



Appeal Decision

Site visit made on 11 November 2025

by **C Livingstone MA(SocSci) (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12th January 2026

Appeal Ref: APP/K0940/W/25/3371173

Land Opposite Greenhills Pond/Hillside Close, Greystones Lane, Dalton in Furness, Westmorland and Furness LA15 8FG

- The appeal is made under section 106B of the Town and Country Planning Act 1990 (as amended) against a determination that a planning obligation shall continue to have effect without modification.
 - The appeal is made by Mt Tim Jones, Harry Barker Properties Ltd, against the decision of Westmorland and Furness Council.
 - The application Ref is B28/2025/0045.
 - The proposal is to modify a planning obligation made under S106 of the Town and Country Planning Act 1990 by the removal of the requirement to provide four affordable units.
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Decision

1. The appeal is allowed. The planning obligation, dated 1 October 2019, made between Westmorland Council and Barker Developments (Cumbria) Limited shall continue to have effect subject to the removal of the requirement to provide four affordable units.

Preliminary Matters

2. A certified Deed of Agreement made pursuant to S.106 of the Town and Country Planning Act 1990 (as amended) (S106 Agreement), dated 1 October 2019, was prepared in relation to outline planning permission for the development¹. The subsequent approval of the Reserved Matters², was then subject to the completion of a Supplemental Agreement, dated 10 November 2021, which included the replacement of the definition of 'Affordable Units' as well as the definition of 'Affordable Rent' as relevant to the scheme.
3. The S106 Agreement contains a number of planning obligations which include the provision of affordable housing, the payment of financial contributions to the Highway Authority, that the developer facilitates the development of neighbouring land, specification and maintenance for SUDS and open space maintenance.
4. The description of the proposal in the banner heading above has been taken from the planning application form. The sentence 'please see attached Supplementary Planning Statement and Viability Assessment' has been omitted in order to ensure the description is clear and succinct.
5. The appellant has provided an updated viability appraisal as part of the appeal. The Inspectorate's Procedural Guide on Planning Appeals states that 'it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the LPA and by interested parties at the application stage'. The findings of the updated viability assessment have not been subject to

¹ B07/2018/0070

² B07/2019/0737

independent review. Thus, accepting this information would result in a procedural unfairness to both the Council and other interested parties. As such, I have not taken the updated viability appraisal into account as part of my assessment.

Main Issue

6. The application was made under Section 106B of the Town and Country Planning Act 1990 to enable the modification of the planning obligations set out in the Section 106 Agreement detailed above. Section 106B(4) of the Act allows the Secretary of State to determine;
 - (a) that the planning obligation shall continue to have effect without modification;
 - (b) if the obligation no longer serves a useful purpose, that it shall be discharged;or
 - (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.
7. The application sought modification of the Deed to remove the requirement to provide affordable housing; as detailed in Section 1 of the First Schedule of the S106 Agreement, dated 1 October 2019, and then later defined within the Supplemental Agreement, dated 10 November 2021. The main issue is therefore whether the obligation serves a useful purpose that would be equally well served if it were to be modified as proposed.

Reasons

8. The appeal relates to a housing development comprising 36 dwellings on an allocated housing site on the edge of Dalton in Furness. It is at an advanced stage of construction.
9. In order to meet the needs of the community, Policy H14 of the Barrow Borough Local Plan 2016-2031 (BBLP) supports the Council's aim to provide affordable housing in the borough. The policy sets the expectation that, for developments comprising 10 or more units, 10% of dwellings would be affordable. This requirement is reflected in the Section 106 Agreement which requires a total of 4 affordable housing units.
10. The appellant seeks the approval of the modification of the Section 106 Agreement to remove the requirement for the provision of affordable housing. The level of affordable housing now being offered is 0% rather than 10% of the total number of homes. The appellant has provided a Viability Assessment³ in support of this change. The Viability Assessment has also been independently reviewed and agreed by a Council appointed specialist⁴. Because of this, there is common ground between the Council and appellant that the appeal scheme would be unviable with affordable housing. I have no reason to disagree.
11. Policy H14 of the BBLP includes the caveat that a lower portion of affordable housing may be permitted when it can be demonstrated through a viability assessment that the required figure would render the scheme unviable. The National Planning Framework (the Framework), in Paragraph 59, and Planning

³ Viability Assessment, HBP Ltd.

⁴ Viability Assessment Review, Aspinall Verdi Property Regeneration Consultants.

Practice Guidance (PPG)⁵ similarly reference that the weight to be given to a viability assessment is a matter for the decision maker.

12. There is no dispute between the main parties that there is an identified need for affordable housing in the area. However, this need must be balanced against the overall viability of the development; and Policy H14 of the BBLP makes provision for this.
13. The Viability Assessment, detailed above, demonstrates that economic changes over recent years have led to increased construction costs which are not absorbed by a small increase in house prices in the area. This has had a significant impact on the viability of the scheme. The situation is so altered that viability assessments produced by both the Council and appellant demonstrate that the scheme can no longer provide affordable housing and remain viable.
14. The Council stated that the appellant has not demonstrated that they have explored alternative options in terms of design, phasing or specification to reduce costs. However, the appellant states that changes to the layout of the scheme, which they assert was at the request of the Council, significantly increased the cost of the development in comparison to their original proposal. Notwithstanding this, both viability assessments demonstrate that changing economic conditions have significantly impacted the viability of the development.
15. Therefore, the current circumstances are such that there is a need for a planning obligation in different terms, to facilitate delivery. Which would be consistent with the development plan taken as a whole. Thus, an amended Section 106 Agreement is necessary, reasonable, supported by development plan policy and proportionate in the context of the prevailing circumstances. Therefore, it is desirable, essential and appropriate to allow a Section 106 Agreement on different terms, namely the provision of 0% affordable housing.
16. Further if I were not to allow the modification of the S106 Agreement, its retention as existing would restrict the efficient use of land, as the evidence before me demonstrates that the provision of affordable dwellings would make the appeal scheme unviable. The Framework seeks to significantly boost the supply of homes. There would also be moderate economic and social benefits associated with the occupation of the dwellings.

Other Matters

17. I have carefully considered the comments of Dalton and Newton Town Council which include concerns in relation to the loss of affordable housing units, the delivery of which is supported within the Framework, in order to facilitate the creation of mixed and balanced communities. This point is addressed in the reasons section above. They also state that the appellant has not provided a robust or independently verified viability assessment. However, as detailed in paragraph 10, the viability evidence submitted by the appellant was independently reviewed by the Council.
18. Concerns were also raised that removing the requirement to provide affordable housing would set an undesirable precedent. Yet, the particular circumstances relating to the appeal proposal would be unlikely to be repeated elsewhere.

⁵ Paragraph: 010 Reference ID: 23b-010-20190315, Revision date: 15 03 2019

Therefore, Dalton and Newton Town Council's concerns about precedent are of limited weight.

19. The appellant may have previously applied to complete the development with a reduced amount of affordable housing. However, my assessment is based on the evidence before me which supports the view that the provision of any affordable housing would make the development unviable.

Conclusion

20. For the reasons set out above, I conclude that the appeal should be allowed and the obligation shall have effect subject to the removal of the requirement to provide four affordable housing units, as defined in paragraph 7 above.

C Livingstone

INSPECTOR

Richborough