



Appeal Decision

Hearing held on 7 November 2023

Site visit made on 7 November 2023

by **F Wilkinson BSc (Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Appeal Ref: APP/A2335/W/23/3321406

Land at Scotforth Road, Scotforth, Lancaster LA1 4NU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent to details required by a condition of an outline planning permission.
- The appeal is made by Northstone Developments Ltd against the decision of Lancaster City Council.
- The application Ref 22/01073/REM, dated 19 August 2022, sought approval of details pursuant to condition No 1 of outline planning permission, Ref 22/00423/VCN, granted on 17 August 2022.
- The application was refused by notice dated 22 March 2023.
- The development proposed is the erection of up to 95 residential dwellings with associated access (pursuant to the variation of conditions 2, 6 and 10 on planning permission 19/00332/OUT for changes to the approved site access arrangements, the proposed great crested newt mitigation strategy and the provision to allow the flexibility for an updated AIA to be prepared and submitted at the time of a reserved matters application).
- The details for which approval is sought are: appearance, landscaping, layout and scale.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Northstone Developments Ltd against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. Outline planning permission was originally approved on 30 April 2021¹. This was then varied through outline planning permission reference 22/00423/VCN approved on 17 August 2022. Access details were approved at the outline stage leaving appearance, landscaping, scale and layout reserved. This appeal relates to the aforementioned reserved matters associated with permission reference 22/00423/VCN. The reserved matter application is for the erection of 74 dwellings.
4. Following the close of the hearing, a revised National Planning Policy Framework (the Framework) was published². The main parties have been given the opportunity to comment on this and I have taken account of their comments and the revised Framework in my decision.

¹ Permission reference 19/00332/OUT

² December 2023

5. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO) defines what each of the reserved matters means:
- Appearance – means the aspects of a building or place within the development which determines the visual impression the building or place makes, including the external built form of the development, its architecture, materials, decoration, lighting, colour and texture;
 - Landscaping – the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes screening by fences, walls or other means; the planting of trees, hedges, shrubs or grass; the formation of banks, terraces or other earthworks; the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and the provision of other amenity features;
 - Layout - means the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development;
 - Scale - except in the term 'identified scale', means the height, width and length of each building proposed within the development in relation to its surroundings; and
 - Access - means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network; where "site" means the site or part of the site in respect of which outline planning permission is granted or, as the case may be, in respect of which an application for such a permission has been made.
6. For the avoidance of doubt, planning permission has already been granted for the erection of up to 95 dwellings on the site including details of access. I can only therefore consider the acceptability of the reserved matters which are before me. There is no scope for me to reconsider matters which have been dealt with, or should have been dealt with, at the outline stage.

Main Issue

7. The main issue is whether the proposed layout, scale, appearance and landscaping represent an appropriate design solution, with regard to defining a sense of place and design quality.

Reasons

Policy Context

8. Policy SG1 of the 2020 adopted Local Plan for Lancaster District 2011-2031 Part One: Strategic Policies and Land Allocations DPD (the SPLA DPD) sets out several principles to guide development within the Lancaster South Broad Location for Growth (including the Bailrigg Garden Village). At the hearing, the Council confirmed that the boundaries for the Bailrigg Garden Village have not yet been set. The appeal site does however lie within the Lancaster South Broad Location for Growth (the BLG).

9. At the hearing, the Council described Policy SG1 as an 'interim position' prior to the adoption of an area action plan (AAP) for the BLG. In June 2023, the Council made the decision to cease preparation on the AAP and to commence a full review of the Local Plan. Nevertheless, Policy SG1 allows for development within the BLG in advance of the AAP to be permitted provided that three criteria are met. The second criterion is that the development would conform with and further the 15 Key Growth Principles described in Policy SG1. At outline application stage, the Council took the position that, given the inclusion in Policy SG1 to permit some development ahead of the AAP, a reasonable and proportionate approach should be taken to how development conforms to the Key Growth Principles.
10. Policy DM29 of the 2020 adopted Local Plan for Lancaster District 2011-2031 Part Two: Review of the Development Management DPD (the DM DPD) sets out key design principles for new development. This includes a requirement that new development located at the entrances/gateways to Lancaster must be of a high standard of design and contribute towards creating a positive statement when entering the settlement. The policy identifies that this approach is of particular importance on the southern approach to Lancaster via the A6, amongst other locations.
11. The National Design Guide (the NDG) states that a well-designed place comes about through making the right choices at all levels, including the layout, form and scale of buildings. Amongst other matters, it advises that is to be based on an understanding of the existing situation, including patterns of built form as well as the local vernacular and other precedents that contribute to local character, to inform the form, scale, appearance, details and materials of new development.
12. The areas of dispute between the main parties regarding whether the proposal is acceptable in defining a sense of place and design quality, bearing in mind the context set by Policies SG1 and DM29, can be summarised as housing mix and the layout and positioning of the proposed affordable housing; design and form of the proposed development; amenity and communal space and landscaping; and energy efficiency and sustainability.

Housing Mix and Layout and Positioning of Affordable Housing

13. Principle 4 of Policy SG1 seeks to ensure that the mix of housing contributes significantly to the creation of cohesive, balanced communities. Policy DM1 of the DM DPD is supportive of proposals that seek to promote balanced communities and meet evidenced housing needs by supporting proposals that accord with the Council's latest Strategic Housing Market Assessment (SHMA). Policy DM3 of the DM DPD requires affordable housing to be well integrated into the design of an overall scheme and be consistent with market housing in quality of materials, design and appearance. The 2022 Meeting Housing Need Supplementary Planning Document (the SPD) sets out principles for the design of layout of sites, including that affordable housing should be 'pepper potted' evenly through a site to ensure the provision of mixed communities.
14. Paragraphs 115 and 116 of the NDG state that well-designed neighbourhoods provide a variety and choice of home to suit all needs and ages, and where different tenures are provided, they are well-integrated and designed to the same high quality to create tenure neutral homes and spaces, where no tenure is disadvantaged.

Housing Mix

15. The evidence sets out that the Council's 2018 SHMA identifies a need for a mix of new homes, with a particular need for three-bedroom open market houses. There is also a desire for bungalows. My attention has not been drawn to a more recent SHMA. Table 4.1 within Policy DM1 of the DM DPD and Table 1 in the SPD shows the indicative approach to housing mix across the district as identified within the SHMA.
16. There is common ground between the main parties that Policy DM1 should be applied with a degree of flexibility in terms of applying the housing mix guidance on a site-by-site basis. In my judgement, however, it is necessary that there should be reasonable adherence to the housing need and mix guidance. Indeed, if this did not happen for most sites, there would be a risk that the need for housing types and tenures would not be met across the authority area as a whole. In addition, the SPD identifies that meeting a limited range will place greater pressure upon other developments to provide a shortfall in other housing sizes.
17. While the proposal would provide a variety in house sizes it is very much skewed towards larger dwellings. Consequently, the variety would not reflect the housing market pressures and mix indicated in the Council's SHMA or the tables within Policy DM1 and the SPD.
18. The proportion of four-bedroom+ market dwellings proposed within the scheme would be 39 out of a total of 52 market dwellings, which would be substantially more than the 25% indicated for properties of that size. The proposal does not include any two-bedroom market dwellings. It would be below the SHMA's indications for three-bedroom market dwellings which is identified as being where the greatest need is, although the 13 of such dwellings proposed would contribute to addressing this identified need.
19. The proposal also includes one- and two-bedroom affordable apartments, two- and three-bedroom affordable homes and a small number of bungalows. Taking the scheme as a whole would bring the proposed housing mix closer to that indicated. However, there would remain a disproportionate level of four-bedroom+ properties within the proposed scheme. It is therefore likely to be the case that the scheme would not fully meet the identified local housing needs in terms of its mix.
20. The appellant explains that the housing mix is due to the commitment to provide the required provision of 30% affordable housing which is contained with the planning obligation under section 106 of the Town and Country Planning Act 1990 associated with the outline planning permission (the section 106 Agreement). In addition, the site has constraints which are costly to mitigate, a significant over delivery of biodiversity net gain and landscaping/open space is proposed and there has been a considerable rise in building costs. To balance these costs, the appellant argues that it is necessary to deliver a greater proportion of larger market homes.
21. While noting this, I have not been presented with any objective viability evidence to persuade me that the significant proportion of larger dwellings and the lack of smaller ones would be appropriate or indeed necessary.

22. The appellant highlights two specific examples in their appeal statement where it is contended that the Council adopted a flexible and site-specific approach to housing mix. However, both cases overprovided on three-bedroom houses, which is the size identified as having a particular need. Furthermore, I have no evidence on what viability information may have been presented on these schemes to justify the housing mix or the lack of policy compliant affordable housing.
23. Consequently, I find that the proposed mix of housing would fail to accord with the requirement of Policy SG1 for the creation of balanced communities. This weighs against the proposal.

Affordable Housing

24. The access into the site was fixed through the outline planning permission. The proposed road from the access point into the site would accord with the approved parameters plan. These factors, along with the need to safeguard land for a future West Coast Mainline crossing serve to split the site into distinct development parcels.
25. Rather than pepper potting the affordable units throughout the development, as advised in the SPD, all such units would be in the northern parcel, as would most of the smaller dwellings. The units in the northern parcel would comprise short terrace blocks, pairs of semi-detached dwellings and two apartment blocks. The dwellings to the south of the access road would be detached dwellings.
26. The rationale given by the appellant for locating all the affordable housing in the northern parcel is related to site efficiencies and ensuring values across the site as a whole, given the site constraints. The appellant states that to meet the 30% affordable housing requirement, the square footage of market units needed to be increased to counter the losses because of the affordable housing provision. Furthermore, as increased density has been accepted in the northern parcel at outline stage, the appellant considers that it is the most logical location in which to locate the affordable housing, which focuses on smaller dwellings. It is also the area closest to the supermarket to be developed immediately to the north.
27. I recognise the factors set out above. I also acknowledge that achieving higher densities would likely require at least some smaller units as well as dwellings that join neighbouring ones. Nevertheless, the decision to locate all the affordable housing and the majority of the smaller units in the northern parcel, with the configuration of plots noted above, gives it a compact and more intensely developed character and appearance. This contrasts markedly with the area to the south of the access road and exacerbates the sense of separateness from the site as a whole. This is notwithstanding that the units would be tenure blind, that residents would have access to the same access routes and areas of open space and that the affordable housing would be mixed with market housing within the northern parcel.
28. There is no substantive evidence before me to demonstrate that the site would be unviable if some of the smaller and/or affordable units were to filter further into the site. I am also not persuaded that the coherence of the built form would be adversely affected by the introduction of a greater mix of house sizes and/or plot configuration.

29. Consequently, I conclude that the way in which the affordable housing has been integrated into the overall layout of the scheme does not contribute positively towards achieving a balanced community. This weighs against allowing the proposal.

Design and Form – Central Axis, Interface Distances and Car Parking

Central Axis

30. The Council's view is that the central part of the site feels regimented. This is claimed to be mainly due to the rigid road layout here and the back of house relationship with the main road through the development.
31. The evidence indicates that having dwellings facing out towards the A6 road was seen as an important requirement by the Council. A consequence of this would likely be that the rear of these dwellings would face towards the main road through the development.
32. The dwellings along the east side of the main road through the development are described as having a high level of detailing and articulation, such that the rear would match the front in terms of emphasis. This is supported by the house type plans. Landscaped areas would sit in between the rear gardens of the dwellings and the road. A mix of boundary treatments are proposed to the rear of the dwellings as well as car parking/car ports. In addition, several dwellings to the west of the main road would face towards it.
33. The main road through the development would be long and straight. However, as noted above, a desire of the Council was to secure outward facing dwellings towards the A6. In addition, there is a requirement to provide a cycle path which the evidence indicates was requested by the Council to be close to the A6, parallel with it, and linear in nature. The site layout is therefore having to respond to these linear features. Furthermore, I am mindful of the principles in the document 'Building for a Healthy Life'³ highlighted by the appellant which encourages straight roads for easier way finding.
34. I appreciate that it is important to ensure a human scale within the street scape, and that a long straight street can reduce the sense of enclosure and therefore make this harder to achieve. Nevertheless, in this case, the main road through the development would be broken up by the roads and footpaths that would lead to/from it and by the proposed landscaping that would be managed over the long term.
35. Taking these factors as a whole, I am satisfied that within the central part of the site, an active street frontage would be provided, there would be appropriate permeability, and the internal street scene would contribute positively to defining a sense of place. I therefore find that the proposed layout, appearance and scale of the development would be acceptable in this regard.

Interface Distances

36. Policy DM29 states that the Council will expect development to contribute positively to the identity and character of the area through appropriate separation distances amongst other considerations. To ensure privacy, the

³ Building for a Healthy Life – A design toolkit for neighbourhoods, streets, homes and public spaces – July 2020

supporting text to the policy sets out that development proposals should give consideration to a number of principles, including that there should normally be at least 21 metres between dwellings where windows of habitable rooms face each other and 12 metres where a habitable room faces onto a side wall with no such window. The supporting text acknowledges that there may be instances where these minimum distances need to be increased or reduced depending on circumstances.

37. There are several dwellings that would not meet the 21 metres guidance. The appellant argues that this is a purposeful design intent to facilitate varied street scenes. The appellant also identifies that they deliberately include shorter front gardens to minimise the opportunities for residents to create additional parking in the future, which I accept would be a benefit in terms of maintaining the street scape over the longer term.
38. Avoiding uniform separation distances would enable some variety in the street scape and help slow traffic and may give a greater sense of intimacy to some areas within the development. I also understand that the interface distances in the supporting text of Policy DM29 are not expressed as rigid requirements to be met in all cases.
39. However, as noted in the NDG, as well as appearance, good design promotes quality of life for occupants, and this includes matters such as privacy. It would be only a relatively small number of dwellings that would not meet the separation distance of 21 metres. However, in a number of cases, the separation distance would be materially less than 21 metres, at around 13 metres in some instances. Such distances would unacceptably compromise the privacy of future residents of these properties.
40. There is no evidence to indicate that a bespoke housing design for these plots could not have achieved the design objectives for the varied street scape while still maintaining acceptable privacy distances.
41. Given the expectations placed on the design quality of development within the BLG through Policy SG1, and more generally by Policy DM29, the fact that the separation distances proposed at the identified dwellings would fall short of that which would maintain reasonable privacy weighs against allowing the proposal.

Car Parking

42. The proposed car parking did not receive objections from technical consultees. Nonetheless, the technical aspects are not the only factor when considering the layout of the development. The NDG sets out that well-designed parking is attractive, well-landscaped and sensitively integrated into the built form so that it does not dominate the development or the street scene. The National Model Design Code identifies that the arrangements for parking can have a major impact on the quality of a place both visually and in terms of how it is used, particularly by pedestrians.
43. Not all the parking proposed for the northern parcel would be in curtilage parking. The appellant has submitted a plan which illustrates that the remote parking areas would be overlooked by a dwelling from at least one direction. This would be in line with the advice in the consultation response of the Designing Out Crime Officer.

44. Parking areas for apartments are not uncommon and this does comprise much of the grouped parking areas. The appellant's parking diagram and visual⁴ illustrate how the remote and visible parking would be broken up by landscaping. Nevertheless, on entering the northern parcel, the street scene would be dominated by the hard surfaced parking areas. This adds to the compact and more intensely developed character and appearance of the northern parcel identified above.

Open Space and Landscaping

45. There is no dispute between both main parties that in quantitative terms, the areas of open space more than satisfy the policy requirements and contribute to a sense of place. I have no reason to disagree. However, the Council is concerned that there is a lack of detail with the landscaping submission, in particular how it would interplay with the open space and the built form, to ensure that it would adhere to the aspirations in Policy SG1.
46. In terms of landscaping information, there is a masterplan which does refer to indicative areas for planting and play space. However, this is supplemented by the Design Code which includes details of tree, hedges and shrub types and planting specifications; native planting types for the open spaces; and a palette of hard materials. In addition, hard landscaping details have been submitted, as has a boundary treatment plan and individual plans showing the enclosure types. There is also a plan showing indicative play proposals which addresses how the open space would be used by different age groups, including locations for play equipment and surveillance views.
47. Large areas of open space and landscaping are proposed for the site. In my view, the areas of landscaping and open space would integrate well with the proposed built and engineered forms and would suitably accord with the outline planning permission parameters plan. It has been satisfactorily demonstrated that the landscaping of the site would retain and enhance existing landscape features, create new areas of open space, and link landscape features with the surrounding area. Furthermore, the landscaping proposals overall would have the effect of significantly enhancing biodiversity, and so it has been acceptably shown that functional and accessible open space would be provided alongside ecological mitigation and enhancement.
48. The long-term management and maintenance of the open space and landscaped areas would be the responsibility of a management company. This would be set up under the terms of the section 106 Agreement.
49. I am therefore satisfied that, based on the level of detail that has been provided, the areas of open space and landscaping would contribute positively to a sense of place and would be of sufficient quality to meet the aspirations for the BLG set out in Policy SG1 as well as the key design principles in Policy DM29. Consequently, I am content that securing further details by means of the imposition of a planning condition would be an acceptable approach.
50. A community garden is proposed. The Council has raised concerns with its location and usability, in particular that it would feel more like an extension to a private garden, that it should be located more centrally within the

⁴ Appellant's statement of case, appendix 9

development and that there is the potential for disturbance to the nearest residents.

51. The rationale given for its location close to dwellings includes giving the space a more intimate feel to help engender the sense of ownership required to ensure it is used, which I can understand. It would be relatively accessible to the whole development including the northern parcel. Careful choice of boundary treatment, such as the gabions shown on the associated plans, would distinguish between the communal garden and the outdoor amenity space for plot 10, while the parking spaces on its southern boundary would fulfil the same function for plot 12.
52. The intention is for the garden to be a quieter amenity space. The area is not large and so scope for large gatherings would be limited. I am satisfied that any noise or disturbance for nearby residents would not be unacceptable. Overall, the communal garden would offer an additional type of public open space that would positively contribute to the range of amenity areas within the development.
53. On the whole, I find that the submitted landscape details are acceptable.

Energy Efficiency and Sustainability

54. Principle 11 of Policy SG1 states that proper account be taken of the need for new development to minimise its contribution to the impacts of climate change and to ensure there is future resilience and adaptability to its effects. Principle 14 requires innovative urban design which should include the application of appropriate new technologies for buildings where possible. Policy DM30 of the DM DPD sets out criteria to encourage development to deliver high standards of sustainable design and construction. A Climate Emergency Review of the SPLA DPD and the DM DPD is being undertaken. This proposes changes to Policy DM30 to introduce, amongst other things, specific targets for reducing carbon emissions for new residential development. Main modifications were published in June 2023. These include significant amendments to Policy DM30a.
55. The Energy Statement submitted with the application sets out that the proposal would achieve a 37.06% reduction in carbon emissions through a mix of fabric first and low to zero carbon technologies (mainly solar pv panels on the dwellings). This is above both the current Building Regulations requirement and the requirement in condition 21 of the outline planning permission.
56. I am therefore satisfied that the layout and appearance of the development would ensure that the requirements set out above would be met. The detail as to how this would be achieved would be addressed through the discharge of condition 21 of the outline planning permission.

Other Matters

57. Following the close of the hearing, the Council approved an alternative reserved matter application for the site. The parties who attended the hearing have been given the opportunity to comment on this matter. This second reserved matters proposal is for 70 houses. It includes the same percentage of affordable housing but has a different housing mix across both the affordable and market dwellings, including more two- and three-bedroom dwellings. While the information before me indicates that the affordable housing and the smaller units may not extend across the whole of the development, it does appear that

they filter further into it than is the case with the appeal proposal. The layout of the dwellings within the second reserved matters proposal do not appear to have the same extent of shortfall of separation distances. There are therefore notable differences between the second reserved matter proposal and the appeal scheme, which I have in any event considered on its own planning merits.

Planning Balance and Conclusion

58. The Council cannot demonstrate a five-year supply of deliverable housing sites. The evidence indicates that the figure has fallen further since the outline planning permission was granted. The appellant argues that paragraph 11 of the Framework states that plans and decisions should apply a presumption in favour of sustainable development, a reserved matter application involves a decision taking exercise, and so the requirements of paragraph 11 d) of the Framework would apply.
59. Planning permission has already been granted at the outline stage, where the principle of the development was addressed. An application for approval of reserved matters is not an application for planning permission. Instead, it is an application seeking consent for prescribed technical details. The balance required by paragraph 11 d) of the Framework was undertaken by the Council at the outline application stage. It is not therefore appropriate to apply the requirements of paragraph 11 d) to the consideration of the reserved matter details.
60. Nevertheless, a planning balance still needs to be undertaken of the proposal, and there are matters which weigh in its favour.
61. The appellant states that the housing would be delivered within the accelerated growth phase of the development plan. This is not a matter that directly relates to any of the specified reserved matters. Nevertheless, and for the avoidance of doubt, I have given this matter some positive weight in respect of this appeal as it would support the Government's objective of significantly boosting the supply of homes.
62. There would be substantial biodiversity net gain evaluated at around 80% for habitats and 329% for hedgerows, and the provision of open space would greatly exceed the requirements set out in Policy DM27. This has positive weight. There would be an exceedance of the Building Regulations Part L requirements and a commitment to Future Homes Standard. These are not matters that directly relate to the specified reserved matters, but again and for the purposes of this appeal I have given such a matter positive weight in the planning balance.
63. The appellant considers that positive weight should be given to the 30% affordable housing provision. However, this was established at outline permission stage and is a requirement of the section 106 Agreement completed as part of that permission. The provision of a cycle path was also a requirement of the outline planning permission, although the proposed layout does show that it would link well within the site and outside its boundaries, as would the proposed pedestrian links.
64. The commitment to retain safeguarded land for a link across the West Coast Main Line within the proposed layout would represent a benefit, although again

it is a factor that was considered at outline stage. The appellant's stated intention of providing social events once the development is complete would make a positive contribution to creating a sense of community, although there does not appear to be a specific planning mechanism to require this.

65. There are many aspects of the scheme that would positively contribute to defining a sense of place, demonstrate a high standard of sustainability and attractiveness and foster a sense of community.
66. The NDG states that the underlying purpose for design quality and the quality of new development at all scales is to create well-designed and well-built places that benefit people and communities. This reflects the design objectives in the Framework. I am also aware of the strong emphasis placed on high standards of design in Policies SG1 and DM29.
67. There are clear disadvantages in the proposed appearance, layout and scale of the development. Taken individually, these issues may not result in an unacceptable development. However, when taken together, they are indicative of a scheme that falls short of the expectations of Policy SG1, including several of its principles which are identified as being at the very core of the planning and development in the BLG, notably principles 2 and 4. This would be the case, even when taking a reasonable and proportionate approach to the application of Policy SG1.
68. The harmful effects would persist for the long term. In my judgement the identified benefits of the scheme would not outweigh the harm. For the avoidance of doubt, I make it clear that this would have been my position whether or not paragraph 11 d) of the Framework had been triggered.
69. I therefore conclude that, while the proposed landscaping details are acceptable, the proposed details of layout, scale, and appearance would not represent an appropriate design solution. Hence, the development would not appropriately define a sense of place and design quality. Consequently, the proposal would conflict with Policy SG1 of the SPLA DPD and Policy DM29 of the DM DPD and the objectives of the Framework for achieving well-designed and beautiful places.
70. Accordingly, for the reasons given, the appeal should be dismissed.

F Wilkinson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Bernadette Barry – Head of Planning and Sustainability, Northstone Developments Ltd

Hannah Flory – Design Manager and Architect, Northstone Developments Ltd

Rachel Glover-White – Director, NJL Consulting

Ian Ponter – Barrister, Kings Chambers

FOR THE LOCAL PLANNING AUTHORITY:

Richard Byrne – Principal Consultant on behalf of Lancaster City Council

Paul Hatch – Senior Planning Officer, Lancaster City Council

Luma Ifram – Consultant on behalf of Lancaster City Council

Mark Potts – Service Manager, Lancaster City Council

INTERESTED PARTIES:

Tom Davies – local resident

Roger Kemp – local resident

DOCUMENTS SUBMITTED AT THE HEARING

Map of Scotforth Neighbourhood Plan area

DOCUMENTS SUBMITTED AFTER THE HEARING

Committee report for application reference 23/00802/REM, reserved matters application for the erection of 70 dwellings, land to the south Of Lawsons Bridge Site, Scotforth Road, Lancaster

Representations on committee report, NJL Consulting, 5 December 2023

Comments on committee report, Lancaster City Council, 15 December 2023

Comments on the National Planning Policy Framework December 2023, NJL Consulting

Comments on the National Planning Policy Framework December 2023, Lancaster City Council



Costs Decision

Hearing held on 7 November 2023

Site visit made on 7 November 2023

by **F Wilkinson BSc (Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Costs application in relation to Appeal Ref: APP/A2335/W/23/3321406 Land at Scotforth Road, Scotforth, Lancaster LA1 4NU

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Northstone Developments Ltd for a full award of costs against Lancaster City Council.
 - The appeal was against the refusal of planning permission for approval of details pursuant to condition No 1 of outline planning permission, ref 22/00423/VCN, granted on 17 August 2022.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural and/or substantive.
3. In summary, the applicant argues that the Council has acted unreasonably by advancing a series of assertions that are vague, generalised, and occasionally factually inaccurate. The applicant considers that there is an absence of objective analysis to support those assertions or to establish harm or a policy breach and this amounts to a failure to substantiate the reason for refusal. The applicant claims that this approach has delayed development which should clearly have been permitted having regard to its accordance with the development plan, national policy, and other material considerations.
4. Following the close of the hearing, the Council approved an alternative reserved matter application for the site (REM2). The applicant considers that there are inconsistencies in the way that the Council has dealt with REM2 and the appeal proposal. This concerns the application of Policy SG1 of the SPLA DPD¹, the use of planning conditions, and the flexible application of policies and guidance in the development plan.
5. The Council disputes that it has acted unreasonably.

¹ 2020 adopted Local Plan for Lancaster District 2011-2031 Part One: Strategic Policies and Land Allocations DPD

Lack of Objective Analysis

6. As I have dismissed the appeal, it is not the case that the Council delayed development that should clearly have been permitted. In their evidence, the main parties have differed on the degree of consistency of the appeal proposal with policies in the development plan. This is in terms of whether the proposal would achieve the positive design that is expected of all new development; and the high bar for urban design and contribution to the definition of a sense of place, high standard of sustainability and attractiveness, and sense of community expected for development in the Lancaster South Broad Location for Growth as defined in Policy SG1 of the SPLA DPD.
7. The Council's reason for refusal is essentially a matter of planning judgement. The Council's evidence in its officer report and statement of case sets out the planning balance and adequately explains why it considers that the proposal would not be acceptable. I appreciate that reference could have been made to documents such as the National Design Guide to help articulate the concerns. However, this does not mean that the opposition to the proposal has not been properly justified. To my mind, the Council's written evidence and the arguments made at the hearing were neither vague nor generalised, but conveyed the reasons why the proposal could not be supported. The Council's case has been adequately reasoned, and this is framed within the context of the development plan.
8. I have found that the Council had reasonable concerns about the proposal which justified its decision, and these are based on a conflict with the development plan and the National Planning Policy Framework. In these respects, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Inconsistent Approach

9. Although the officer report for REM2 does not explicitly refer to the Key Growth Principles set out in Policy SG1, it is clear that the policy formed the basis of the assessment. This can be seen from the appraisal, including the three questions posed in the officer report under 'design and form', which draw on the Policy SG1 criteria that were mainly at issue with the appeal proposal. These three questions are the same as three of the headings in the officer report for the appeal proposal. The Council's statement of case for the appeal proposal identifies the criteria in Policy SG1 that it considers are relevant to the reserved matter application and those that are not. Although there is some variation in the structure of the officer report for the appeal proposal and REM2, I do not consider that the application of Policy SG1 has been materially different between the two.
10. As can be seen from my decision, I am satisfied that the landscaping details submitted appropriately demonstrate that the areas of open space and landscaping would be of sufficient quality to meet the aspirations of Policy SG1, and further details could be secured through the imposition of a planning condition. The applicant states that the landscaping details submitted for the appeal proposal and REM2 are the same. However, the Council has taken a different position on landscaping between the two schemes. The Council's position for the appeal proposal is that there is a lack of detail to ensure that the landscaping would adhere to the aspirations in Policy SG1. However, for

REM2, the Council concludes that there is sufficient confidence that a high-quality landscaping scheme can be secured by planning condition.

11. The Council's position on this matter is that there are key differences between the appeal proposal and REM2 that places greater confidence that a landscaping scheme could come forward under a planning condition that contributes towards a sense of place. Examples given of changes that contribute towards developing a greater sense of place are the change of location of the communal garden, the introduction of street communal gardens and a change to street layout.
12. Based on the limited information that is before me, I cannot reasonably conclude that the Council has acted inconsistently between the two schemes with regard to the landscaping details.
13. The Council's statement of case acknowledges that the guidance on housing mix is not rigid and a flexible, site-specific approach should be taken. There are notable differences between REM2 and the appeal scheme in terms of housing mix and distribution. In addition, the layout of the dwellings within REM2 do not appear to have the same extent of shortfall of separation distances. The Council was open to reach a different conclusion on the consistency with the relevant policies and the weight to attach to the matter of housing mix and affordable housing and privacy distances in the planning balance given that there were changes between the two schemes.
14. The applicant considers that the Council has been inconsistent in its decision making between the appeal proposal and REM2. However, I am not persuaded that this is the case given the content of the appraisal set out in the two officer reports and the Council's appeal statement, and the differences between the two schemes. In this regard therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Conclusion

15. For the above reasons, I find that the Council has not behaved unreasonably in terms of the issues relating to a lack of objective analysis and an inconsistent approach.

F Wilkinson

INSPECTOR