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## Appeal Decision

Inquiry held on 18, 19 and 20 June 2013

Site visits made on 21 June 2013

**by Brendan Lyons BArch MA MRTPI IHBC**

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

**Decision date: 18 October 2013**

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**Appeal Ref: APP/M0933/A/13/2193338**

**Land to the west of Oxenholme Road, Kendal, Cumbria**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Oakmere Homes Ltd against South Lakeland District Council.
  - The application, Ref SL/2012/1566, is dated 1 July 2012.
  - The development proposed is the construction of 148 no. dwellings.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the construction of 148 no. dwellings at land to the west of Oxenholme Road, Kendal, Cumbria, in accordance with the terms of the application Ref SL/2012/1566, dated 1 July 2012, subject to the conditions set out in the schedule annexed to this decision.

### Background and preliminary matters

2. The planning application that has given rise to this appeal was submitted in the name of Briery Homes Ltd. The company has since changed its name, so that the appeal was made by Oakmere Homes Ltd, as set out in the heading above.
3. The appeal concerns an area of land comprising some 6.95 hectares, located next to Oxenholme Road at the edge of the built-up area of Kendal. The site is bounded to the east by the road, on the opposite side of which stands a line of mainly detached houses and bungalows, backed by the more recent Kendal Parks housing area. The site is adjoined to the north by The Oaks housing estate, which is now some 10-15 years old. To the west stand the main buildings of the Westmorland General Hospital, while to the south are open fields that adjoin the main railway line. Beyond the railway lies the smaller settlement of Oxenholme.
4. The major part of the site is currently used for grazing and comprises sloping ground associated with the adjoining drumlin feature, and draining to a small stream, which crosses the site from south to north. The flatter land at the south-eastern corner encompasses part of an area cultivated for fruit growing and referred to by local residents as 'the strawberry field'.

5. Permission is sought for the erection of 148 houses. The application was submitted in outline form, with only the means of access to the site for full approval at this stage. The proposed main vehicular access would be by way of a new mini-roundabout junction with Oxenholme Road at the south-eastern corner of the site, and provision would be made for a secondary emergency access further to the north. Other matters of layout, scale, appearance and landscaping are reserved for later approval, but the submitted Design and Access Statement and indicative plans suggest that the proposed housing would be similar in scale and appearance to The Oaks, predominantly comprising two-storey detached houses facing onto cul-de-sac roads. A green corridor and public open space would be formed beside the stream.
6. The appeal was made against the Council's failure to reach a decision on the application within the prescribed period. The Council later considered the application and resolved the reasons for which it would have refused permission. However, following revised advice from the education authority, the Council has subsequently decided that the absence of contributions to mitigate adverse effects on local education could no longer be sustained as an objection to the proposal.
7. The areas of agreement between the Council and the appellants and the matters still at issue are set out in a Statement of Common Ground ('SoCG') dated 26 April 2013. Supplementary SoCGs relating to matters of valuation and build costs were agreed during the course of the Inquiry. No common ground was agreed with the local Triangle Opposition Group ('TOG'), who were granted Rule 6 status for the appeal.
8. The appeal is accompanied by a unilateral undertaking ('UU') as a planning obligation under section 106 of the Town and Country Planning Act 1990 (as amended). The Council accepts that the covenants provided by the UU would address its concern in respect of play space provision. The UU also includes covenants to make financial contributions to the cost of monitoring the submitted travel plan and towards highway improvements intended to mitigate the cumulative effects of the proposal and other developments. However, the need for the latter is disputed by the appellants, and the relevant covenant is qualified so that this payment would not be made should the provision be found not to meet the tests for planning obligations set out in the Community Infrastructure Levy ('CIL') Regulations 2010. The validity of the UU is considered later in this decision.

### **Main Issues**

9. Having regard to the Council's remaining intended reasons for refusal and to the objections raised by TOG, the main issue in the appeal is agreed to be:

Whether, if there is less than a five year supply of developable housing land, the proposal would amount to a sustainable form of development in accordance with national and local policy, particularly in respect of:

- The provision of affordable housing;
- The effect on highway and transport infrastructure;
- The suitability of the site for residential development, in particular the effect on the Green Gap between Kendal and Oxenholme.

## **Reasons**

10. The South Lakeland Local Development Framework Core Strategy ('CS') adopted in 2010, seeks to deliver a housing requirement for the district of 8800 additional homes over the period 2003-2025, of which 35% are to be in Kendal. The strategy for Kendal set by Policy CS2 states that the Council will seek to ensure that 35% of these 3080 additional dwellings meet identified needs for affordable housing, with up to 60% of the provision to be for social rented occupation.
11. It is common ground that, allowing the 20% buffer for persistent past under-delivery advised by the National Planning Policy Framework ('NPPF'), the Council cannot demonstrate a five-year supply of deliverable housing land. The precise level of shortfall is subject to some debate, but there is little doubt that it is significant. The acute need for both market and affordable housing is not disputed by any party to the appeal.
12. In these circumstances, the housing supply policies of the development plan cannot be regarded as up-to-date and in accordance with NPPF guidance the proposal must be assessed in the context of the presumption in favour of sustainable development, with permission to be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF as a whole.
13. The Council does not dispute the site's suitability for housing development, accepting that it provides a sustainable location at the urban edge of Kendal. This is notwithstanding the site's allocation as part of the 'Green Gap' between Kendal and Oxenholme, originally designated by the South Lakeland Local Plan and confirmed at the most recent Alterations to the plan adopted in 2006. The allocation is now carried forward by CS Policy CS8.2, pending a review of boundaries by the emerging Land Allocations Development Plan Document ('LADPD'), which was undergoing examination at the time of the appeal Inquiry.
14. The Council places weight on the submission draft LADPD, which proposes to allocate the great majority of the appeal site<sup>1</sup> for housing development and to amend the Green Gap boundary accordingly. The objection to that proposal by TOG also forms the core of their objection to the appeal proposal, which is considered later in this decision.
15. The Council's outstanding objections to the appeal relate to the proposed level of provision of affordable housing and to the need for a financial contribution to help mitigate a potential cumulative effect of traffic on highways and transport infrastructure.

## **Affordable Housing**

16. CS Policy CS6.3 sets the requirement for 35% affordable provision on schemes of nine or more dwellings, which is reflected by the strategy for Kendal set by Policy CS2. But Policy CS6.3 allows that a lower level may exceptionally be provided where there is clear evidence that full provision would make the proposed development unviable. This flexibility is consistent with the guidance of paragraph 173 of the NPPF, which advises that development should not be

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<sup>1</sup> 5.97 hectares of the total of 6.95 hectares

subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.

17. Therefore, the force of Policy CS6.3 is not diminished by the later introduction of the NPPF. But it is clear that, in certain circumstances, a scheme with a lower level of provision than normally sought could still be in accordance with national and local policy, provided there was clear evidence to support the position.
18. In this case, the appellants dispute the viability implications of the 35% affordable housing requirement, which would equate to 51 of the proposed 148 units. The requested contribution for transport infrastructure, which is considered below, is disputed in principle, but would also have some impact on viability if payable, albeit of a considerably lower order. The appellants suggest that the scheme would be viable with 10% affordable housing provision (15 units).

#### *Viability*

19. The assessment of viability is dependent on a wide range of variables, requiring a high degree of professional judgement as well as a sound understanding of local conditions. The conflicting evidence offered by valuation specialists for the Council and the appellants shows how the adjustment of certain variables can produce a wide range of outcomes.
20. The guidance of paragraph 173 of the NPPF is framed in the overall context of the need to produce a significant boost in the supply of housing. The thrust of the guidance is to avoid development being prevented or delayed by any threat to viability arising from 'policy burdens'. The guidance states that 'To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable'.
21. The concept of a 'competitive return' is not further defined by the NPPF, and could be the subject of differing interpretations by the parties involved in any particular development. The assessment of a competitive return will involve an element of judgement. Clearly, however, excessively ambitious predictions must be tempered by comparison with industry norms and local circumstances.
22. In this case, it is common ground that a competitive return for the developer can be taken as a profit of 18-20% of the gross development value ('GDV'). The higher figure is used in the series of appraisals put forward by the Council before and during the Inquiry<sup>2</sup>. The single appraisal submitted in evidence by the appellants<sup>3</sup> modifies this to 18%, in order to enhance viability, but notes that in the event of development proceeding, efforts would be made to achieve an actual figure of 20%. It is agreed that the difference between these figures is not of critical significance in the overall assessment of the differing positions. I see no reason to reach a different conclusion.

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<sup>2</sup> Proof of evidence of Matt Messenger, Appendices 1-8

<sup>3</sup> Proof of evidence of Derek Nesbitt, Appendix 1

23. The issue therefore becomes the achievement of a competitive return for the land owner. The land value generated by the proposal must be sufficient to attract the willing release of the site for development.
24. The Council's evidence outlines a number of methods by which a benchmark site value can be established. The first is based on the existing use value ('EUV') plus a margin. In this case, the Council proposes the margin settled upon by the consultants who prepared the recent Viability Study in support of the LADPD<sup>4</sup>. At an EUV of £50000/hectare, to reflect higher value 'paddock' use at the urban fringe rather than basic agricultural value, with a margin of 20% plus £400,000/hectare the site value would amount to £3,197,000. Using the measure of land value preferred by the valuation experts, this is calculated by the Council to equate to £246,873/net developable acre<sup>5</sup>.
25. However, the RICS guidance note on viability<sup>6</sup> points out concerns about the potential inaccuracy of the EUV plus margin method, and does not recommend it. The Harman report<sup>7</sup> on viability testing of plans also points out the weakness of this approach when dealing with agricultural land at the urban edge. In the present case, the figures adapted from the LADPD Viability Study are broad brush, and the precise rationale for the £400,000 margin is not open to interrogation. Furthermore, I note that representations made for the LADPD on behalf of the Cumbria House Builder Group in response to the Viability Study are firmly of the view that the level proposed would not encourage landowners to bring forward sites for development<sup>8</sup>. The figure of £246,873 would be well below the £500,000/net developable acre proposed by the House Builder Group and favoured by the appellants in this appeal. It would also be below the level of £400,000/net developable acre regarded by the Council, and confirmed by the Viability Study, as the historic value sought by local land owners.
26. Therefore, although I note that the EUV plus margin method has been accepted in other situations, such as the examination of the London CIL charging schedule, and may be useful at an area-wide level, in this case I consider that greater weight must be given to the residual method of determining the site value, which has also been followed by the appellants.
27. The six variations on a residual valuation appraisal included in the Council's original evidence were effectively superseded by the two appraisals produced at the Inquiry<sup>9</sup>. Both of these seek to show that at the Council's revised estimates of sales values, and using at the appellants' benchmark land value, the scheme could deliver 35% affordable housing and still create a financial surplus. The appellants' single appraisal seeks to demonstrate that, at their preferred lower sales values and the same benchmark land value, the scheme without any affordable housing would result in a surplus of £335,000. The appellants' conclusion is that this amount would allow 10% affordable housing provision, subject to some 'flex' by the parties on their level of return and on the tenure of the housing.

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<sup>4</sup> HDH Planning & Development *South Lakeland Land Allocations DPD Viability Study* April 2013

<sup>5</sup> It is agreed that the gross site area of 6.95 hectares produces a net developable area of 5.04 hectares or 12.45 acres

<sup>6</sup> *Financial Viability in Planning*, RICS Guidance Note, 1<sup>st</sup> edition

<sup>7</sup> Local Housing Delivery Group *Viability Testing Local Plans: Advice for Planning Practitioners* June 2012

<sup>8</sup> Proof of evidence of Derek Nesbitt, Appendix 12

<sup>9</sup> Proof of evidence of Matt Messenger, Appendices 7 and 8

28. The key elements of the appraisals relate to: development value, determined by sales revenues and fees; building costs, including site-specific abnormalities, and developer's profit; land values.

*Building costs*

29. The Council's written evidence questioned the appellants' assumptions on building costs. Following the agreement of common ground, the concern had narrowed to one item, relating to infrastructure. However, by the close of the Inquiry, and in the light of expert quantity surveyor evidence, the Council had accepted the appellants' costs calculation, including infrastructure and abnormal items, and had used the figures in its own final two appraisals. While noting that the appeal site comprises green fields at the urban edge, without any obvious need for demolition or de-contamination, I have no reason to reach any different conclusion on costs.

*Development value*

30. There remains a significant difference between the parties on the matter of development value. The sales values shown in the appellants' initial viability appraisal were accepted as realistic in the assessment carried out for the Council at the time of the application, when the main concern related to the high value indicated for the land. In the written evidence for the Inquiry, the range of sales values shown, between £2044/sqm and £2248/sqm is described as 'realistic, if slightly cautious'. Reference is made to the range employed in the LADPD Viability Study of £2250-2300/sqm, based on two hypothetical urban edge sites in the Kendal area.
31. The Council's altered stance at the Inquiry is said to be based on a realisation that the figures in the LADPD Viability Study were deliberately based on a 'worst case' approach rather than on an analysis of actual sales rates. However, this is not clearly indicated in the Study itself, which contains a range of data on the current housing market. In fact, the Study states that consultation with stakeholders, including developers, had accepted that the figures used in the Study's modelling exercise were reflective of the current market. This tends to cast doubt on the Council's revised position that sales values in the order of £2550-2700/sqm could be achieved at the appeal site, rather than the average rate of £2174/sqm now proposed in evidence by the appellants.
32. The ability to benchmark against comparable achieved sales in the local area is constrained by the limited range of new housing brought to the market in recent years. The Council's analysis of the three new-build schemes quoted by the appellants suffers from the lack of direct comparability with the appeal proposal, which was confirmed by my visit to these sites.
33. The new houses at Cock & Dolphin Yard form a highly distinctive urban infill development, which would appeal to a particular market. They could not be directly compared with the relatively standard suburban form of development proposed in the appeal.
34. The small development at Rowan Gardens, Natland, is more similar to the likely character of the appeal scheme, but more exclusive in scale and in a location that is acknowledged by the Council to be a desirable village, only 2 miles from Kendal. It is reasonable to expect the houses here to attract higher values than

those at the appeal development. The same is true of the achieved values and current asking price for the even more select development at Greengate Gardens, Levens. None of these schemes provides compelling evidence in support of the Council's revised assessment.

35. Similarly, the Council's analysis of asking prices for modern re-sale properties does not greatly add to its case. I agree with the appellants that such asking prices cannot give a fully reliable indicator of actual achieved sales. Evidence provided by the appellants gives some indication of the way in which asking prices have tended to be reduced over time, with the exception of some vendors seeking returns that are out of step with the general market. The appellants' proposed average sales value would be above average sale prices for the area.
36. I acknowledge the importance of competitive pricing in ensuring a regular rate of sales in a new development, in order to maintain cash flow and restrict the development period. It appears that the Council's proposed rate of £2500/sqm would result in uncompetitive prices, which could affect buyers' ability to access borrowing. The Council also models a rate of £2400/sqm, but has not offered specific evidence to support that as an alternative.
37. For the reasons set out above, I consider that the sales figures used in the LADPD Viability Study provide a reasonable basis for the appraisal, so that the appellants' average rate of £2174/sqm can be accepted as sound in this particular instance.

*Land value*

38. The Council's evidence does not seek to specify a prescriptive level of land value for the proposed development. Its summary of the different methods of arriving at a benchmark land value indicate a range between £243,000 and £557,600/net developable acre. The different versions of the appraisals submitted in evidence are also based on a range of potential benchmark values, including the appellants' preferred level of £500,000/net developable acre, and conclude differing 'true residual' values. However, the Council maintains the position that a value of £400,000/net developable acre remains the 'tipping point' at which an informed local landowner would be willing to release land for residential development.
39. Support for this figure is offered by its adoption in the LADPD Viability Study, at least as an historic value, based on evidence of recent sales. As this report provides a considered comprehensive exploration of the issue, prepared by independent consultants to inform the DPD adoption process, I consider that weight can be attached to it. The Study's modelling of two hypothetical sites at the urban edge of Kendal, based on 35% affordable housing provision, produced residual site values close to this figure.
40. The appellants place considerable reliance on the objection to the DPD lodged by the Cumbria House Builder Group, which argues for a minimum benchmark value of £500,000/net developable acre. However, the Study reports a range of views, not all of which take the same line. In the absence of consensus, the authors of the Study resolved that £400,000/net developable acre was the correct figure to test.

41. The choice of this figure does not appear to have relied unduly on comparisons with the market in Wrexham, the objection to which by the Cumbria House Builder Group is endorsed by the appellants. The appellants themselves seek to make comparisons with other areas, such as Cheshire, whose comparability with Kendal is equally open to question.
42. The use of these remote comparators is an illustration of the lack of clear local or regional data of benchmark values, which creates considerable difficulty in drawing reliable conclusions. The Cumbria House Builders' knowledge of the local market may not be open to question, but their representations are not supported by clear evidence to illustrate the basis of the value suggested, or of the circumstances, such as a rise in house sale prices, that might have led to an increase in land owners' average expected values of up to 25% in a relatively short period. The appellants point out that it is not normally seen as in house builders' interest to promote higher land values. However, the relationship between land value and developer return does not appear to be straightforward, particularly if higher land values are offset by the reduction in other burdens and the achievement of higher development values.
43. Some limited comparator evidence is provided by the sale price of land for the Rowan Gardens, Natland, development, which was in the order of £580,000-£600,000/net developable acre. Allowing for the more exclusive character of the Natland scheme, the land value could be expected to be considerably higher than that at the appeal site. But the Council accepted at the Inquiry that, based on this one comparator, the Natland sale price could indicate a value of £500,000/net developable acre for the appeal site.
44. The Council's evidence reports three recent transactions for development involving affordable housing in South Lakeland and the adjoining Eden District, at unconstrained prices between £262,500 and £383,000/acre. But as full details of these schemes have been withheld for reasons of confidentiality, it has not been possible to test the figures, which reduces the weight to be given to them. However, I note that highest value of the three sites, described by the Council as particularly comparable with the appeal site, included an affordable housing provision of only 20%.
45. A further measure of appropriate land value is based on a percentage of the gross development value (GDV). The level of 20% of GDV proposed by the appellants appears to have some currency. It was recommended for urban sites in the Economic Viability Appraisal prepared by the appellants' consultant for Eden District, and was accepted without comment by the Inspector examining the Eden Core Strategy DPD. However, it appears to me that such percentages must be seen as estimates that can at best provide only an approximate guide. The study allows a wide disparity between the percentage for urban and rural sites, which seems difficult to justify in the light of high value rural sites such as Rowan Gardens, in a desirable village close to a main town. The potential differing interpretation of those categories in relation to the previously developed status of the land was highlighted by the Council in this appeal. I note also that the recommended percentages were doubled during the course of consultation, which suggests that the science involved is inexact. A similar study for Warwick adopted the rate of 20% throughout the area, but viability considerations in Eden are likely to be much more comparable with the appeal site than those in Warwick.



46. The appellants' calculation of GDV of the appeal proposal without any affordable housing, based on the sales values accepted above, would amount to £32,722,000. A 20% proportion would equate with their proposed benchmark of £500,000/net developable acre. However, provision of affordable housing would reduce the GDV and the resulting calculation of land value. Nevertheless, I note that none of the Council's estimates of GDV of the appeal proposal, even with 35% affordable housing provision, fell below £30 million, 20% of which would be considerably closer to the appellants' figure than to the historic value of £400,000/net developable acre.
47. The parties refer to an appeal decision for land at Shinfield, Berkshire<sup>10</sup>, which is quoted in the LADPD Viability Study. However, little weight can be given to that decision in the present case, as the nature of the site was quite different, being partly previously developed, and the positions taken by the parties on the proportion of uplift in site value that should be directed to the provision of affordable housing were at odds with those now proposed. There is no reason in the present case to assume that either 100% or 50% of the uplift in site value is the correct proportion to fund community benefits.
48. Both the RICS Guidance Note and the Harman report comment on the danger of reliance on historic market land values, which do not take adequate account of future policy demands. The LADPD Viability Study reflects this, raising concern that future trends, particularly the introduction of CIL, are likely to reduce values. The conclusion of the Study is that the level of £400,000/net developable acre should be seen as an historic aspiration, dating from before the adoption of the CS.
49. While it appears that the Council has no advanced plans to introduce a CIL, the possibility of future increased charges on development land must be a factor in any decision by a land owner to hold land back from release in the short term. A land owner would also be aware that failure to release land could result in other sites coming forward to address housing need. In setting a reasonable expectation of value, regard must also be had to adopted planning policy for the area. Values obtained elsewhere may not be subject to the same constraints and may not be true comparators.
50. The weight to be given to a variety of factors, including values achieved elsewhere, means that any individual decision on land value will be complex. Therefore, the task of identifying a benchmark value that would provide a competitive return for a willing seller is a difficult one. Having modelled various sites against the benchmark of £400,000/net developable acre, the LADPD Viability Study recorded the difficulty of viably achieving the full CS policy target of 35% affordable housing. The Study recommended that the DPD should proceed, noting the enhanced viability offered by the EUV plus margin approach, which would offer considerable uplift over EUVs.
51. In the light of all of the above, I am unable to conclude that a higher benchmark value than £400,000/net developable acre should be accepted in this appeal. The evidence for the higher figure proposed by the appellants is not conclusive, being based largely on one small comparator site of a different quality and on a relatively broad brush method of checking land value against GDV. Although contested, the LADPD Viability Study suggests that not all owners have expectations in excess of the £400,000 level. The land owner in

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<sup>10</sup> Appeal Ref APP/X0360/A/12/2179141

the present case appears to have started at a higher level, but the appellants themselves have significantly reduced that earlier figure. However, the expectations of one land owner are not critical in the determination of a benchmark level, which relates to the reasonable expectation of a typical owner.

52. Therefore, although the evidence of a comparable site value and the check against GDV gives some support for a land value of £500,000/net developable acre, I consider that there are grounds to conclude that a lower benchmark figure would be reasonable. I conclude that the need to set a benchmark land value of £500,000/net developable acre, on which the appellants' case is based, has not been conclusively demonstrated.

#### *Conclusion on affordable housing*

53. The appellants' viability appraisal shows that with no affordable housing, the scheme could generate a surplus of £335,000 at the higher benchmark land value, which the appellants state could support an affordable housing provision of 10%. It is clear that a lower land value would generate a larger surplus, which would thus support a higher proportion of affordable housing. No detailed appraisal has been provided with other levels of provision at the levels of development values and costs accepted above. Therefore there is no evidence of the effect of a range of different levels of provision on the residual land value.
54. Some guidance can be gleaned from the appellants' statement that 35% affordable housing provision would result in a residual value £1,165,000 less than the 'legitimate benchmark value'. I take this to mean that the residual value would be in the order of £5,060,000, which would equate to more than £400,000/net developable acre.
55. The appellants' position at the Inquiry was that if the case for 10% provision was not to be accepted, planning permission should still be granted subject to a condition in the form agreed between the parties requiring a scheme for 35% provision, which would bring the proposal into full compliance with CS Policy CS6.3. It was accepted in evidence that there were no other material considerations that would overcome conflict with this policy objective.
56. The Council's position was that the appeal should be dismissed on the ground that the level of provision proposed would not accord with the policy. However, the application is submitted in outline, without binding details of the housing mix or tenure. The submitted UU does not contain any obligation on affordable housing provision. The parties agreed at the Inquiry that the matter could be addressed by a condition requiring later submission of a detailed scheme.
57. In the circumstances, and in the absence of clear evidence that the proposal could not generate a competitive return for both developer and landowner at the policy approved level of provision, I conclude that a condition requiring 35% affordable housing would be reasonable and necessary and would comply with the guidance of the NPPF and meet the tests of Circular 11/95<sup>11</sup>.

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<sup>11</sup> DoE Circular 11/95: The use of conditions in planning permissions

### **Highway and transport infrastructure**

58. The Council accepts the advice of Cumbria County Council ('CCC') as highway authority that the proposed development could be accessed safely from Oxenholme Road and that there would be no unacceptable traffic implications on the local highway network. In this respect the proposal would comply with the transport objectives of CS Policy CS10.2. Paragraph 32 of the NPPF advises that development should only be refused on transport grounds where the residual cumulative impacts are severe.
59. However, the Council supports the CCC view that the proposal, in conjunction with other development anticipated by the CS and to be settled by the forthcoming adoption of the LADPD, would contribute to future traffic congestion. Based on the overall cost of a programme of improvements divided *pro rata* between each proposed residential and employment development, a contribution of £115,884 is sought towards the cost of improvements intended to offset predicted adverse effects. This is said to be in accordance with CS Policy CS9.2 which requires new development to provide for improvements to infrastructure that are necessary to make the development acceptable.
60. The principle of requiring pooled contributions to address a need for infrastructure generated by a number of developments is sound, and forms the basis for the CIL system. The Council and CCC anticipate that transport-related infrastructure will in the longer term be funded by CIL. Until a CIL is adopted, any planning obligation offered must comply with the guidance of the NPPF and meet the tests of Regulation 122 of the CIL Regulations 2010.
61. In this instance, the case for the contribution is entirely reliant on the implementation of potential development set out in the submission draft LADPD. As outlined above, the existence of outstanding objections to the LADPD proposals, including to the appeal site, means that only limited weight can be given to it at this stage. The lack of certainty that any or all of the sites identified for potential development will form part of the adopted DPD casts considerable doubt on the programme of improvements identified as mitigation.
62. Even if it could be argued that the overall amount of development in the adopted DPD will need to reflect the CS objectives, there is no certainty on how it would be delivered. The CCC approach seeks to allocate predicted impacts for Kendal into four quadrants of the town, but the final pattern of development might not reflect that currently proposed. Therefore, it is not possible to predict with confidence the degree of impact relating to the appeal proposal. It has not been shown that the proposal would lead to a cumulative severe traffic impact.
63. In the absence of any reliable estimation of the effect of the proposed development, the requirement for a financial contribution would not meet the tests for planning obligations. It has not been satisfactorily shown that the measures to be funded would be necessary to make the development acceptable in planning terms, would be directly related to the development and would be fairly and reasonably related to the development in scale and kind. For these reasons, no weight can be attached to the covenant offered by the UU as a reason for approval of the appeal proposal.

## **Site suitability**

### *Green Gap*

64. The purpose of the 'Green Gaps' designated by Policy C2 of the South Lakeland Local Plan was to retain the distinct and separate characters of settlements by preventing their coalescence. Pending the review of boundaries by adoption of the LADPD, CS Policy CS8.2 carries forward the protection of the Green Gaps formerly designated, including that between Kendal and Oxenholme.
65. The proposed allocation in the submission draft LADPD of the great majority of the appeal site for residential development would significantly amend the existing Green Gap boundary. But in view of the unresolved objection on this matter, the guidance of the NPPF suggests that very limited weight can be given to the emerging DPD at this stage.
66. The only development in a Green Gap supported by Policy CS8.2 is that essential for the needs of agriculture, forestry and local community infrastructure that cannot be located elsewhere. Residential development would therefore be contrary in principle to the policy. However, there are a number of material considerations that indicate that this policy conflict should not be determinative in the appeal.
67. The first of these is the pressing need to boost housing supply. The significant contribution that the proposed development would make to addressing under-supply of both market and affordable housing weighs very strongly in its favour.
68. Secondly, the site is well placed to meet the need, being sustainably located at the urban edge, with good access to public transport, employment, shopping and education facilities and the potential to create improved foot/cycle links.
69. Thirdly, the proposal would not undermine the policy objective by causing coalescence of Kendal and Oxenholme but would maintain a gap between the two settlements. If the large trapezoidal area of land to the north-west of the railway line currently designated as the Green Gap is viewed as a totality, it can be seen that development of the appeal site would still leave a very substantial area of open land. The appeal site would mainly comprise a narrower portion of the designated area that is surrounded by existing development on three sides. It would appear as a logical re-alignment of the urban edge between the hospital site and the housing to the east of Oxenholme Road.
70. This altered pattern of development and the remaining gap between the site and the railway would be clearly appreciated from the ridge of The Helm, where the designated land makes up the foreground to very spacious views over the town to the fells beyond. At this scale, the extension of the built-up area by the appeal development would not appear significant. The drumlin mound to the south west of the appeal site forms a pronounced landscape feature that would provide a strong edge to the new urban boundary. While noting the comments of the Inspector who was assessing a different nearby site in 2003<sup>12</sup>, I consider that the appeal proposal would not result in a perception of coalescence that would significantly harm the role of the Green Gap or the quality of the landscape as seen from The Helm.

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<sup>12</sup> South Lakeland Local Plan Alteration No.1 (2002): Inspector's Report on Objections

71. When perceived from ground level, the land form ensures that views of the appeal site from Burton Road to the west are strictly limited, so that there would be no marked effect on openness. The concern raised by TOG appears to focus on the perception from Oxenholme Road, which is identified by the LADPD Kendal Fact File as the area most at risk of coalescence. The notion of a strong physical break between settlements here is already compromised by the continuous developed frontage to the east of the road. As noted by the Fact File, it appears that the sense of separateness of Oxenholme relies greatly on the strong physical break provided by the railway line's wooded corridor, and the steep switchback change in level to cross it.
72. The introduction of the appeal development would result in a loss of openness along a considerable length of the western side of the road, even if the development were well softened by landscaping. The sense of the countryside projecting into the built-up area would be reduced. But a clear gap would remain between the appeal site and the railway embankment, which would allow views through to the wider area of open land to the west.
73. That gap would itself be affected were the approved plans for the relocation of the town rugby club onto this site to be implemented<sup>13</sup>. Despite the obstacles outlined by the appellants, the permission remains live and there is at least a possibility that the club could move onto the site.
74. The great majority of the site would remain open as playing pitches, in accordance with the accepted recreational use of Green Gap land. The site frontage would be more intensively developed but the car parking would be well screened by landscaping and the clubhouse building would appear as a relatively isolated element, in the context provided by the pitches beyond.
75. Were both developments to proceed, the narrow space between them would result in a nearly continuous developed frontage along Oxenholme Road, not unlike the existing east side of the road. However, the openness of the rugby pitches would still be perceived, linking to the broader open land to the west. The combined effect of the two schemes would not be equivalent to the proposal rejected by the Local Plan Inspector in 1996<sup>14</sup>, which allowed for residential development in depth close to the railway embankment.
76. While the near-continuous frontage would have some adverse effect on the perception of the Green Gap from Oxenholme Road, a substantial area of open land to form a Green Gap would remain, as earlier outlined, reinforced by the strong barrier of the railway corridor. Even in conjunction with the rugby club scheme, the appeal proposal would not result in coalescence of the two settlements.

#### Access

77. As the draft LADPD allocations are not matters of substantial weight in this appeal, the fact that the appeal site area would extend beyond the boundary proposed by the DPD does not in itself require justification. The Council does not oppose the extended boundary and confirmed at the Inquiry that the currently proposed boundary was drawn in response to a landowner's submission rather than any physical objective.

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<sup>13</sup> Planning permission Ref SL/2011/0896

<sup>14</sup> South Lakeland Local Plan 2006: Inspector's Report

78. The longer site frontage would allow a better access location at the bend in the road, where the proposed mini-roundabout would act as traffic calming feature. Subject to detailed design, CCC as highway authority is satisfied that both main and emergency site accesses would operate safely, and I have found no reason to disagree. Similarly, as outlined above, I have no evidence that the proposal, either alone or in combination with other committed developments, would cause unacceptable traffic congestion at nearby road junctions.

*Wildlife and nature conservation*

79. Concern is also raised by TOG with regard to the effect on biodiversity and nature conservation. Unlike the LADPD allocated site, the appeal site would encompass part of the 'strawberry field'. The chief issue raised is that the reduction in the nesting area of the lapwings that use this field, the closeness of development and the loss of feeding areas would have a serious impact on a species whose numbers are in decline nationally, placing it on the Red List compiled by the British Trust for Ornithology.
80. In addition to their biodiversity value, evidence was given of the enjoyment that the presence of these birds, close to the built-up area, brings to local residents and visitors. However, the appellants contest that the proposed reduction of less than 20% of the nesting area would have serious consequences for breeding at the site. The diverse habitat offered by the strawberry field would largely remain, as would the feeding areas to the west. The indicative layout suggests that these could be well screened from residential traffic, and the birds already live close to human activity and road and farm traffic. It was confirmed on behalf of TOG that, despite some local drop in numbers, the species is not scarce in South Lakeland, where there is reasonably plentiful habitat. For their part, the appellants point out the likely benefits for other Red List bird species of the formation of residential gardens and protected stream corridor.
81. On balance, the evidence suggests that, while any potential reduction in an important species would be detrimental, the proposal's overall effect on bird life would not be significantly harmful and could even be positive. It must also be noted that the approved rugby club development, which TOG argue is likely to proceed, would include the strawberry field and have a much more detrimental effect on the lapwings.
82. The stream which crosses the site passes on through the adjoining Oaks estate to form a tributary of the Natland Beck, which goes on to join the River Kent. The response to the planning application by Natural England is clear that the stream itself does not form part of the River Kent Special Area of Conservation (SAC) and the River Kent & Tributaries Site of Special Scientific Interest (SSSI), whose boundaries are said to lie some 300-400m away.
83. There is no dispute that the removal of access for grazing cattle to the stream and the formation of an appropriately planted and managed corridor around the water course, re-aligned and re-profiled where necessary, would represent a considerable enhancement. As advised by Natural England, these matters, including the precise form and dimensions of the planted corridor, can be the subject of conditions.
84. Natural England has accepted that the presence in the stream of white clawed crayfish, a protected species, is confirmed without the need for disruptive

surveys at this stage, but that the completion of a suitable survey and detailed proposals for mitigation to inform the submission of the reserved matters should be the subject of a condition. As this species is a primary reason for selection of the River Kent as an SAC and SSSI, the likely effect on the interest features of the SAC must be assessed in accordance with the Habitats Regulations<sup>15</sup>. Having regard to the advice of Natural England, I am satisfied that subject to appropriate details of the treatment of the stream corridor and mitigation measures for crayfish there would be no likely significant effect on the special interest of the SAC. Discharge of the conditions would be subject to confirmation of this assessment.

#### *Other matters*

85. I am satisfied that none of the other matters raised by TOG would add sufficient weight to justify rejection of the proposal. The proposed density would be relatively low, at 22 dwellings per hectare. The final layout, scale and appearance of the dwellings would be subject to later approval but the indicative information provided gives confidence that a satisfactory form of development could be achieved, without undue adverse effects on the amenity of existing residents, either on The Oaks estate or on the opposite side of Oxenholme Road.
86. The Environment Agency is satisfied that, subject to details to be secured by a condition, satisfactory surface water drainage could be achieved without risk of flooding. I have no reason to reach a different conclusion.
87. It is not for this appeal decision to require the production of a co-ordinated development brief for the Green Gap, as sought by TOG. However, there is nothing before me to suggest that there has been any critical failure to consider the above issues in conjunction with the effects of other anticipated development.

#### *Conclusion on site suitability*

88. For the reasons set out above, I conclude that the conflict in principle with CS Policy CS8.2 on development in the Green Gap would be outweighed by other material considerations and that the proposal would represent a sustainable location for the proposed form of development.

#### **Conditions**

89. A schedule of conditions agreed between the appellants and the Council was discussed at the Inquiry. It was agreed that a number of proposed conditions, including those requiring details of materials and landscape design and management should be dealt with under approval of the reserved matters and were not necessary at this stage. The relationship with surrounding properties, including those on The Oaks, would be considered as part of the approval of layout and landscaping.
90. In addition to the conditions already mentioned earlier in this decision, and to the standard conditions on time limits for outline planning permissions and to identify the approved plans (site boundary and access arrangements, as access is not reserved), further conditions are necessary to cover the following matters.

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<sup>15</sup> Conservation of Habitats and Species Regulations 2010 Regulation 61

91. In the interests of highway safety and sustainable access, approval is required of the details of the main and emergency accesses and of internal roads and paths and the timing of their provision, and of the implementation of the submitted Travel Plan. Details of earthworks and finished levels are needed to ensure the proposal fits with its natural and built context. Approval of the details and implementation of sustainable surface water drainage is needed to assist in flood prevention. Approval of details and implementation of foul drainage, of measures to address potential soil contamination and of any measures to mitigate the effects of noise, particularly from the adjoining hospital, are required to prevent harm to human health. Approval of a Construction Method Statement is justified by the need to minimise risks to highway safety and harm to the living conditions of nearby residents, which also justifies the control of working hours. The provision of nesting opportunities in and around the proposed dwellings is justified in the interest of enhancing biodiversity. However, a condition seeking to protect nesting conditions on the strawberry fields would not be reasonable as the land would not be in the appellants' control and there is already statutory protection in place.
92. I consider that the conditions set out in the schedule annexed to this decision are necessary and reasonable and would meet the tests set out in the NPPF and in Circular 11/95. But a condition seeking to secure further engagement with local residents, as sought by TOG, would not meet the tests, as it would not be necessary to make the development acceptable and would not be precise. However, the Council has confirmed that the approval of the reserved matters would be subject to publicity and consultation.

### **Unilateral undertaking**

93. In addition to the disputed covenant on highway contributions discussed earlier in this decision, the submitted UU contains a covenant on the payment of a contribution towards the improvement of play space at Whinlatter Drive Park and/or Hayclose Road Park or other play space in the vicinity of the site, and a covenant on the payment towards the highway authority's costs in monitoring the Travel Plan. I accept that these covenants would comply with the guidance of the NPPF and with Regulation 122 of the CIL Regulations 2010. Weight can be afforded to them in the approval of the appeal proposal.

### **Conclusion**

94. The Council cannot demonstrate an up-to-date supply of deliverable housing land. The proposal must be assessed in the context of the presumption in favour of sustainable development. The pressing need for additional housing and the sustainable location of the site outweigh the policy objection in principle to residential development on land allocated as a Green Gap. While the openness of the Green Gap would be reduced, the proposal would not in result in coalescence of the two settlements of Kendal and Oxenholme and would not have a significant adverse effect on wildlife and nature conservation. The modest harm caused would be significantly outweighed by the benefits of the development.
95. The acute need for affordable housing is accepted. It has not been shown that the development requires a proportion of affordable housing below the policy minimum of 35% in order to generate a competitive return. However, the disputed financial contribution towards future highway improvements would not



meet the policy tests for planning obligations. Therefore, subject to conditions including that to secure the necessary level of affordable housing, and without giving weight to the transport obligation, I consider that the proposal would provide a sustainable form of development.

96. For the reasons set out above, I conclude that the appeal should be allowed and planning permission granted subject to conditions.

*Brendan Lyons*

INSPECTOR

Richborough Estates

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

|   |   |
|---|---|
| Celina Colquhoun of Counsel                 | Instructed by Matthew Neal, Solicitor,<br>South Lakeland District Council |
| She called:                                 |   |
| Matt Messenger<br>BSocSc(Hons) DipVal MRICS | Estates and Valuation Surveyor,<br>NPS Group                              |
| Keith Masser<br>BSc(Hons)                   | Area Highways and Transport Manager,<br>Cumbria County Council            |
| Fiona Clark<br>BSc(Hons) DipTP MRTPI        | Planning Officer,<br>South Lakeland District Council                      |

### FOR THE APPELLANT:

|   |  |
|---|--|
| Ian Ponter of Counsel                     | Instructed by<br>Steven Abbott Associates LLP  |
| He called:                                |  |
| Alastair Skelton<br>BSc(Hons) DipTP MRTPI | Partner,<br>Steven Abbott Associates LLP   |
| Gary Bushell<br>FRICS MAE                 | Director, Expertqs Limited<br>Consultant, Bushell Raven Limited,<br>Chartered Quantity Surveyors |
| Derek Nesbitt<br>MRICS                    | Director,<br>DTZ   |

### FOR THE RULE 6 PARTY Triangle Opposition Group:

|                              |  |
|------------------------------|--|
| Dennis Reed                  | Local resident<br>Chair, Triangle Opposition Group |
| He gave evidence and called: |  |
| Dr Henry Adams               | Consultant ecologist                               |

## DOCUMENTS

### Submitted by the Local Planning Authority:

- 1 Schedule of Conditions
- 2 M Messenger: Proof of Evidence- Updated Summary
- 3 M Messenger: Additional Paper Analysing Appellant's Valuation Expert's Local Residential Market Evidence
- 4 M Messenger: Proof of Evidence- Appendices 7 and 8
- 5 Planning permission SL/20011/0896 and approved plans
- 6 South Lakeland Local Plan 2006: Proposals Map
- 7 South Lakeland Local Plan 2006: Saved policies
- 8 Updated Core Document (CD) list
- 9 LADPD Discussion Paper, November 2008 (CD 41)
- 10 Planning permission SL/20011/0896: Committee report (CD 42)
- 11 Planning application SL/2012/0566: Observations by S Senior (CD 43)

- 12 Cumbria County Council May 2013: Further Statement in response to submitted responses and issues regarding South Lakeland District Council Land Allocations Kendal Highways and Transport Evidence Base (CD 44)
- 13 Cumbria County Council May 2013: Statement on the Update of the Kendal Transport Model for the South Lakeland District Council Land Allocations Kendal Highways and Transport Evidence Base (CD 45)
- 14 South Lakeland District 2011: Strategic Housing Market Assessment (extract)
- 15 Report on the Examination into the South Lakeland Core Strategy DPD (extract)
- 16 Opening
- 17 M Messenger: Derek Nesbitt Proof of Evidence Rebuttal Note
- 18 K Masser: Proof of Evidence - amendments to para 2.7, 2.8
- 19 M Messenger: Note on infrastructure costs
- 20 Appellants' original viability appraisal
- 21 Assessment of original viability appraisal
- 22 Revised Schedule of Conditions
- 23 M Messenger: Attachments 1-6 on local house prices
- 24 Closing submissions

Submitted by the Rule 6 Party:

- 25 Closing Statement

Submitted by the Appellants:

- 26 Deed of Unilateral Undertaking dated 18 June 2013
- 27 Statement of Common Ground: Building costs
- 28 Statement of Common Ground: Valuation
- 29 Opening Submissions
- 30 Envirotech letter dated 30 May 2013
- 31 D Nesbitt: Review of Additional Evidence Submitted by Mr Messenger
- 32 D Nesbitt: Review of Additional Evidence Submitted by Mr Messenger – Appendices 1-3
- 33 D Nesbitt: Matt Messenger Rebuttal Note
- 34 D Nesbitt: House sale prices
- 35 E-mail exchange: Oakmere Homes – Valuation Office Agency
- 36 HM Land Registry: Achieved Residential Values – Wrexham (Heat map)
- 37 Closing Submissions

## **Annex**

### **Appeal Ref APP/M0933/A/13/2193338**

### **Land to the west of Oxenholme Road, Kendal, Cumbria**

#### **Schedule of Conditions Nos.1-19**

1. Details of the layout, scale, appearance and landscaping (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.  
Application for the approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.  
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.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 1653-LOC; T1539/H/01.
3. No development shall take place until details of the main site access junction and emergency vehicle access priority junction with Oxenholme Road and a scheme for their provision have been submitted to and approved in writing by the local planning authority. The main site access junction shall be carried out in accordance with the approved details prior to the commencement of any earthworks or construction work in respect of the housing and roads within the site. The emergency junction shall be carried out in accordance with the approved details and the timescale that have been submitted to and approved in writing by the local planning authority.
4. No development shall take place until design specifications for the internal access roads, pedestrian and cycle routes through the site and into the adjacent Westmorland General Hospital and The Oaks residential estate, have been submitted to and approved in writing by the local planning authority. The scheme shall include levels, construction details, lighting, drainage and surfacing together with a phasing scheme for their construction and completion. The internal access roads, pedestrian and cycle routes shall be implemented and completed in accordance with the approved scheme.
5. No development shall take place until details of a buffer zone/wildlife corridor to both sides of the watercourse running through the site have been submitted to and approved in writing by the local planning authority. The details shall include any alterations to the banks of the watercourse and the arrangements for future management of the corridor. The buffer zone/wildlife corridor shall be implemented and thereafter managed and maintained in accordance with the approved details.
6. No development shall take place, including any clearance or earthworks, until a crayfish survey of the watercourse running through the site has been submitted to and approved in writing by the local planning authority. If crayfish are found to be present the survey shall be accompanied by a scheme of mitigation measures. The development shall not proceed except

in complete accordance with the approved mitigation measures.

7. No development shall take place until details of earthworks have been submitted to and approved in writing by the local planning authority. The details shall include cross-sections and contour plans of the proposed grading and mounding of land areas to be formed, and the relationship of these areas with existing vegetation and surrounding landform with a readily identifiable fixed datum. The development shall be carried out in accordance with the approved details.
8. No development shall take place until the proposed finished floor levels and the levels of external paths and any patios/decking areas within each plot 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.
9. No development shall take place until a surface water drainage scheme (including surface water, land drainage and highway drainage) for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The drainage strategy shall demonstrate that the surface water run-off generated up to and including the 1 in 100 year plus climate change critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event.
10. No development shall take place until details for the implementation, maintenance and management of the approved surface water drainage system have been submitted to and approved in writing by the local planning authority. The details shall include a timetable for the implementation and a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the effective operation of the sustainable drainage system throughout its lifetime. The system shall be implemented and thereafter managed and maintained in accordance with the approved details.
11. No development shall take place until a scheme for the discharge of foul water has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
12. No development shall take place until a scheme to deal with potential site contamination has been submitted to and approved in writing by the local planning authority. The scheme shall include a site investigation, risk assessment and remediation strategy (in accordance with Model Procedures for the Management of Land Contamination- CLR11) to identify the extent of any contamination and the measures to be taken to avoid risk to the public/buildings/environment when the site is developed. Development shall not commence until the measures approved in the scheme have been implemented and a validation report and statement has been submitted to and approved in writing by the local planning authority.

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it shall be reported in writing immediately to the local planning authority. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme shall be submitted to and approved in writing by the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report shall be submitted to and approved in writing by the local planning authority.

13. No soil or soil materials derived outside the boundary of the application site shall be brought onto or deposited anywhere on the site until:
- i. The source of the material has been confirmed, documented and assessed for risks of contamination;
  - ii. The material has been sampled and analysed for contamination in accordance with a methodology submitted to and approved in writing by the local planning authority. The methodology shall include the sampling frequency, testing schedules, criteria against which the analytical results will be assessed (as determined by risk assessment), and source material information;
  - iii. Following conclusion of sampling and analysis, confirmation and process validation evidence has been submitted to and approved in writing by the local planning authority.
14. No development shall begin until an assessment of the noise likely to affect the application site and of measures to mitigate such effects has been submitted to and approved in writing by the local planning authority. The assessment methodology to be used, including measurement positions, shall be agreed with the local planning authority prior to any noise measurements being taken. The approved mitigation measures shall be installed prior to first occupation of the development and retained thereafter and a site completion report shall also be submitted to and approved in writing by the local planning authority prior to first occupation of the development. The site completion report shall validate that all works undertaken on site have been completed in accordance with those approved by the local planning authority.
15. No development 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 construction period. The Statement shall provide for:
- i. the parking of vehicles of site operatives and visitors;
  - ii. loading and unloading of plant and materials;
  - iii. storage of plant and materials used in constructing the development;
  - iv. the erection and maintenance of security hoardings;
  - v. wheel washing facilities;
  - vi. measures to control the emission of dust and dirt during construction;
  - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - viii. measures to control noise and vibration.
16. No work for the construction of this development, including earth works, start-up of machinery and deliveries and unloading of equipment and materials, shall take place on the site except between the hours of 08.00 am

and 18.00 pm Monday to Friday and between the hours of 09.00am and 13.00 pm on Saturday. No work shall be carried out on Sundays or public holidays.

17. The Travel Plan by PSA Design (Ref T1539 Rev 4) including the ongoing revisions, audits, reviews and updates referred to shall be implemented in accordance with the timescales within the Plan.
18. No development shall take place until a scheme for the provision of internal nesting opportunities, such as the use of 'artificial nest bricks' in the buildings or integral soffit boxes for different bird species has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme and the provision retained thereafter.
19. No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme. The scheme shall include:
  - i. the numbers, type, tenure and location on the site of the affordable housing provision to be made, which shall consist of not less than 35% of housing units;
  - ii. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
  - iii. the arrangements for the transfer of the affordable housing to an affordable housing provider or the arrangement for the management of the affordable housing if no RSL is involved;
  - iv. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing;
  - v. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.