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## Appeal Decision

Site visit made on 12 March 2019

**by John Dowsett MA DipURP DipUD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 9<sup>th</sup> April 2019**

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**Appeal Ref: APP/Z0923/W/18/3217111**

**Land to south of Elizabeth Crescent, Whitehaven CA28 6JQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mrs Katherine Bowe of Harras Park Estates against the decision of Copeland Borough Council.
  - The application Ref: 4/17/2296/001, dated 14 August 2017, was refused by notice dated 6 July 2018.
  - The development proposed is residential development of up to 50 dwellings.
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### Decision

1. The appeal is dismissed.

### Procedural matter

2. The development proposal was submitted in outline, with only approval for access sought at this stage. Details of appearance, landscaping, layout and scale were reserved for future approval. Although drawings were submitted with the application showing how the site could be laid out for approximately 50 dwellings and a possible landscaping scheme, as layout and landscaping were reserved for future approval, I have treated these as indicative only and determined the appeal on this basis.

### Main Issue

3. The main issue in this appeal is the effect of the proposed development on highway safety in the vicinity of the appeal site.

### Reasons

4. Policy ST1 of the Copeland Local Plan Core Strategy and Development Management Policies Development Plan Document 2013 (the Local Plan) sets out the Council's strategic development principles and, among other matters, seeks to ensure that new development incorporates traffic and access arrangements in ways that make it safe and convenient for pedestrians and cyclists to move around. From the evidence submitted, the Council's concerns are focussed on the operation of the junction with Victoria Road in respect of vehicular traffic. Nevertheless, cyclists and pedestrians are road users and the proposal advocates cycling and walking as alternatives to car use. Consequently, this policy is of some relevance.

5. Whilst the appellant suggests that Policy ST1 is out of date, it is not explained why this is the case. The Policy does pre-date the current version of the National Planning Policy Framework (the Framework) but this does not, of itself, render the Policy out of date. The Policy was formulated in line with the previous version of the Framework and the criteria in the policy in respect of ensuring the creation and retention of quality places are wholly consistent with the relevant requirements of the current version of Framework.
6. Local Plan Policy DM22 sets out various criteria against which the accessibility of developments will be assessed including the form of the layout, access to public transport, access for emergency and service vehicles, managing traffic speeds and car parking provision. From what I have read and from what I saw when I visited the site, none of these criteria relate directly to the reason for refusing planning permission in which it is cited, and I can find no conflict with this policy.
7. The Framework expects new development to provide safe and suitable access to the site for all users. It also sets out that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or that the residual cumulative impacts on the road network would be severe.
8. It is common ground between the main parties that the appeal proposal raises no issues in respect of the principle of residential development on the appeal site; the effect on the landscape and the character and appearance of the area; the effect on the living conditions on existing residents; effects on geology and contamination, ecology; and effects on flood risk and drainage.
9. The sole matter in dispute is whether the existing highway infrastructure in the vicinity of the appeal site provides a safe and suitable access to the site in terms of the junction arrangements, vertical and horizontal alignment of the carriageway, and the capacity and condition of the access route.
10. The appeal site would be accessed from Victoria Road, which is the principal road carrying traffic to this part of the town, via Rosemary Close and Elizabeth Crescent.
11. It is not in dispute that the junctions on Elizabeth Crescent that would be utilised for access have adequate visibility. The Council's principal concern is with visibility at the junction of Rosemary Close with Victoria Road. The appellant states that the current visibility at this junction is 55 metres to the west and 40 metres to the east. The Council has not set out any dimensions for the visibility splay and does not challenge the appellant's measurements, but it considers that the junction does not meet the visibility requirements for the traffic speeds on the Victoria Road, which it considers would be 57 metres to the west and 53 metres to the east. The appellant does not dispute that these are the relevant requirements but suggests that local conditions are such that a reduction in forward visibility is acceptable. The only detailed survey drawing of the junction has been submitted by third parties<sup>1</sup>. This drawing shows visibility splays of 44 metres to the west and 31 metres to the east can be achieved.

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<sup>1</sup> Atlantic Geomatics Drawing numbers 3607-P-03 Revision A and 3607-P-03 Revision A

12. I saw when I visited the site that whilst visibility to the west of the access is reasonable, to the east the line of sight is notably shorter, being truncated by a low stone wall and vegetation adjacent to the highway.
13. It is common ground that the proposed development would not lead to unacceptable numbers of vehicles queuing on either road forming the junction. There is, however, disagreement on whether the junction would operate safely in terms of vehicles joining and leaving Victoria Road. Although the junction is within a stretch of road that has a 30 mph speed limit, the only available data shows that the 85<sup>th</sup> percentile speed of vehicles on Victoria Road is 37.8 mph eastbound and 33.6 mph westbound. Traffic flows on Victoria Road are relatively low at 1500 vehicles a day, with 150 vehicle movements in each peak hour. The appellant's transport statement establishes that a development of up to 70 dwellings, more than is proposed by the appeal scheme, would result in an additional 36 vehicle movements during each of the morning and afternoon peak hours, and this is not challenged by the Council. Regardless of which assessment of the visibility is correct, the junction with Victoria Road as currently configured falls short of the visibility requirements as set out in the Manual for Streets for the actual recorded 85<sup>th</sup> percentile speeds on Victoria Road.
14. Manual for Streets 2 states that visibility should be based on the recommended sight stopping distances but goes on to say that, unless there is local evidence to the contrary, a reduction in visibility below the recommended levels will not necessarily lead to a significant problem. It is common ground between the two main parties that there have only been two slight injury accidents on Victoria Road since 2000 and none in the last five years. There is no information in respect of accidents that did not result in personal injury. Local residents dispute the level of accidents and have submitted that there have been 25 accidents within the estate and on Victoria Road. Whilst this is supported by a plan setting out the location of accidents, there is no information in respect of the nature of the accidents or the time frame over which they occurred. Consequently, I can give little weight to this.
15. Although the proposed development would only result in a small number of additional vehicle movements through the junction, there is no definitive evidence in respect of the current total number of vehicle movements that occur. The appellant states that the current daily flow through the junction is 597 vehicles. The traffic count in the appellants transport statement recorded the vehicle movements from the 35 houses on the upper part of Elizabeth Crescent as a daily average of 255 vehicles. The whole estate comprises approximately 83 houses, based on the Ordnance Survey Map and, from the recorded vehicle movements generated by 35 houses, a figure of 597 movements would be reasonable.
16. The appellant states that the proposed development represents a 38% increase in the number of dwellings and that it is reasonable to assume that, with similar trip generation characteristics for the existing and proposed homes, this would result in a 38% increase in traffic. Whilst I would agree that the increase in traffic would be proportionate to the increase in the number of houses, the appellants calculation of a 38% increase is incorrect. This figure is the proportion of the total resulting number of houses that would be new. A figure of 50 new dwellings added to the existing estate would be an increase of

approximately 60% over the existing 83 houses. This would result in a significant increase in the number of vehicle movements through the junction.

17. There has been no assessment of the operation of the junction based on total predicted traffic flows. Whilst the evidence suggests that the junction is operating safely at present, despite not meeting the current visibility requirements, there is no compelling evidence that would demonstrate that the resulting traffic flows from the existing and proposed development would not result in an increased risk of accidents at the Victoria Road junction. On the basis of the evidence before me, I am not satisfied that it has been shown that this junction would continue to operate in a safe manner, taking into account the traffic speeds on Victoria Road and the restricted visibility at the junction. Nor has it been shown that if the development were to proceed there would not be an unacceptable impact on highway safety in this location.
18. Rosemary Close and Elizabeth Crescent rise up the hillside to the south of Victoria Road. From the junction with Victoria Road, Rosemary Close has a carriageway width of approximately 5.7 metres and Elizabeth Crescent has an initial width of approximately 5.8 metres widening to approximately 6.3 metres for most of its length. The Council state that the carriageway width is only 4.8 metres, however, this does not tally with my observations on site.
19. Elizabeth Crescent, which would form the majority of the access route to the site, is a long cul-de-sac that has several steep changes in vertical alignment and also features a 90 degree bend part way along its length. I saw when I visited the site that whilst the carriageway surface of Elizabeth Crescent is old, its general condition is not such that vehicles cannot pass easily over it.
20. During my site visit, I also observed that the dwellings served by Elizabeth Crescent have dedicated off street parking and that very little parking took place on-street. Whilst vehicles parked on the carriageway reduced its effective width for a short length, I observed that the gradient of the road results in lower vehicle speeds, which is confirmed by data in the appellant's Transport Statement, and that for most of its length forward visibility is good. I accept that the level of on-street parking and vehicle movements is just a snapshot of the conditions at the time of my visit and that different times of day conditions will be different. However, there is no evidence before me that indicates that parking stress on the street is at a level where the carriageway width is reduced for significant portions of its length or significantly obstructs vehicle movements resulting in a safety issue.
21. It is clear that parts of the access route have a steeper gradient than might be considered desirable for a new road. Due to the topography of the wider area, much of the existing development in Whitehaven outside of the central area is located on sloping sites where the desirable gradients are also not present. The access route is an existing, adopted, highway and there is no substantive evidence that demonstrates that these gradients make the access route unsuitable to carry the additional vehicle movements that would be generated by the proposed development.
22. Whilst Rosemary Close and Elizabeth Crescent would provide a practical access route to the appeal site, I have previously found that it has not been demonstrated that the junction with Victoria Road would continue to operate safely were the development to proceed. I therefore conclude that the proposed development would cause harm to highway safety in the vicinity of

the appeal site. It would be contrary to the relevant requirements of Local Plan Policy ST1 and the Framework.

### **Other matters**

23. I have had regard to the representations that have been submitted by third parties and I have dealt with the aspects of these in respect to highways matters above. Whilst these raise concerns in respect of several other matters including landscape impact, surface water flooding, and access to shops, services and other facilities, I am mindful that these matters are not in dispute between the main parties nor has the Council raised these in the reasons for refusing the planning application. From what I have read and from what I saw when I visited the site, none of these other points that have been raised would lead me to a different overall conclusion on the appeal.
24. The Council accepts that it cannot demonstrate a five year supply of deliverable housing sites. In these circumstances the presumption in favour of sustainable development in Paragraph 11 of the Framework has to be considered. This sets out that development proposals that accord with an up to date development plan should be approved without delay. Alternatively, where the Local Planning Authority cannot demonstrate a five year housing land supply, planning permission should be granted unless the application of other policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the framework as a whole.
25. The appellant has not identified any particular benefits that would arise from the development. The development would undoubtedly contribute towards increasing housing supply in the Borough and there would be some economic benefits arising from the construction of the new dwellings. The test that is to be applied is whether the adverse impacts significantly and demonstrably outweigh the benefits. The Council can only demonstrate a 2.3 year housing land supply and although it is performing well in terms of housing delivery this is still somewhat short of achieving the required 5 years land supply. The benefit of increasing the housing supply, therefore, has significant weight.
26. The proposal would, nevertheless, cause harm to highway safety in the vicinity of the appeal site and this adverse impact weighs equally significantly against the proposal. This being the case, the adverse impacts would not significantly and demonstrably outweigh the benefits of the proposal and the presumption in favour of sustainable development is engaged.
27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the determination of planning applications and appeals must be made in accordance with the development plan, unless material considerations indicate otherwise. The presumption in favour of sustainable development is a material consideration, but the Framework is also clear that it does not change the statutory status of the development plan as the starting point for decision making. It goes on to say that where a planning application conflicts with an up to date development plan, permission should not normally be granted.
28. I have found that the proposed development would not comply with the relevant requirements of Policy ST1 of the Local Plan. Whilst the presumption in favour of sustainable development is a material consideration of some weight,

Local Plan Policy ST1 is not out of date and the proposed development would conflict with the requirements of the Framework in respects of highway safety. The presumption in favour of sustainable development does not automatically override up to date policies in a development plan. Harm to highway safety is a serious matter and, in the circumstances of this appeal, the presumption in favour of sustainable development does not outweigh the harm to highway safety, or the conflict with the development plan and with the requirements of the Framework.

### **Conclusion**

29. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*John Dowsett*

INSPECTOR