

Local Planning Authority Statement of Case

Appeal By:

Mr P Lockhart

Appeal Reference:

APP/Z0923/Q/22/3311413

Local Planning Authority Reference:

4/22/2241/DOC

Proposal:

Modification of S106 agreement of planning approval 4/14/2242/0F1

Site Address:

Land at Tarn Bank, Braystones, Beckermeth

1. Introduction

The Site

The appeal site relates to an area of land extending 0.34 hectares, located within the north of Braystones.

The land was formally residential curtilage, and benefits from historical residential planning permissions.

The topography of the site is generally flat and is contained by hedgerows and post and wire fencing. The site adjoins the curtilage of existing residential dwellings to the north and east, agricultural land to the south, and Tarnside Caravan Park to the west.

Proposal

The submitted planning application seeks to modify the S106 agreement attached to planning approval 4/14/2242/0F1.

Planning permission was granted (ref: 4/14/2242/0F1) in 2015 for the erection of 7 dwelling at this site. This permission was granted subject to a S106 agreement to secure that 5 of the proposed dwellings would be for affordable home and 2 would be open market. Three of these dwellings have been constructed. The constructed dwellings are three terrace dwellings located at the front of the site which were intended to form three of the five affordable dwellings provided within this development.

This current application seeks to vary this S106 agreement to reduce the number of affordable dwellings to a single unit. The original application sought permission to remove the affordable element all together from the site, however following a meeting with the Local Planning Authority this was amended to one affordable unit.

The application is supported by a viability assessment.

2. Scope of Statement of Case

The submitted appeal is against non-determination of planning application ref: 4/22/2241/DOC under Section 78(2) of the Town and Country Planning Act 1990 (as amended).

The appeal was submitted on the 18th November 2023 to Copeland Borough Council. Under the Constitution of Copeland Borough Council, planning application ref: 4/22/2241/DOC would have been required to be determined by Members of the Planning Panel (Planning Committee).

On the 1st April 2023, Copeland Borough Council ceased to exist and was replaced by Cumberland Council as part of the Local Government Reorganisation of Cumbria. Cumberland Council is now therefore the Local Planning Authority dealing with this planning appeal. Under the adopted scheme of delegation for Cumberland Council there is no requirement for this application to be determined by Members of the Planning Panel and the decision could be delegated to officer level.

To date an Officer report has not been prepared for this application and there has been no formal decision issued for this application.

The Appeal Statement is therefore limited to the following:

- identification of the relevant policies of the Development Plan; and
- identification of the key issues and the acceptability of the scheme.

3. Relevant Policies of the Development Plan

Planning Policy

Planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

Development Plan

On 1st April 2023, Copeland Borough Council ceased to exist and was replaced by Cumberland Council as part of the Local Government Reorganisation of Cumbria.

Cumberland Council inherited the local development plan documents of each of the sovereign Councils including Copeland Borough Council, which combine to form a Consolidated Planning Policy Framework for Cumberland.

The inherited the local development plan documents continue to apply to the geographic area of their sovereign Councils only.

The Consolidated Planning Policy Framework for Cumberland comprises the Development Plan for Cumberland Council until replaced by a new Cumberland Local Plan.

Copeland Local Plan 2013 – 2028 (Adopted December 2013)

Core Strategy

Policy ST1 – Strategic Development Principles

Policy ST2 – Spatial Development Strategy

Policy SS1 – Improving the Housing Offer

Policy SS2 – Sustainable Housing Growth

Policy SS3 – Housing Needs, Mix and Affordability

Policy SS5 – Provision and Access to Open Space and Green Infrastructure

Policy T1 – Improving Accessibility and Transport

Policy ENV1 – Flood Risk and Risk Management

Policy ENV3 – Biodiversity and Geodiversity

Policy ENV5 – Protecting and Enhancing the Borough’s Landscapes

Development Management Policies (DMP)

Policy DM10 – Achieving Quality of Place

Policy DM11 – Sustainable Development Standards

Policy DM12 – Standards of New Residential Developments

Policy DM22 – Accessible Developments

Policy DM24 – Development Proposals and Flood Risk

Policy DM25 – Protecting Nature Conservation Sites, Habitats and Species

Policy DM26 – Landscaping

Policy DM28 – Protection of Trees

Emerging Copeland Local Plan 2021 – 2038 (ELP):

Cumberland Council are continuing the preparation and progression to adoption of the emerging Copeland Local Plan 2017-2038.

The emerging Copeland Local Plan 2017-2038 comprising the Publication Draft (January 2022) and Addendum (July 2022) have recently been examined by the Planning Inspector and their report on the soundness of the plan currently remains awaited.

The Planning Inspector has now issued their post hearing letter, which identifies the next steps for the Examination. This includes proposed modifications to the plan to ensure a sound plan on adoption.

As set out at Paragraph 48 of the National Planning Policy Framework (NPPF), Local Planning Authorities may give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan; the extent to which objections to relevant policies have been resolved; and the degree to which emerging policies are consistent with the NPPF.

Given the stage of preparation of the emerging Copeland Local Plan 2017-2038 some weight can be attached to policies where no objections have been received or objections have been resolved. The Publication Draft (January 2022) and Addendum (July 2022) provides an indication of the direction of travel of the emerging planning policies, which themselves have been developed in accordance with the provisions of the NPPF.

Strategic Policy DS1PU: Presumption in favour of Sustainable Development

Strategic Policy DS2PU: Reducing the impacts of development on Climate Change

Strategic Policy DS3PU: Settlement Hierarchy

Strategic Policy DS4PU: Settlement Boundaries

Strategic Policy DS5PU: Planning Obligations

Policy DS6PU: Design and Development Standards
Policy DS7PU: Hard and Soft Landscaping
Strategic Policy DS8PU: Reducing Flood Risk
Policy DS9PU: Sustainable Drainage
Policy DS11PU - Protecting Air Quality
Strategic Policy H1PU: Improving the Housing Offer
Strategic Policy H2PU: Housing Requirement
Strategic Policy H3PU: Housing delivery
Strategic Policy H4PU: Distribution of Housing
Strategic Policy H5PU: Housing Allocations
Policy H6PU: New Housing Development
Policy H7PU: Housing Density and Mix Strategic
Policy H8PU - Affordable Housing
Policy SC1PU - Health and Wellbeing
Strategic Policy N1PU: Conserving and Enhancing Biodiversity and Geodiversity
Strategic Policy N2PU: Local Nature Recovery Networks
Strategic Policy N3PU: Biodiversity Net Gain
Strategic Policy N6PU: Landscape Protection
Policy N9PU - Green Infrastructure
Policy CO4PU - Sustainable Travel
Policy CO5PU - Transport Hierarchy
Policy CO7PU - Parking Standards and Electric Vehicle Charging Infrastructure

4. Other Material Planning Considerations

National Planning Policy Framework (2021)
National Design Guide (NDG).
Cumbria Development Design Guide (CDG)
The Conservation of Habitats and Species Regulations 2017 (CHSR).
Copeland Borough Council Housing Strategy 2018-2023 (CBCHS)
Strategic Housing Market Assessment 2021 (SHMA)
Copeland Borough Council - Strategic Housing Market Assessment and Objectively Assessed Housing Need (SHMA).
5 Year Housing Land Supply – February 2023

The following documents were not submitted by the Local Planning Authority within the original appeal questionnaire, details can be found at the following links:

- Strategic Housing Market Assessment (SHMA) Update 2021- [Microsoft Word - Revised FINAL COPELAND SHMA update October2021 Clean](#)
- Strategic Housing Land Availability Assessment (SHLAA) September 2022 - [shlaa_assessment_sept_2022.pdf \(copeland.gov.uk\)](#)
- 5 Year Housing Land Supply – February 2023 - [cbc26_5_year_housing.pdf \(copeland.gov.uk\)](#)

Key Issues

The application site is located within the area known as Braystones, which is identified under Policy ST2 of the Copeland Local Plan as outside of any of the Council's defined settlement boundaries and is therefore considered to be within open countryside. Policy ST2 of the Copeland Local Plan states that outside of the defined settlement boundaries, development is restricted to that which has a proven requirement for such a location, including housing that meets proven specific and local needs including provision for agricultural workers, replacement dwellings, replacement of residential caravans, affordable housing, and the conversion of rural buildings to residential use.

Policies ST1 and ST2 along with Policies SS1, SS2, and SS3, also seek to promote sustainable development to meet the need and aspirations of the Borough's housing market. These policies further concentrate development within the defined settlement boundaries in accordance with the Borough's settlement hierarchy. The NPPF also seeks to support the Government's objective of significantly boosting the supply of housing through sustainable development. Paragraph 79 of the NPPF states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Furthermore, planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.

Within the Emerging Local Plan, under Policy DS3PU, Braystones continues to be identified as open countryside. Policy H15PU of the Emerging Local Plan states that housing developments within open countryside will be permitted on rural exception sites, which are small sites where it is demonstrated that affordable housing is required to meet local need. This policy further states that applicants must demonstrate that the development is viable, and housing will be retained in local, affordable use in perpetuity. An element of market housing will be accepted to support the development of local, affordable housing under this policy where there are excessive development costs due to site constraints, it is demonstrated that the additional revenue created by the development of open market housing is essential to enable the delivery of affordable housing on the site, and the majority of the homes are affordable and the amount of open market housing is the minimum required to achieve site viability.

The application site falls within the Whitehaven Housing Market Area (HMA) of Copeland Strategic Housing Market Assessment (SHMA). The SMHA suggest a particular focus on the delivery of two and three bedroom (80%) and some 4+ bedroom (20%) semi-detached and detached dwellings. It is also stated the Council should also consider the role of bungalow and there is a high need for new affordable housing.

Paragraph 78 of the NPPF states that in rural areas planning decision should be responsive to local circumstances and support housing developments that reflect local needs. It is further stated that Local Planning Authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs, and consider whether allowing some market housing on these sites would help to facilitate this.

The developer has already built three of the affordable units associated with this development which were presumably factored into any viability considerations for this development. The changes proposed by the requested variation are a significant change from the approved scheme and would no longer provide the level of affordable housing required to make this scheme acceptable in policy term or meeting the required housing need. The provision of only one affordable unit would have a significantly reduced impact in terms of meeting the local housing needs and would make the scheme essentially an open market housing development in the open countryside which is at odds with current and emerging Local Plan policies and Government Guidance as set out in the NPPF.

Government guidance ([Viability - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/viability-assessment)) states that where up-to-date policies have set out the contributions expected from development, planning applications that fully comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. Such circumstances could include, for example where development is proposed on unallocated sites of a wholly different type to those used in viability assessment that informed the plan; where further information on infrastructure or site costs is required; where particular types of development are proposed which may significantly vary from standard models of development for sale; or where a recession or similar significant economic changes have occurred since the plan was brought into force. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and viability evidence underpinning the plan is up to date, and site circumstances including any changes since the plan was brought into force, and the transparency of assumptions behind evidence submitted as part of the viability assessment. Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time. As the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the

developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project.

Given that the application site is located within open countryside, and therefore an unsustainable location, planning permission has only historically been granted at this site based on the provision of affordable housing which would be provided as part of the development, ensuring the application complies with the Policies set out in the Copeland Local Plan. Should the appeal be allowed the Local Planning Authority would wish to retain an appropriate level of affordable housing provision at this site to be consistent with the adopted Copeland Local Plan, the Emerging Copeland Local Plan, provisions of the NPPF, and the identified housing need for the Borough.