provided within the Inquiry documents and that furnished at the Inquiry itself I am satisfied that the obligations meet the tests in CIL Regulation 122.

*Planning balance*

46. I have found that the proposed development would accord with the spatial strategy as defined by policy SP1. While this policy could be deemed to be out of date by virtue of paragraph 11(d) of the Framework, it nonetheless to my mind carries significant weight.
47. In terms of benefits the scheme would provide both market and affordable homes in a district that, notwithstanding the advanced status of the emerging SAP, cannot presently demonstrate a five year supply of housing. Whilst acknowledging that the deficit is only 0.7 years, I give significant weight to this, particularly in light of the Framework's imperative of significantly boosting the supply of homes. The provision of these homes would be a positive factor in respect of the social element of sustainability.
48. There would also be economic benefits in jobs either created or sustained by the building work and by the income of future residents, some of which would be very likely spent in the immediate community.
49. The appellants also point to visual improvements through the demolition of the disused buildings and ecological enhancements through the creation of public open spaces and a central green corridor. As the application was in outline I can give only limited weight to the latter, but nonetheless these are both factors that add some limited weight to the positive side of the planning balance.
50. Against these positive aspects there would be conflict with policy N34 and paragraph 139(d) of the Framework, to which I have attributed considerable weight. The proposed development would also result in the loss of a green field site and agricultural land and there would be landscape changes. However, no significant evidence has been presented to me to show that the landscape changes would be so severe as to justify being afforded any more than limited weight.
51. I acknowledge that the Council can demonstrate an uplift in planning permissions in recent years and that with the emergence of the CSSR a lower number of dwellings would be needed, indicating that a 5 year HLS would be demonstrated. Nevertheless, having found against the Council on the issue of prematurity, I have to determine the appeal based on the situation pertaining at the present time.
52. I am required to determine the appeal in accordance with the development plan unless material considerations indicate otherwise. In this case, considering my above findings, I conclude that whilst conflict with the development plan has been identified, taking into account the material considerations, there are no adverse impacts that significantly and demonstrably outweigh the benefits. The proposed development therefore benefits from the presumption in favour of sustainable development.



53. I am aware that this decision is different to that of the Secretary of State in the Tingley decision. However, in that case conflict was found with policy SP1 as well as with policy N34, the quantum of housing proposed was significantly greater and none of the proposed site was allocated for housing within the emerging CS.

#### *Conditions*

54. The conditions set out in the accompanying schedule are based on those agreed by the Council and the appellant. Where necessary I have amended the wording of these in the interests of precision and clarity in order to comply with advice in the Planning Practice Guidance.
55. I have imposed a condition that defines the maximum number of dwellings permitted by this outline permission and one that, for certainty, identifies the approved plans. To ensure that the site is constructed in a coordinated manner I have imposed a condition that requires the appellant to submit a scheme of phasing.
56. In the interest of highway safety I have imposed conditions requiring that the approved access is constructed prior to the construction of the dwellings. For the same reason and to protect residential amenity I have imposed conditions requiring a construction practice statement and also details of such things as the parking, loading and unloading and storage of contractor's plant and materials. Also, in the interest of residential amenity I have imposed a condition that restricts working hours.
57. To promote sustainability I have imposed conditions relating to electric vehicle charging points and cycle storage, and I have imposed several conditions relating to drainage and the existing watercourse through the site to ensure that the permitted development is provided with suitable and sustainable drainage systems.
58. Due to the history of the site and the potential occurrence of historical artefacts I have imposed a condition requiring the implementation of a programme of archaeological recording. In the interests of public safety I have imposed conditions relating to site investigations to establish any risks from past mining activity, contamination and asbestos.
59. The Council's Environmental Health Officer recommended that a scheme of noise attenuation should be produced for all new houses due to the proximity of the Unicorn Inn to the north of Main Street. To my mind, bearing in mind that there are dwellings next to the pub and diagonally opposite to the south it would be unduly onerous to expect the appellant to provide such a scheme for all dwellings on the development. However, in the interest of residential amenity and in line with the advice in paragraph 182 of the Framework it would not seem unreasonable to impose such a scheme for the dwellings built directly to the south of Main Street. I have therefore imposed such a condition.

#### **Conclusion**

60. In light of my above reasoning and having regard to all other matters raised, I conclude that, having regard to local and national planning policy for the delivery of housing, the appeal site is an appropriate location for the proposed development. The appeal is therefore allowed.

*John Wilde*

INSPECTOR

Schedule of conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before the development of each relevant phase takes place 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 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Y81: 1053.01 Revision A (site location plan), 17064/GA/01 Revision B (access point).
- 5) The submission of all Reserved Matters and the implementation of the development hereby permitted shall be carried out to deliver a maximum of 129 dwellings.
- 6) Prior to the commencement of development other than the commencement of ground works and site preparation / investigation, a scheme of phasing shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with this scheme.
- 7) The access hereby approved shall not be brought into use until works have been undertaken to provide the visibility splays shown on the approved plan ref 17064/GA/01 Revision B to an adoptable standard. These visibility splays shall be retained clear of all obstructions for the lifetime of the development.
- 8) Construction of the dwellings shall not commence until the works associated with the proposed site access arrangements as shown for indicative purposes on Drawing No. 17064/GA/01 Revision B have been submitted to and approved in writing by the Local Planning Authority. The approved works shall be fully implemented prior to occupation of the first dwelling.
- 9) Development shall not commence on the relevant phase of development until details of access, storage, parking, loading and unloading of all contractors' plant, equipment, materials and vehicles (including workforce parking) have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be provided for the duration of construction works.
- 10) Construction activities shall be restricted to 08:00 to 18:00 Monday to Friday, 08:00 to 13:00 Saturdays, with no construction activities on Sundays, nor Bank or Public Holidays.

- 11) No works shall begin on the relevant phase of development until a Statement of Construction Practice for that phase has been submitted to and approved in writing by the Local Planning Authority. The Statement of Construction Practice shall include full details of:
  - i) the methods to be employed to prevent mud, grit and dirt being carried onto the public highway from the development hereby approved;
  - ii) measures to control the emissions of dust and dirt during construction;
  - iii) location of site compound and plant equipment/storage; and
  - iv) how this Statement of Construction Practice will be made publicly available by the developer.
- 12) Construction of the dwellings within each phase of the development shall not commence until details of Electric Vehicle Charging Points have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and no dwelling on the relevant phase of development shall be occupied before its Electric Vehicle Charging Point has been provided.
- 13) Construction of the dwellings within each phase of the development shall not commence until details of cycle storage have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and no dwelling on the relevant phase of development shall be occupied before its cycle storage has been provided.
- 14) Prior to the construction of any dwelling a scheme of noise attenuation for all those new houses built directly to the south of Main Street and having no other built form between themselves and the Carlton Social Club and the Unicorn Inn shall be submitted to and approved in writing by the local planning authority. The scheme shall include measures to ensure noise levels shall not exceed 35 dB (A) in living rooms during the day and 30dB (A) in bedrooms at night. The scheme shall include an assessment of which windows will need to remain closed and alternative ventilation systems that are subsequently required. The scheme shall be implemented as approved prior to occupation of dwelling.
- 15) The site shall be developed with separate systems of drainage for foul and surface water on and offsite.
- 16) Development shall not commence until details and a method statement for interim drainage measures during site works have been submitted to and approved in writing by the Local Planning Authority. The site works and construction phase shall thereafter be carried out in accordance with the approved details.
- 17) Construction of dwellings shall not commence until a scheme detailing the surface water drainage works (i.e. drainage drawings, summary calculations and details of all attenuation systems) has been submitted to and approved in writing by the Local Planning Authority. The surface water drainage scheme (including details of any balancing works and off-site works) shall be in accordance with the principles of the drainage proposal set out in the FRA E14/6014/FRA001 dated Feb 2014. If discharge to public sewer is proposed, the information shall include:

- i) evidence that other means of surface water drainage have been properly considered and why they have been discounted; and
- ii) the means by which the discharge rate for the whole site shall be restricted to a maximum rate of 28 litres per second.

The works shall be implemented in accordance with the approved scheme before the development is brought into use, or as set out in the approved phasing details.

- 18) Surface water from the site shall not be discharged to the watercourse until:

- i) the necessary works in the vicinity of the watercourse (i.e. provision of a grid upstream of the culverted outfall from the site to the public sewer, opening up of the culverted section of watercourse upstream of the grid, details of the culvert under the access road) have been submitted to and approved in writing by the Local Planning Authority; and
- ii) a scheme for the future maintenance of the grid and any other drainage facility has been submitted to and approved in writing by the Local Planning Authority. This scheme shall also include provisions and or a schedule for the ongoing maintenance of any SUDS ponds that are also functioning as public open space.

The development shall be carried out in accordance with the approved details which shall thereafter be retained in operational condition. No dwelling shall be occupied until the surface water management provisions have been implemented in full and made available for use.

- 19) No demolition or development in any phase shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological recording. This recording must be carried out by an appropriately qualified and experienced archaeological consultant or organisation, in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority.
- 20) No removal of trees or shrubs shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before (within 24 hours) the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the Local Planning Authority within 3 days of vegetation removal works being carried out.
- 21) No development shall commence until a scheme of intrusive site investigations adequate to properly assess the ground conditions on the site and establish the risks posed to the development by past coal mining activity has been undertaken by a competent person, and a report of findings arising from the intrusive site investigations, along with any remedial works and/or mitigation measures considered necessary has been submitted to and approved in writing by the Local Planning Authority. All necessary remedial works and/or mitigation measures shall be undertaken in accordance with the agreed details and implemented in full prior to the occupation of the first dwelling.

- 22) The approved Phase I Desk Study report indicates that a Phase II Site Investigation is necessary, and therefore development shall not commence until a Phase II Site Investigation Report has been submitted to, and approved in writing by, the Local Planning Authority.

Where remediation measures are shown to be necessary in the Phase II Report and/or where soil or soil forming material is being imported to site, development shall not commence until a Remediation Statement demonstrating how the site will be made suitable for the intended use has been submitted to, and approved in writing by, the Local Planning Authority. The Remediation Statement shall include a programme for all works and for the provision of Verification Reports.

- 23) If remediation is unable to proceed in accordance with the approved Remediation Statement, or where significant unexpected contamination is encountered, the Local Planning Authority shall be notified in writing immediately and operations on the affected part of the site shall cease. An amended or new Remediation Statement shall be submitted to, and approved in writing by, the Local Planning Authority prior to any further remediation works which shall thereafter be carried out in accordance with the revised approved Statement.
- 24) Remediation works shall be carried out in accordance with the approved Remediation Statement. On completion of those works, the Verification Report(s) shall be submitted to the Local Planning Authority in accordance with the approved programme. The site or phase of a site shall not be brought into use until such time as all verification information has been approved in writing by the Local Planning Authority.
- 25) Prior to the commencement of demolition, documentation demonstrating the absence or total removal of asbestos from any building(s) to be demolished shall be submitted to and approved in writing by the Local Planning Authority. Should documentation be unavailable or insufficient, post-demolition surface soil sampling of future landscaped or garden areas shall be carried out and the results shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any post-demolition development. Where surface soil sampling indicates remediation to be necessary, a Remediation Statement shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of construction. The Remediation Statement shall include a programme for all remediation works and for the provision of verification information. Remediation works shall be carried out in accordance with the approved Remediation Statement. On completion of those works, the Verification Report(s) shall be submitted to the Local Planning Authority in accordance with the approved programme. The site or that phase of the site shall not be brought into use until such time as all necessary verification information has been approved in writing by the Local Planning Authority.



## **APPEARANCES**

FOR THE LOCAL PLANNING AUTHORITY:

Mr Juan Lopez of Counsel

He called: Mrs Caroline Harris  
Ms Jessica Thomas

FOR THE APPELLANT:

Mr Andrew Williamson

He called Mr Jonathan Dunbavin

INTERESTED PERSONS:

Rule 6 party:

Mr Steven Carmody

He called: Ms Verity Britton  
Mr Stewart Golton  
Councillor Carmel Harrison  
Mr Kevin Kuszyk  
Councillor Karen Bruce  
Mr Peter Ellis

## **DOCUMENTS HANDED IN DURING THE INQUIRY**

- 1 Appellant's Appearance List
- 2 Section 106 Agreement
- 3 Summary of Section 106 Agreement
- 4 Unilateral Undertaking
- 5 Optima Note: on Potential New Road Pedestrian Improvements
- 6 Jon Dunbavin's Response to Council Submission on SAP  
Inspector's Further Interim Notes
- 7 Screenshot of SAP Examination Site dated 21/01/2019
- 8 SAP Inspector's Further Post Hearing Note
- 9 SAP Inspector's "Potential Main Modifications"
- 10 LCC Sustainability Appraisal Addendum 3 – Leeds SAP January  
2019
- 11 LCC Leeds SAP – Proposed Main Modifications, January 2019
- 12 Update to Mr Brooks Proof, Appendix 8
- 13 Statement on behalf of LCC updating on the Leeds SAP
- 14 Appellant's Opening Submissions
- 15 Council's Opening Submissions
- 16 R6 Party Presentations

- 17 Email dated 17 January 2019 from Mr Carmody to Mr Owen
- 18 Draft Conditions
- 19 CIL Statement – 106 Agreement
- 20 CIL Statement – UU
- 21 Extracts from Mr Dunbavin's proof at Tingley
- 22 Council calculation of ID Planning figures to reflect CSSR
- 23 Updated CD list
- 24 LCC reps dated 10 August 2018 to Linton Inspector re revised Framework
- 24 Reply submissions on NPPF on behalf of LCC dated 22 August 2018
- 25 Appellant in relation to Linton: reps dated 22 August in reply to Council's submission on revised Framework
- 25 Land at Ridge Meadows Tibgarth Note from Counsel dated 10 August 2018
- 26
- 27 Council plan showing location of culvert
- 28 JD Response to D22
- 29 Plan extracts showing relevant offsite junctions
- 30 R6 Closing Submissions
- 31 LCC Closing Submissions
- 32 Appellant's Closing Submissions
- 33 S.106 Agreement (completed)
- S.106 Unilateral Undertaking (completed)