

UPDATES AND LATE REPRESENTATIONS FOR COMMITTEE

Committee Date: 29 July 2021

Planning application no. SL/2020/0783

Land off Brigsteer Road, KENDAL

1.0 Committee referral

- 1.1. This application has been referred to the Planning Committee at the discretion of the Director of Customer and Commercial Services and in accordance with the Council's Constitution, being a proposal where the views of Members are considered to be desirable or essential having particular regard to: (1) the level of affordable housing being proposed; and (2) the level of public interest.

2.0 Updates

The National Planning Policy Framework

- 2.1. On 20 July 2021 the government published an updated version of the National Planning Policy Framework (NPPF). In essence this has strengthened requirements on design quality and the use of trees in new developments, as well as presenting revised policies on plan-making, removing statues and opting out of permitted development rights. The NPPF remains a key material consideration in the determination of all planning applications.
- 2.2. Some of the updates in the 2021 version of the NPPF are material to the assessment of the current application and the significance of the key changes are discussed below under the relevant heading in the officers' report. Some of the paragraph

numbers in the NPPF referred to in the report have also been updated. These too are highlighted below. The main section headings in the NPPF, referred to in paragraph 4.4 of the officers' report, remain unchanged.

The presumption in favour of sustainable development

- 2.3. The NPPF's presumption in favour of sustainable development, which remains defined in paragraph 11 of the document, now includes an explicit reference to climate change, stating that for plan-making:

“all plans should promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure; improve the environment; mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects;”

- 2.4. The need to mitigate against and adapt to climate change is already embedded in the District Council's development strategy. It features as the first of the 11 principles in Core Strategy policy CS1.1 (Sustainable Development Principles), which then provides the context for the overall development strategy and subsequent allocations in the Land Allocations DPD.
- 2.5. The amendment to paragraph 11 of the NPPF has no material impact on the recommendation in the officers' report.

Flood risk

- 2.6. The references to paragraphs 178 and 179 of the NPPF in paragraph 5.84 of the officers' report should be updated to read paragraphs 183 and 184 respectively.

Site accessibility

- 2.7. Paragraph 122 of the (now superseded) 2019 NPPF expects planning policies and decisions to support development that makes efficient use of land, taking into account (amongst other things) “the scope to promote sustainable travel modes that limit future car use.” This has now become paragraph 124 of the latest NPPF
- 2.8. Preceding this, paragraph 73 of the updated NPPF repeats paragraph 72 of the superseded version, but now includes an additional reference to transport modes in parentheses at the conclusion of the first sentence, which now reads:
- “The supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities (including a genuine choice of transport modes).”
- 2.9. This represents a strengthened emphasis on reducing the need for car-borne journeys.

- 2.10. As explained in the officers' report, the Stainbank Green allocation is accessible by a range of modes of transport and provides convenient access to the full range of facilities and amenities present in the District's largest settlement. Walking and cycling will be made more challenging by the steep climb up from the town centre and the bus service via Underwood may be too infrequent and circuitous to suit everyone's needs. Nevertheless, walking, cycling and trips by public transport will be genuine choices for new residents; choices that would be impracticable or non-existent in locations at a greater distance from the town.
- 2.11. The references to paragraph 109 of the NPPF in paragraphs 5.129 and 6.7 of the officers' report should be updated to read paragraph 111.

Character

- 2.12. The reference to paragraph 124 of the NPPF in paragraph 5.148 of the officers' report should be updated to read paragraph 126, which now reads as follows:
- “The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.”
- 2.13. The updated NPPF places greater weight on the significance of masterplans, design guides and design codes in driving up the quality of new development, reflecting the recommendations of the Building Better, Building Beautiful Commission. There is an expectation that (para. 127):
- “Design policies should be developed with local communities so they reflect local aspirations, and are grounded in an understanding and evaluation of each area's defining characteristics. “
- 2.14. There is also a cross-reference to a number of tools which have been provided as part of National Planning Guidance, including the National Design Guide¹ and the National Model Design Code² as well as influential separate guidance such as Building for a Healthy Life, Homes England's key measure of design quality.
- 2.15. The updated NPPF is clear (in paragraph 129) that:

¹ National Design Guide, Ministry of Housing, Communities & Local Government 2021

² National Model Design Code, Ministry of Housing, Communities & Local Government 2021

“Design guides and codes can be prepared at an area-wide, neighbourhood or site-specific scale, and to carry weight in decision-making should be produced either as part of a plan or as supplementary planning documents.”

- 2.16. This will be a new work stream going forward, and there is no expectation that the delivery of existing allocated sites should be delayed whilst this work is completed. Furthermore, as far as Stainbank Green is concerned, the site is already subject to a supplementary planning document – the Development Brief, which includes site-specific design guidance, referred to in the officers’ report. This predates the latest National Planning Guidance, but the Brief was adopted following extensive public and stakeholder engagement.

Biodiversity net gain

- 2.17. The reference to paragraph 170 of the NPPF in paragraph 5.245 of the officers’ report should be updated to read paragraph 174.

Trees

- 2.18. The updated NPPF has introduced a completely new paragraph (131) on the importance of trees. Reproduced in full, this states:

“Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Planning policies and decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible. Applicants and local planning authorities should work with highways officers and tree officers to ensure that the right trees are planted in the right places, and solutions are found that are compatible with highways standards and the needs of different users. “

- 2.19. Trees within and surrounding the current application site are an important consideration, and represent both a constraint and an opportunity. This is recognised in the allocating policy for Stainbank Green and in the Development Brief. Indeed, the Brief’s expectation of a green corridor along the main vehicular route through the site pre-empts the latest NPPF guidance and is reflected in the latest site layout by a 3m-wide planted verge which is to be adopted by the local highway authority. The latest Landscape Structure Plan also shows trees lining the other streets in the layout (albeit within private gardens) and significant areas of new planting in the various open spaces. The officers’ report considers these proposals in more detail and also assesses the necessary tree loss to facilitate the development.
- 2.20. It is probably no longer true, as stated in paragraphs 5.100 and 5.260 of the officers’ report that nothing substantive has changed since 2014 to suggest a different decision on appeal if we were to challenge again the impact of the proposed access

onto Brigsteer Road in terms of tree loss. Paragraph 131 of the updated NPPF is clearly an additional material consideration to be weighed in the balance. Having said that, the issue of tree loss along the site frontage was not ignored in 2014; it was just weighed less significantly than other considerations, even having regard to the presumption in favour of retaining trees already established by the allocating policy and the Brief at the time. In that context the updated NPPF is not telling us anything new and it remains officers' opinion that we would be unlikely to pull together a convincing case if this issue was revisited on appeal.

Setting of designated landscapes

- 2.21. Paragraph 176 of the updated NPPF changes the policy in respect of designated landscapes, including National Parks, to refer to their setting. In full paragraph 176 states:

“Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.”

- 2.22. The potential impact on the setting of the Lake District National Park associated with the principle of developing Stainbank Green was considered when the site was allocated for development in 2013; all that remains is to consider whether the layout adopted in the current application creates any unforeseen or unusual impacts. As explained in the officers' report, and as Members will have appreciated from their site visit, this part of the allocation is very well screened; views towards the National Park are extremely limited. As are views back. And there is nothing unanticipated about the form of the development. None of the proposed houses exceeds two storeys in height, typical of much of the area, and the layout works with the topography of the site in a very organic fashion, incorporating a significant amount of new landscaping, establishing a continuity of tree cover for the future. It is officers' opinion that the setting of the National Park is completely unharmed by the proposal.

Archaeology

- 2.23. The reference to paragraph 189 of the NPPF in paragraph 5.284 of the officers' report should be updated to read paragraph 194.

Conclusion

- 2.24. Having considered the relevant changes in the latest version of the NPPF officers consider that the recommendation in respect of this application remains sound.

Conditions

Condition 2

- 2.25. We now have an amended version of the Affordable Homes Layout. Revision C of drawing 0014.03.11 now differentiates between the different forms of intermediate housing – identifying the locations the four units for discounted sale and five for shared ownership. If the application is approved then the list of plans in condition 2 needs to be updated accordingly.

Condition 13

- 2.26. As discussed in the officers' report, there will be a considerable loss of unprotected trees along the Brigsteer Road frontage resulting from the construction of the new vehicular access and associated roadside footway connection to Underwood. However, the one protected tree on this frontage is shown to be retained. This is a Category A sycamore referred to as T9 in the submitted Arboricultural Impact Assessment. The footway will inevitably encroach into the root protection of this tree, although the Council's arboriculturist sees no immediate reason why it cannot be retained, subject to a bespoke construction specification and appropriate working practices. To reinforce this point, it is recommended that the wording of condition 13 is amended as follows:

Condition (13): No individual dwelling hereby approved shall be first occupied until the new footpath link along Brigsteer Road to the junction with Underwood has been constructed and made available for use in accordance with the General Arrangements Layout plan (40014.03.01 Revision T) and a further specification that shall first have been submitted to, and approved in writing by, the local planning authority. The specification must include details of the construction methods and working practices necessary to retain the protected sycamore identified as T9 in the Arboricultural Impact Assessment submitted in support of this application and prepared by Urban Green - October 2020, Revision 05.

Reason: To maintain highway safety in accordance with: (1) policy CS10.2 (Transport impact of new development) of the South Lakeland Core Strategy; and (2) policy DM1 (General Requirements for all development) of the South Lakeland Development Management Policies Development Plan Document.

3.0 Representations

- 3.1. We have received further representations from two people since the Committee agenda was published. These appear in full online.
- 3.2. The first contains three photos illustrating: (1) the attractiveness of the tree-lined public footpath that crosses the northern section of the site (referred to in the representation as an “ancient path from Kirkland Kendal to Helsington church”); and (2) the difference between the existing condition of the north-east corner of the site (where one of the two SuDS basins in the scheme is proposed) and the earthworks currently underway on the Underbarrow Road development to the north.
- 3.3. The second representation reiterates earlier concerns about the archaeological significance of the site and is critical of the likely damage caused to archaeology and ecology by recent excavations. The archaeological significance of the site is discussed in sections 5.277 – 5.289 of the officers’ report. The excavations were trial pits created to gain a better understanding of the site’s drainage characteristics. They were undertaken in response to earlier concerns raised by the lead local flood authority - and also raised in a number of local representations. The information gathered from these trial pits has informed the applicant’s updated flood risk assessment. This is a normal part of the development process.
- 3.4. The second representation also updates and replaces the author’s earlier analysis of the provision of affordable housing based upon the creation of a new town adjoining junction 36 of the M6.
- 3.5. The hypothetical delivery of affordable housing on a separate (unallocated) site is irrelevant to the merits of the current application. The provision of affordable housing on the current application site needs to be judged against policy CS6.3 of the Core Strategy and the standardised approach to viability assessment set out in the National Planning Guidance. This is fully explored in sections 5.25 – 5.47 of the officers’ report.