

The Inspector
c/o The Development Plans Manager
South Lakeland District Council
Lowther Street
LA9 4DL



14th July 2012

Dear Sir,

Conformity of the DPD with the new NPPF - R121M

I wish to make some comments on the conformity of the DPD with the new NPPF. I would argue that the DPD is not in conformity with the NPPF and I will give my reasons as set out below.

May I say firstly, that this has been a very difficult, complex and trying process and I feel that SLDC have somewhat set out to confuse and mislead the local community with their abstruse procedures and incorrect information.

I hope that you will read my earlier submissions along with this letter in order to understand the importance of this site (R121M). I am particularly concerned about the devastating impact on the biodiversity of this site, especially the terrestrial habitats of the Great Crested Newts. I would also like to comment on the issues of Flooding, the Natural, Built and Historical Environment, Highways and the Non-engagement with the local community.

Biodiversity and the Great Crested Newts

On the question of biodiversity, I feel that R121M is not in conformity with the NPPF. For example, Paragraph 7 states that planning's environmental role is to contribute to protecting and enhancing our natural built and historical environment, and, as part of this, helping to improve biodiversity etc.

109. The planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and producing net gains in biodiversity where possible, contributing to the government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

114. Local planning authorities should set out a strategic approach in their Local Plans, planning positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure.

Adopted Core Strategy policy CS8.4 makes several provisions for the production, enhancement and restriction of biodiversity and geodiversity, including requirements for all new developments to protect, enhance and restore the biodiversity and geodiversity value of land and buildings, minimise fragmentation and maximise opportunities for restoration, enhancement and connection (including links to habitats outside South Lakeland) and incorporate beneficial biodiversity/geodiversity conservation features. The policy makes special provisions for U.K. priority habitats and species.

Great Crested Newts are strictly protected under the Wildlife and Countryside Act 1981 (see my earlier submission).

117. states that in order to minimise impacts on biodiversity and geodiversity, planning policies should "promote the preservation, restoration and re-creation of priority habitats, ecological networks and the **protection and recovery of priority species populations**, linked to national and local targets, and identify suitable indications for monitoring biodiversity in the plan.

The OS map that SDLC are currently working with is **wrong** and **unreliable** as it shows the pond

as much smaller than in reality (see photograph 1 in my earlier submission). The pond runs along the length of the field (R677) and is much larger than on the OS map (see Google Earth photograph 2 in my earlier submission). This soft marsh area from the pond overflows into fields R56 and particularly R141. R141, in particular, has a soft marsh area which extends from the pond in the north end, well into R141 (see photographs 3 and 4 in earlier submission). This soft marsh area is an extension of the pond and is used by the Great Crested Newts as an Emergence Zone, and is vital to their survival and existence. The pond has long been established and is shown on an 1867 Kendal map, making it 145 years old, and is likely to be older.

Before applying for planning permission, an appraisal of the impact of development on the Great Crested Newt population is required. The Inspector should request a correct map from the LPA, correctly labelled plan/diagram, (including also the old established orchard at the top of R56). The LPA should also provide the Inspector with a supplementary map showing the extent of the original site, R56, R141, R121, R677K, R676KE (with contours).

SDLC are quite prepared to allow the destruction of the terrestrial habitats of the Great Crested Newts. Eight months of the year adult Great Crested Newts live out of the pond and live in the landscape and its surrounds. They range over a **wide area** in search of shelter, prey, and new breeding sites. They have been spotted in gardens on Oak Tree Road and Rowan Tree Crescent indicating a wildlife corridor which covers a wide area.

In certain circumstances the presence of Great Crested Newts within **500 metres of a proposed development can result in severe planning constraints and considerable expense to progress building projects**. The impact of a housing development would mean a **loss of the terrestrial habitat**, particularly those close to the breeding pond can be very damaging. 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 go extinct where there is a **major loss of terrestrial habitat**.

Flooding

On the 28th June 2012 during heavy rain, I was shocked and dismayed to see the huge volume of water running off the fields on to Castle Green Lane, the A684 (see photographs 1, 2, & 3) - the drains unable to cope with volume of water. At the bottom of the Castle Green Road road under the bridge it was like a swimming pool and virtually impossible to drive through. Likewise the water running off the fields on to Sedbergh Road was a torrent.

Paragraph 17 states that Planning Authorities should take full account of flood risk. Core Strategy Policy CS1.1 addresses mitigation against and adaptation to climate change, and it states that provision will be made for resolving surface water drainage issues. At a meeting with the Kendal Planner, when asked what provision has been put in place, he could not say.

CS8.8 refers to the subject of development and flood risk, and it states that both the Core Strategy and the Land Allocations documents contain a proactive approach to mitigating and adapting to climate change, taking full account of flood risk.

However it did not take account of Professor Jackson's report. It is vitally important that before this site can be approved on flooding grounds the LPA should be required to carry out the recommendations contained in the Preliminary Expert Report made by Professor Robert Jackson CEng CWEM FICE FCIWEM MAE, who is a leading hydrology expert.

SDLC know only too well the risk from flooding in this area.

100. 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 risk elsewhere.

And development here is neither necessary nor in any way appropriate. This area floods twice each year already.

102. A site specific flood risk assessment must demonstrate that the development will be safe for its life time taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk over all.

This is difficult to believe after what I have just witnessed recently (28th July), the torrential gushing of water off the fields, and a drainage system that could not cope. Have SDLC carried out any research recently to investigate which sites proposed were affected by flooding, and if they have, where is the evidence? What research have they carried out regarding the impact of climate change, and the effect of this on future flooding?

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Natural, Built and Historical Environment

Paragraph 7 states that planning's environmental role is to contribute to protecting and enhancing our natural, built and historical environment; and Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.

May I draw your attention to the Inspector's Report written in 1997, and referring to this area, made clear points that are just as valid today. He stated that:

The allocation site has a *visual quality of some importance* in the local landscape which outweighs the *very small contribution* which it can make to the housing land need.

Any argument that there is already existing developments at Oak Tree Road/Rowan Tree Crescent with landfill between the farmstead conversions at Castle Green Lane (formally Castle Green Farm), the Inspector finds **unconvincing**. The older traditional buildings with rural character **blend** into the landscape, but the houses at Oak Tree Road appear a "*visually intrusive element in the rising landscape*".

Subsequently he concludes:

The allocation site (R56) provides an important visual buffer between these distinct locations and that the sites's value in landscape terms is sufficient to outweigh its value as a housing allocation.

Taking the past findings into consideration further possible development into the fields beyond would be even more visually intrusive for an Inspector with concerns. But SLDC have refused to take into account the previous planning history and landscape designations of the site. Their Core Strategy policies on green infrastructure, green corridors, watercourses and open spaces (CS8.1) and landscape settlement character (CS8.2) are not being adhered to.

SDLC used Gillespies landscape assessment document in order to make their proposals. But the Gillespies document was wholly inadequate, a very thin document full of glaring mistakes, e.g. gardens up for development in Sedbergh Road, and topography was overlooked.

170. Due to the sensitivity of this area, landscape character assessments should be put in place, along with an assessment of the historic landscape character.

SLDC's Local Plan 2006 stated that 'development of higher hillsides further east (of R56) would be **unduly prominent**' Section 6.3 Visual Amenity. And R121 and R141 were deemed worthy of County Landscape designation in 1999. The Kendal Local Level Landscape Character Assessment commissioned by Kendal Town Council on 4th April 2011, corroborates all the points I have made above. K.T.C. has supported the view that R121M should not be developed. This was also corroborated by The Friends of the Lake District. R121M was identified as of medium/high sensitivity due to its biodiversity and rural environment, and that it would be adversely affected by development. Again SLDC did not accept as part of their evidence base the independent Landscape Character Assessment (Galpin Landscape Architect). It had been commissioned because there was a glaring gap in the evidence base at a local level.

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Indeed, when I telephoned the Kendal Planner to visit the site last February, it was the first time he had set foot on it. He stated that he had only seen the site from his car. This beggars belief. How can SDLC make such major decisions that would destroy a beautiful historical landscape, a landscape that can never be replaced? This illustrates their utter arrogance and lack of sensitivity towards the wishes of the local community. There have been 200 written objections to this proposed allocation and a petition containing 400 signatures sent to SLDC. The brief was looked at and approved by the Strategy Team Manager. Galpin stated that of the 19 possible development sites in Kendal R121M was the **most sensitive (high) in landscape terms** and with **low capacity for development**.

Another glaring example of SLDC's insensitive and erratic approach to planning of R121M is to build a road across two fields, two fields that have been **removed** from building development on **landscape grounds**, is totally farcical. They are even indecisive as to where the road should be built. The road (with lighting etc.) will come from Oak Tree Road or from Castle Green Road, which will scar this most highly sensitive area (R56 and R141) in order to allow access to R121, which was worthy of County Landscape designation in 1999. A road through here would have a devastating impact on the Great Crested Newts' terrestrial habitats. SLDC would be acting **illegally** as this would contravene the 1981 Wildlife and Countryside Act and the Conservation (Natural Habitats &c.) Regulations 1994 (as amended). Also Oak Tree Road was their preferred option as regards access to the site (Highways access/safety (Appendix 8 page 110), but unbelievably no-one had measured the width of Oak Tree Road. The last survey of Castle Green Road was done three years ago.

Highways

4. Promoting sustainable transport (paragraphs 29-41)

Relating to R121M, Paragraph 32 states that all developments that generate significant amounts of movement should take account of whether safe and suitable access to the site can be achieved for all people.

A development of 60 houses could mean 80 to 90 cars. At a meeting with the Kendal planner in February 2012, he stated that the preferred option was to access Oak Tree Road. But later on when an enquiry was made to the Highways Department of Cumbria County Council to find out what was being proposed, a spokesman stated that they had not even measured the width of the road, which was 4.8 metres, for two way traffic!

If however, SDLC decides access be made off the A684 then a road, lighting etc. would traverse two fields, fields that SDLC already accepts of high landscape quality. SDLC seeks access on to a site that should not be developed and cannot be justified via an access road that cannot be justified in planning terms.

Traffic on Castle Green Road in the last three years has changed dramatically and for the worse, as it is heavily congested. How can SLDC allow this development to go ahead when they are also breaking the law regarding air quality? Air pollution is a major problem in Kendal and monitoring has shown that there are high levels of Nitrogen Dioxide across the town due to road traffic emissions. Air pollution from road vehicles causes the most damage to health. Nitrogen dioxide affects asthmatics and reduces the lung defences against infection.

Rachel Shaw (Environmental Protection Officer, SLDC) informed the Kendal Town Council on the 5th September, 2011, that there was an action plan in place, but it was more like a wish list. Surely this is a contradiction in terms and clearly suggests that nothing is being done to reduce air pollution. This admission shows that SLDC are acting illegally and have not been sufficiently robust in tackling this major problem. They have failed miserably to reduce levels of Nitrogen Dioxide, in fact, in the last three years it has got much worse. Rachel Shaw also admitted that 150 households located in the most polluted areas of Kendal are at serious risk. SLDC have failed to consider the well-being and health of existing residents

In the light of this exposure, SLDC must seriously reconsider this development at R1M1, which potentially means an extensive number of cars. The increase of cars along Castle Green Lane and Parkside Road will significantly exacerbate the already high levels of Nitrogen Dioxide. This

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development of housing will also significantly alter flows or speeds on already busy, congested roads and increase the volume of traffic, causing bottlenecks and tailbacks. An extract from SDLC document "Kendal Transport Study (Jan 15) pdf

"6.1.6 Furthermore, even with the implementation of these improvement schemes, it is important to note that a large proportion of the key junctions would continue to operate **above capacity**, and therefore experience **congestion and extensive queuing** in the 2022 base situation. This situation would be compounded by the LDF development traffic".

The Council has **failed** to implement an infrastructure delivery plan, a transport plan or an air quality plan to meet the scale of developments proposed. The vision (South Lakeland Core Strategy) states that in "2025 Kendal will....was a pipe-dream in 2010 and 2 years later still is a pipe-dream and we have no concrete ideas as to how we will get there".

Non-Engagement with the Community

The NPPF states that the purpose of planning is to help achieve sustainable development. In this context, **sustainable** means ensuring better lives for ourselves, and does not mean worse lives for future generations. Sustainable development is therefore about change for the better. Also the NPPF states that planning should be a collective enterprise, and should not exclude people and communities from the decision making process.

1. Local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities.

Such statements are cynical because SLDC are guilty of non-involvement and non-engagement with the local community who feel that there has been a lack of meaningful dialogue as far as Kendal is concerned. All sorts of obstacles have been put in place to confuse and frustrate residents, e.g. initial insistence on computer use, the difficulty of forms, the need to keep an eye on the website, the difficulty to understand the technical language of the latest form etc.

As far as SLDC are concerned they have failed to communicate and engage with the local community, and taken little notice of their concerns. They have consistently ignored the concerns of organisations, groups, or elected bodies. I personally have had no feedback or dialogue with them, nor with Damian Law the planning officer I took around the site. Questions I have raised about the landscape, the bio-diversity (especially the Great Crested Newts' terrestrial habitats), flooding, air pollution, traffic and highways have not been addressed. All we have experienced is their arrogance and stubbornness and their blinkered aim to get this DPD through as quickly as possible.

And on that basis SLDC's land allocation DPD is unsound and not in conformity with planning guidance and the NPPF. Would you please consider removing R121M from the Land Allocations Document, and find the DPD itself unsound.

Yours faithfully,



Michael Fennell

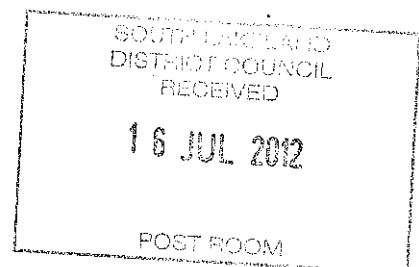


Fig. 1.

OAK TREE ROAD
ESTATE



4684 [Castle Green Lane]

28 June 2012

OAK TREE ROAD
ESTATE

Fig 2.

Drain near R56



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POST ROOM

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fig. 3



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