

Agenda Item	A9
Application Number	23/00375/FUL
Proposal	Demolition of existing agricultural buildings and erection of 9 dwellings with access, parking, the raising of site levels and construction of retaining wall
Application site	Land And Buildings South Of Number 52 Low Road Middleton Lancashire
Applicant	Mr M Gulzar
Agent	HPA Chartered Architects
Case Officer	Mrs Petra Williams
Departure	No
Summary of Recommendation	Refusal

(i) **Procedural Matters**

A previous planning application (Ref: 21/00864/FUL) proposed the demolition of the existing farm buildings and the erection of nine dwellings. The scheme was presented to Planning Committee and was refused in November 2022. Given this application history, and the issues that are involved, the Development Management Service Manager considers that the application merits Committee determination again.

1.0 Application Site and Setting

- 1.1 The site that forms the subject of this application is land adjacent to Low Road in the village of Middleton and contains a group of modern agricultural buildings. There are no farm operations taking place from the site and many of the buildings are in a poor state of repair. The land slopes downwards away from the highway and is significantly lower at the rear of the site, to the east. The majority of the site is hard surfaced.
- 1.2 To the north, south and west of the site are residential properties which are a mix of bungalows and two storey buildings and to the east are agricultural fields. The site extends further to the east than the rear boundaries of the adjacent residential properties and behind the rear of Woodburn Farm, the dwelling to the north. The properties on the opposite site of Low Road, to the west, are at a higher level.
- 1.3 Most of the site is located within flood zone 3a. The site is located within the Open Countryside, as identified on the Local Plan Proposals Map. The Lune Estuary is approximately 800 metres to the southeast and is designated as a Site of Special Scientific Interest. It is also covered by the Morecambe Bay Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site.

2.0 Proposal

- 2.1 The application proposes the demolition of existing agricultural buildings and erection of 9 dwellings with access, parking, the raising of site levels and construction of retaining wall.
- 2.2 The 9 two-storey units as proposed comprise the following mix:
- Plots 1 and 5 – detached 4-bed
 - Plots 4, 6 and 7 - detached 4-bed
 - Plots 2, 3, 8 and 9 – semi-detached 3-bed
- 2.3 Each property is provided with dedicated off-road parking in accordance with the maximum standards as set out within appendix E of the DM DPD document.
- 2.4 The 9 properties all benefit from private amenity space which generally comprises grassed rear gardens with a small amount of patio also provided. Externally, the properties will be finished with a mix of the following materials:
- Elevations - Ivory render and coursed stone
 - Windows – Grey upvc double glazed units
 - Roof treatment - Grey tiles
 - Boundary treatment - Timber hit & miss fencing max. 1800mm high and rendered retaining walls to match housing.
- 2.5 The site levels will be raised by a maximum of 1.1 metres and retaining walls installed to the rear of properties on the eastern boundary.

3.0 Site History

- 3.1 Two relevant applications relating to this site has previously been received by the Local Planning Authority. The most recent application (21/00864/FUL) was refused on the following grounds:
1. The proposal would result in the provision of residential development within flood zones 2 and 3. In the opinion of the Local Planning Authority, the submission does not satisfy the requirements of the Sequential Test or Exception Test. As such, the proposal represents an unacceptable form of development, classified as more vulnerable to flood risk within an area defined as having a high probability of flooding. The proposal therefore conflicts with the requirements of policy DM33 of the Review of the Development Management DPD and Section 14 of the National Planning Policy Framework.
 2. The site is not within an identified sustainable rural settlement and fails to demonstrate how the proposal will meet a locally identified housing need. There is not considered to be any special circumstances, in this instance, to justify new dwellings in this location. The proposal is therefore contrary to the aims and objectives of the Policy SP2 of the Strategic Policies and Land Allocations DPD and Policies DM4 and DM60 of the Review of the Development Management DPD and the National Planning Policy Framework, in particular section 5.
 3. The application fails to detail the way in which the development can be sustainably drained in accordance with the surface water drainage hierarchy. It has not been conclusively demonstrated that a satisfactory arrangement for disposing of surface water can be achieved and consequently a risk of flooding would remain. The proposal therefore conflicts with the requirements of Policy DM34 of the Review of the Development Management DPD and Section 14 of the National Planning Policy Framework.

Application Number	Proposal	Decision
21/00864/FUL	Demolition of existing agricultural buildings and erection of 9 dwellings with access, parking, the raising of site levels and construction of retaining wall.	Refused
15/00238/OUT	Outline application for the demolition of existing farm buildings and erection of 9 dwellings.	Permitted

4.0 Consultation Responses

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

Consultee	Response
County Highways	No objections but states that should this site be put forward for adoption there are concerns regarding the lack of continuous footway around the site, the nature of the driveway accesses the size of the garages and the general layout.
Housing Strategy Officer	Neither supports or objects - Middleton is not considered a sustainable settlement and falls within the category of a Rural Village within the settlement hierarchy in policy SP2. The policy states that these settlements will accommodate development that meets evidenced local needs only. The evidence within the Strategic Housing Market Assessment (SHMA) does not indicate a need for new dwellings on this site or within Middleton itself.
Engineers	Objection - Flood Risk associated with the proposed development, including the effect of the development on existing drainage systems, has not been properly considered.
Environment Agency	No objections -Development should be carried out in accordance with the submitted Flood Risk Assessment. It is for the LPA to consider whether or not the Sequential Test has been passed.
Environmental Health	No objections - subject to a condition for a detailed scheme for the investigation of any contamination.
United Utilities	The plans are not acceptable to United Utilities because flood risk from all sources have not been considered. Requests details of finished floor levels and ground levels. This information is required so that any risk of sewer surcharge can be further assessed.
Tree Officer	No objections – Trees are not a barrier to this development
Natural England	No objections – Subject to condition for the provision of Homeowner Packs.
Waste and Recycling	No objections
Fire Safety Officer	Advice
Middleton Parish Council	No comments received

4.2 The following responses have been received from members of the public:

Two letters of objection which raise the following concerns:

- Flooding – surface water runs from south to north along Low Road, meeting water from Hall Drive with water then north to south along Low Road. The quantity of water that collects at the top of the lane requires me to have permanent sand bags at the front door.
- Unnecessary housing.
- Damage to wildlife living upon this land/area.
- Will obstruct views
- Increased parking pressures.
- Noise and disturbance during construction

5.0 Analysis

5.1 The key considerations in the assessment of this application are:

- Principle of residential development in Middleton
- Flooding and Drainage
- Residential amenity
- Design and Impact on the character of the area
- Access and highway impacts
- Impact on trees and hedgerows
- Ecological Impacts
- Contaminated land

5.2 **Principle of residential development in Middleton:** NPPF paragraphs: 7 – 12 (Achieving Sustainable Development), and 60-61 and 73-79 (Delivering a Sufficient Supply of Homes); Strategic Policies and Land Allocations (SPLA) DPD Policies SP1 (Presumption in Favour of Sustainable Development), SP2 (Lancaster District Settlement Hierarchy), SP3 (Development

Strategy for Lancaster District), SP6 (The Delivery of New Homes), H2 (Housing Delivery in Rural Areas of the District); Development Management (DM) DPD Policies DM1 (New Residential Development and Meeting Housing Needs), DM4 (Residential Development Outside Main Urban Areas)

- 5.2.1 The Local Plan requires development proposals to accord with the Councils identified settlement hierarchy set out in Policy SP2. Development outside of the main urban centres should preferentially be directed towards the identified rural settlements.
- 5.2.2 Middleton is a small rural village located to the south of Heysham, which is no longer identified as a sustainable rural settlement through policy SP2 of the SPLA DPD, but as a 'Rural Village' covering all other settlements that did not achieve the criteria to be considered sustainable settlements as part of the Strategic Housing Land Availability Assessment (SHLAA). Policy DM4 stipulates that proposals for new housing in such settlements, which have not been identified as sustainable settlements, will only be supported if it can be demonstrated that the development will enhance the vitality of the local community and meet an identified and specific local housing need. Proposals lacking sufficient justification will be considered using the Rural Exceptions Sites criteria set out in Policy DM5 of the DPD. The site is not an allocated site through the local plan listed within SPLA DPD policy H2 for housing delivery in rural areas of the district, but has been identified in the SHLAA in 2018 as a deliverable site for 9 dwellinghouses. It is worth noting that the site is considered deliverable in the SHLAA due to a previous outline permission (15/00238/OUT) which has now lapsed without the submission of a reserved matters application. As such there is no fallback position.
- 5.2.3 The current submission argues that Middleton's Sustainable Settlement designation needs to be reconsidered. The submitted Supporting Statement seeks to highlight the sustainable credentials of Middleton and points to the fact that Middleton lies within the catchment area for Overton Primary School and together, the two villages are large enough to sustain one school. Furthermore, there is a daily minibus service provided by Lancashire County Council between Middleton and Overton to allow primary school children to be transported safely from Middleton to school, and vice-versa at the end of the school day. The Supporting Statement goes on to highlight the regular bus service which provides transport to and from secondary schools in Lancaster. The Statement goes on to point out improved broadband services in Middleton and that there is also a Village Hall and a community run pub. Middleton is close to sources of employment at Heysham Business Park which is approximately 1.16 km from the application site.
- 5.2.4 In preparing the Local Plan the Council undertook a Sustainable Settlements Review in 2018. The purpose of the Review was to inform the Settlement Hierarchy set out in Policy SP2 of the Strategic Policies & Land Allocations DPD and assisting the identification of a number of 'Sustainable Settlements' which should be the focus for future residential growth through the life-time of the Plan. The Review was comprehensive and considered a wide range of factors to judge the sustainability of a settlement. This included the access to services (both within the settlement itself or located in nearby settlements which have good connectivity by public transport), the accessibility to public transport, population and demographics and links to employment.
- 5.2.5 In the context of Middleton, Chapter 15 of the Settlement Review is key and an extract of its conclusions is set out below:

'Middleton only contains two 'key' services, an active bus stop and a public house. In order for a settlement to be considered sustainable within this Review, a settlement is required to contain a Primary School and an Active Public Bus Stop. However, there is no Primary School. The presence of a bus service opens up the ability of residents to access services, facilities and employment opportunities outside the settlement itself. Within an 800m walking radius there are no further services/facilities which are accessible, and cycle routes are only possible to the south, and not north to the Sub Regional Centres of Heysham and Morecambe. Residents are therefore very reliant upon this bus service. Therefore, Middleton is not considered to be sustainable settlement, to become a focus for growth outside a main urban area. Predominantly due to the absence of 'key' services within the settlement itself.'

Clearly the 2018 Review is an assessment at a point in time. The Sustainable Settlement Review will be updated in the future at which point it will be updated to reflect any changes in terms of the considerations of the Review (referred to in paragraph 5.2.4).

- 5.2.6 Applications for development in rural villages must demonstrate how the proposal will meet locally identified housing need (specific to the village or parish where the site is located) for market housing, affordable housing and community needs. The Councils Meeting Housing Needs SPD at section 7.6 onwards provides specific guidance as to what proposals in rural villages need to address. Such proposals need to demonstrate how the proposal will meet locally identified housing need (specific to the village or parish where the site is located) for market housing, affordable housing and community needs. The proposals must demonstrate how the number, type, size and tenure of housing will meet the needs identified in a village or parish or meet a proven local need, such as affordable housing or targeted market housing identified in an adopted Neighbourhood Plan.
- 5.2.7 The scheme provides an opportunity to clear the site of dilapidated land and buildings and the application describes the site as “brownfield” i.e., previously developed land. However, the NPPF is very clear that land that is or was last occupied by agricultural buildings is not defined as previously developed. The submission proposes 9 open market houses but has failed to evidence how this will meet a locally identified housing need in accordance with policy SP2 of the SPLA DPD and policies DM4 and DM5 of the DMDPD.
- 5.2.8 The NPPF was revised in July 2021 but at its core, the objective to ‘significantly boost’ the supply of homes remains and is reflected in paragraph 60 of the framework. It is acknowledged that the Council cannot currently demonstrate a five-year supply of deliverable housing sites and this can only be addressed by the approval of more residential proposals and the identification of further supply through the Land Allocations process. The most up to date housing land supply position for the council is contained within the 2021 Housing Land Supply Statement (September 2021) which identifies a 2.1-year supply of housing land. The council’s lack of a five-year housing land supply is a material consideration in the determination of this application and also requires the application of the presumption in favour of sustainable development as set out in paragraph 11 of the NPPF. This means applying a tilted balance in favour of proposals for housing development and granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. As this requires consideration of all the impacts of the development, this will be fully considered within the next section of this report and the conclusion.
- 5.3 **Flooding and drainage: NPPF paragraphs: 159-165, 167 and 169 (Planning and Flood Risk); Development Management (DM) DPD Policies DM33 (Development and Flood Risk), DM34 (Surface Water Run-off and Sustainable Drainage) and DM35 (Water Supply and Waste Water).**
- 5.3.1 The majority of the site is located within Flood Zone 3 which is defined as having a high probability of flooding in the National Planning Practice Guidance. Given the location of the proposed residential development, within Flood Zone 3, a Sequential Test is required to assess whether more appropriate locations exist which are in areas which are at lower risk from flooding. The need for and importance of the Sequential Test is set out in paragraph 162 of the National Planning Policy Framework (NPPF) which states that *‘The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development with a lower probability of flooding.’*
- 5.3.2 The NPPG in paragraph 23 sets out that avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures such as flood defences, flood warnings and property level resilience features. Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. The absence of a 5-year land supply is not a relevant consideration for the sequential test for individual applications.
- 5.3.3 If it is not possible for the development to be located in zones with a lower probability of flooding, the Exception Test should be applied. For this to be passed, it must be demonstrated that: the development provides wider sustainability benefits to the community that outweigh flood risk; and that it will be safe for its lifetime taking account of the vulnerability of its users, without increasing use elsewhere, and, where possible, will reduce flood risk overall.

- 5.3.4 The applicant has submitted a Flood Risk Assessment which includes a Sequential Test. In order to assess this, the local planning authority needs to consider the scope of the test. Paragraph 27 of the NPPG states that ‘the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed.’ The type of development proposed is residential which, if permitted, would assist in meeting market housing needs within the district. The most relevant and recent evidence on market housing needs comes from the Council’s Strategic Market Housing Assessment (SHMA) which was published in 2018. The SHMA addresses housing needs / requirements on a district-wide basis and does not focus on housing needs for specific settlements, wards or parishes. As a result, the housing need for Middleton village is not known and no evidence has been provided by the applicant to evidence the level of specific local need. Given that the evidence for housing need is district-wide, the only consistent approach to take when determining a catchment area for the Sequential Test is to consider the availability of housing sites on a district-wide basis and not to purely concentrate on the availability of sites within the immediate vicinity of Middleton.
- 5.3.5 The submitted Sequential Test (ST) states that a District wide search was undertaken using the Strategic Housing and Employment Land Availability Assessment (SHELAA) 2018 of which a total of 80 sites were reviewed. The ST sets out 65 sites where allocated as housing, whilst the remaining 15 sites are considered for either employment or housing, all deliverable within 1-5 years and to be considered developable within the short term. Of the 80 sites 47 were considered to be greenfield sites and are therefore not sequentially preferable over brownfield sites (which the submission wrongly states that the application site is) and where therefore discounted from the sequential test on this basis. Out of the remaining 33 sites, the ST then goes on to eliminate the sites that cannot accommodate approximately 50% of the application site and therefore discounts 29 sites, leaving 4 remaining sites for consideration. Of these sites two are also within Flood Zone 3 and two are already developed.
- 5.3.6 The Sequential Test is obviously flawed as it refers to the site as “brownfield” but notwithstanding that given that there are many locations within the District which are on land outside Flood Zones 2 and 3, it is considered unlikely that there would not be reasonably available sites elsewhere at a lower risk of flooding which could accommodate the proposed development. It is therefore unlikely that the proposal could pass the Sequential Test even if a more appropriate assessment was submitted. Residential development is therefore considered to be unacceptable on this site.
- 5.3.7 The Environment Agency (EA) have raised no objection in principle to the proposed development but make it clear that it is for the local planning authority (not the EA) to determine whether or not the proposals satisfy the Sequential Test. They have only considered whether or not the proposals satisfy the requirements of the second part of the Exception Test. They have advised that finished floor levels should be 600mm above existing ground levels. The Flood Risk Assessment was revised during the course of the application to achieve this, to the satisfaction of the EA who have advised that the development would be safe without exacerbating flood risk elsewhere if the proposed flood risk mitigation measures are implemented.
- 5.3.8 Even if the LPA were to accept the findings of the Sequential Test, the Exception Test would then need to be applied. For the Exception Test to be passed, it must be demonstrated that: the development provides wider sustainability benefits to the community that outweigh flood risk; and that it will be safe for its lifetime taking account of the vulnerability of its users, without increasing use elsewhere, and, where possible, will reduce flood risk overall. The very term “exception” means that it is development beyond that which would normally be allowed. The applicant’s Exception Test sets out that the re-development of a brownfield site is considered sustainable development and argues that this satisfies the first part of the Exception Test. However, as highlighted in paragraph 5.2.7, this is not a brownfield site. It is therefore considered that it has not been demonstrated that the development would provide wider sustainability benefits to the community that outweigh flood risk. With regards to the second criteria of the Exception Test the submitted Flood Risk Assessment (FRA) has been considered by the Environment Agency (EA) who are satisfied in this regard as highlighted within paragraph 5.3.7. However, notwithstanding the EA comments, these matters are considered after the Sequential Test and only relate to one criteria of the Exception Test.
- 5.3.9 It is worth highlighting that within an area although the site is within an Area Benefitting from Defences (ABD), since the production of the submitted Flood Risk Assessment, the Environment

Agency have now removed this (ABD) dataset from the Flood Map for Planning portal. This is because the Environment Agency determined that it no longer meets customer needs and creates a false sense of security for users. Furthermore, a breach in these defences cannot be ruled out during harsh conditions as highlighted by Planning Inspectors appeal decisions.

5.3.10 As the proposed development is within Flood Zone 3 the drainage system needs to be able to work effectively under surcharged conditions to ensure that flood risk is not increased on site or elsewhere. The Council's Drainage Engineer has considered the revised Drainage Strategy which sets out that surface water is to discharge into an existing on-site culverted watercourse. However, the Drainage Engineer is of the view that the information provided does not adequately justify how surface water will be dealt with and could put the development at risk. Although the drainage strategy demonstrates a detailed proposal by which this site can be drained, insufficient information has been provided in relation to the culverted watercourse were all surface water runoff is being diverted to. Furthermore, the impact of raising the land within the site and the construction of retaining walls that intercept existing surface water flow routes have not been properly considered and could increase flood risk onsite and elsewhere and could also impact existing drainage systems in the area. In addition, drainage strategy does not take into account the latest climate change allowance factors. As such the Drainage Engineer has recommended refusal of the application. In order to overcome these concerns, the applicant would need to justify the surface water drainage proposals in accordance with planning policy DM34, in order to demonstrate that the development would not present a local flood risk to itself or neighbouring properties.

5.4 **Residential amenity:** NPPF paragraphs: 92 (Promoting Healthy and Safe Communities), 130 (Achieving Well-Designed Places), Development Management (DM) DPD Policies DM2 (Housing Standards), DM29 (Key Design Principles), and DM57 (Health and Well-Being).

5.4.1 In conjunction with paragraph 127 of the NPPF, policy DM29 requires all developments to ensure that they do not give rise to unacceptable impacts on amenity or overlooking through inappropriate massing, scaling or design. In addition, policy DM2, applicants are expected to design schemes in accordance with the Nationally Described Space Standards (NDSS), including sufficient built-in storage.

5.4.2 The application seeks consent for the erection nine dwellings. There are residential properties on either side of the site, and the opposite side of the Low Road. The submitted plans indicate a separation distance of at least 21 metres between the front walls of the existing dwellings fronting onto Low Road, and those proposed at the front of the site. These neighbouring properties are also at a higher level than the application site. The plan also demonstrates that an adequate separation distance can be achieved between the side walls of the dwellings to the north and south and the rear wall of Woodburn Farm. As such, it is considered that the proposal would be adequately accommodated on the site without having a detrimental impact on the amenities of the neighbouring residential properties. Overall, it is considered that the scheme would provide an acceptable standard of residential amenity for future occupants while not impacting unduly on existing residential neighbours.

5.5 **Design and Impact on the character of the area:** NPPF paragraphs: 126-134 (Achieving Well-Designed Places), 174 (Valued Landscapes and the Countryside); Strategic Policies and Land Allocations (SPLA) DPD Policy EN3 (The Open Countryside); Development Management (DM) DPD Policies DM29 (Key Design Principles) and DM46 (Development and Landscape Impact)

5.5.1 In conjunction with the NPPF, policy DM29 seeks to secure developments that contribute positively towards the identity and character of the areas in which they are proposed. Good design should respond to local distinctiveness. The NPPF also places an increased focus on good design through advocating 'beautiful' buildings and places to reside.

5.5.2 The layout shows three of the proposed two storey dwellings fronting Low Road with six to the rear, accessed via a new internal road. It is considered that the dwellings would be adequately accommodated within the site with sufficient garden space and separation distances between the proposed dwellings. The buildings have been shown with two storeys. There is a mix of bungalows and two storey properties in the vicinity of the site. The dwellings on the opposite side of the highway are at a higher level, and the adjacent dwelling to the north is two storey. As such the scale of the proposal is considered to be acceptable. The development will also result in the removal of several

derelict buildings and should improve the overall appearance of the site. The development would extend further to the east than the adjacent residential properties, but this is not considered to have an adverse impact on the character or appearance of the area.

5.5.3 Plots 1, 8 and 9 would present a frontage to Low Road. Plots 2 and 3 orientated to face onto the courtyard area within the site. The site levels will be raised to improve the access and highway safety at the junction with Low Road. This requires the installation of retaining walls to the rear of properties on the eastern boundary (plots 1-7) where land levels will be increased by approximately 1.1 metres. Level access will be achieved from the internal ground floor out to the rear patio with steps down to the main garden level.

5.5.4 Externally, the development will comprise ivory render and coursed stone with grey framed windows under grey tiled roofs. This is considered appropriate and acceptable in the context of the site. Boundary treatments between gardens will be formed by timber fencing to a maximum height of 1800mm and retaining walls will be rendered to match the dwellings. Proposed surface treatments will be a combination of gravel for the driveways, block paved shared surfacing and tarmac.

5.6 **Access and highway impacts:** NPPF paragraphs: 104-106 and 110-113 (Promoting Sustainable Transport); Development Management (DM) DPD Policies DM29 (Key design principles), DM60 (Enhancing Accessibility and Transport Linkages); DM61 (Walking and Cycling); DM62 (Vehicle Parking Provision)

5.6.1 From a National Planning Policy perspective, paragraph 108 of the NPPF advises that where appropriate, schemes should secure safe and suitable access to the public highway for all applicable users. The NPPF further advises that sustainable transport modes should, where possible and relevant, be taken up and encouraged although this will of course depend on the type of development and its location. This requirement is reflected in policy DM29 (Key Design Principles) which requires proposals to deliver suitable and safe access to the existing highway network whilst also promoting sustainable, non-car dominated travel. Policy DM62 requires parking to be provided in accordance with appendix E of the Development Management DPD. Appendix E sets out the number of car parking spaces required as a maximum. A 3-bed dwelling should have a maximum 2 off street parking spaces and a 4-bed dwelling should have a maximum of 3 spaces.

5.6.2 The site already benefits from an established point of access off Low Road. This would be altered to a width of 14 metres where it meets the highway with the internal road reducing to a width of approximately 4.5 metres into the site where it meets a "T" section approximately 6.6 metres wide to provide access to the properties within the to the eastern part of the site. A footway (approximately 2 metres wide) would be provided along the site frontage and 26 metres into the site. The County Highways consultee is not satisfied that the highway arrangement within the site would allow for vehicles to manoeuvre safely and as such has raised objections. The agent is currently in negotiations with County Highways in order to agree a satisfactory solution. Should a satisfactory highway layout not be received then officers reserve the right to include an additional reason for refusal.

5.6.3 Each dwelling would benefit from two external parking spaces and a garage. This is considered to be acceptable and provides an acceptable level of parking. No concerns regarding the parking provision have been raised by the Highway Authority. A scheme for the provision of electric vehicle charging points would be conditioned in the case of an approval.

5.7 **Impact on trees:** NPPF paragraphs: 174 and 180 (Conserving and enhancing the natural environment); Development Management (DM) DPD Policies DM45 (Protection of Trees, Hedgerows and Woodland) and DM46 (Development and Landscape Impact)

5.7.1 The submitted Arboricultural Impact Assessment (AIA) identifies four trees and one group around the perimeter of the site, of which only one (T1) requires felling to facilitate the development. T1 is a relatively young Sycamore which has established in an area of rough grass adjacent to the highway boundary is a prominent tree in the local street scene and its removal will accommodate a suitable access and visibility splay to the site. The Tree Officer is of the view that given the defect noted in the AIA, the loss of this tree is acceptable and can be compensated for. The remaining trees are all off site, with the AIA recommending a series of pruning works to T2 and G1, on health

and safety grounds. The tree protection measures are appropriate and designed to protect crowns as there is no rooting within the site.

- 5.7.2 The submitted plans show indicative planting and this would provide mitigation for the single tree removal required within the site and represent a significant increase in tree stock. Further detail is required to ascertain the species, number and size of trees as well as hedgerow composition. This could be conditioned in addition to a long-term maintenance plan to ensure landscaping is successful.
- 5.8 **Ecological Impacts:** NPPF paragraphs: 174 and 179-182 (Habitats and biodiversity); Strategic Policies and Land Allocations (SPLA) DPD policies: SP8 (Protecting the Natural Environment), Development Management (DM) DPD policies DM43 (Green Infrastructure), DM44 (Protection and Enhancement of Biodiversity NPPF paragraphs: 174 and 179-182)
- 5.8.1 The Lune Estuary is located approximately 800m to the south east and is designated as a Site of Special Scientific Interest. It is also covered by the Morecambe Bay Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site.
- 5.8.2 The site is separated from the designated area by intervening existing residential development and roads. As such, it is considered that there would be no direct impacts on the aforementioned designations. However, there is the potential for increased recreational pressure post development, although this is unlikely to be significant given the scale of the development. It is considered that this relatively small impact could be adequately mitigated through a requirement to produce and distribute a homeowner pack to future occupants, which could be controlled by a condition. As mitigation would be required, the Local Planning Authority is required to undertake an Appropriate Assessment, and this is contained in a separate document. This concludes that, with mitigation, it is considered that proposed development will have no adverse effects on the integrity of the designated site, its designation features or its conservation objectives, through either direct or indirect impacts either alone or in-combination with other plans and projects. Natural England have confirmed that the suggested mitigation in the form of homeowner packs is acceptable.
- 5.8.3 A bat, barn owl and nesting bird survey has been submitted with the application as the proposal involves the demolition of several buildings. This sets out that there was no past or current evidence of bats roosting found at the site during the survey and that the buildings are unlikely to be used by significant numbers of bats for roosting. As such, it is highly unlikely the buildings are essential for species survival. Precautionary mitigation has been advised. The report also sets out that there is a low potential for use of the site by barn owls. Whilst there are potential nest sites within the buildings, there is no indication of any type of past use. There is the potential for a disturbance to nesting birds during the construction phase, however, it is unlikely that the loss of potential nest sites would have significant long-term impacts on local bird populations as the habitat around the site is open and exposed and offers low quality foraging opportunities. A check of the site for active nest sites has been advised prior to work commencing if this is in the period of March to September. On this basis, it is considered that the development will not have a significant impact on protected species, provided that appropriate precautionary mitigation is implemented during construction.
- 5.8.4 A bat, barn owl and nesting bird survey has been submitted with the application as the proposal involves the demolition of several buildings. This sets out that there was no past or current evidence of bats roosting found at the site during the survey and that the buildings are unlikely to be used by significant numbers of bats for roosting. As such, it is highly unlikely the buildings are essential for species survival. Precautionary mitigation has been advised. The report also sets out that there is a low potential for use of the site by barn owls. Whilst there are potential nest sites within the buildings, there is no indication of any type of past use. There is the potential for a disturbance to nesting birds during the construction phase, however, it is unlikely that the loss of potential nest sites would have significant long-term impacts on local bird populations as the habitat around the site is open and exposed and offers low quality foraging opportunities. A check of the site for active nest sites has been advised prior to work commencing if this is in the period of March to September. On this basis, it is considered that the development will not have a significant impact on protected species, provided that appropriate precautionary mitigation is implemented during construction.
- 5.9 **Contaminated land:** NPPF: Chapter 8 paragraphs 92 and 98 (Promoting Healthy and Safe Communities), Chapter 12 (Achieving Well-Designed Places) paragraph 130 and paragraphs 183 –

- 5.9.1 The site has been previously used for agricultural activities. As such, there is the potential for contamination which could cause risks to future occupiers of the site. However, the nature and level is unlikely to be so significant to prevent the development being carried out. A preliminary risk assessment has been undertaken, which identifies issues relating to asbestos and polluting materials resulting from previous agricultural use. As such it is the view of the Environmental Health consultee that in the event of the application being permitted, a condition requiring further site investigation, remediation method, final report and completion certificate is required.

6.0 Conclusion and Planning Balance

- 6.1 While it is acknowledged that the site previously obtained outline consent for 9 dwellings, this consent has now lapsed, and a new Development Management Development Plan Document was adopted in July 2020. It is considered that the site is of a sufficient size to accommodate nine dwellings without having a significant adverse impact on the character and appearance of the area, residential amenity and ecology.
- 6.2 Although the site is not within a sustainable settlement the fact that the Council cannot currently demonstrate a five-year supply of deliverable housing site adds weight to the scheme. However, the site is located within flood zone 3, which is defined as having a high probability of flooding in the National Planning Practice Guidance. Due to the conflict with flood risk, the overall tilted balance is disengaged. It is considered unlikely that there are no other suitable sites within the District that are in areas that are at a lower risk of flooding. The lack of a five-year housing land supply or the benefits of removing the derelict buildings from the site do not obviate the requirement for this development to pass the Sequential Test at this moment in time. The proposal, therefore, represents an unacceptable form of development having regard to its flood zone location and the provisions of the National Planning Policy Framework. Furthermore, the submission fails to demonstrate that the site can be satisfactorily drained and would not present a local flood risk to itself or neighbouring properties.

Recommendation

That Planning Permission BE REFUSED for the following reasons:

1. The proposal would result in the provision of residential development within flood zones 2 and 3. In the opinion of the Local Planning Authority, the submission does not satisfy the requirements of the Sequential Test or Exception Test. As such, the proposal represents an unacceptable form of development, classified as more vulnerable to flood risk within an area defined as having a high probability of flooding. The proposal therefore conflicts with the requirements and policy DM33 of the Review of the Development Management DPD and Section 14 of the National Planning Policy Framework.
2. The site is not within an identified sustainable and fails to demonstrate how the proposal will meet a locally identified housing need. The proposal would result in a more vulnerable use in an area of high probability of flooding and there are considered to be no special circumstances, in this instance, to justify new dwellings in this location. The proposal is therefore contrary to the aims and objectives of the Policy SP2 of the Strategic Policies and Land Allocations DPD and Policies DM4 and DM60 of the Review of the Development Management DPD and the National Planning Policy Framework, in particular section 5.
3. The application fails to detail the way in which the development can be sustainably drained in accordance with the surface water drainage hierarchy. It has not been conclusively demonstrated that a satisfactory arrangement for disposing of surface water can be achieved and consequently a risk of flooding would remain. The proposal therefore conflicts with the requirements of Policy DM34 of the Review of the Development Management DPD and Section 14 of the National Planning Policy Framework.

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

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. Although the applicant has failed to take advantage of this service, they have previously been made aware of the issues of concern regarding the proposal which the submission does not satisfactorily address. Consequently, 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