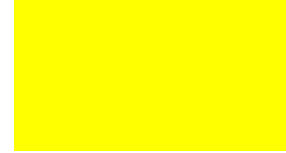


Mr Simon Berkeley BA MA MRTPI  
Planning Inspector  
C/O The Development Plans Manager  
South Lakeland District Council  
South Lakeland House  
Lowther Street  
Kendal  
LA9 4DL

7485 - WATERBURY



Delivered by hand

Thursday, 2<sup>nd</sup> May 2013

Dear Mr Berkeley

**South Lakeland Local Development Framework  
Land Allocations Development Plan Document ('DPD')  
Comments on the updated Schedule of Proposed Main Modifications to the DPD**

This letter constitutes my comments on the updated Schedule of Main Modifications to the DPD, with particular reference to the land east of Castle Green Road, previously referred to as site R121M. I have 4 specific comments and 1 more fundamental comment to make. The details are set out below, with the appropriate modification reference numbers.

1. **MM007** – the updated Schedule now includes specific reference to heritage considerations, biodiversity and geodiversity forming part of the decision making process. Whilst I completely support use of these criteria, I would argue that in reality they can not have formed a material part of the process. The land east of Castle Green Road has heritage issues (for example, it forms the last undeveloped part of Kendal Castle's old deer park) and major biodiversity issues (for example, a protected species - great crested newts – live within this site). I would be very surprised if other proposed sites meet these criteria as strongly as the Castle Green Road site. I would therefore argue that, whilst the words are laudable, the reality has been very different.
2. **MM008** - reference is made here to flood zones 2 and 3a, with new dwellings not being permitted within these zones. I'm afraid that I have no knowledge of where these zones cover, other than to take SLDC's word that part of the land east of Castle Green Road falls within zone 3a. To my mind these are artificial distinctions – part of my criticism of the whole DPD process is that it has been a predominantly desk-based exercise and anyone familiar with this site would know that there is significant run off after rainfall over large parts of the site, to the extent that the West side of the site (which sits in a dip) regularly floods as a consequence. I would argue that the restriction on new dwellings should be based on an actual understanding of which areas of the site flood, rather than some arbitrarily designated 'flood zones'.
3. **MM009** – clause 2.27A states that SLDC has carried out a viability study which, amongst other things, has taken into account infrastructure requirements and 'taking

account of the normal cost of development and mitigation, has ensured that development will provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable' This is simply not true, for the following reasons:

- a. My understanding is that this study was to be based upon the principles set out by Harman, which included an obligation to take account of any 'abnormals' where they were known. As part of the recent consultation on the viability process, I pointed out a number of relevant, factual 'abnormals' relating to the land east of Castle Green Road which were apparently ignored.
  - b. National Grid said at the outset that this site is 'unfeasible' (their words, as quoted in SLDC's original fact find document). Whilst almost anything becomes feasible if enough money is thrown at it, surely this is a highly relevant 'abnormal' factor which should have been taken into account in calculating this site's viability?
  - c. At a meeting of developers, land owners and agents convened by SLDC on 22<sup>nd</sup> February 2013, the consultant retained by SLDC to assess viability said that, based upon the stated expectation of local landowners of £1m per hectare for development land, the DPD as whole was not feasible. The consultant then invited the land owners and their agents at the meeting to agree in principle to an uplift of 25% on existing use value plus £0.4m per hectare. The land owners made it very clear that this would not be acceptable. The final report states that a 25% uplift plus £0.4m per hectare is a reasonable, deliverable price. It is hard to understand how the consultant can say this when the local situation was made so clear to him, and it is simply not good enough to use wishful thinking in such an important document. I contend that, based on local land owners' stated expectations, the DPD does not pass the financial viability test.
4. **MM024** – this section states that development briefs will be prepared for 'major, complex or sensitive sites' and then goes on to list which sites will have development briefs prepared. The land east of Castle Green Road is a complex and sensitive site and I contend that a development brief is justified for this site.
5. **Flaws in the preparation of the DPD** – it is a widely held view that the land east of Castle Green Road was earmarked as a favoured site by SLDC right from the start of the process and that no amount of relevant objections was ever going to change the outcome. SLDC has consistently failed to act upon information provided during the various phases of consultation and has not responded to a large number of reasonable requests for clarification or information. On 8<sup>th</sup> April 2013, on behalf of a number of concerned individuals I collated 29 outstanding questions relating to this site and put them in writing to the Development Strategy Manager, Dan Hudson. Although I asked for a reply within a timeframe which would allow interested parties to factor Mr Hudson's response into this consultation process, to date I have not received a reply. A copy of my letter to Mr Hudson is attached to this letter, and you will see that many of the questions have a direct bearing on the modified DPD. For this reason I believe that it is legitimate to bring it to your attention.

My opinion is that the land east of Castle Green Road should be removed from the DPD because the site is unsuitable for a variety of reasons, including biodiversity, heritage, access, susceptibility to flooding on the proposed site, flood run off into adjacent areas, known infrastructure problems and loss of a highly visible green space.

Even if you and SLDC do not share this opinion, I hope that this letter and the accompanying copy letter to Dan Hudson demonstrate that there are far too many unknown or unresolved issues to form a meaningful, impartial view on the site's suitability as part of the current process.

Yours sincerely



Michael Waterton

COPY

Dan Hudson  
Development Strategy Manager  
South Lakeland District Council  
South Lakeland House  
Lowther Street  
Kendal  
LA9 4DL



Delivered by Hand

8<sup>th</sup> April 2013

Dear Mr Hudson

**South Lakeland Land Allocations DPD –  
Outstanding Enquiries relating to Proposed Site R121M**

I am writing both on my own behalf and as a representative of 'Save our Landscape in East Kendal' ('SOLEK'), the community group which was established to ensure that SLDC's proposals in respect of site R121M are challenged with an appropriate level of rigour, so as to ensure that the eventual decision is a correct and just one.

Ever since 2009, interested individuals have been seeking clarification from SLDC of a number of matters of fact relating to site R121M which, in our view, have a significant bearing on the validity of the decision-making process. A large number of these enquiries have not been responded to and I have been asked by a number of people to restate these questions in a single document. I have therefore set them out below, together with some background on each.

I would greatly appreciate answers to these questions in sufficient time to allow me to disseminate the answers, so that interested parties can then have an appropriate input into SLDC's latest round of consultation. Given that this commences today and ends on Monday 6<sup>th</sup> May, I should be grateful if you could reply as soon as possible, preferably before Friday 26<sup>th</sup> April 2013.

To put this all into context, point 69 in the National Planning Policy Framework Document, states that:

"Local Planning Authorities should create a shared vision with communities of the residential environment and facilities they want to see. To support this, Local Planning Authorities should aim to involve all sections of the community in the development of local plans and in planning decisions, and should facilitate neighbourhood planning. They should promote safe and accessible developments, containing clear and legible

pedestrian routes, and high quality public spaces.

Whilst there have been several rounds of public consultation, from an external perspective it is a widely-held view that SLDC has consistently ignored the concerns of local residents, organisations, groups, and elected bodies. At the Government Inspector's Hearing there were many unanswered questions and it was the opinion of various attendees at the Hearing that your answers were often vague and inadequate.

The background and questions are set out below. I have highlighted each specific question in bold. You will see that there are 29 main questions in total, although it is worth mentioning that there are also a large number of other questions which have been posed to SLDC during this process and which remain unanswered. .

### **1. Evidence Base and Process**

The process as a whole has had the feel of being primarily an opaque, desk-based exercise where views which support SLDC's desired end result have been given greater weight than views which have challenged it. Those who have responded to the various consultations have often felt frustrated that SLDC's plans haven't appeared to take any material account of the comments of independent, professional individuals or bodies with a legitimate point to make.

**Question 1: Why has professional and independent documentation such as Cumbria County Council's landscape designations, Galpin's landscape character assessment and Professor Jackson's report not been taken into account?**

**Question 2: On what grounds did SLDC reject the recommendations of Kendal Town Council and the Friends of the Lake District in respect of site R121M?**

**Question 3: Why did SLDC not undertake a district-level landscape character assessment and review the scale of the proposed allocations, in the light of environmental capacity and the scale of local concerns?**

**Question 4: SLDC's published Fact Find document in 2011 painted an exclusively negative picture of the suitability of site R121 and yet this site was put forward for development. Was the decision to put the site forward based on this Fact Find and, if not, what criteria were used?**

**Question 5: Why has SLDC not re-drawn the site map for R56, R141 and R677K in order to indicate what the site is actually like? The current site map is totally misleading and should not form the basis for decision-making.**

**Question 6: Why has R141 not been removed from possible development when, in SLDC's matrix, the site has more 'red' criteria than, for example R676KE, which has been removed?**

## 2. Landscape and Biodiversity

In the National Policy Framework Policy Document, point 109 states that "Minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures". Point 118 states that "When determining planning applications, Local Planning Authorities should aim to conserve and enhance biodiversity".

The pond within R121M with the colony of Great Crested Newts has been long established and is shown on an 1867 map, making it at least 146 years old. It is a significant point that the Ordnance Map being used by SLDC for the land allocation process shows a small circular feature, not marked specifically as a pond. On the assumption that this represents the pond, it is shown as being much smaller than it now actually is. Similarly, the map does not correctly show the actual extent of the reed beds, old orchard and other important topographical features. The significance of this comes out below.

You stated at the Government Inspector's Hearing that the "Great Crested Newt issue around the pond.....is actually outside the site". This is incorrect - it is actually within the proposed site. If an access road was to be developed through R56, by our calculation it would be within 10-20 metres of the pond. It is illegal to build within 500 metres of a great crested newt colony.

You also stated at the hearing that "there would be no significant landscape impact". Clearly this is untrue. An access road, street lighting, a housing development of sixty houses plus some ninety cars on a sloping and highly visible site would have a significant impact on the landscape in general and on the great crested newts in particular, as it would mean the loss of their terrestrial habitats and emergence zones in the rest of the site. The main effect of habitat loss is reduction in population size, through reduced refuge opportunities leading to exposure to predators or harsh conditions, and unsuccessful hibernating populations may become extinct where there is a major loss of terrestrial habitat.

It is important to understand that all young newts spend their first three years living almost exclusively away from the pond. All adult newts spend up to eight months of every year out of the pond living in the landscape and its surrounds. They need access to old drystone walls, soft marsh grasses, undisturbed logs, tree trunk roots and spaces under large stones.

There is also a historical dimension to site R121M, given that it is the only remaining part of the Kendal Castle deer park. I would hope that this has been taken into account within the process.

**Question 7: Is SLDC using a map which shows the pond within R121M at its correct size or is it still basing its assumptions on an old, incorrect OS map?**

**Question 8: Has SLDC carried out a detailed appraisal of the impact of development on the great crested newts population as was required in the Core Strategy DPD, Inspector's Report, August 2010?**

**Question 9: Can you confirm that SLDC has incorporated all of Natural England's great crested newt impact avoidance and mitigation requirements in the proposals for R121M?**

**Question 10: Is SLDC prepared to guarantee that there will be no development of any kind within 500 metres of the existing great crested newt colony?**

The aims of policy CS8.4 to protect the extensive and wide ranging biodiversity and geodiversity value of the area are widely supported. However, Cumbria County Council has pointed to the need for policy to refer explicitly to the evolving Cumbria Biodiversity Action Plan. This Plan includes the need to protect and also to restore and enhance valued habitats and features. I believe that SLDC agreed and that a series of agreed changes are proposed. You personally stated at the Hearing that "we are applying for the mitigating ways to address the newts and bats within our policy".

**Question 11: What are these "mitigating ways" and can you advise on the status of the application process that you referred to?**

### **3. Flooding and Surface Water Run-off**

As has been pointed out to SLDC by numerous people on numerous occasions during the consultation processes, R121M suffers from severe drainage and flooding problems. The fields act as a 'sponge' to slow the run-off of surface water off the site and local residents are extremely concerned about the flooding implications of any development on this site. SLDC has only ever acknowledged these major concerns by saying vaguely that 'attenuation measures' would form part of the planning permission process. This is insufficient, especially given past precedents for building on known adjacent areas of flooding, such as Lowther Park. It is surely reasonable to expect SLDC to address these concerns up front in deciding the allocation of land, rather than relying upon developers to do this work.

In the National Planning Policy Framework Document Point 100 states that 'Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.

You personally stated at the Hearing that "We consulted extensively with both the Environment Agency and with our own land drainage team".

The R121M flood status is completely inaccurate and assessment of the Stock Beck Flood Scheme impact has apparently not been included as part of the flood

assessment. It would appear to be essential that, before this site can be approved on flooding grounds, SLDC should review and adopt the recommendations contained in the Preliminary Expert Report written by Professor Robert Jackson, CEng CWEM FICE FCIWEM MAE, one of the leading specialists in hydrology in the UK.

SLDC appears to be using the Environment Agency's ('EA') Flood Map as a reference, but Professor Jackson in his Report states that the EA uses only low resolution flood mapping to create indicative flood maps to provide cautious estimates of flood risk. He also states that, on a more local scale, this mapping may not be accurate. For example, some water courses due to their size are sometimes not shown on the EA flood map and consequently are not shown on the EA "indicative flood maps". We would suggest that these limitations are highly relevant in respect of SLDC's evaluation of R121, with the EA's maps understating the flood risk on this site and adjacent areas.

In his Report Professor Jackson states that 'The proposed development site to the south of Sedbergh Road comprising fields R121, R141 and R56 contains numerous land drainage ditches together with springs and seepages, and ponds. Springs and seepages occur whenever water-bearing conduits intersect the ground surface and these features serve to confirm that the area has a complex hydrogeology.

Added to this, nothing is known about the geology of the site.

**Question 12: Could I please be provided with confirmation and supporting documentation relating to the consultation that has taken place with the Environment Agency and your own land drainage team?**

**Question 13: Why does the flooding status within the evidence sections of the consultation documentation show the same status for land known to flood (such as R121M) as for land that doesn't? This is clearly incorrect.**

**Question 14: What research has SLDC carried out regarding flooding, climate change and the effect of this on future flooding?**

**Question 15: Has SLDC considered the recommendations in Professor Jackson's Report? Could you please explain the reasons for his recommendations not having been factored into the land allocation process?**

**Question 16: Was a formal Flood Risk Assessment requested by SLDC as part of the evaluation process for the proposed development of R121M?**

**Question 17: What does SLDC propose to do about the surface water and flooding problems on and adjacent to R121M if the proposed development goes ahead?**

**Question 18: What analysis has been done to prove that additional run-off will not compromise the effectiveness of the Stock Beck Flood Alleviation Scheme?**



#### **4. The Inspector's Report of 1997**

The Inspector's Report of 1997 relates to the land proposed for access into the residential development of R121M and so is still highly relevant. However, it does not appear to have been considered at all within the current land allocations process. The Inspector stated that "The allocation site (R56) provides an important visual buffer between these distinct locations" and that "the site's value in landscape terms is sufficient to outweigh its value as a housing allocation". This was written before the discovery of the great crested newt colony which makes the site even more sensitive.

**Question 19: Why has SLDC not taken into consideration the various points made by the Inspector in 1997 against development on such a sensitive site?**

#### **5. Traffic Congestion on the A684**

In the 16 years since the Inspector's Report in 1997, traffic on the A684 Castle Green Lane has become increasingly busy, especially at peak periods, and is used as a 'rat-run' to avoid the town's congested one-way system. The emergency services also often use this route. Whilst 'calming' procedures could be put in place, these will also have an impact on the landscape character and visual amenity of the area.

It was also pointed out to the Inspector at the recent Hearing that severe flooding on the A684 had recently caused a traffic jam for one to two hours. The Inspector wanted to lodge this as evidence for his forthcoming report. It is the opinion of many local residents that the additional traffic generated by development of R121M will be a step too far and that, with some ninety more cars accessing onto the A684, this will further exacerbate an already intolerable traffic problem on a busy, congested road.

**Question 20: Can you please confirm that the Inspector has been made fully aware of these traffic problems?**

**Question 21: What traffic surveys have been carried out on Castle Green Road subsequent to the opening of the K Village development?**

**Question 22: Why has a Highways Design Brief not been carried out for site R121M?**

**Question 23: Why was there no inclusion of the Highway Officer's comments relating to R121M at the Hearing?**

#### **6. Positioning of an Access Road into R121M**

At the recent Hearing Mr. McGough stated that "My preferred option I think would be to access off the main road A65 [he actually meant the A684], and I must again say that this purely an engineering response not a landscaping one.....I would then expect also

a link through to Oak Tree Road".

This reference to Oak Tree Road represents at least the third change of mind about access into this proposed site and highlights the dangers of carrying out such a critical exercise primarily from behind a desk. It is completely unacceptable that we can potentially be so close to approval of a site such as R121M when fundamental issues such as access have not been properly thought through.

Whilst consultants have recently declared Oak Tree Road as being acceptable as a potential access point, a site visit would show that the road simply isn't wide enough to take additional through traffic. It is so narrow that local residents are forced to park on the pavements to enable other drivers to see clearly. What is certain is that the road (or roads) will scar this most highly sensitive area (previously referred to as R56 and R141) in order to allow access to R121M, which was worthy of County Landscape designation in 1999.

The Council has failed to deliver a meaningful infrastructure delivery plan, transport plan or air quality plan to meet the scale of developments proposed.

**Question 24: Does Oak Tree Road meet all of the Highways Department's criteria for a through road providing access to the proposed development?**

**Question 25: What is the justification for allowing access across R141 (which has high landscape value) when planning regulations state that this could only be possible if it were to allow access onto a 'major site', which this is not?**

#### **7. Affordable Housing**

**Question 26: How many affordable houses are proposed to be built on this site?**

#### **8. Infrastructure**

The 2011 Fact Find stated that 'National Grid states the site is unfeasible and major infrastructure/service investment is needed to the gas network'. The more recent Fact Find omits this statement.

**Question 27: If the site is unfeasible from National Grid's perspective, then why is site R121M still being put forward for residential development?**

**Question 28: If SLDC is in possession of subsequent information from National Grid which now states that the site is feasible, could I please be provided with a copy of this communication from National Grid?**

#### **9. The recent exercise to establish Financial Viability of each Site**

This exercise was designed to use Harman's guidelines to test the financial viability of

each site individually and for the plan as a whole. At the meeting on 22<sup>nd</sup> February 2013 the consultants made much of the fact that they were following Harman's guidelines and were using the standard site viability test, which looks at the development costs and the projected income and deduces the maximum price which can be paid to purchase the land. I attended this meeting, which broke up in disarray because the financial expectations of the landowners meant that barely any of the sites were financially viable. It now appears that this has been addressed in the consultants' final report by simply reducing the projected sale price per hectare from £1m to a 10% uplift plus £400k. This is not in line with Harman's guidelines and, given that it was made very clear at the meeting that such a land valuation would not be acceptable to local landowners, it looks like an expedient but disingenuous way of dealing with the major problems relating to demonstration of the plan's financial viability.

**Question 29: Has the Inspector been made aware of the outcome of the meeting held on 22<sup>nd</sup> February 2013, namely that the plan as a whole is not viable if Harman's guidelines are used?**

As you will see, there are a considerable number of unanswered questions relating to site R121M. As stated at the beginning of this letter, I would appreciate a reply to each of these questions as soon as possible, in order to allow the implications of your reply to be included in the formal consultation process. Whilst I appreciate that you must be very busy at the moment, the gravity of these unanswered questions is such that, if for whatever reason you are unable to respond in a timely fashion, then SOLEK will need to bring them all to the Inspector's attention when the process recommences.

Yours sincerely



**Michael Waterton**

**For and on behalf of 'Save our Landscape in East Kendal'**