



Appeal Decisions

Inquiry opened on 14 September 2011, resumed on 22 February 2012 also sitting on 23 February 2012

Site visit made on 23 February 2012

by Zoë Hill BA(Hons) MRTPI DipBldgCons(RICS) IHBC

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

Decision date: 19 June 2012

Appeal A Ref: APP/G0908/E/11/2152403
Low Road, Cockermouth, Cumbria CA13 0JR

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Lakeland Leisure Ltd against the decision of Allerdale Borough Council.
 - The application Ref: 2/2010/0739, dated 23 August 2010, was refused by notice dated 14 February 2011.
 - The works proposed are described as the re-location of existing listed milestone.
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Appeal B Ref: APP/G0908/A/11/2151737
Low Road, Cockermouth, Cumbria CA13 0XE

- 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 Lakeland Leisure Ltd against the decision of Allerdale Borough Council.
 - The application Ref: 2/2010/0542, dated 21 June 2010, was refused by notice dated 14 February 2011.
 - The development proposed is residential development for 221 dwellings including 79 affordable dwellings and associated access and landscaping.
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Decisions

Appeal A

1. The appeal is allowed and listed building consent is granted for the re-location of the existing listed milestone at Low Road, Cockermouth, Cumbria CA13 0JR in accordance with the terms of the application Ref: 2/2010/0739, dated 23 August 2010, subject to the conditions in the attached schedule.

Appeal B

2. The appeal is allowed and planning permission is granted for residential development for 221 dwellings including 88 affordable dwellings¹, and associated access at Low Road, Cockermouth, Cumbria CA13 0XE in accordance with the terms of the application², Ref: 2/2010/0542, dated 21 June 2010, subject to the conditions in the attached schedule.

¹ Note the change of description is dealt with in the preliminary matters section below.

² The application plans are listed at the end of this decision and are as amended by the appeal plans also detailed at the end of this decision, as explained below.

Preliminary Matters

Adjournment

3. The Inquiry opened on 14 September 2011. However, due to a failure in the consultation process it was necessary to adjourn without hearing the case of either party. Only administrative matters were dealt with on that day. The Inquiry resumed on 22 February and sat for two days.

The Development Proposed

4. The application was submitted in outline with access and landscaping for determination at this stage and all other matters reserved for subsequent consideration. During the application process the indicative layout was altered to revise the positions for plots 195 & 196 and remove them from the woodland. The application was accompanied by a Design and Access Statement, but there were no details of the scale parameters that should accompany such an application. Those details were sought and provided prior to commencement of the Inquiry. On opening, attention was drawn to those details, which subsequently became part of the scheme. As a consequence there has been opportunity for interested parties to comment upon them and I shall consider those details as part of the proposal.
5. Between the opening of the Inquiry and the main sitting days the number of affordable housing units proposed was increased from 79 to 88. During that period consultation was undertaken, which included reference to the change in affordable units. I am satisfied that no prejudice would result from my alteration of the description so that it refers to the increased number of affordable housing units.
6. In addition, at the opening of the Inquiry the appellant sought that part of the blue-line site near to the existing dwellings on The Parklands be incorporated into the red-line appeal site area³. This was to include an area of woodland as public open space and allow for footpath links. The main parties agreed that this would not be unreasonable subject to consultation on that change. This change was also included in the additional consultation which took place during the period between opening and the resumed event. As such, I am satisfied that no prejudice would arise as a result of my consideration of the revised red-line site area.

The Council's Reasons for Refusal

7. Prior to the Inquiry it was agreed that the requested commuted sum for highway works would not be used to alter the Main Street/Crown Street/Gallowbarrow junction within the town centre and so the development, taken as a whole, would not harm the setting of Wordsworth House, a Grade I listed building, as originally feared. On that basis, and subject to a satisfactory s.106 Agreement to provide highway enhancements elsewhere, the Council did not seek to defend reason for refusal no 4 which related to potential conflict between possible highway improvement and the Grade I listed building. I shall deal with the s.106 below.

³ See appeal plans as listed at the end of this decision.

8. Also prior to the Inquiry the Council withdrew from defending its reason for refusal no 5 in respect of odour nuisance. However, given this matter was pursued in some detail by an objector I shall address it in my reasoning.

Environmental Impact Assessment

9. The proposed development was accompanied by an Environmental Statement (ES). Prior to the Inquiry the Planning Inspectorate found it to be limited in certain respects and so further environmental information (FEI) was sought under a Regulation 19 Direction (Reg 19). That information was provided and was the subject of further consultation, the period for which expired prior to the opening of the Inquiry. However the FEI was also found to be lacking so that a further Reg 19 letter was served. That information was received by the Planning Inspectorate and was, again, the subject of further consultation. That consultation was completed prior to the resumed Inquiry. I have taken the ES, the FEI and responses relating to that information into account in my determination of these appeals.

S.106 Agreement

10. A s.106 Agreement between the appellant (owner and developer), Allerdale Borough Council and Cumbria County Council was submitted in draft form and discussed at the Inquiry. Due to delays in obtaining signatures from the bank a further period was allowed at the close of the Inquiry for the signed deed to be submitted to the Planning Inspectorate, which it was. The s.106 is dated 28 February 2012.

National Planning Policy Framework

11. The National Planning Policy Framework (the Framework) came into force on 27 March 2012. As a consequence the main parties and an objector, who specifically cited concerns relating to the draft Framework and policy position, were consulted on the implications of this new document. I have considered their responses and determined the appeal in accordance with the Framework.

Main Issue Appeal A

12. The main parties, following consultation with English Heritage and the Milestone Society, agree that should the planning appeal be successful, a demonstrated need would exist that would justify the proposed relocation of the milestone. That relocation would involve a move of some 9m, but retain sufficient accuracy in the information the milestone imparts. With this in mind the main issue for Appeal A is whether or not there is a demonstrated need sufficient to justify the re-location of the Grade II listed milestone. This reflects the Framework which requires that harm to listed buildings should be weighed against the public benefits derived from the development, bearing in mind that the greater the harm to the significance of the heritage asset the greater the justification will need to be. The outcome of this appeal therefore will follow from the decision on Appeal B.

Main Issues Appeal B

13. The main issues in this case are:

- (a) whether the site should be considered favourably for housing having in mind national and development plan policy in respect of housing land

supply and delivery and whether the development should be resisted on prematurity grounds;

- (b) the effect of the proposed development on the character and appearance of the countryside having regard to conclusions on the preceding issue;
- (c) whether the site would be sustainable having in mind accessibility; and,
- (d) whether adequate living conditions would be provided for future occupiers of the proposed dwellings having particular regard to odours.

Reasons

Housing Land Supply

14. The Council does not have a 5 year supply of housing land based on the requirements of Policy L4 (set out in Table 7.1) of the North West of England Plan Regional Spatial Strategy to 2021 (RSS) which, at present, remains part of the Development Plan. This matter is not disputed. Whilst it is the Secretary of State's intention to abolish Regional Strategies, paragraph 49 of the Framework explains that policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.
15. Thus, saved Policy HS4 of the Allerdale Local Plan (First Alteration) (2006) (Local Plan 1st Alt), cannot be relied on to resist applications for residential development outside defined development limits. This situation is acknowledged by the Council in its written submissions on the Framework.
16. Paragraph 14 of the Framework sets out the presumption in favour of sustainable development. It goes on to explain that, for decision taking where the relevant policies are out-of-date this means granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.
17. At the Inquiry it was agreed that the unmet housing figure is 859 units in addition to the requirement going forward of 267 units per annum. The Framework, in terms of plan making, seeks to address such undersupply by seeking a higher buffer of specific deliverable sites. Whilst plan making is not an issue before me, this indicates the importance of addressing situations of historic undersupply. I note that the appellant has reworked the housing supply figures in response to the consultation on the Framework. Those undisputed updated figures serve to reinforce the accepted position that a significant undersupply of housing exists.
18. Turning to matters of affordable housing, this scheme, which is demonstrated to be financially viable, offers 88 affordable homes. Those homes would be made available in different ways, with some for rent and others being part of a shared ownership scheme. Whilst the costs of these homes might still be considered high, the scheme would widen the choice of high quality homes, increasing financial accessibility to them, thus improving people's quality of life in line with sustainable development objectives.
19. The Strategic Housing Market Assessment (SHMA) identifies an existing need for 134 affordable units, with future needs assessed at 38 units per annum.

The extant sites identified would produce 34 family units, 26 at Sullart Street and 8 net additions at Wakefield Road where there would also be 38 flats for the over 55s. Although those flats would contribute to the needs of older people, it is family housing that is in greatest demand and the net addition with extant permission amounts to just under 1 year's supply. Thus, the scheme would go a considerable way towards reducing the housing need (88 units to be provided towards the current 134 unit need) which also weighs in its favour. Notably this scheme exceeds the Council's normal policy requirement for 20% affordable housing, making 40% available.

20. Indeed, the Council does not dispute that the proposed development would be able to achieve a good mix of high quality housing reflecting the accommodation requirements of specific groups and would use land efficiently and effectively. The Council's concerns, as set in its written submission on the Framework, which reflects the earlier submitted Housing Statement of Common Ground (SoCG), rest with whether or not it would be in line with the spatial vision for the area, particularly given the implications for the plan making process and the environmental sustainability of the site. It is clear that there is a significant housing need including for affordable housing. Thus, noting that Local Plan housing policies are out-of-date and the importance given to provision of housing in the Framework, this is a matter which weighs significantly in favour of the appeal scheme.

Plan Making/Prematurity

21. Whilst it is the Council's position, which is supported by other objections, that the proposed development would undermine the development plan process, the Local Development Framework (LDF) has not even reached draft stage, so there is no plan to be undermined and thus the approach in paragraph 216 of the Framework is not engaged. The Planning System: General Principles sets out a similar approach. Clearly, allowing such a development would, if implemented, have an impact on the spatial distribution of housing. However, the Framework establishes, at paragraph 14, the approach to take where existing plans are out-of-date as already set out above. In this case, the Council's approach of putting everything on hold until some undetermined future date is undermining the achievement of housing provision for which there is a well established need and which has resulted in this proposal gaining a good degree of local support, including a petition, alongside the letters of objection.
22. In terms of prematurity and wider assessment of sites, an objector explains that they consider alternative sites to be preferable, including their own. However, those sites are not within the planning system, so are behind the appeal scheme in terms of potential determination and thus implementation. Moreover, they have not been subjected to the rigours of the planning process, including consultation, such that there is a paucity of information regarding those sites.
23. This objector also questions deliverability of the site within the next 5 years on the basis that the appeal scheme is in outline, requires land modelling and does not have a house builder involved. However, even this objector accepts delivery of 87-105 units could be achieved, which would represent a significant improvement on the current situation and again there are no other schemes that have reached a comparable stage. Nor is there anything to indicate that other schemes would not have potential delaying factors. Furthermore, this

scheme has involved a significant level of assessment to date which should assist progress. The appellant is more optimistic in terms of timescales. Phasing would allow for those parts of the site not requiring land remodelling to come forward first, whilst at the same time remodelling works are undertaken elsewhere on the site. Moreover, there is clearly significant demand which should help drive development.

24. Whilst the objector suggests the appellant should have looked at alternative sites, including elsewhere in the Borough, I do not agree that it is incumbent on them to do so. Rather that is the role of the local planning authority. In this case, the absence of up-to-date housing policies has resulted in the need to consider this appeal on its own merits. Similarly, the lack of an up-to-date plan means that alternative uses for the appeal site have not been considered; however to impose this on the appellant would be unreasonable without any policy requirement.
25. It is evident that Cockermouth has numerous constraints which the planning system ought to deal with and which, no doubt, will be reflected in future local plan documents. However, the extent of matters which need consideration in the formulation of policy documents for this area does not, in itself, justify delaying much needed housing development and I attach little weight to this argument in the circumstances of this case. Instead, the suitability of this site is more important, having particular regard to the Framework and the other main issues in dispute.
26. On this first main issue I conclude that the site should be considered favourably for housing development and prematurity should not be a reason to withhold planning permission, especially given the demonstrated need for additional housing, including affordable housing.

Character and Appearance

27. The appeal site is long and linear so, as the Council notes, it would appear as a spur of development when viewed in plan form. In terms of what is actually seen, the site is situated at the edge of the town, albeit separated by a small woodland and the parkland setting of The Fitz. Despite those separating elements, it is situated between two roads, the A66 trunk road which skirts the town and Low Road which gives access to the town centre. The point at which these two roads converge is where the waste water treatment works (WWTW) is sited, with the roads joining at a roundabout. This roundabout, with its lighting columns, road signs and kerbing, a pedestrian footway to the town and partial cycle way provision have an urbanising impact on this location. From this point, there are buildings and highway features that result in the approach to the town not appearing wholly rural in character. Although the appeal development, and particularly the highway access to the site, would introduce a new urban element to this approach to the town, this would not be incompatible with its existing landscape character.
28. Views of the site from the A66 are limited by existing screening and earthworks associated with the development of that trunk road. As such, the extension of development would not be harmful when seen from that route. In this regard, the appeal scheme provides scope for some remodelling of the land which has been left with an unnatural landform, and this would be an advantage of the scheme. When seen in more distant views, for instance from Papcastle, the site would appear contained by the existing road and constrained by the

landform with rising hills behind. Thus, this site could be absorbed by the landscape in a manner which, whilst being a clear change, would not be harmful, particularly given the scope for land remodelling and additional screening to assist assimilation. Indeed, the Council's landscape consultant concluded that adverse residual effects would be relatively limited in extent and severity and the Council accepts that this is a discreet site, with the Committee Report concluding that there were insufficient grounds to substantiate any significant detrimental impact on the landscape, subject to appropriate landscaping.

29. The proposal is outside development limits, where Allerdale Local Plan 1999 (Local Plan) saved Policy EN25 makes it clear that strict control will apply. However, the Council accepts it can no longer rely on settlement boundaries to restrict housing development as already explained in respect of Local Plan 1st Alt saved Policy HS4. Moreover, Local Plan saved Policy EN25 offers some flexibility for certain types of development including that considered to be essential. Whilst mixed open market/affordable housing is not what may have been envisaged when the policy was adopted in 1999, it acknowledges that there are circumstances when development could be allowed. Given the demonstrated housing need, I have some sympathy with the appellant's view that an essential need applies in this case. In cases where development is to be countenanced outside development limits Local Plan saved Policy EN25 goes on to explain that unacceptable harm to the character of the landscape or landscape features will not be permitted. In this case I am satisfied that unacceptable landscape harm would not arise. Thus, I do not find that there would be significant conflict with Local Plan saved Policy EN25 in the light of current circumstances of this case. Nor do I find that the proposal would be fundamentally at odds with the core principle of the Framework which seeks recognition for the intrinsic character and beauty of the countryside.
30. Having weighed up the landscape issues in light of local and national planning policies, I conclude that the limited harm to the character and appearance of the countryside is outweighed by the demonstrated need for housing.

Sustainability

31. The highway connection would be along Low Road, with a shared surface pedestrian/cycle route away from the carriageway making it more attractive to use. This would give access to the town centre with its shops and schools. In addition there would be a shared access at the other side of the site (A66). The scheme provides for bus lay-by facilities, thus further improving the scope for travel without the use of a private car.
32. Access directly through the site into existing housing areas would be limited and I note that the independent design review (by Places Matter) for the scheme, albeit the one without the additional footpath links, was particularly critical of this. This situation arises because the area along the boundary between existing housing and the appeal site includes a woodland protected by a Tree Preservation Order. However, pedestrian and cycle links would be able to cross through this area, which would provide a relatively pleasant route towards the centrally located primary schools and town centre.
33. I appreciate that local residents have concerns about noise and disturbance arising within the existing culs-de-sac as a result of those links. However, pedestrian and cycle activity within residential areas using public rights of way

is normal activity. Moreover, there is nothing to suggest it would result in levels of activity, noise or disturbance that would be beyond what might be considered acceptable for residential areas. Concerns about, for instance, the speed of cyclists, particularly where using shared surfaces or when emerging into areas where there may be conflict with vehicles or pedestrians, are matters for design at the detailed application stage. A travel plan (on an interim basis bearing in mind this is an outline application) has been provided for the proposed development to set out the general approach to encourage use of more sustainable means of transport. The travel plan would be secured through the s.106.

34. Although the proposed development might well add to congestion in the town, the existing constraints are such that most development would similarly add to congestion, as indicated in the Cockermouth LDF Transport Study Modelling Results January 2012 (LDF TS), yet there is no intention to prevent any further development. Rather, the Council confirmed the status of the town as a key service centre, as set out in saved Policy ST5 of the Cumbria and Lake District Joint Structure Plan 2001-2016 (JSP).
35. I appreciate that the schools are situated at the centre and eastern side of the town whilst the appeal site is to the west. However, it seems employment is likely to attract vehicular traffic to the west. Furthermore, the LDF TS which includes the appeal site (albeit in error at 290 units rather than the 221 proposed) in some of its calculations, indicates that there are a number of scenarios for residential/employment and retail development that could operate within capacity. As such, I do not share an objector's view that, if allowed, this proposal would prevent development elsewhere. More particularly it would not prevent development at the eastern side of the settlement as confirmed by the Council's witness. I note that the highway authority raises no objection in terms of highway access, the free flow of traffic or highway safety.
36. On this matter I do not consider that accessibility has a direct link to whether this proposal should be resisted on grounds on prematurity. Whilst the site has some limitations in terms of access, there is scope for pleasant pedestrian and cycle links to the town. In addition there would be provision through the s.106 for bus lay-bys which the County Council's Integrated Transport Team confirms are on the route of a supported bus service (every two hours) where they would ask the operator to observe the proposed bus stops. Thus, there are some positive aspects of the location.
37. Local Plan 1st Alt saved Policy HS8 seeks that new development is well related to existing development. The matters to which attention is specifically drawn (building lines, materials, form and massing, roof pitches, fenestration, spaces between buildings, children's play space and density) are largely outside of the details of this outline application. In terms of being generally well related to existing development I have explained that there are some shortcomings, but equally there are positive factors such as the relatively easy assimilation into the landscape. On balance, I am satisfied that accessibility and connectivity, whilst not heavily in favour of the scheme do not weigh against it and overall the proposal accords with the approach towards promoting sustainable development set out in the Framework. I conclude that sustainability objectives would not be undermined by the development of housing in this location.

Odours and WWTW

38. Odour modelling has been undertaken by the appellant for the site which predicts that neither $3 \text{ OU}_E/\text{m}^3$ or $5 \text{ OU}_E/\text{m}^3$ (European odour units per cubic metre of air) contours would impinge on the appeal development. At less than $3 \text{ OU}_E/\text{m}^3$ the Chartered Institute for Water and Environmental Management Policy Position Statement (2011) indicates that complaints are unlikely to occur. Exposure below this level is unlikely to constitute significant pollution or detriment to amenity, unless the locality is highly sensitive or the odour highly unpleasant.
39. On the other hand, an objector to this site, considers that, on a precautionary basis, a higher threshold of $C_{98,1\text{hour}} > 1.5 \text{ OU}_E/\text{m}^3$ should be set. This is based on an Environment Agency Technical Guidance Note IPPC H4 Part 1 (2002) which indicates a 'justifiable cause for annoyance' being highly offensive odours of $C_{98,1\text{hour}} 1.5 \text{ OU}_E/\text{m}^3$, with medium offensiveness of $C_{98,1\text{hour}} 3 \text{ OU}_E/\text{m}^3$ also being considered to represent a 'justifiable cause for annoyance'.
40. I am mindful that the assessment based on a 98th percentile 1-hour average odour concentration ($C_{98,1\text{hour}}$) would not result in a totally odour free scenario, as there is a likelihood of some occasional odour issues with sites such as the WWTW. However, any period of exposure to unpleasant odour should be short lived at some 2% of a year. Moreover, there are varying degrees of odour from sewage treatment. At this WWTW, odour from the sludge holding tanks is abated by use of an odour control unit, which odour sampling has shown to have an odour removal efficiency of approximately 98%. Thus it seems that highly offensive odours are unlikely to arise during normal operation. Should odours fall within medium offensiveness, rather than low, the $C_{98,1\text{hour}} 3 \text{ OU}_E/\text{m}^3$ level modelled by the appellant indicates that it would not impinge on the appeal dwellings.
41. I note that United Utilities who operate the WWTW do not object to the proposed housing development. On the evidence before me and subject to a 50m buffer, I am satisfied that the future occupiers of the development would not be effected by odours from the WWTW to such an extent that it would create unacceptable living conditions. Furthermore, occupiers would be aware of the WWTW before deciding to move to the development.
42. In this respect I find no material conflict with saved Policy EN7 of the Local Plan. That policy seeks to resist the siting of pollution sensitive developments in locations which are unacceptably adversely affected by existing potentially polluting development. Nor do I find conflict with the core planning principles set out in the Framework, which seek a good standard of amenity for all future occupants of land.

Other Matters

43. Flood risk is not considered to be an issue at the appeal site. Whilst objectors note that the site has seen some flooding, I saw the blocked land drain which led the beck crossing the site to fail in removing standing flood water. Moreover, I have no reason to doubt the position of the Environment Agency that there is no objection to the scheme on flood risk grounds.
44. As recorded above, the appeal site adjoins the waste water treatment works (WWTW). United Utilities, in a letter submitted at the Inquiry, state that they do not object to the appeal scheme which, because of capacity constraints,

- would be served by a private sewage treatment plant. An objector takes the view that the development would prejudice the expansion of the existing sewage treatment works. Given the lack of any plan that demonstrates the intention to expand that site, combined with the lack of objection from the operator of that site, resisting development on those grounds would be unreasonable.
45. Because of the proximity to the A66 trunk road there are issues relating to noise for occupiers of some of the proposed dwellings. Conditions can be imposed to require glazing of a standard that would provide for acceptable living conditions and adequate ventilation within dwellings. This is an issue which would be considered in the layout and design details. I therefore do not find this a reason to withhold planning permission.
 46. Local residents backing onto the woodland express concern at loss of privacy arising from use of footpaths and public open space. However, it seems many existing properties have private gardens facing this direction which could be adequately screened using fencing or landscaping which could form part of the details required by condition. Views from public spaces towards upper floor rooms would be likely to be sufficiently distant such that adequate privacy would remain; again specific design features or approaches to woodland management could be considered at the detailed design stage and through the consideration of details submitted under planning conditions relating to landscaping.
 47. The Fitz is a Grade II listed building within a parkland setting. The development would preserve that setting with little change other than use of the existing access drive for emergencies and a pedestrian/cycle way provided alongside but separated from Low Road. Whilst the proposed development would wrap around this property, it would not intrude upon it.
 48. There is a Scheduled Ancient Monument (SAM) to the rear of, and elevated above The Fitz, outside the application site but adjoining it and within the appellant's control. It has been encroached upon by vegetation with some sizeable trees. The appeal proposal would not encroach upon this site and conditions could secure protective fencing and prevent activity within the fenced area during construction works. Because of potential for archaeology on the appeal site near to the SAM, a field evaluation was undertaken prior to the Council's determination of the application. No important archaeological remains were found. On that basis, the County Council's Historic Environment Officer seeks conditions which could be imposed to provide for a scheme of archaeological investigation, and provide for an archaeological watching brief.
 49. The appeal site is located adjacent to a the River Derwent and Tributaries Site of Special Scientific Interest (SSSI) and the River Derwent and Bassenthwaite Lake Special Area of Conservation (SAC), which resulted in the EIA process being triggered. A number of ecological assessments have been undertaken, looking at both flora and fauna, which were included within the EIA. Key concerns related to impact upon water courses, and on red squirrels, which were not found but which would be likely to find the woodland habitat on land adjoining the site to be attractive. Conditions to protect the water environment should be imposed as should a condition to provide for enhancement for red squirrels. Subject to those conditions and subject to careful consideration when discharging other conditions, for instance the landscaping condition which includes details for lighting, I am satisfied that the scheme would not be

harmful to ecological interests. Natural England, following consideration of additional evidence during the application stage, does not object to the scheme.

50. Objections have also been made, including from the County Council, about the implications for education provision and the lack of a commuted sum in this regard. However this was not a matter pursued by the Council or County Council at the Inquiry, and I am mindful that the County Council is a party to the s.106 agreement which has been supplied so is aware of the contents of that document. In terms of the limited details submitted, it appears places are currently limited for certain year groups. Despite an assertion that demand is likely to remain high, there is no detailed assessment of future needs. No specific sum has been sought, and there are no calculations before me to indicate how it would be arrived at. Nor has any up-to-date policy been put forward with which the scheme would fail to comply in terms of making necessary provision. Thus, there is nothing to enable me to conclude that such a request would accord with the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL). I therefore do not consider this matter should be held against the scheme in this case.
51. Nearby residents have expressed concern that public open space owned by the Greenbelt Group which they have perceived as their own, and for which they have made financial contributions, would be used by residents of the appeal scheme. However, those private arrangements are not a matter for me in consideration of this appeal.
52. Numerous other appeal decisions have been produced to support arguments on both sides, particularly in respect of the approach to housing supply and its effect on plan making. However circumstances have changed since all of those decisions were taken in that the Framework is now in force and sets out a clear approach to how housing policies should be considered. As such, I have considered this appeal on its own merits in the light of current policies and guidance.

S.106

53. The purpose of the s.106 covers several matters. It ensures the provision of affordable housing, making arrangements for how this will be implemented. This is an important part of the scheme, which is necessary, reasonable and directly related to the development. The affordable housing provision goes beyond the Local Plan requirement for affordable housing. However, the affordable housing offered reflects the policy thrust set out in Local Plan saved Policy HS14⁴ and, to a lesser extent Local Plan 1st Alt saved Policy HS15⁵. It also reflects the emphasis towards housing delivery, including affordable homes, set out in the Framework.
54. In terms of highways and access the s.106 ensures the delivery and maintenance of shared routes to facilitate and encourage pedestrian and cycle access to and from the development. These routes are important for connectivity and encourage use of sustainable modes of travel. The s.106 clearly relates to the scheme and is necessary and reasonable. The s.106 also provides funding of £13,500 to assist with transport improvements which

⁴ HS14 relates to affordable housing within settlement limits.

⁵ HS15 which relates to exceptions sites outside settlement limits.

- include reducing the speed limit on Low Road, associated works and signage. Those works are also necessary and reasonable.
55. The s.106 sets out arrangements for the implementation of the travel plan, which itself acknowledges it is an interim document given that the proposal is in outline. The travel plan includes the provision of bus stops, and provides a contribution to the County Council of an administration fee (£6,125) and phased payments totalling £58,312 to be made in the event that the travel plan's target of a 10% reduction in vehicular trips for the development are not met. This would ensure monitoring and provide towards successful implementation. The travel plan reflects the requirements of saved policies T30 and T31 of the JSP and accord with the principles of seeking to achieve sustainable development set out in the Framework.
56. A further sum of £20,388 is offered towards the provision of enhancement works to Cockermouth Main Street to improve pedestrian movement within the town centre, encourage sustainable modes of transport and improve transport facilities. At the Inquiry it was accepted that there is no justification for this sum. Although it may be proportionate to the development and relates to street works to increase attractiveness of the area to pedestrians and cyclists, I am unable to conclude that this part of the s.106 fully complies with the CIL requirements and so it is not a matter to which I have attached weight in coming to my conclusions on this appeal.
57. The s.106 ensures provision and maintenance of landscaping, and offers a public work of art (not less than £10,000) in the interests of the character and appearance of the area. The provision of a public work of art accords with Local Plan saved Policy L5 which encourages such works within larger developments such as the appeal scheme. This does not conflict with the design objectives of the Framework.
58. The s.106 also ensures provision and maintenance of the foul drainage of the site and for surface water drainage infrastructure. These are necessary and directly related to the development in order to achieve acceptable drainage of the site in terms of public health and ecological interests. The s.106 provides a level of detail in terms of maintenance beyond that which could be set out in conditions, but some details of the scheme require approval of the local planning authority so that it remains necessary to also impose conditions.
59. Finally, provision is made for delivery and maintenance of, neighbourhood equipped area of play (NEAP)/locally equipped area of play (LEAP) facilities and public open space. Those facilities are necessary for the needs of the occupiers of the proposed development. Their provision is supported by saved Policy L1 of the Local Plan which is policy that remains consistent with the Framework which places importance on green spaces. A condition in this respect is required to set out further detail.
60. With the exception of the highway sum for Cockermouth Main Street, I am satisfied that the s.106 provisions are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development, and thus, that the tests of the CIL are met.

Conclusions

61. The need for housing, and in particular affordable housing, weighs heavily in favour of the scheme. I am not persuaded that there is justification to resist this proposal on the grounds of prematurity. Whilst the proposal would develop an area of open countryside, the development could be absorbed without significant harm to the landscape. I am satisfied that the scheme would be reasonably accessible, including by modes of transport other than the private car. The proximity to the WWTW is unlikely to cause unacceptable issues for the living conditions for future occupiers of the proposed development. Having all these factors in mind I am satisfied that the scheme would accord with the thrust of the Framework, which for the reasons explained is an important material consideration in this case. Thus, for the reasons set out above and having regard to all other matters raised I conclude that Appeal B should be allowed.
62. Given the need to provide safe access to this site and the constraints from the existing road layout, the existing milestone would need to be relocated in order to achieve safe access to the site. I have found that the scheme would satisfy a housing need in the locality. This is a significant public benefit. Given the milestone could be relocated so that it is not harmed as an object, and as it could be relocated so that its details remain accurate, I consider that the public benefit outweighs the harm arising from the loss of its historic positioning. I conclude that Appeal A should therefore succeed and that this would accord with the provisions of the Framework.

Conditions

63. In considering conditions I have been mindful of the advice in Circular 11/95 and have altered conditions where necessary to reflect this. I have also altered and amended conditions in light of discussions at the Inquiry.

Conditions Appeal A

64. In addition to a time condition, and a condition requiring compliance with the approved plans is necessary to ensure works are undertaken as approved in the interests of the listed building. A clear methodology for the relocation of the milestone is required to ensure that the milestone is correctly removed stored and replaced without damage. Precise details of the repositioning also need to be agreed prior to works commencing; the repositioning then needs to accord with the agreed details so that the functional integrity of the stone is retained.

Conditions Appeal B

65. The reserved matters conditions set out the need for further submissions so that full details are provided of the development. Time limits for submissions and commencement are also imposed. A phasing condition is sought to ensure development is managed in an efficient and appropriate way in the interests of the appearance of the site, its ecology and amenity for occupiers of the proposed development as it is constructed. The condition is amended from that submitted at the Inquiry to require the number of units to be specified for each phase. Build out rates could not be required by condition so linking numbers to phases is more appropriate. A condition is also necessary to ensure compliance with approved plans, other than as set out in this decision

and conditions, for the avoidance of doubt and in the interests of proper planning.

66. Highways conditions are required to ensure that the internal layout is satisfactory and provided in a manner to provide for safety for users of the highway and site access road. Visibility splays and improvement works within the adjoining highway are necessary in the interests of highway safety. The pedestrian routes are necessary for improved pedestrian access between the site and the highway network and, to prevent significant delay in providing those routes for future occupiers, implementation is required as discussed at the Inquiry. In addition, a condition is required to seek full details of the emergency access that have been agreed along The Fitz driveway and the arrangements for its implementation.
67. For reasons set out above, archaeological conditions are required in the form of a programme of archaeological work and a watching brief for ground works. Additionally, fencing is required to protect the SAM. The condition that requires this also clarifies that this area should not be used for storage or levelled or excavated so as to protect the SAM.
68. Drainage conditions are required to ensure satisfactory foul and surface water infrastructure in the interests of public health and protection of the environment. Whilst maintenance clauses are not included in the conditions those arrangements are set out within the s.106 Agreement.
69. Landscaping conditions are required to ensure the implementation and maintenance of structural planting, to provide protective fencing for existing trees on and adjacent to the site and ensure it is maintained until machinery and equipment is removed from the site, and to obtain full details of all other hard and soft landscaping and its implementation. Lighting details are also required so that their implications for ecology can be assessed. A woodland management plan and implementation of measures to provide for red squirrels are necessary in the interests of ecology. A construction management statement is required to control construction activities in the interests of ecology and residential amenity.
70. I have already explained above the need for conditions in respect of glazing and ventilation to protect future occupiers from road noise from the A66. Following some preliminary work it is necessary to impose conditions to require a scheme of on-site investigation for land contamination, submission of a remediation scheme and verification of its completion should this be found to be required. Provision is also made in the conditions for dealing with any unexpected contamination. These conditions are required in the interests of the health of future occupiers of the site.
71. The requirement for the provision of play space and the timing of its implementation is necessary in the interests of the amenities of future occupiers of the development. As already explained, a buffer is required to prevent development in close proximity to the WWTW in the interests of the residential amenity of future occupiers of the development. A no-build zone is required to ensure access to existing drainage/water mains infrastructure.

Zoë Hill

Inspector

Schedule of Conditions for Appeal A Ref: APP/G0908/E/11/2152403

- 1) The works hereby authorised shall begin not later than 3 years from the date of this consent.
- 2) Before work is commenced a scheme containing a methodology statement and timetable for the removal, storage and relocation of the milestone shall be submitted to and approved in writing by the local planning authority. The works shall be carried out strictly in accordance with the approved details.
- 3) Before work is commenced the exact new location of the milestone shall be submitted to and approved in writing by the local planning authority. The works shall be implemented in accordance with the approved details and timetable under condition 2.
- 4) The works hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 09/03/655-04 and Block Plan 09/03/655-05, except in respect of details that are approved under conditions 2 and 3 of this permission.

Schedule of Conditions for Appeal B Ref: APP/G0908/A/11/2151737

Reserved Matters

- 1) Details of the appearance, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Prior to the submission of the reserved matters referred to in condition 1 above, a design brief setting out the principles to be followed in the development of the site shall be submitted to and approved in writing by the local planning authority. The brief shall include: external and roofing materials; means of enclosure; surfacing materials; siting of affordable dwellings.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans: Indicative master plan 09-03/655-01d); Indicative master plan (showing phasing) 09/03/655 - 02a); Indicative site sections 09/03/655-03; Location Plan 09/03/655-04b); 09-03-655-06; and, TF.011109 Rev a (in respect of planting only note indicative plots 195 & 196 moved), except in respect of details that are approved under the conditions of this permission.

Phasing

- 6) No part of the development hereby permitted shall be implemented until a phasing programme for the approval of reserved matters, including the number of units for each phase, has been submitted to and approved in writing by the local planning authority. Reserved matters shall be submitted to the local planning authority and approved in accordance with the approved phasing programme, no part of any phase shall commence until all reserved matters relating to that phase have been approved, and each phase shall be carried out in accordance with the approved reserved matters.

Highways and Access Routes

- 7) Prior to the commencement of development a scheme for the internal highway layout of the site and specifications for the highway works, including a timetable for their implementation, shall be submitted to and approved in writing by the local planning authority. The works shall be completed in accordance with the approved scheme and implemented in accordance with the approved timetable.
- 8) The development on site shall not commence until visibility splays providing clear visibility of 2.4m x 90m in both directions as shown on drawing no 09-03/655-01d) have been provided at the junction of the access road with Low Road (B5292). Thereafter, the visibility splays shall be kept free from obstruction so that they can be used for their intended purpose.
- 9) No part of the development hereby approved shall be commenced until the required improvements to the adjacent highway referred to in the Transport Assessment ref no. CS/034708-01-05-01 have been carried out.
- 10) Prior to the commencement of works, full details of the construction and drainage details of the pedestrian routes, including footbridges, shall be submitted to and approved in writing by the local planning authority. The works shall be implemented in accordance with the approved details within 4 years of the commencement of the development or prior to the occupation of the 150th dwelling, whichever is the sooner.
- 11) Development shall not begin until a route and treatment for emergency access to and from the site and a means of restricting non-emergency access has been submitted to and approved by the local planning authority. The approved scheme shall be implemented prior to the occupation of the first dwelling and thereafter be retained. The approved route shall be used solely for emergency access purposes.

Archaeology

- 12) No development shall commence within the site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. This written scheme of investigation shall include an archaeological evaluation and an archaeological recording programme the scope of which will be dependant upon the results of the evaluation. Where the agreed written scheme identifies it as being appropriate, an

archaeological post-excavation assessment and analysis, preparation of a site archive ready for deposition at a store, completion of an archive report, and publication of the results in a suitable journal as approved beforehand by the local planning authority shall be carried out within two years of the commencement of development.

- 13) An archaeological watching brief shall be undertaken by a qualified archaeologist during the course of the ground works of the development. This brief shall be in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority before works commence. Within two months of the completion of the ground works three copies of the report of that watching brief shall be submitted to the local planning authority.
- 14) No development shall take place until the fencing has been erected, in a manner to be agreed in writing with the local planning authority, around the scheduled ancient monument. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made.

Drainage

- 15) The development hereby approved shall be drained by a private foul sewerage treatment plant the details of which shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. No dwelling shall be occupied until the approved foul sewerage treatment plant has been constructed and made operational in accordance with the approved scheme and shall be so maintained thereafter.
- 16) No building hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out in accordance with the Development and Flood Risk Practice Guide (accompanying the former PPS25) (or any subsequent replacement) and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - (i) provide information about the design storm period intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - (ii) include a timetable for its implementation; and,
 - (iii) the approved scheme shall ensure that the overall rate of discharge including surface water pond, into the watercourse is restricted to the equivalent rate of existing green field run off rate of the application site, plus allowance for climate change.

Landscape, Trees and Ecology

- 17) No development shall take place until full details of both hard and soft landscape works, other than the main structural planting hereby approved, have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian circulation areas; hard surfacing materials; details of all lighting and its suitability in terms of impact on ecology, minor artefacts and structures (e.g. street furniture, play equipment, refuse or other storage units, signs etc); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc). Details of soft landscaping works shall include written planting specifications; schedule of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation and replanting programmes.
- 18) All planting, seeding or turfing comprised within the landscaping approved by this permission and the landscaping approved by condition No 17 shall, at the latest be carried out in the first planting season following completion of each respective phase of the development and any trees or plants which within a period of five years from the completion of the respective phase of development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with other similar size and species, unless otherwise agreed in writing by the local planning authority.
- 19) No works or development shall take place until a scheme for the protection of trees on, or adjacent to the site, during construction as well as for replacement tree planting, including species and sizes, with a proposed timetable for planting and a maintenance regime, has been submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out in accordance with the approved details, including its timetable.
- 20) The erection of fencing for the protection of retained trees shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made without the written approval of the local planning authority.
- 21) Prior to the commencement of works, a woodland management plan, including a timetable for works and provision for the long term maintenance of the trees and habitats within the area covered by Tree Preservation Order (TPO) 18/2004 and TPO 07/2010, shall be submitted to and approved in writing by the local planning authority. The woodland management plan shall be carried out as approved and in accordance with the approved timetable.
- 22) The development shall not begin until a phased programme for the implementation of the mitigation measures outlined in the squirrel

survey report dated 31 August 2010 (ref: LLL10SQ001R2) and the Assessment of Likely Significant Effect dated 5 November 2010 (ref: BS10ALSE010) has been submitted to and approved in writing by the local planning authority. The mitigation measures shall be carried out in accordance with the approved scheme.

Construction Management

- 23) 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 Construction Method Statement shall be adhered to throughout the construction period. The Construction Method Statement shall provide for:
- i the parking of vehicles for site operatives and visitors
 - ii loading and unloading of plant and materials
 - iii storage of plant and materials used in the development
 - iv the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v wheel washing facilities
 - vi measures to control the emissions of dust and dirt during construction
 - vii a scheme for recycling/disposing of waste resulting from demolition and construction works
 - viii measures for the control of noise during development
 - xi details of lighting to be used on site.

Noise

- 24) Details of glazing for all bedroom windows in dwellings with elevations facing towards the A66 trunk road shall be submitted and approved in writing by the local planning authority. The details shall accord with the recommendations detailed within the acoustic consultants report ref: ENR-0947. Any such windows shall be installed prior to the occupation of the dwellings and retained thereafter as approved.
- 25) Ventilation details for all dwellings with windowed elevations facing the A66 trunk road shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved scheme prior to the occupation of each dwelling incorporating the approved ventilation details.

Contaminated Land Investigation

- 26) No development hereby approved shall commence until site investigation works within the site boundary have been carried out to establish the degree and nature of contamination and its potential to pollute the environment or cause harm to human health. The scope of works for the site investigations shall be agreed in writing with the local planning authority prior to their commencement.
- 27) Where land affected by contamination is found which poses unacceptable risks to human health, controlled waters or the wider

environment, no development shall take place until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme must include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan.

- 28) Should a remediation scheme be required, the approved strategy shall be implemented and a verification report submitted to and approved in writing by the local planning authority prior to the development or relevant phase of development being brought into use.
- 29) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. Development on the part of the site affected must be halted and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risk is found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These shall be implemented prior to the development, or relevant phase of development, being brought into use.

Equipped Play Space

- 30) Prior to the commencement of development, details of a neighbourhood Equipped Area of Play (NEAP) that has an area of not less than 500sq m (or no more than two individual Local Equipped Areas of Play (LEAP) with a combined area of not less than 500sq m) shall be submitted to and approved in writing by the local planning authority. The submitted details shall include: a phased programme for implementation with not less than 250sq m of equipped play space made available for public use before the 60th dwelling is occupied and 500sq m made available for public use before the 120th dwelling is occupied; a full inventory of the type of play equipment to be installed; details of a buffer zone to protect the residential amenity of dwellings adjoining the NEAP/LEAPs.

Odour

- 31) No dwelling or residential curtilage shall be sited within the 50m buffer strip as indicated on plan no 09/03/655-01d).

No-build Zones

- 32) No development shall be sited within 3 m of any existing drainage/water mains infrastructure within the site.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Owen of Counsel	Instructed by Allerdale Borough Council
He called	
Steve Robinson	Senior Planning Officer Allerdale Borough Council
BA(Hons) MTP MRTPI	

FOR THE APPELLANT:

David Manley QC	Instructed by Michael Sandelands HFT Gough & Co.
He called	
Graeme Blacklock	Associate SLR Consulting Ltd
BSc(Hons) MSc	
Nicholas Iain Folland	Director Barnes Walker Ltd
BA(Hons) DIP LA CMLI	
Robert James Metcalfe	Managing Director MJN Planning
BSc MSc DipTP MRTPI	

INTERESTED PERSONS:

Mr Ward	Cockermouth Civic Trust
Mr Johnson	Local Resident

DOCUMENTS submitted on 14 September 2011

- 1 E-mail dated 12 September 2011 from Michael Sandelands regarding consultation process
- 2 Letter dated 13 September 2011 from SLR regarding odour
- 3 Letter dated 13 September 2011 from WYG engineering regarding flood risk
- 4 Copy of representation to ABC regarding the appeal site prepared by Story Construction and Mr Slack
- 5 E-mail from Dawn Evans dated 12 September 2011 regarding Transport Assessment
- 6 2 draft s.106 Unilateral Undertakings
- 7 Suggested Planning Conditions (as working draft)

DOCUMENTS submitted on 22 and 23 February 2012

- 8 Notification letter for the appeal
- 9 Objection on behalf of Story Homes
- 10 Opening on behalf of the Council
- 11 Proof of Evidence (submitted as document only) by Simon MacKay of Jones Lang LaSalle
- 12 Letter from United Utilities dated 21 February 2012
- 13 E-mail from Martin Williams 11 November 2010 regarding United Utilities and package treatment plant
- 14 E-mail from Steve Long 21 January 2011 regarding United Utilities and

- package treatment plant
- 15 Letter from United Utilities stating no objection to the development subject to conditions
- 16 E-mail from Dawn Evans regarding transport improvement
- 17 Letter from Cumbria Highways dated 5 December 2011
- 18 Planning application forms for site at Gote Road
- 19 Appeal decision APP/G0908/E/09/2112712
- 20 Suggested condition regarding sustainable urban drainage
- 21 Appellant's closing notes

PLANS

- A The application plans for 2151737 : Indicative master plan 09/03/655-01c; Indicative master plan (showing phasing) 09/03/655 - 02a); Indicative site sections 09/03/655-03; Location Plan 09/03/655-04a); TF.011109 Rev a (in respect of planting only note indicative plots 195 & 196 moved)
- B The appeal plans for 2151737: Location Plan 09/03/655-04b); 09-03/655-01d); 09-03-655-06
- C The Application Plans 2152403: Location Plan 09/03/655-04; Block Plan 09/03/655-05

Richborough Estates