



Appeal Decision

Inquiry Held on 14 - 17 January 2020

Site visit made on 13 January 2020

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th March 2020

Appeal Ref: APP/U2370/W/19/3238536

Land off Lambs Road, Thornton-Cleveleys FY5 5JL

- 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 Wainhomes (North West) Ltd against the decision of Wyre Borough Council.
 - The application Ref 17/00951/OUTMAJ, dated 28 September 2017, was refused by notice dated 6 September 2019.
 - The development proposed is the erection of up to 66 dwellings and a convenience store (up to 280sqm net sales area) with access applied for off Lambs Road (all other matters reserved).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. At the inquiry an application for an award of costs was made on behalf of the appellant against Wyre Borough Council (WBC). This application is the subject of a separate decision.
3. The description of the proposed development on the application form has been amended with the agreement of the appellant to more accurately describe the proposal. The application seeks outline planning permission with access to be determined at this stage. Appearance, landscaping, layout and scale are reserved matters to be considered in the future. Although the application plans show various indicative site layouts, the appellant has confirmed that these are for illustrative purposes. I shall determine the appeal on this basis.
4. A Scott Schedule setting out the points of dispute between the appellant and WBC in tabular form was revised during the course of the inquiry, with a further final agreed version submitted on 22 January 2020 after the close of the inquiry. During the course of the inquiry, the Planning Inspectorate issued its Report on the Council's Annual Position Statement, dated 15 January 2020, recommending that WBC can confirm that they have a 5.18 year supply of deliverable housing sites until 31 October 2020.
5. A completed S106 Agreement (Unilateral Undertaking) was submitted at the inquiry, dated 17 January 2020. The undertaking provides for 30% of the total number of dwellings to be affordable housing; a primary education financial

contribution; and management and maintenance of open space for the lifetime of the development. I return to this later in my decision.

6. Given that the application is in outline, with details of access only, my site visit prior to the opening of the inquiry was unaccompanied, with the agreement of the main parties.

Main Issue

7. The main issue is whether or not the absence of an agreed masterplan would prejudice delivery of the wider site allocation SA1/2 with regard to the policies of the development plan.

Reasons

8. The appeal site comprises agricultural land of some 2.6 hectares on the edge of the settlement of Thornton-Cleveleys. The proposal seeks outline permission for the development of 66 dwellings at Phase 2 of a wider site allocation SA1/2 of the Wyre Local Plan (February 2019)(WLP), with an overall capacity of 400 dwellings. At Phase 1 to the south, 157 dwellings have commenced, with a future Phase 3¹ to the east.
9. The reason for refusal given by WBC states that the lack of a masterplan prejudices delivery of the wider site allocation, with the proposal being contrary to the following wide range of policies, which together require development to:
 - accord with the development strategy for the Borough (policy SP1);
 - contribute positively to the overall physical, social, environmental and economic character of the areas (policy SP2);
 - be viable (policy SP6);
 - provide necessary infrastructure and developer contributions (policy SP7);
 - promote health and well-being (policy SP8);
 - not be at risk of flooding or lead to flooding elsewhere and provide appropriate surface water management (policy CDMP2);
 - be of high standard of design (policy CDMP3);
 - be designed to make a positive contribution to green infrastructure (policy CDMP4);
 - be suitably accessed and accessible (policy CDMP6);
 - contribute to housing supply (policy HP1);
 - contain choice and mix of housing types (policy HP2);
 - provide appropriate green infrastructure (policy HP9); and
 - address site allocation key development considerations (KDCs)(site allocation SA1 and SA1/2).
10. The submission of the Scott Schedule narrowed the points of dispute. Whilst WBC confirmed that, subject to conditions and planning obligations, the proposal could be considered acceptable in isolation, it maintained concerns relating to prejudicial harm, specifically prejudice arising as a result of green infrastructure, linkages, and flood risk and drainage. Objections have been raised by Lancashire County Council as local education authority (LEA) in respect of potential prejudice to education provision. The Rule 6 party, the Thornton Action Group (TAG), are concerned about these same matters, as well as prejudice arising from highways matters, design and landscape impacts

¹ Also identified as Phase 3/4 in the Highways Statement of Common Ground

and housing mix. However, even were there no prejudicial effects, WBC considered that there would be conflict with policy, with harm arising specifically because there is not an agreed masterplan.

Masterplanning

11. Site allocation SA1/2 allocates this and other sites for development subject to a number of KDCs for each site that must be delivered. For the appeal site, KDC1 requires that a masterplan must be produced covering the whole of the site allocation. KDC1 is quite specific in its wording; firstly, that the site is to be brought forward in line with a masterplan to be produced covering the whole of the site and, secondly, that the masterplan must be agreed by WBC prior to the granting of planning permission for any part of the site.
12. The supporting text for the site allocation chapter at paragraph 9.1.6 advises what circumstances should apply when permission already exists on part of an allocation, as is the case here; a masterplan over the entire allocation would still be required. Whilst supporting text cannot add to policy, in this case it is clearly relevant to the interpretation of policy itself as it clarifies the logic of SA1/2 and KDC1. This is also confirmed in section 6 of the masterplan guidance², which explains that it is for landowners and developers to prepare the masterplan guided and assisted by WBC as necessary, albeit that only limited weight can be afforded to this non-statutory document.
13. In this case, even though a masterplan for the site allocation is emerging and WBC does not object to it, it is a matter of fact that there is not currently a formally agreed masterplan for the whole site. There is no ambiguity in the policy wording and, as a result, the absence of a masterplan causes conflict with development plan policy.
14. The interpretation of KDC1 was also considered at the Stalmine³ inquiry in March 2019, after adoption of the WLP, at which the Inspector reached a conclusion that the proposal would accord with the development plan, notwithstanding the absence of a masterplan. When that decision was challenged by WBC, the Secretary of State defended the Inspector's decision, and the High Court ultimately refused permission to bring the challenge, observing that the points were 'academic in the light of the fact that the information that would be contained in a masterplan was provided'. The appellant considers that, at this point, the interpretation of KDC1 should have been clear to WBC.
15. However, when Stalmine was originally determined by WBC, it was an unallocated site located in the countryside and was refused for locational reasons unrelated to masterplanning. By the date of the inquiry, following the local plan Inspector's Main Modifications, Stalmine was an allocated site SA1/7, with the same wording for KDC1 as at the current appeal site. At the inquiry WBC withdrew their objection, and therefore the Inspector's primary considerations were the concerns of the Rule 6 party.
16. In determining the current appeal proposal, WBC as local planning authority exercising its duty under Section 38(6) considered that the starting point in decision making is plan-led, notwithstanding the Stalmine decision and

² Wyre Guidance on the Preparation of Masterplans V1.2 May 2019 (Core Document 5.1)

³ Appeal decision APP/U2370/W/18/3211691 (Core Document 6.2)

notwithstanding that WBC accept that the appropriate level of information is available to determine the appeal proposal in isolation.

17. Another factor distinguishing Stalmine from the current appeal is the way the three phases of Stalmine related to each other and the fact that connections could not have been achieved due to the lack of a common boundary between Stalmine phases 2 and 3, and the fixed extant planning permission between them, which may well have reduced the benefit of a masterplan. Although that context may be partially replicated in the current appeal, which has a common boundary with the fixed planning permission for Phase 1, the common boundary with Phase 3 is not fixed and forms part of the remaining site allocation and, as such, a masterplan is more relevant here than at Stalmine.
18. Paragraph 9.2 of version 1 of the masterplan guidance, which was specifically referenced by the Secretary of State at Stalmine, no longer exists. Therefore, neither that former wording nor its absence can provide any guidance on current interpretation. Whilst the appellant refers to potential inconsistencies in the threshold of 50 units, as well as to the local plan Inspector's concerns regarding potential for delays and proportionality, I am required to determine the proposal on the basis of the wording of the development plan as it stands.
19. The agreement of WBC to a number of matters within a draft masterplan does not imply agreement to a finalised masterplan, and it is not within my remit to determine what content or level of information should be agreed as part of any masterplan. Although the best endeavours of the appellant are noted, it has not been suggested that WBC have refused to agree a finalised masterplan. In the event that one was, the normal appeal routes for any associated applications would remain open. The suggestion that the emerging masterplan could be agreed without public consultation runs contrary to the best practice advised in the Planning Practice Guidance⁴(PPG).
20. The viability of the development is raised in WBC's reason for refusal, and TAG are concerned about the viability of providing a policy compliant level of affordable housing in a future phase if land for a new school, open space and potentially drainage were offset until that future phase. Whilst no substantive evidence was put forward at the inquiry that any individual potential prejudicial effect from the appeal proposal would adversely affect future viability, the PPG states that masterplans should be viable. A masterplan prepared in line with the PPG would clarify the viability position of delivery of the overall site allocation as envisaged by SA1/2.
21. Overall, I find that the absence of an agreed masterplan conflicts with site allocation SA1/2 of the WLP. Such a masterplan is necessary in ensuring that all the KDCs can be taken into account across the wider site allocation and accommodated within the remaining phases, with particular regard to any of the identified prejudicial effects.

Green infrastructure

22. The parties differ on the need for a masterplan to ensure a comprehensive network of connected spaces across the wider site allocation. The appellant's figures⁵ suggest a smaller proportion of open space provision within the appeal site (0.29 hectares for 66 dwellings) than in the future phase (1.6 hectares for

⁴ PPG Design: processes and tools, paras 006 & 007, ref ID 26-005-20191001

⁵ Steven Harris rebuttal, Section 3

balance of 177 dwellings), as does the illustrative masterplan drawing. Whilst these figures and drawing are only indicative, the appellant considers delivery of this green infrastructure can nonetheless be appropriately addressed through conditions and future reserved matters application, with reference to the quantity and quality standards set out in policy HP9.

23. However, securing green infrastructure by condition would only allow its consideration on a phase by phase basis. Instead, KDC3 requires provision of a landscape and green infrastructure framework, with provisions for open-space and cycle and pedestrian connectivity within the site. Whether or not these provisions are standard requirements on all site allocations, where there is also a requirement for a masterplan, they are not standalone requirements. It is not the case that a masterplan can be prepared in isolation, it must have regard to the policy framework within which it sits. Any masterplan agreed under KDC1 would need to consider KDC3, thereby ensuring any agreed masterplan would include a green infrastructure framework across the wider site.
24. This approach is supported by the PPG, and by the masterplan guidance. The purpose of masterplanning is not solely to ensure that prejudice is not caused to the comprehensive development of an allocation. The PPG advises that masterplans should create a vision for the overall site and clarify design expectations. In doing so, a masterplan should focus on site specific proposals such as the layout of the development and green infrastructure, amongst other things, in supporting any outline planning application. In this case, such an approach would allow a greater proportion of open space to be offset for a future phase, should that be considered appropriate for example for functional reasons or to address landscape or ecological requirements, and as suggested by the illustrative arrangements.
25. Overall, the absence of an agreed masterplan would prejudice overall delivery of the wider site allocation as envisaged by SA1/2, and also as set out in the PPG, in respect of green infrastructure.

Linkages

26. A requirement for cycle and pedestrian connectivity and linkages within and, where possible, outside the site is also contained within KDC3. The key points of dispute between the parties relate to delivery, due to differing land ownerships, and wording of conditions. WBC accepted at the inquiry that neither a masterplan nor indeed planning permission can compel ownership commitments from landowners, and that provision of linkages as part of the development could be secured by condition. The appellants ultimately agreed to WBC's suggested conditions to provide linkages within the appeal site to the boundaries contiguous with Phases 1 and 3, albeit varied to secure implementation not at the outset but mid-development, as well as provision of linkages within Phase 1.
27. However, to my mind it would not be reasonable to require that the fixed permission for Phase 1 be altered or amended as part of this current appeal. Instead, that fixed permission now has to be accepted for what it is, unless the developer chooses otherwise. It therefore follows that the absence of an agreed masterplan for the overall site may cause a similar recurrence at Phase 3 in the event that the appeal site were to become fixed, notwithstanding that the appellant considers that the overall development can be delivered on a phase by phase basis under the current land ownership and options arrangements. As

with green infrastructure above, any masterplan would need to consider linkages across the entire site, again supported by the PPG.

28. Consequently, the lack of an agreed masterplan would prejudice overall delivery of the site allocation as envisaged by SA1/2, and as described in the PPG, in respect of linkages.

Flood risk and drainage

29. The strategy prepared by Betts Hydro⁶ for the appeal site reviews all sources of flood risk, concluding that the risk is very low to low. Surface water run-off from the site would be discharged via a conveyance pipe to the River Wyre to the east of the site. That pipe is associated with the delivery of Phase 1, and is currently the subject of a separate planning application. Any assessment of the capacity of any approved connection could be appropriately reserved for a detailed Phase 2 application stage, when load levels would be more precisely known. In addressing WBC's concern relating to potential risk of prejudice to the wider site, a further drainage strategy has been produced for Phase 3, which would rely on the same conveyance pipe. In the event that the capacity of the pipe was subsequently found to be inadequate, I see no evidence why a new connection could not be adequately provisioned at that time.
30. The detailed evidence of the Betts strategy indicates that the appeal site is capable of being suitably drained at green-field run-off rates, subject to detailed calculations at reserved matters stage. Whilst WBC consider this strategy may constrain options for Phase 3 such that it cannot be said whether it would be harmful or not, this view is not supported by any critical analysis of the evidence. I give greater weight to the detailed and comprehensive drainage strategy set out by the hydrological consulting engineers.
31. There have evidently been problems with surface water flooding in the locality, with video footage shown at the inquiry by TAG of flooding from Furlong Green to Lambs Road. However, the above evidence indicates that the appeal proposal would not worsen the existing situation either at the site or elsewhere. As such, the absence of an agreed masterplan would not prejudice delivery of the wider site allocation in terms of flood risk and drainage.

Education

32. Under the terms of KDC6, a new school should be provided within the site allocation, if required, as part of a financial contribution towards education. If land is not needed, a contribution should be provided towards the expansion of existing schools. The consultation responses from the LEA make it clear that the need for school places is based upon ever shifting sands. In October 2017 there was anticipated to be a shortfall of 25 places, such that a financial contribution was required. This reduced to 17 places in May 2019, and the most recent revised calculation in December 2019 notes there would be sufficient surplus places to accommodate the development.
33. Notwithstanding the appellant's claim of excessive projected surplus, I am satisfied that the LEA methodology⁷ sets out a sensible and reasonable mechanism for reassessing actual need at the appropriate future stage, based on specific bedroom and school place analysis at that time. To this end, in

⁶ Flood Risk Assessment and Drainage Management Strategy (Phase 2) by Betts Hydro (Core Document 1.8)

⁷ LCC Education Contribution Methodology Infrastructure and Planning Annexe 2 (April 2019 revision)

terms of the financial contribution, a unilateral undertaking has been submitted, as summarised in my procedural paragraphs above, which makes provision for appropriate contribution in the event of the appeal being allowed.

34. Turning to the matter of reserving land for a new school, all parties agree that the most suitable location in the allocated site would be within Phase 3, should it be demonstrated to be required at the appropriate future stage. The LEA seek that the relevant land in Phase 3 be secured by the current planning obligation. This does not form part of the undertaking submitted and, in any case, such an obligation is unlikely to meet the CIL tests as the LEA methodology does not include a strategic approach. Furthermore, it is not within my remit in assessing this appeal for Phase 2 to determine the need for any new school arising as a result of future phases of the site allocation not subject to this appeal. Similarly, nor can I consider any potential use of the adjacent Joseph Kenyon Foundation Trust land or any extension to the adjacent Stannah Primary School.
35. WBC do not object on the basis of prejudice to delivery of the school site within Phase 3, and I see no evidence that approval of Phase 2 would prejudice potential future provision of land at a later stage, should it be required.

Highways

36. A new road from Skippool Road to Raikes Road is required by KDC2, unless demonstrated that the site could be accessed from the existing road network. Following submission of the appeal, Lancashire County Council as local highways authority (LHA) removed their objection to the proposal, based on provision of a secondary access to Phase 2 as well as off-site highway improvement works at Thornton Hall Mews which would be wholly contained within the highway boundary. TAG are also content in this respect, but raise concerns regarding traffic queues reaching Phase 1 from the Skippool roundabout. However, the evidence from the detailed and comprehensive Transport Assessment indicates that the appeal proposal will only generate one trip every three minutes, such that there would be no material impact on existing queues or on potential delays caused by construction of future improvement works on the Singleton by-pass or Skippool roundabout.
37. Whilst any change to the design of the access to the commenced Phase 1 is outwith the scope of this appeal, TAG are also concerned that the proposed access to Phase 2 would be a hazard being on the brow of the hill. However the submitted drawings confirm suitable visibility can be achieved, as agreed by both WBC and the LHA. TAG and third parties raise further concerns relating to the proposed access within the site, firstly, in terms of traffic flow resulting from the proposed shop and school, which children outside the area may also attend by car and, secondly, the characterisation and hierarchy of the access as a secondary route to that at Phase 1. However, I am satisfied that these are all matters that could be considered, and consulted on, at reserved matters stage, such that the absence of an agreed masterplan would not prejudice the wider site allocation as a result of access being obtained through Phase 2.

Design and landscape

38. The successful and organic integration of the allocated site with the surrounding landscape, and its impact on long distance views from the estuary, are stated by TAG as being best dealt with through a masterplanning process.

However, due to its location within the wider site allocation, Phase 2 will not be critical to the future rural fringe. Rather, the appeal site relates more immediately to the adjacent existing urban area.

39. From my observations in the locality, it is also unlikely that Phase 2 will be visible from the western side of the estuary due to intervening topography. Similarly, whilst the development may be visible from eastern sections of the Wyre Way, it remains the case that SA1/2 is an allocated site, such that development is anticipated in any case. Whether that development is prominent or particularly visible are matters of appearance and scale that are more appropriately reserved for a future application. Consequently, no prejudice to the wider site allocation would arise from the lack of a masterplan.

Housing mix

40. TAG consider that the best locations for affordable housing and housing for the elderly can only be addressed through a masterplan. However, there is no reason why provision of appropriate housing mix at the site could not be achieved by means of the submitted legal agreement and conditions. Given this appeal is in outline only, the layout and siting of such units is more appropriately reserved for future detailed applications. On that basis, I find that no prejudice is caused to the wider site allocation in terms of housing mix.

Planning obligation

41. A unilateral undertaking has been submitted, as summarised in my procedural paragraphs above. I have considered this obligation with respect to regulation 122 of the Community Infrastructure Levy Regulations (2010) and advice at paragraph 56 of the Framework. Were I minded to allow the appeal, I am satisfied that the obligation would accord with the regulations and meet the three tests; the provisions would be directly related to the development, reasonable in scale and kind, and necessary to make the development acceptable in planning terms, having regard to the above development plan policies, WBC's Infrastructure Delivery Plan, and the Framework.

Conclusion on main issue

42. I have found that the absence of an agreed masterplan would directly conflict with the development plan policy requirement for an agreed masterplan for the whole site allocation to be approved prior to the grant of planning permission for any part of the site. As such, the proposal would be prejudicial to the Framework's intention at paragraph 8 that the planning system should be genuinely plan-led. Furthermore, the absence of an agreed masterplan would prejudice overall delivery of the site allocation as envisaged by SA1/2, and as set out in PPG, in respect of green infrastructure and linkages. These conflicts are not outweighed by the lack of prejudicial harm from flood risk, drainage, education provision, highways, design and landscape, and housing mix.
43. Overall, I conclude that the absence of an agreed masterplan would prejudice delivery of the wider site allocation SA1/2 with regard to the policies of the development plan. Accordingly, the proposal would not comply with policies SP1, SP2, SP6, SP7, SP8, CDMP4, CDMP6, HP9, and SA1/2 of the WLP, Sections 2, 4, 8, 9, and 11 of the Framework, and the guidance in the PPG. Together these policies require development to accord with the requirements set out in paragraph 9 above, amongst other matters.

Planning balance

44. The main parties agree that the benefits of the proposal through the delivery of 30% affordable housing are significant. The proposal would also make an important contribution to WBC's overall housing supply, and the Framework's emphasis on the delivery of housing requires me to attach significant weight, notwithstanding that WBC can demonstrate a five year housing supply. The economic benefits from employment opportunities and increased spending in the supply chain attract moderate weight, whilst purported benefits from sustainable development in an accessible location, highway improvements, open space provision, new homes bonus, CIL, and council tax revenue would be required to mitigate the development and therefore attract neutral weight. As provision of linkages to the fixed Phase 1 cannot be secured, no weight can be attached. Even together, these benefits do not outweigh the conflict with the development plan and the prejudicial harm I have found.

Other matters

45. The Morecombe Bay SPA, SAC, Ramsar site, and SSSI are designated because they support internationally important populations of seabirds and wading birds, together with the habitats that support these birds. The proposal is not directly connected with or necessary to the management of the designations, and the appeal site is unlikely to support significant numbers of the SPA birds, due to its enclosure and proximity to built development. However, as I am dismissing the appeal on other grounds, it is not necessary for me to undertake an appropriate assessment.

46. It is clear that considerable delays to the determination of the application have occurred as a result of a number of issues remaining unresolved, however these delays would not outweigh my above findings. Whilst the appellant considers that removal of the unnecessary barrier caused by the masterplan requirement could potentially bring about earlier delivery of housing, for the reasons given I find the masterplanning process to be necessary and of greater weight. There may well be potential risks to delivery of other sites within the housing trajectory as a result of the marginal 5.18 year housing land supply, however WBC are only required to demonstrate a 5 year supply. Finally, the handling of the application by WBC is not within my jurisdiction, other than reasonableness of behaviour, covered separately in my costs decision.

Conclusion

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

Patrick Hanna

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Vincent Fraser QC, instructed by
Emery Planning for Wainhomes (North West) Ltd

He called:

Mr Stephen Harris BSc(Hons) MRTPI
Director, Emery Planning Partnership

The following person took part in the highways roundtable discussion:
Mr Amjid Kahn MSc BSc CEng MICE MCIHT
Director of Transport, WYG

FOR THE LOCAL PLANNING AUTHORITY

Mr John Hunter of Counsel, instructed by
Senior Solicitor, Wyre Borough Council

He called:

Mr Len Harris BA(Hons) DipUPI MRTPI
Senior Planning Policy Officer, Wyre Borough Council

Ms Lyndsey Hayes BA(Hons) MCD MRTPI
Development Manager, Wyre Borough Council

RULE 6 PARTY

Mr Howard Phillips	Thornton Action Group
Mr Philip Jenkins	Thornton Action Group

INTERESTED PARTIES

Mr Stevens	Lancashire County Council (Highways)
Ms Jill Anderson	Lancashire County Council (Legal)
Mr Ben Terry	Lancashire County Council (Education)
Ms Steph Rhodes	Lancashire County Council (Education)
Mr Colin Ingledew	Local resident
Mr Michael Powell	Local resident
Mr Wilkinson	Local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

IN1 Update to Scott Schedule
IN2 Appellant's opening statement
IN3 Wyre Borough Council's opening statement
IN4 A585 Windy Harbour to Skippool Improvement Scheme General Arrangement Plan (1 of 4) and extract (drawing no. HE548643-ARC-HGN-SZ_ZZ_000-DR-D-3056)

- IN5 Vertical visibility checks on Phase 2 proposed site access (drawing no. A105893-SK012)
- IN6 Extracts from Planning Practice Guidance (Design: process and tools) paragraphs 001 to 0023
- IN7 DePol Masterplanning Statement for Land South of Stalmine SA1/9
- IN8 Planning Inspectorate report on the Council's Annual Position Statement
- IN9 Email objecting to the appeal proposal from Anne Harwick, local resident
- IN10 Signed Unilateral Undertaking, dated 17 January 2020
- IN11 Wyre Borough Council's closing statement
- IN12 Rule 6 Party's closing statement
- IN13 Appellant's closing statement
- IN14 Costs application on behalf of Wainhomes (North West) Ltd
- IN15 Final update to Scott Schedule (submitted after close of inquiry)

In addition, video evidence was shown to the inquiry by the Thornton Action Group of surface water flooding in vicinity of Furlong Green/Lambs Road.