

S78 Town and Country Planning Act 1990 (as amended)

Land at Harras Moor, Whitehaven

Appeal by Homes England against a refusal of Planning Permission by Copeland Borough Council for a development of up to 370 dwellings with associated open space and infrastructure

(LPA Reference: 4/18/2287/001)

Appellant's Statement of Case

February 2023

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For and on behalf of Avison Young (UK) Limited

1. Introduction

1.1 This Statement of Case (“SoC”) has been prepared in accordance with the guidance set out in the Procedural Guide to Planning Appeals (England) (December 2022), published by the Planning Inspectorate (“PINS”).

The Appellant

1.2 The appeal is made by Homes England against the decision of Copeland Borough Council (“the Council”) to refuse to grant outline planning permission for a residential development of up to 370 dwellings with associated open space and infrastructure on land off Harras Moor, Whitehaven (LPA reference 4/18/2287/001).

1.3 Homes England is the Government’s housing and regeneration agency. It was set up by the Government under the Housing and Regeneration Act 2008. Its objectives are to:

- **Unlock land** – Unlock public and private land where the market will not, to get more homes built where they are needed;
- **Unlock investment** – Ensure a range of investment products are available to support housebuilding and infrastructure, including more affordable housing and homes for rent;
- **Increasing productivity** - Improve construction productivity;
- **Driving market resilience** – Create more resilient and competitive market by supporting smaller housebuilder and new entrants, promoting higher quality homes and better design;
- **Supporting local areas** – Offer expert support for priority locations, helping to create and deliver more ambitious plans to get more homes built; and
- **Delivering home ownership products** – Deliver home ownership products providing an industry standard service to consumers.

1.4 Homes England’s mission is to work proactively with its partners to ensure more homes are built in areas of the greatest need and to ensure the affordability of homes is improved. It intervenes in the market where it is necessary, therefore driving positive market change. The Government has made very clear that it expects Homes England to intervene and use its powers to deliver, or speed up the delivery of, housing and regeneration, where it is appropriate to do so.

1.5 The Homes England Strategic Plan 2018/19-22/23 is clear: unlocking land, making it available for development at the earliest opportunity and accelerating housing delivery are key strategic objectives of the Agency. To meet its objectives, Homes England works proactively to identify significant opportunities where it can use its resources and powers to work with developers and local authorities to deliver, or accelerate the delivery of, new homes and affordable homes.

1.6 The Appeal site was originally owned by the Council and the County Council. Both had a long-standing ambition to see the site developed with housing, consistent with adopted and emerging development plan policies, but needed help delivering the proposals. The Council’s considered that Homes England would be best placed to assist and approached the Agency in 2017 for help. Homes England acquired the site in 2017 and immediately set about compiling an application for planning permission, in line with the Council’s ambitions.

The Planning Application

1.7 The planning application was submitted to the Council in May 2018 and was validated in June of that year. It sought outline planning permission for a development of up to 370 dwellings (Class C3), public open space and associated infrastructure. All matters of detail, save those in respect of means of access to the site (but not within it) were reserved for future consideration.

1.8 The application was refused on 18 August 2022 for the following reasons:

1. *The proposed development will result in an unacceptable impact on highway safety on the public highway network, with specific regard to the public highways known as Harras Road, Park View, Victoria Road, Albert Terrace, Solway View, Hilton Terrace and Wellington Row and the junctions of Park View with Albert Terrace, Park View with Solway View, Albert Terrace with Victoria Road and Victoria Road with the A595. Given the constraints of the public highways and junctions, the impacts of the proposed development on highway safety cannot be cost effectively mitigated to an acceptable degree.*

The development is in conflict with the requirements of Policies ST1 and T1 of the Copeland Local Plan 2013-2028 and Paragraphs 110 and 111 of the National Planning Policy Framework.

2. *The proposed development will result in severe residual cumulative impacts on the road network, with specific regard to capacity and congestion on the public highways known as Harras Road, Park View, Victoria Road, Albert Terrace, Solway View, Hilton Terrace and Wellington Row and the junctions of Park View with Albert Terrace, Park View with Solway View, Albert Terrace with Victoria Road and Victoria Road with the A595. Given the constraints of the public highways and junctions the impacts of the proposed development on capacity and congestion cannot be cost effectively mitigated to an acceptable degree.*

The development is in conflict with the requirements of Policies ST1 and T1 of the Copeland Local Plan 2013-2028 and Paragraphs 110 and 111 of the National Planning Policy Framework.

The Appeal

1.9 A Notice of Intention to appeal via Public Inquiry was submitted to PINS and the Council on 15 December 2022.

1.10 The appeal includes the full suite of planning application documents, this SoC, a Draft Statement of Common Ground ("SoCG") and the relevant Forms. The Appellant has requested that the appeal be heard at a Public Inquiry and so also included in the appeal documents is a Statement of Reasons for determining the appeal by Public Inquiry.

1.11 This SoC cross refers to a number of the planning application documents. However, to avoid duplication, none of the planning application documents are attached as appendices to this Statement. For the purposes of the Inquiry it is proposed to create a core documents list that would include key application documents as well as appeal documentation.

1.12 The appeal site and surrounding area, the proposed development and the relevant provisions of the development plan and other material considerations are all described in the Draft SoCG. None of what is said in the Draft SoCG is repeated in this SoC. If matters included in the Draft SoCG are not agreed, then Homes England reserves the right to seek to amend to or add to this SoC and/or to produce further evidence on those matters.

2. Background to the Appeal

- 2.1 Homes England's proposals for this site were the subject of extensive pre-application discussions, including with the Council, the County Council (acting as the Local Highways Authority, Lead Local Flood Authority, the Local Education Authority and County Archaeologist), National Highways, , Natural England and the Environment Agency. In December 2017, Homes England submitted to the Council a request for a Screening Opinion under Regulation 5 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The Council responded with a Screening Opinion in January 2018. This confirmed that, in the opinion of the Council, the proposed development is not EIA Development.
- 2.2 In March 2018, Homes England held a public exhibition and consultation event with the local community, immediately prior to which it met with local Ward Councillors and key stakeholders. The exhibition was advertised in the local press, on Council and Mayoral websites, by way of a letters to local people and stakeholders and posters displayed in local venues. Some 130 local people attended. Following the exhibition, an online consultation portal was opened which contained the material shared during the exhibition and provided a further means by which people could pass comment on the proposals.
- 2.3 During pre-application meetings held with Council Officers between October 2017 and February 2018, the parties discussed the site's constraints and opportunities, the planning policy framework and its support for the proposals, the scope and content of the planning application and the illustrative masterplan for the site. Parallel discussions were had with statutory and other consultees with a view to agreeing the scope of the various technical studies that were required and the approach to assessment.
- 2.4 As regards highway matters, Homes England and its consultants liaised with both the County Council, as local highway authority, and National Highways (previously Highways England), with a view to agreeing the scope of the transport assessment, the proposed access arrangements into and through the site, the impact that the proposed development will have on the highway network, matters relating to highways safety, and the need for highway works to mitigate the effects of the proposals. These discussions started in September 2017 and were followed by the issuing of a Transport Technical Note and a Transport Assessment ("TA") scoping email in January 2018. Both the County Council and National Highways commented on the documents, providing advice on the scope of the TA in the process. The TA was prepared in accordance with the agreed scope and was submitted with the planning application in June 2018.
- 2.5 The County Council and National Highways provided feedback on the TA post-submission and, in November 2018, Homes England submitted to the Council an Addendum to the TA which addressed the questions that the highway authorities had posed. Further comments were then received from the County Council in February 2019 and a Technical Note was submitted by way of response in March 2019. National Highways provided additional comments also and a second Technical Note was submitted to address these in April 2019. Discussions then continued until, in the summer of 2019, agreements were reached on all relevant matters including trip generation, assignment, access, the impact of the development on the network and the highway improvements considered necessary by the highway authorities to mitigate the proposals.
- 2.6 As work on the highway matters was progressed, Officers worked through their assessment of all other relevant matters and Homes England submitted to the Council several additional technical documents to assist. These included:

- a) further Ecological Assessments dated January 2019 with surveys dating from April, May, October and November 2018);
- b) Report on the results of a geophysical survey dated February 2019;
- c) a planning policy update report addressing changes that had been made to the NPPF, dated November 2018; and
- d) a Viability Assessment, dated January 2019.

2.7 At the conclusion of the highway discussions, and in the light of the additional submissions made by Homes England on the above-mentioned technical matters, Officers considered the application ready for determination and prepared a Report to be taken to the Council's Planning Panel on 18 September 2019. The Report was thorough. It described the site, the proposals, the representations that had been made by consultees and interested parties and the relevant provisions of the development plan and other material considerations before then setting out Officer's assessment of the proposals. The assessment concluded with the following:

- a) the NPPF tilted balance is engaged and so planning permission must be granted unless specific policies in the NPPF provide a clear reason for refusing the application or the adverse effects of granting permission would significantly and demonstrably outweigh the benefits when the proposals are assessed against the policies in the NPPF taken as a whole;
- b) the proposals would help significantly boost the supply of housing and help meet identified housing needs in Whitehaven and the wider Borough;
- c) the proposals would be of an appropriate scale and character for Whitehaven, the Principal Service Centre in the Borough;
- d) a significant part of the site is allocated for housing in the Local Plan;
- e) it has always been envisaged that the whole Site would be allocated for housing in the emerging Local Plan and that is now in preparation;
- f) the site is in close and convenient proximity to the wide range of services and employment opportunities that Whitehaven offers – many are within walking distance;
- g) sustainable travel options are available within 1km and 2km walking catchments and the site is within 700m of a regular bus service;
- h) the development will not give rise to any issues in respect of highway safety, residential amenity, ecology, land contamination, flood risk, and drainage, subject to the imposition of conditions;
- i) the development will result in some adverse local landscape and visual impacts in conflict with Local Plan Policy ENV5; but
- j) overall, the adverse impacts in terms of landscape are not sufficiently harmful to significantly and demonstrably outweigh the significant benefits of the development.

2.8 Accordingly, the Report recommended that Officers be given delegated authority to grant outline planning permission, subject to Homes England first entering into a Planning Agreement and subject also to the imposition of planning conditions.

- 2.9 However, Members concluded that they were minded not to grant planning permission in the light of concerns they had about highway safety and the adequacy of the local road network to accommodate the traffic that would be generated by the proposed development. The Council's constitution provides that when Members are minded not to agree with an Officer recommendation, the determination of the application must be deferred to a future meeting of the Panel. Deferring applications in this way is intended to give Officers and applicants the opportunity to try and address the concerns that have been raised.
- 2.10 In the light of the concerns raised by Members, Officers commissioned an independent review of the TA and Technical Notes, as well as the comments provided by the County Council and National Highways. The scope of the review was agreed with Members of the Planning Panel to ensure Members' concerns were fully and independently considered. The review was undertaken by Arup in October/November 2019.
- 2.11 Draft findings of the Arup review were shared with Members ahead of a meeting with them which took place on 13 November 2019. That meeting was attended by a representative of Arup who presented the assessment and took questions. The traffic and transportation implications of the proposed development were discussed in detail at that meeting. The Arup work: concluded that the TA is robust; addressed Members' concerns; and concluded that there were no highway grounds for refusing planning permission. An audio recording of this meeting is available and can be made available if the Inspector wishes to hear it.
- 2.12 During 2020, updates were made to the outline drainage strategy for the site and Homes England worked with the Local Highway Authority to agree designs for the off-site highway works that the TA had deemed necessary and a Road Safety Audit for the site access onto Harras Road ((which confirmed that the proposed arrangement is safe, subject to minor upgrades to be delivered via a s278 agreement).
- 2.13 In 2021, the Council re-consulted on the application and this generated comments from Sport England, Natural England and the Woodland Trust. In response, Homes England updated ecological surveys, agreed an appropriate buffer to the adjacent Midgey Wood, carried out a Biodiversity Net Gain Assessment, and produced a Habitat Regulations Assessment. The Council's Planning Panel was kept apprised of the work that was being undertaken, and the reasons for the delay in taking the application back to the Panel for determination, by way of an Update Report.
- 2.14 A final re-consultation was undertaken in 2022 in the light of the additional material that had been supplied. By July 2022, all consultee concerns had been addressed and all of the highway experts had given the proposals their approval. The application was taken back to the Planning Panel on 16 August 2022 for determination and the Officer recommendation was again that delegated authority be given to grant planning permission subject to conditions and Homes England entering into a Planning Agreement to secure various planning obligations.
- 2.15 However, at the meeting, several Members continued to voice concerns about the proposals, despite there being no new technical evidence presented and in spite of Members being reminded that the transport assessment had been subject to an independent review by consultants appointed by the Council. When the recommendation was put to the vote, 5 Members voted against approving the application and 3 voted for approval. Members then spent a further 30 minutes discussing possible reasons for refusal before settling on the two that are quoted in Section 1 above.

3. Main Issues

- 3.1 Having regard to (i) the submissions made by Homes England in support of the planning application; (ii) the content of the Officer's Reports to the Planning Panel; and (iii) the reasons for refusal ("RfR"), the Appellant and the Council are likely to agree that the proposals accord with the majority of the policies of the development plan, or that any conflicts are outweighed by the benefits of the proposals. Indeed, the only Policies referred to in the RfR are Core Strategy Policies ST1 and T1¹. As a consequence, the questions that need to be addressed through this appeal are:
- a) whether the proposals accord with or are at odds with these specific policies;
 - b) whether the proposals accord with or are at odds with the development plan taken as a whole;
 - c) whether the policies referred to in the decision notice may be afforded full weight in the determination of the appeal;
 - d) if there is any conflict with any of the policies referred to in the decision notice, or any other policies, what harm arises from this conflict;
 - e) whether there are other material considerations to be weighed in the planning balance including whether the NPPF tilted balance is engaged in this instance;
 - f) whether a grant of planning permission would give rise to benefits and if it would, what benefits; and
 - g) whether, on balance, and having regard to the statutory duty under s38(6) of the Planning and Compulsory Purchase Act 2004 (as amended), the appeal should be allowed or dismissed.
- 3.2 We set out the Appellant's case on each of these points below.

¹ We note that, in accordance with Article 35(1)(b) of the Town and Country Planning (General Development Procedure) Order 2015, where planning permission is refused, the decision notice must state clearly and precisely the Council's full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision.

4. Compliance with Relevant Development Plan Policies

- 4.1 The Draft SoCG lists the development plan policies that are relevant to this Appeal and notes which of these are fundamental to understanding the merits of the proposals and the matters in dispute between the Appellant and the Council.
- 4.2 The Appellant will present evidence which demonstrates that the proposed development accords overall with the provisions of the development plan. In doing so it will highlight the following:
- a) The appeal site lies within Whitehaven where the development plan seeks to direct the majority of new housing development, including most large scale development (Core Strategy Policy ST2 and saved Policy HSG2);
 - b) a significant part of the site is allocated for a housing development of approximately 220 dwellings under saved Policy HSG2 (Sites HA1 and HA2);
 - c) the proposals will: meet the needs and aspirations of the Whitehaven housing market; provide appropriate community infrastructure (on and off site); minimise carbon emissions; not give rise to flood risk and will use SuDS to prevent an increase in surface water run off; minimise the need for its residents to travel by car; minimise air, ground and water pollution, in accordance with Core Strategy Policies ST1 and ENV1 and Development Management Policy DM24;
 - d) the proposals will deliver a mix of homes, 15% of which will be affordable, and all necessary infrastructure, in accordance with Core Strategy Policies ST4 and SS3;
 - e) a part of the site at its western end, adjacent to Loop Road South (the A595), is protected for its landscape character under Development Management Policy DM28. The part of Midgey Wood adjacent to the western end of the site to the immediate north of Standings Rise is also protected under Policy DM28. Neither the land protected for its landscape character, nor Midgey Wood, are proposed to be developed and agreed buffers are proposed to the woodland, all in accordance with Policy DM28 and Core Strategy Policy SS5;
 - f) the proposed development will deliver more public open space and play spaces than the development plan requires, and will protect and enhance existing green infrastructure on site, in accordance with Core Strategy Policy SS5 and Development Management Policy DM12;
 - g) the proposals will: protect those parts of the site that have biodiversity value; minimise the fragmentation of habitats; maximise opportunities for habitat conservation / enhancement; safeguard all relevant protected species; and will deliver biodiversity net gain, in accordance with Core Strategy Policy ENV3 and Development Management Policy DM25;
 - h) construction work will be preceded by archaeological investigations which will determine whether there are archaeological remains on site and, if there are, whether they need to be preserved and how, in accordance with Core Strategy Policy ENV4 and Development Management Policy DM27;
 - i) the proposals will have an impact on the local landscape but this is an appropriate and inevitable impact given that a significant part of the site is proposed to be developed with housing in the development plan. In any event, the harm that would be caused in landscape terms is clearly outweighed by the benefits of the proposals in accordance with Core Strategy ENV5;
 - j) in the north-eastern corner of the site is a long disused playing field. It is proposed that this land be developed with housing. The loss of the disused playing field is to be compensated by the

making of a £100,000 contribution to the improvement of an existing playing pitch in the local area (likely to be either a Rugby pitch at Moresby Rugby Club or a hockey pitch at Whitehaven Academy), in accordance with Core Strategy Policy ST4 and Development Management Policy DM21. The Council and Sport England have assessed this aspect of the proposals and both are satisfied that this is an appropriate way of compensating for the loss of the existing playing field. The loss of the playing field forms no part of the RfR; and

- k) the illustrative masterplan and layout submitted with the planning application indicate how the development is capable of satisfying in full the requirements of Development Management Policies DM10 (Achieving Quality of Place); DM11 (Sustainable Development Standards); DM12 (Standards in New Residential Development); DM22 (Accessible Developments); and DM26 (Landscaping)

4.3 As regards the Policies referred to in the RfR, the Appellant will present evidence as follows:

Policy ST1

4.4 Policy ST1 contains a list of strategic development principles which the Local Plan says inform and underpin the Borough's planning policies. The principles are expressed under 4 headings: Economic and Social Sustainability; Environmental Sustainability; Protect, Enhance and Restore the Borough's Valued Assets; and Ensure the Creation and Retention of Quality Places. The Policy concludes by saying that planning applications that accord with these principles and relevant development management policies, and do not undermine the Plan's Spatial Development Strategy, will be approved without unnecessary delay, unless material considerations indicate otherwise.

4.5 The development principles listed in Policy ST1 are wide ranging. Only one, that is D(iii), can be said to be concerned with the matters that are referred to in the RfR. This appears under the heading "*Ensure the Creation and Retention of Quality Places*" and reads as follows:

"Accommodate traffic and access arrangements in ways that make it safe and convenient for pedestrians and cyclists to move around"

4.6 This principle is concerned with both site access arrangements and traffic on the network relative to the safety and convenience of pedestrians and cyclists. It is intended to avoid situations where the traffic created by development proposals impacts adversely on the safety and convenience of those moving on foot and by bicycle.

4.7 There is no dispute between the Appellant and the Council, or the highway authorities, as regards the site access arrangements. These are agreed to be acceptable.

4.8 As regards the traffic that the proposed development will add to the local highway network, and its implications for the safety and convenience of pedestrians and cyclists, the Appellant will demonstrate that a traditional pre-Covid 'worst case' assessment was undertaken as part of the planning application process which satisfied the local and strategic highway authorities, and an independent consultant commissioned by the Council, on these specific matters, all of whom have found the approach to the assessment, and the proposals, to be acceptable.

4.9 The Members of the Planning Panel should have given great weight to the views of the local and strategic highway authorities, and its own independent expert consultants. Members should only have departed from those views if there were cogent and compelling reasons for so doing: see e.g. **Visao v SSHCLG** [2019] EWHC 276. The Appellant will demonstrate that the technical evidence presented through the planning application process is sound and that there is no technical evidence to support or justify the decision taken by the Planning Panel. The Planning Practice Guidance warns

local authorities not to refuse permission based on “vague, generalised or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis”: see Paragraph: 049 Reference ID: 16-049-20140306.

- 4.10 Evidence will also be presented which considers a post-Covid assessment of the development proposals in the context of important matters of the day (i.e. climate and health). This will include consideration of 2022 survey data which demonstrates:
- a) how safe, convenient and direct active travel links will be provided by the development;
 - b) how the existing and proposed transport networks, including the active travel, shared travel including public transport and highway networks are able to support the development; and
 - c) how the existing public highway is suitable for access to the development in highway safety terms.
- 4.11 The Appellant’s evidence will describe the methods used to assess the baseline conditions currently existing in the vicinity of the site, the potential direct and indirect effects of the proposed development (assessed through mathematical analysis and a policy compliant ‘Vision and Validate’ approach), the mitigation and improvement measures required and the identification of any residual effects as a result of mitigation.
- 4.12 The evidence that the Appellant presents will demonstrate that the proposed development accords with part D(iii) of Policy ST1 and also paragraph 111 of the NPPF (see below).
- 4.13 As indicated earlier, all other relevant provisions of Policy ST1 are positively addressed by the proposed development. This is a matter it is anticipated will be addressed through the SoCG discussions with the Council.

Policy T1

- 4.14 Policy T1 is concerned with improving accessibility and transport. It describes a number of initiatives that are intended to improve accessibility within the Borough, particularly by foot, cycle and public transport. These include: allocating or safeguarding land to facilitate specified transport priorities; supporting schemes which improve transport (e.g. park and ride facilities and freight transfer facilities); creating better connections to facilities and transport routes beyond the Borough; requiring planning obligations to minimise the impact of new development on the Borough’s transport system; carrying out improvements to the transport system; and developing a parking strategy for the Borough.
- 4.15 Policy T1 says nothing about how proposals for development will be assessed and nor does it contain requirements or criteria that proposals must satisfy. As a consequence, its appearance in the RfR is erroneous and it is not relevant to this Appeal.
- 4.16 If, contrary to Homes England’s, primary case it were to be concluded that Policy T1 is in some way relevant to the Appeal it will be contended that in no regards is what is proposed in any way in conflict with that policy.

Conclusions on Compliance with the Development Plan

- 4.17 It is clear from the assessments completed by the Appellant, Council Officers, the Council’s consultant and consultees that the proposed development accords with the development plan as a whole.

- 4.18 A number of Members of the Council's Planning Panel have taken the view that the proposals are at odds with Core Strategy Policies ST1 and T1. The Appellant will demonstrate that the position adopted by the Planning Panel does not stand up to scrutiny and is not tenable. Moreover, the Appellant will evidence that even if the Panel is right that the proposals are at odds with ST1 and T1 (which is not admitted), this does not mean that the proposals are at odds with the development plan read as a whole.

5. Weight to be Afforded Relevant Development Plan Policies

5.1 In spite of the age of the development plan, the majority of the Policies within it are consistent with the provisions of the NPPF and so may be afforded significant weight. These include:

Local Plan Core Strategy

- Policy ST1 – Strategic Development Principles (save as regards highway safety – see below)
- Policy ST2 – Spatial Development Strategy (save as regards settlement boundaries and Fig. 3.3)
- Policy ST4 – Providing Infrastructure
- Policy SS1 – Improving the Housing Offer
- Policy SS2 – Sustainable Housing Growth (save part B – housing requirement)
- Policy SS3 – Housing Needs, Mix and Affordability
- Policy SS5 – Provision and Access to Open Space and Green Infrastructure
- Policy ENV1 – Flood Risk and Risk Management
- Policy ENV3 – Biodiversity and Geodiversity

Local Plan Development Management Policies:

- Policy DM10 – Achieving Quality of Place
- Policy DM11 – Sustainable Development Standards
- Policy DM12 – Standards for New Residential Development
- Policy DM21 – Protecting Community Facilities
- Policy DM22 – Accessible Developments
- Policy DM24 – Development Proposals and Flood
- Policy DM25 – Protecting Nature Conservation Sites, Habitats and Species
- Policy DM26 – Landscaping
- Policy DM28 – Protection of Trees

Copeland Local Plan 2001-2016

- Policy HSG2 – New Housing Allocations

5.2 Those relevant Policies that are either out of date or not consistent with the NPPF, and so must be afforded reduced weight or no weight at all are:

- Policy ST1 - part D(iii) of ST1 is not consistent with the provisions of the NPPF which, as regards safety, states that:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.....” (Paragraph 111)

As a consequence, the Appellant will demonstrate that this part of Policy ST1 cannot be afforded full weight in the determination of this Appeal.

- Policy ST2 – whilst the general principles of ST2 are consistent with the NPPF, the Policy, the settlement boundaries and the distribution of development that it promotes are all based on an assessment of housing need and a housing requirement that are out of date;
- Policy SS2 – which specifies a housing requirement that is out of date;

- SS3 – which fails to specify the level of affordable housing required in new developments in accordance with paragraph 34 of the NPPF;
- Policies ENV4 and DM27 – which are not consistent with the NPPFs policies for the assessment of the impact that new development has on heritage assets; and
- Policy ENV5 – which is not consistent with the NPPFs policies as regards the protection of landscapes and the countryside.

5.3 As noted above, and for the reasons already set out, the Appellant will demonstrate that Policy T1 is not relevant to this appeal and may not be afforded any significant weight in the assessment of the proposed development.

5.4 The relevant policies that the Appellant considers are most important for determining the appeal are: ST1; ST2; SS3; SS5; ENV1; ENV5; DM21; and HSG2. As noted above, several of these are out of date or are not consistent with the NPPF.

6. Harm Arising from Conflict with Relevant Development Plan Policies

- 6.1 As noted above, the Appellant does not accept that there is any significant conflict with relevant development plan policies. However, the Appellant notes that the Council is asserting a conflict with ST1 and so, for completeness, will consider the amount of harm that would be caused if the Council is correct.
- 6.2 As noted above, Part D(iii) of Policy ST1 is not consistent with the NPPF and as a consequence, Policy ST1 must be afforded reduced weight. Accordingly, any harm arising from a conflict with Policy ST1 must also be afforded reduced weight in the planning balance. The Appellant will examine the congestion and safety implications of allowing the appeal and will demonstrate that any harm arising from a breach of Policy ST1 would be limited.

7. Other Material Considerations

7.1 There are other material considerations to be weighed in the planning balance. These indicate that planning permission should be granted, rather than refused. These are as follows.

The NPPF

7.2 The Local Plan 2001 – 2016 was adopted in 2006 and the Local Plan (Core Strategy and DMP DPD) 2013-2028 was adopted in 2013. Only parts of the 2006 Local Plan have been saved and the Core Strategy contains a development strategy that is designed to address development requirements, including a housing requirement, which are out of date. The Council is in the process of preparing a new Local Plan (see below) and, when this is adopted, it will replace both the 2006 and 2013 Local Plans.

7.3 As a consequence of the age of the development plan, the changes that have been made to national planning policy since it was adopted, and the changes in circumstances that have arisen as regards development needs and requirements, a number of the development plan policies which are most important for determining this Appeal are out-of-date. Accordingly, paragraph 11(d) of the NPPF is engaged. This states that planning permission must be granted unless:

- i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (see NPPF paragraph 11 footnote 7); or
- ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

7.4 There are no Footnote 7 policies in the NPPF that provide a clear reason for refusing planning permission in this instance and the Appellant will demonstrate that the proposals accord with all other relevant provisions of the NPPF, including its policies on:

- a) delivering a sufficient supply of new homes (paragraphs 60, 63 and 65);
- b) promoting healthy and safe communities (paragraphs 92 and 93);
- c) open space and recreation (paragraphs 98, 99 and 100);
- d) promoting sustainable transport (paragraphs 104, 105, 110, 111, 112 and 113); and
- e) achieving appropriate densities (paragraphs 124 and 125);
- f) achieving well designed places (paragraphs 130 and 132);
- g) planning for climate change (paragraphs 154 and 157);
- h) planning and flood risk (paragraphs 159, 164 and 169);
- i) conserving the natural environment (paragraph 174);
- j) ground conditions and pollution (paragraphs 183 and 185); and
- k) conserving and enhancing the historic environment (paragraphs 194, 199, 203 and 205).

- 7.5 As indicated earlier, the Appellant will clearly demonstrate that the proposed development will not give rise to any significant adverse impacts and will certainly not have an unacceptable impact on highway safety or a severe impact on the operation of the road network generally. As will be seen when we deal with the planning balance later in this SoC, any adverse effects caused by the proposed development would not significantly and demonstrably outweigh the benefits of granting permission, when assessed against the policies in the Framework taken as a whole.

The Emerging Local Plan

- 7.6 The Council is in the process of preparing a new Local Plan ("ELP"). The Draft SoCG contains a list of those ELP Policies that are relevant to this appeal. In the context of applying appropriate weight to the ELP, the Appellant will present evidence which demonstrates that the proposed development accords with each of these as appropriate. In doing so it will highlight the following:

- a) the site lies within the Whitehaven settlement boundary and is, therefore, in a location where the ELP seeks to focus new development and indicates that planning permission will be granted for housing development unless material considerations indicate that permission should be refused (Policies DS3PU and DS4PU);
- b) the ELP proposes to allocate the entirety of the site for housing (Policy H5PU);
- c) the ELP is proposing a housing requirement of 146dpa and that the majority (40%) of this housing be delivered within Whitehaven. The proposed development would deliver 37% of the housing required in Whitehaven within the Plan period and so is critical to the spatial strategy (Policies H2PU and H4PU);
- d) the proposed development would satisfy the ELPs requirements for developments on allocated housing sites (Policy H6PU);
- e) 15% of the proposed dwellings would be affordable homes which is significantly in excess of the 10% required by the ELP (Policy H8PU); and
- f) The proposed development addresses the loss of sports pitch issue in accordance with relevant exception criteria, proposes a gain in terms of biodiversity and addresses green infrastructure, landscape and archaeological issues in accordance with ELP requirements (Policies SC3PU; N3PU; N6PU; N9PU; N13PU and BE3PU).

- 7.7 The ELP is now at Examination. Hearing Sessions commenced on 31 January 2023 and are expected to run through to 9 March 2023. The NPPF provides that:

"Local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);*
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)"* (paragraph 48)

- 7.8 The ELP has reached an advanced stage and the Policies within it are generally consistent with the NPPF. The Appellant will address in evidence the extent to which relevant policies are the subject of

outstanding objections, whether these are significant, and thus the weight that these Policies may be afforded in the planning balance.

Proposed Changes to the NPPF

7.9 The Appellant notes that the Government is consulting on proposed changes to the NPPF. These may not be afforded anything other than limited weight at present but will be subject to further consideration in evidence.

Issues Raised by Third Parties

7.10 The 16 August 2022 Report to the Council's Planning Panel records that third parties raised concerns about a number of matters including:

- a) flood risk and drainage;
- b) the scope of the TA and assumptions made within it about trip generation, the capacity of the highway network, the safety of the proposed accesses, and the potential for rat running through nearby estates;
- c) the location of the site relative to walking and cycling routes and public transport links and impacts on public rights of way;
- d) the scale of the development, being excessive / overly intensive and it representing urban sprawl;
- e) the need for the development;
- f) landscape effects;
- g) the loss of green spaces and public open spaces;
- h) impacts on wildlife and protected species;
- i) the loss of hedgerows;
- j) additional pressure being placed on already stretched infrastructure such as healthcare facilities and schools;
- k) the potential for overlooking of adjacent existing homes and impacts by way of overshadowing;
- l) antisocial behaviour; and
- m) construction noise.

7.11 All of these matters were addressed by the Appellant in the documents that it submitted with the application, or by consultees and / or by Officers when they set out their assessment of the proposals in their Reports to the Council's Planning Panel. In the event that Interested Parties raise similar matters pursuant to consultation on this appeal, the Appellant will provide further evidence to address the points made.

8. The Benefits of the Proposed Development

8.1 The proposed development would give rise to a number of benefits. The Appellant has assessed the weight that each of these should be afforded in the planning balance. The Appellant has also considered the weight that should be afforded these benefits when looked at together. A summary of the Appellant's assessment is as follows:

- a) the delivery of up to 314 market homes on land that is already part allocated for housing in the current development plan, is proposed to be allocated in full in the ELP and is within the settlement boundary of the Borough's Principal Town – substantial weight;
- b) the delivery of up to 56 affordable homes (15% of the total dwellings proposed, 5% more than required by the ELP) – substantial weight;
- c) improved choice of homes for the local housing market available to meet different population needs including single bedroom homes and larger family homes – substantial weight;
- d) provision of executive style homes for which there is an identified need – substantial weight;
- e) the provision of 7.1 hectares of public open space (some 6.3ha more than the development plan requires), that would be accessible to both existing residents of Whitehaven as well as the residents of the proposed development – substantial weight;
- f) provision of two Locally Equipped Areas of Play (LEAPs) which will benefit existing as well as new residents (there are no LEAPs within the Highlands estate or the Caldbeck Road estate) – substantial weight;
- g) a reduction in the risk of surface water flooding downstream and adjacent to the application site in extreme rainfall events through the introduction of flow control measures and managed sustainable drainage features – substantial weight;
- h) the creation of jobs during the construction period in an area (Whitehaven) that has a higher unemployment rate than both Copeland Borough and Cumbria – moderate weight;
- i) the enhancement of existing planting and the planting of new areas of native woodland – moderate weight;
- j) provision of a network of publicly accessible footpaths and green spaces providing active travel routes across / through the site – moderate weight;
- k) economic benefits flowing from the generation of additional spend in the local economy, both during construction and post-occupation – moderate weight;
- l) the delivery of improvements to two key road junctions that will benefit existing road users as well as accommodate traffic generated by the proposed development – moderate weight;
- m) the generation of additional New Homes Bonus and Council Tax revenue, supporting local services and infrastructure – moderate weight; and
- n) the making of financial contributions towards local sports facilities and off-site habitat creation through planning obligations – moderate weight.

8.2 Together, the Appellant considers that the above benefits of the development should be afforded substantial weight in the planning balance.

9. Planning Balance

- 9.1 This appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. The proposed development complies with the development plan read as a whole. However, some of the development plan Policies that are most important to the determination of this appeal are out of date.
- 9.2 Paragraph 11d of the NPPF provides that where the development plan policies which are most important for determining the appeal are out-of-date, planning permission must be granted unless either:
- i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole
- 9.3 There are no Footnote 7 policies in the NPPF that indicate that planning permission should be refused. Accordingly, the tilted balance is engaged and the appeal should be allowed unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 9.4 There is no prospect at all in this case of the adverse impacts of the development significantly and demonstrably outweighing the benefits of the proposals when assessed against the policies in the NPPF taken as a whole. Considered on balance, the adverse effects of granting permission would be very modest indeed and the benefits of the proposals, which include those flowing from its compliance with the provisions of the development plan and the ELP, would be substantial.
- 9.5 The Appellant considers that the case for the appeal is compelling. It therefore respectfully requests that the appeal is allowed subject to appropriate obligations and conditions.

10. Planning Conditions and S106 Contributions

- 10.1 The Officer's Report to the Council's Planning Panel meeting of 16 August 2022 contained a list of planning conditions that would likely have been imposed if Members had resolved to grant planning permission. It also described several planning obligations that will need to be included within a S106 Agreement should the appeal be allowed. These are all listed in the Draft SoCG and, as necessary, will be the subject of further discussion with the Council before the Inquiry.

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