

Our reference ANDEG/SR

17 June 2010

South Lakelands District Council

Dear Sirs

**South Lakelands Core Strategy
Consultation on inspector's possible changes – ref: IPC2**

We act on behalf of Median Developments Limited (**Median**) in respect of the above matter.

Background

Turley Associates, on behalf of Median, submitted representations to the submission Core Strategy of the Council on 16 September 2009 (as clarified by their further letter of 14 October 2009). In summary, these representations submitted that the Core Strategy with specific reference to draft policy CS7.5 (Town Centre and Retail Strategy) was unsound principally, on the basis that the Strategy failed to make proper provision for the identified need in Kendal for additional convenience shopping floorspace.

Turley Associates appeared at the examination of the Core Strategy on 24 March in relation to town centre and retail issues.

Kendal Canal Head Area Action Plan

Policy CS2 of the submitted Core Strategy stated that the Council will aim to designate a regeneration area at the former Kendal Canal Head area to be delivered through the preparation of an AAP. The Council had already started work on the preparation of the AAP including public consultation on preferred options in April 2008. Paragraph 3.32 of the submitted Core Strategy set out the range of uses and issues that will be explored as part of that AAP. This did not include retail within the listed of potential uses.

On the morning of 24 March, the Council's Cabinet considered and approved a report from the Corporate Director (Communities) recommending that the Council agree:

- 1 to cease the intention to publish the Kendal Canal Head AAP on the basis of the current preferred options;
- 2 to the principle of undertaking a further round of preferred options consultation to the AAP, based on a thorough appraisal of a proposal by Gilkes/Signet Planning for the regeneration of the canal head area;
- 3 to a new timetable for the production of the Kendal Canal Head AAP as summarised in the report.

This decision of the Cabinet, taken on the morning of the examination into town centre and retail issues on the Core Strategy, withdrew the Council's current preferred option for the Canal Head AAP

10-1362794-3

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which comprised a mixed use development to regenerate the area, but excluded retail. Instead the Council resolved to undertake a thorough appraisal and further public consultation of the Gilkes/Signet Planning proposal which would include as part of the range of uses a substantial convenience goods food retail store(5,500sm (net)). The report to Cabinet (at paragraph 26) noted that technical appraisal would need to take place against the sustainability appraisal framework for the AAP and that the role of the sustainability appraisal and community engagement would be *"particularly important given how dismissive the AAP was of a retail led scheme in the development of the original preferred options"*.

It is understood that this re-appraisal of the approach of the draft AAP arose from the recent decision at the Rugby Club which did not place great credence on the Council's case that the significant convenience retail need could be met other than in Kendal and as a result of representations submitted by Gilkes after the formal consultation period on the AAP Preferred Options.

In addition, at the start of the examination session to discuss town centre and retail issues on 24 March, the Council produced suggested changes to the Core Strategy. These changes were threefold.

- 1 The first change suggested by the Council was the proposed incorporation of an additional bullet point at paragraph 3.32 of the Core Strategy to acknowledge the potential provision of appropriate scale retail as part of the canal head area regeneration.
- 2 The Council also proposed the incorporation of a clearer reference in Core Strategy retail policy CS7.5 to the support of convenience/comparison goods provision of an appropriate scale to support the vitality and viability of Kendal Town Centre.
- 3 The third suggested change was proposed wording to make clear that any application relating to the canal head area submitted prior to the adoption of the Kendal Canal Head AAP would be considered against the criteria in policy 3.32, the objectives of the emerging AAP and other elements of the Core Strategy and would not be refused on the grounds of prematurity.

At the examination session on 24 March, Turley Associates having become aware of these suggested changes for the first time submitted to the Inspector that the Council's proposed changes effectively created a retail allocation for the canal head area via the back door.

The Council's strategy was to try and secure this proposed change without any community engagement or consultation. However, following the comments of the inspector at the examination on 24 March that the proposed change is not a minor one and needs to be advertised and subject to public consultation the current consultation is now being undertaken.

On behalf of Median we object to the proposed change (left IPC2) Our grounds of objection include the following.

Lack of Evidence Base

It is clear that if adopted, the Council's proposed change would create an unequivocal policy indication that retail would be an acceptable land use as part of the canal head regeneration area. Such an approach however would be wholly inconsistent with the retail strategy on which the Council has relied to inform and justify its Core Strategy.

Section 20(5)(b) of the Planning and Compulsory Purchase Act 2004 requires the Inspector to determine inter alia whether the Core Strategy is sound. To be sound, the Core Strategy should be "justified, effective and consistent with national policy". PPS12 states that "justified" means the document must be "founded on a robust and credible evidence base". Further guidance is contained in The Local Development Frameworks Examining Development Plan Documents Soundness Guidance (August 2009) published by the Planning Inspectorate which states that the Inspector will expect convincing answers to a number of key questions as to whether the development plan document is justified. One of the key questions is whether the content of the DPD is justified by the evidence.

It is abundantly clear that if Core Strategy incorporates the proposed change it will fail the test of soundness on the basis that it is not justified by the Council's own evidence base for its Core Strategy retail strategy. This is further supported by the Council's own acknowledgement in the report to Cabinet of 24 March that any proposal for the canal head AAP incorporating retail would need to be subject to thorough appraisal and public consultation, given "how dismissive the AAP was of a retail led scheme in the development of the original preferred options".

Guidance on the making of post-submission changes by local planning authorities to development plan documents is contained in the PINS Guidance entitled "Local Development Frameworks Examining Development Plan Documents Procedure Guidance".

Paragraph 5.22 at page 23 sets out what is expected of the local planning authority in relation to the development plan document examination. Paragraph 5.22 states that "*the intention is that LPAs will not seek changes after submission because the front loading process should have considered the full range of options and policy approaches the LPA should only seek changes after submission in very exceptional circumstances (our underlining)*".

Paragraph 7 of the chapter entitled "Overview" further states that "*the 2004 Act specifically provides that a LPA must not submit the DPD unless it considers the document is ready for examination. Changes after submission by the LPA should be unnecessary and may be disregarded by the inspector unless there are exceptional reasons (our underlining) that justify them*".

The circumstances in which post-submission changes can be made to a development plan document are therefore extremely limited and are not justified in the present circumstances.

Paragraph 5.23 of the guidance advises that such changes should be subject to the same process of publicity and opportunity to make representations as the DPD. Paragraph 5.23 provides that "*if the change would alter the thrust of a policy, extend the range of development that a policy would apply to, delete a policy or introduce a new policy, two very important considerations need to be borne in mind*". The change suggested by the Council is evidently one which would alter the thrust of the Core Strategy's retail strategy and proposals for the canal head regeneration area.

Paragraph 5.23 then proceeds to explain these important considerations. One consideration is that the change must not undermine or possibly undermine the sustainability credentials of the plan. The proposed change would have this effect without further work being undertaken to establish an appropriate evidence base and sustainability appraisal to support the change.

No assessments of the impacts of the proposal in terms of traffic or air quality have been undertaken by the Council nor any evaluation of alternatives to demonstrate that the proposal is "the most appropriate given reasonable alternatives"(para 4.43 PPS 12).

PPS4

There has been a complete failure by the Council to provide a credible evidence base demonstrating that it has complied with the requirements of national policies in PPS4, to justify what is in effect a substantial retail allocation at the canal head site. There has been no assessment of the site in terms of its acceptability and suitability having regard to the sequential test, its accessibility and other factors set out in PPS4.

Transport

The transport impacts of the proposed change would be severely greater than the Canal Head development assumptions in Atkins' Kendal Transport Assessment Report (Commissioned by South Lakeland District Council to assess the transport impacts of the South Lakeland Core Strategy). This is based on a comparison with Signet Planning's representations on behalf of Gilkes, dated 23 November 2009.

Atkins' Transport Assessment assumes a development comprising: 541 dwellings and 14,228 sq. m. of employment area. Signet Planning describe a development mix of: 200 dwellings, 10,000 sq. m. of employment area, a hotel and 6,900 sq. m. food retail. This latter development mix which the change

to Policy CS2 would be promoting, would create a material increase in trip generations compared with that currently assessed in Atkins report.

The Kendal Transport Assessment identifies capacity issues at Bridge Street/ Aynam Road but does not suggest any junction improvements. Therefore, with the addition of trips that the retail element would generate and with no highways capacity solutions to locations such as Bridge Street/Aynam Road that would be directly affected by the Canal Head site development, the evidence base of the transport impacts is severely lacking and does not support this amendment to the South Lakeland Core Strategy.

More recently, a number of transport improvement measures have been presented by Signet Planning at the public consultation event and in their representations letter. However, the revised retail development mix and transport improvements have not been tested using the Kendal traffic model and so there is no evidence that these highways measures would address the significant increase in traffic flows the development would generate. More specifically, a new bridge is proposed across the River Kent, northeast of Bridge Street connecting into New Road. This would be a major highways structure to implement and one that would require extensive assessment. Such a structure would need to ensure no flood risk was created, that there would be no loss of amenity value to the river and that the structure would reflect the character of the area. Therefore, the proposal is made with no evidence of impact assessment or feasibility.

Furthermore, the Canal Head Site has poor pedestrian connectivity with Kendal town centre. This would be addressed by the new bridge according to Signet Planning's representations, but again, as highlighted above, evidence that the bridge is feasible or sufficient to address the issues has yet to be demonstrated.

Heritage

There are a number of heritage constraints relating to the canal head site and no evidence has been put forward to demonstrate that a substantial retail proposal is suitable or can be delivered in the light of these constraints. In particular:

- The canal head site is an important historic area within Kendal town.
- There are a number of buildings within the canal head area of particular architectural/historic interest. The site is within the setting of Kendal castle (a scheduled ancient monument).

Other Constraints

A key component of the proposed change for the canal head site is the relocation of the Gilkes manufacturing operation to the adjoining Townfield site. This site however is the subject of a current application to register a village green which would prevent this relocation. This is another clear uncertainty casting doubt on the deliverability of the canal head proposal incorporating the proposed change.

In conclusion Median objects to the proposed change (left IPC2) for the reasons set out in this letter. The lack of credible evidence base to support the proposed change and the failure of the Council to re-appraise the sustainability credentials of the Core Strategy means that the Core Strategy would be unsound without these necessary steps being undertaken. In addition to these fundamental errors, there are a number of reasons set out above why the proposed change should not be incorporated into the Core Strategy.

The third change proposed by the Council provides that any application submitted in advance of the adoption of the Canal Head AAP will be considered against the criteria of policy 3.32, the objectives of the AAP and other policies of the Core Strategy and will not be refused on grounds of prematurity.

The approach advocated by this change would effectively render the AAP superfluous and would be inconsistent with the Council's Local Development Scheme. Median also object to this suggested change notwithstanding it does not form part of the current consultation exercise.

Yours faithfully

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