

Our Ref: SC/1007318
Your Ref:



The Property People

Development Plans Manager
South Lakeland District Council
South Lakeland House
Lowther Street
Kendal
LA9 4DL

Regent House
13-15 Albert Street
Harrogate HG1 1JX
T: 01423 523423
F: 01423 521373

2 May 2013

Dear Sirs

**SOUTH LAKE LAND COUNCIL'S LOCAL DEVELOPMENT FRAMEWORK
PUBLIC EXAMINATION TO LAND ALLOCATIONS DEVELOPMENT PLAN DOCUMENT
REPRESENTATIONS TO THE CONSULTATION ON THE UPDATED SCHEDULE OF
PROPOSED MAIN MODIFICATIONS AND SUPPORTING DOCUMENTS**

As agents acting on behalf of Lindale Developments (Westmorland) Ltd, we hereby submit the following representations to South Lakeland Council's consultation on the 'Proposed Modifications'. These representations need to be read in conjunction with our previous comments at the 'Publication' stage and to the 'Inspector's Matters and Issues'.

Having reviewed the 'Proposed Main Modifications' and supporting evidence, we are particularly concerned that the Council has introduced a substantial amount of new evidence at the post publication stage. We are not aware of any procedure by which the Council can produce new evidence after the Land Allocations DPD has been formally submitted for examination. We consider that introduction of new evidence at this stage is unfair and disadvantageous to our client; especially as neither our client or ourselves were involved or consulted during the preparation of the Viability Study. On this basis, we have set out our initial comments on these new pieces of evidence.

Representations to the Main Modifications

Our client does not object in principle to the removal of the Arnside and Silverdale Area of Outstanding Natural Beauty (AONB) from the Land Allocations Document and it being dealt within instead in a separate Local Plan specific to the AONB (reference: MM001 and MM004).

Representations to Further Highway Evidence to Support Submission SLDC Land Allocations DPD (March 2013)

The Highway Evidence Report sets out three/four options for gaining an appropriate vehicular access to the Quarry Lane site (M683sM-mod). These are: -

- A. A new access from Park Road through the Travis Perkins site, which is estimated to cost £340,560;
- B. Access from Storth Road to the south east, which is estimated to cost £83,952;
- C. The creation of a road bridge spanning the pedestrian/cycleway in the adjoining historic railway cutting, which is estimated to cost £1,054,944; and
- D. The upgrade and widening of Quarry Lane from the proposed new access through the Travis Perkins site, which is estimated to cost £371,923.

Firstly in regards Options A and D the report recognises that it would involve taking an vehicle access though the Travis Perkins' site and upgrading the stretch of Quarry Lane from this new access point. The report states that it would require land under third party ownership from Travis Perkins and from the owner of Norwest Quarries. Page 117 of the Highway Report states that *"this option relies on land outside of the designated site, it is understand that this may be possible to overcome"* (our emphasis). Therefore it is clear that there is no evidence that the site will be available and could be viably developed at the point envisaged in the plan in accordance with Paragraph 47 of the NPPF.

The report calculates that the proposed vehicular access will cost in the region of £712,483, without factoring in the cost of acquiring the necessary land from Travis Perkins and Norwest Quarries. Our client who is an experienced developer in the local area considers that the cost of the highway infrastructure works is significantly underestimated.

The report has failed to take into consideration the ownership of Quarry Lane itself. The Council are still assuming that because Quarry Lane is unregistered it does not have any owners and therefore the necessary upgrades can be undertaken. However Quarry Lane is a private road and will almost certainly have an owner/s. Regardless, if the owners cannot be established then the *"ad medium filium"* rule would normally be applied. This presumes that the conveyance of land next to a highway carries with it the adjoining soil underlying the highway to its mid-point. Therefore if this is the case, there are a significant number of different owners all with potential ransom strips of varying degrees over the development.

In regards to Option B, the report states that the junction between Quarry Lane and Storth Road is unsafe because of the lack of adequate visibility. It also recognises that it is not possible to stop vehicles using the junction and it is not feasible to upgrade the junction because it would involve land under third party ownership. It is clear that the residents of the proposed housing allocation on Quarry Lane would use the Storth Road junction because it represents the quickest and most convenient route to the village and to the larger settlements to the south. Therefore the allocation of the site would lead to a significant increase in vehicles using an access which has been deemed to be unsafe. As such, the allocation of the Quarry Lane site for housing would

compromise highway safety. The CLG 'Strategic Housing Land Availability Assessment Practice Guidance' states that a site should not be considered suitable if there are significant access constraints.

Finally in relation to Option C, the Highway Report has ruled out the creation of a new road bridge over the railway cutting on the grounds that it would require detailed scoping studies and the cost is likely to be prohibitive. This option would also require land under third party ownership.

In summary the Highway Evidence is clear that the allocation of the Quarry Lane site (M683sM-mod) for housing would compromise highway safety because it would lead to a significant increase in use of the Storth Road / Quarry Lane junction. The study has also established that a significant amount of third party land under multiple ownerships would be required to achieve an appropriate vehicle access. The Council has provided no evidence to support their assertions that this land will become available at a cost which would not undermine the deliverability of the site. Equally, it calculates that the site would be subject to a significant abnormal cost of £712,483, before factoring in other abnormal costs such as the ransom strips. Therefore the Quarry Lane site is clearly not suitable for allocation because it cannot be considered deliverable or developable.

Representations to South Lakeland Land Allocations DPD – Viability Study

Our client has a number of concerns in relation to the assumptions used with the Viability Study. However these representations only set out our main concerns because of the limited time given to respond to the consultation. This is our client's first opportunity to comment on the Viability Study, because of the Council's decision to only invite those landowners, developers and agents who have sites included as potential allocations within the Land Allocations Document to participate in the preparation of the Viability Study.

Firstly, the Viability Study has increased the number of dwellings to be delivered on the Quarry Lane site (M683sM-mod) to 42 dwellings compared to the 31 dwellings stated in the Land Allocations Document and pre-submission evidence. Therefore the Viability Study does not assess the viability of the site as it is proposed in the Land Allocations Document and the increase in housing numbers has not been subject to sustainability appraisal.

The Viability Study - Appendices identifies that the Quarry Lane site (M683sM-mod) would require extensive landscaping, contamination remediation works costing approximately £100,000, and highway works costing approximately £712,500 (Options B and D) (Page 27).

The Viability Study identifies that the land has a residual land value of £1,035,33, based on a gross value per hectare of £655,274. It concludes that the allocation is financially viable and could deliver the required amount of affordable housing. However we have a number of concerns about the financial appraisal of the site, in particular it appears to underestimate the current value of the site, does not take into consideration the full abnormal costs of delivering the vehicular access, and the financial implications of the different ransom strips.

The Viability Study states that the existing use value of the Quarry Lane site (M683sM-mod) is £39,500, based on an agricultural land value of £25,000. However the site is a paddock therefore should be valued at a minimum of £50,000 per hectare in accordance with paragraph 6.35 of the Viability Study.

The detailed financial assessment of the site identifies an abnormal cost of £450,000. However the assessment appears not to have included, or taken into full account, the cost of the site remediation work, achieving the vehicular access, or the extensive landscaping scheme detailed earlier in the report. The costs put forward in the report for the vehicle access and dealing with the contamination alone equal £812,500.

Equally, at no point does it consider the implications of the cost of acquiring the third party land to provide the vehicular access to the site. Instead the study seeks to 'brush the issue under the carpet' by stating that the principles of *Stokes v Cambridge* will be applied (i.e. that the ransom strip is worth one-third of the uplift in the value of the land brought about by the release of the ransom strip), and that the owners of the site will have to adjust their expectations to reflect this. The study states the cost of acquiring the access to open up a site should be treated as a land cost and not an abnormal cost of development, therefore the deliverability of the site is not a viability issue but one of willingness to make the land available.

The cost of acquiring the third party land or an easement has to be borne either by the landowner or the developer and will impact on the residual land value or the developer's profit. Either way, it would make the development undeliverable / undevelopable because it would mean that the development would be unable to deliver a competitive return for the landowner or developer. The fact that there are potentially three or more different owners who have ransom strips over the development raises significant concerns about the deliverability and viability of the site. The Strategic Housing Land Availability Assessment Practice Guidance is clear that a site cannot be considered available where there are legal or ownership constraints.

The Highway Report and Viability Study raise the prospect of the cost of the new access through the Travis Perkins site being shared with the proposed employment allocation (EN40) on Quarry Lane. However the Viability Study is clear that employment uses are not financially viable and that there is very little speculative employment development being brought forward within the district. This is clearly evidenced by the fact that the Quarry Lane site (M683sM-mod) failed to come forward in its previous incarnation as an employment allocation even at the height of property market. On this basis, the housing allocation should be considered undeliverable and undevelopable if it is reliant on the employment site coming forward.

Conclusion

Our client broadly supports the 'Proposed Main Modifications'. However, we consider that it disadvantageous to our client that the Council have introduced new evidence at this late stage without providing sufficient opportunity to review the evidence and make comment or produce counter evidence if necessary.

Nevertheless, the Highway Evidence is clear that the allocation of the Quarry Lane site (M683sM-mod) would compromise highway safety and therefore is not suitable for allocation. Equally it raises significant issues in terms of the deliverability and developability of the site because of the cost of the vehicle access and the requirement for third party land.

Our client considers that a number of the assumptions used in the Viability Study are flawed. Equally, it is apparent that the viability assessment of the Quarry Lane is incorrect. Therefore it is considered that very little weight can be given to the findings of the Viability Study.

If you have any queries or require any further information in regards to any of these matters, please do not hesitate to contact me.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Stephen Courcier'.

Stephen Courcier MRTPI

Senior Planner

For and on behalf of Carter Jonas LLP

E: stephen.courcier@carterjonas.co.uk

DD: 01423 707807