

<b>Agenda Item</b> A5	<b>Committee Date</b> 26 June 2017	<b>Application Number</b> 17/00340/VCN
<b>Application Site</b> Land Rear Of Cemetery Back Lane Carnforth Lancashire		<b>Proposal</b> Outline application for 16 affordable residential units with associated access, drainage and landscaping arrangements (pursuant to the variation of condition 5 on the approved application 11/00668/OUT in relation to flood mitigation measures)
<b>Name of Applicant</b> Mr Graham Wallbank		<b>Name of Agent</b>
<b>Decision Target Date</b> 6 July 2017		<b>Reason For Delay</b> Not applicable
<b>Case Officer</b>		Mr Mark Potts
<b>Departure</b>		No
<b>Summary of Recommendation</b>		Refusal

## **1.0 The Site and its Surroundings**

- 1.1 The half hectare application site is situated at the north end of Back Lane close to its junction with Kellet Lane to the east side of Carnforth. To the northern boundary sits Carnforth Cemetery, to the east Back Lane, agricultural fields and M6 motorway. To the south and west are residential properties to Hard Knott Rise and Fairfield Close which are separated by a belt of trees. The immediate surrounding area is predominantly residential with Back Lane forming the outer boundary of the residential area, becoming agricultural beyond it towards the villages of Over Kellet and Nether Kellet with the intersecting motorway running in a north south direction to the east. The commercial centre of Carnforth is only a short distance from the site as are local facilities such as supermarkets and schools. The site itself is roughly rectangular in shape approximately 100-120 metres in length, from Back Lane to the rear of the site, and 40 metres wide. The land is predominantly scrubland with a number of significant trees along its perimeters, although there are none of any notable significance within the site.
- 1.2 Although overgrown and barely visible within the site, a watercourse/drainage dyke runs adjacent to the northern boundary of the site parallel to the cemetery to the north. The dyke enters the site in the form of two streams, one from Back Lane to the east boundary and the other from the rear of Hard Knott Rise to the southern boundary. It then exits the site at the west boundary at the southern corner of Fairfield Close adjacent to property no.14 and enters a culvert which crosses beneath Fairfield Close travelling northwards and under Kellet Close, visible again at the funeral parlour which sits along the north side of the lane. The dyke then follows the east boundary of the 'Carnforth Hub' (Children's Centre) and leading to Carnforth High School playing fields to the north.
- 1.5 The site is allocated as Urban Greenspace under the saved policies of the Local Plan and is within Flood Zone 2 and 3, and 60% of the site is covered by a mineral safeguarding zone.

## **2.0 The Proposal**

- 2.1 The application proposes to vary condition 5 of the outline planning consent to remove the requirement for the development to provide for a new by-pass culvert which would link the site to the north of Kellet Road. The purpose of the culvert is to supplement the existing culvert, and would

provide mitigation for the loss of flood storage resulting from the proposed development. Instead the applicant have proposed an alternative on-site flood storage scheme with no culvert.

The current condition reads as follows;

*“The development hereby approved shall not commence until a scheme showing hydraulic and construction details of the proposed new culvert linking the site to the downstream outlet north of Kellet Road together with flood risk reduction measures described in the application and the Flood Risk Assessment has been submitted to and approved in writing by the local planning authority. The culvert and associated works and measures shall be constructed and completed in full, in accordance with the scheme so approved, in advance of any other works associated with the proposed development. The approved works shall be retained in operational condition thereafter”.*

The applicant seeks to amend the condition as per the below;

*“The development hereby approved shall not commence until a scheme showing details of the proposed flood risk reduction measures described in the following documents has been submitted to and approved in writing by the local planning authority;*

- *Updated Flood Risk Assessment Section 6.4 ‘Report in response to and discharge of condition 5, the planning inspectorate appeal decision dated 10<sup>th</sup> January 2013 of the approved reserved matters application 15/00160/REM dated 7<sup>th</sup> April 2016; as updated by the following documents;*
- *Drawing 14.B.10487/2 Rev B Proposed Drainage;*
- *Drawing 14.B.10487/1 Rev 1 As Existing;*
- *Calculations: Proposed Flood Storage Volumes;*
- *Calculations: Storm sewer design: Micro Drainage.*

*The works shall be completed in sequence so that there is no detriment to the existing protection of the upstream and downstream properties. The sequence shall be submitted to and approved in writing by the Local Planning Authority. The approved works shall be retained in operational condition thereafter”.*

### **3.0 Site History**

3.1 The below applications are relevant in the determination of this planning application

<b>Application Number</b>	<b>Proposal</b>	<b>Decision</b>
<b>15/01630/REM</b>	Reserved matters application for 14 affordable residential units with associated access, drainage and landscaping arrangements	Approved
<b>11/00668/OUT</b>	Outline application for 16 affordable residential units with associated access, drainage and landscaping arrangements	Granted on appeal

### **4.0 Consultation Responses**

4.1 The following responses have been received from statutory and non-statutory consultees:

<b>Consultee</b>	<b>Response</b>
<b>Environment Agency</b>	<b>Objection.</b> The by-pass culvert to be constructed prior to the commencement of the development remains an essential condition to minimise flood risk. Removal of the need for the bypass culvert would increase flood risk to the site and surrounding area.
<b>Lead Local Flood Authority</b>	<b>No Objection</b> to the applicant’s proposed wording of the condition.
<b>Carnforth Town Council</b>	<b>Objection,</b> as they are unsure as to whether the flood prevention methods are acceptable.

## **5.0 Neighbour Representations**

5.1 The application has been advertised in the press and by site notice. To date there has been 3 letters of objection (from the same individual), and a further objection letter from the RG Parkins drainage consultants.

The objections relate to concerns that the amendments to condition 5 would result in flooding elsewhere, and that the condition was imposed to protect off-site properties. They advise that there should be modelling of the proposed site levels and climate change models, scope and maintenance for the maintenance programmes for the main river and below ground storage. Lack of confidence that the scheme as proposed could work given that flooding has already occurred in recent years.

## **6.0 Principal National and Development Plan Policies**

### **6.1 National Planning Policy Framework**

The National Planning Policy Framework indicates that the purpose of the planning system is to contribute to the achievement of sustainable development. At the heart of the NPPF is a presumption in favour of sustainable development (**Paragraph 14**). The following paragraphs of the NPPF are relevant to the determination of this proposal:

Paragraph **17** – The 12 core land-use planning principles  
Paragraph **49** and **50** - Housing  
Paragraphs **56, 58** and **60** - Good Design  
Paragraphs **100 – 103** – Flooding

### **6.2 Local Planning Policy Overview – Current Position**

At the 14 December 2016 meeting of its Full Council, the local authority resolved to undertake public consultation on:

- (i) The Strategic Policies and Land Allocations Development Plan Document (DPD); and,
- (ii) A Review of the Development Management DPD.

This enabled progress to be made on the preparation of a Local Plan for the Lancaster District. Public consultation took place from 27 January 2017 to 24 March 2017. Whilst the consultation responses are currently being fully considered, the local authority remains in a position to make swift progress in moving towards the latter stages of: reviewing the draft documents to take account of consultation outcomes, formal publication and submission to Government, and, then independent Examination of the Local Plan. If an Inspector finds that the submitted DPDs have been soundly prepared they may be adopted by the Council, potentially in 2018.

The **Strategic Policies and Land Allocations DPD** will replace the remaining policies of the Lancaster District Core Strategy (2008) and the residual 'saved' land allocation policies from the 2004 District Local Plan. Following the Council resolution in December 2016, it is considered that the Strategic Policies and Land Allocations DPD is a material consideration in decision-making, although with limited weight. The weight attributed to this DPD will increase as the plan's preparation progresses through the stages described above.

The **Review of the Development Management DPD** updates the policies that are contained within the current document, which was adopted in December 2014. As it is part of the development plan the current document is already material in terms of decision-making. Where any policies in the draft 'Review' document are different from those adopted in 2014, and those policies materially affect the consideration of the planning application, then these will be taken into account during decision-making, although again with limited weight. The weight attributed to the revised policies in the 'Review' will increase as the plan's preparation progresses through the stages described above.

### **6.3 Development Management DPD**

Policy **DM25** Green spaces and green corridors  
Policy **DM27** Biodiversity  
Policy **DM28** Landscaping impact

Policy **DM29** Protection of trees, hedgerows and woodland  
Policy **DM35** Key design principles  
Policy **DM36** Sustainable Design  
Policy **DM38** Development and Flood Risk  
Policy **DM39** Surface Water Run Off  
Policy **DM40** Protecting Water Run-Off and Sustainable Drainage  
Policy **DM41** New residential dwellings

#### 6.4 Lancaster District Core Strategy

Policy **SC1** Sustainable development  
Policy **SC5** Achieving quality in design

#### 6.5 Lancaster Local Plan

Policy **E29** Urban Greenspace

#### 6.6 Joint Lancashire Minerals and Waste Local Plan

Policy **M2** Mineral Safeguarding

### **7.0 Comment and Analysis**

7.1 The principal concern is whether the variation to condition 5 would increase the likelihood of flooding for existing and future residents.

7.1.2 The original application was refused by the local planning authority but was subsequently allowed on appeal by the Planning Inspectorate in January 2013. This permitted the erection of 16 affordable dwellings. The Local Planning Authority refusal was on the basis that the site was situated in Flood Zone 3b, and that the 'Sequential Test' – to consider the availability of other sites at a lower risk of flooding - had not been passed. The Planning Inspectorate took the view that a solution could be found to limit any flood disturbance to properties (by including the proposed condition the applicant is seeking to vary), and therefore approved the scheme in outline form, with only the point of access being approved in detail.

7.1.2 In 2016 an application for reserved matters (permission 15/01630/REM) was approved subject to a number of planning conditions. There are conditions associated with the outline planning permission which address issues of flood risk and surface water drainage. At the request of the Environment Agency (EA) and Lead Local Flood Authority (LLFA), conditions were attached to the reserved matters consent to enable them to remove their objection. It should be noted that the details of the flood risk measures have yet to be submitted to, and approved/discharged by the Local Planning Authority.

#### 7.2 Flood Risk and Drainage

7.2.1 The site does lie within Flood Zone 3b, which puts it at a high risk of flooding, and these are areas that are deemed to be the most at risk of flooding from rivers or the sea. The LLFA raise no objection to the development, subject to it being carried out in accordance with proposed condition outlined by the applicant. The Environment Agency however object to the scheme; they maintain that the bypass culvert is essential and was previously agreed as part of the original outline consent to enable the EA to support the application. It should be recognised that the stream that runs through the site is classified as a main river and therefore falls within the remit of the EA, as opposed to the LLFA.

7.2.2 The Inspectors decision states (our emphasis in bold);

*I conclude, therefore, on the main issue, that the lack of conformity with the Sequential Test is outweighed by the significant benefits of the proposal in terms of reducing flood risk to existing properties and wider sustainability benefits. **This conclusion is contingent upon the imposition of Grampian condition, to ensure that the proposed new culvert is provided in advance of the remainder of the scheme. On that basis, the proposal would represent an acceptable***

***development, having regard to its location within a Flood Zone and the provisions of the CS and national policy.***

It is clear that significant weight was attached to the provision of a culvert and whilst the LLFA are amenable to the applicant's proposals, given the objection from the EA, officers recommend that the variation cannot be supported with any degree of confidence without the support of this important statutory consultee.

- 7.2.3 The applicant maintains that condition 5 of the outline permission has been superseded by the approval of the reserved matters consent, whereby the following conditions were imposed on the reserved matters consent at the request of the EA:

*Condition 6*

*The development hereby approved shall be constructed in accordance with the mitigation measures contained within the approved Flood Risk Assessment including the provision of a permanent flood defence structure (wall) either side of the headwall on the west boundary with Fairfield Close estate.*

*Condition 7*

*Finished floor levels should be set no lower than 27.2 m above Ordnance Datum (AOD).*

It should be recognised that the EA did request that condition 5 (which the applicant is seeking to amend) was imposed (for clarity purposes) on the reserved matters consent, however this would have resulted in the duplication of planning conditions (the same condition on the outline and reserved matters) which officers considered at that time was not necessary. The outline permission remains the planning permission. Officers considered that condition 5 would still continue to be in force, and continue to share this belief. The applicant considers that the EA are seeking unreasonable requirements which are far in excess of the measures that should be required.

- 7.2.4 As mentioned above there is no need to duplicate conditions on the outline and reserved matters consent, and the scheme detailing the provision of the culvert and its subsequent implementation still needs to occur which is required by condition 5 of the outline consent. This has not been superseded by the approval of the reserved matters, as this was fundamental to the scheme being granted planning permission in the first instance. It is clear that the Inspector attached great weight to the culvert being installed as part of the consideration of the planning appeal. The applicant did liaise with the LLFA at pre-application stage regarding this application in relation to on-site storage of water and these discussions have proved fruitful given that no objection has been received from the LLFA. But, as noted earlier in this report the stream that crosses the site is a main river and is therefore within the remit of the EA.

- 7.2.5 Given there is an objection from the EA in terms of potential increase in on and off-site flooding, should Members wish to support the application, under the Town and Country Planning (Consultation) (England) Direction 2009 there would be a need to formally consult the Secretary of State before any planning permission could be granted.

## **8.0 Planning Obligations**

- 8.1 Not applicable in the determination of this planning application.

## **9.0 Conclusions**

- 9.1 The scheme provides for 100% affordable housing, and therefore following the original appeal decision the local planning authority are keen to support the development of this site. However this cannot be at the risk that future flooding may occur. The site falls within Flood Zone 3b, and without the benefit of the condition and in particular the retention of the need for the culvert then it is considered that the development would create an unacceptable threat to existing and proposed dwellings from flooding. The modification to condition 5 of planning permission 11/00668/OUT would give rise to an increased risk of flooding and therefore fails to conform to Policies DM38 and DM39 of the Development Management DPD, Core Strategy Policy SC1 and Paragraphs 17 and 103 of National Planning Policy Framework. Members are therefore advised that the application should not be supported.

## **Recommendation**

That the variation to Condition 5 of Planning Permission 11/00668/OUT **BE REFUSED** for the following reason:

1. Without the benefit of the by-pass culvert, which was previously considered necessary to allow for the scheme to be approved, it is considered there would be an increased risk of flooding, and therefore the application fails to conform to Policies DM38 and DM39 of the Development Management DPD, Policy SC1 of the Core Strategy, and Paragraphs 17 and 103 of National Planning Policy Framework.

## **Article 35, Town and Country Planning (Development Management Procedure) (England) Order 2015**

In accordance with the above legislation, the City Council can confirm the following:

Lancaster City Council takes a positive and proactive approach to development proposals, in the interests of delivering sustainable development. As part of this approach the Council offers a pre-application service, aimed at positively influencing development proposals. Regrettably the applicant has failed to take advantage of this service and the resulting proposal is unacceptable for the reasons prescribed in the Notice. The applicant is encouraged to utilise the pre-application service prior to the submission of any future planning applications, in order to engage with the local planning authority to attempt to resolve the reasons for refusal.

## **Background Papers**

None.