

<b>Agenda Item</b>	A7
<b>Application Number</b>	24/00033/FUL
<b>Proposal</b>	Demolition of 3 existing garages, erection of a dwelling (C3) with associated landscaping and access
<b>Application site</b>	Land Between 3 And 5 Dalton Road Lancaster Lancashire LA1 3HD
<b>Applicant</b>	Lindsay Robertson
<b>Agent</b>	Mr Sam Edge
<b>Case Officer</b>	Mr Sam Robinson
<b>Departure</b>	No
<b>Summary of Recommendation</b>	Refusal

(i) **Procedural Matters**

This form of development would normally be dealt with under the Scheme of Delegation. However, the application was called in within 21 days of appearing on the weekly list of planning applications by Councillor Caroline Jackson who requested that the application be determined by the Planning Regulatory Committee.

**1.0 Application Site and Setting**

1.1 The site that forms the subject of this application is part of the rear gardens relating to nos 3 and 5 Dalton Road, 44 Grasmere Road and 41 Ullswater Road in Lancaster. The rectangular plot is occupied in part by three garages which are accessed off Dalton Road. The site also contains a number of trees and shrub planting and garden ponds. The site gradient increases from west to east between Ullswater Road and Grasmere Road. The area is characterised by a grid road pattern with properties of varying size but all in a dense terrace arrangement with long rear gardens. The front (southern) site boundary is largely formed by a natural stone wall which is softened by trees and planting within the site. The remaining boundaries are formed by a mix of treatments including fencing and hedge planting.

1.2 The site is within the Urban Boundary of Lancaster and is covered by an Article 4 Direction which restricts permitted development for the change of use of a dwellinghouse to a small house of multiple occupancy. The site is also susceptible to groundwater flooding (medium potential).

**2.0 Proposal**

2.1 This application seeks the demolition of 3 existing garages, erection of a 3-bed dwelling (C3) with associated landscaping and access.

- 2.2 The dwelling consists of two storey's and features a gable frontage and two gables to the side and is comprised of stone and render to the walls under a slate tiled roof. The dwelling also features solar panels and to the front roof slope and two chimneys to the side.
- 2.3 The garden area is located to the east of the dwelling whilst the parking and associated hardstanding will be located to the west.

### 3.0 Site History

- 3.1 A number of relevant applications relating to this site have previously been received by the Local Planning Authority. These include:

Application Number	Proposal	Decision
23/00026/REF	Demolition of 3 existing garages and erection of two detached dwellings (C3) with associated landscaping, access and erection of outbuilding	Appeal Dismissed
22/00873/FUL	Demolition of 3 existing garages and erection of two detached dwellings (C3) with associated landscaping, access and erection of outbuilding	Refused
21/01250/FUL	Demolition of 3 existing garages and erection of two detached dwellings (C3) with associated landscaping, access and erection of outbuilding	Refused
14/00252/FUL	Erection of a single storey detached garden room	Permitted

### 4.0 Consultation Responses

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

Consultee	Response
Arboricultural Officer	<b>Objection</b> Trees to be lost make positive contribution to streetscene
County Highways	<b>No objection</b> Subject to submission of CMP, new dropped kerbs, parking areas and suitable surface water drainage scheme
Engineers	<b>No response</b>
Environmental Health	<b>No response</b>
Fire Safety Officer	<b>No response</b>
Natural England	<b>No objection</b> Subject to submission of homeowner pack
United Utilities	<b>No comment</b> Advice note to be attached

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

- **53 letters of objection**
- **1 letter of support**

Letters of objection included the following points:

- Impact on neighbouring properties/gardens in terms of overbearingness and loss of light
- Impact on neighbouring properties/gardens in terms of overlooking
- Detrimental visual impact on streetscene/character of the area and overdevelopment
- Loss of trees, biodiversity and greenspace
- Highway concerns relating to inadequate access, hazard to pedestrians, impact on street parking and increased traffic
- Impact on drainage and flooding both on and off site
- Impact and pollution from construction phase of development

- Proposal has not addressed previous reasons for refusal
- Set an unwanted precedent

Comments were also received relating to the loss of view and impact on house prices however, these are not material considerations in the determination of this planning application.

The single letter of support including to the following point:

- Improve local area

## 5.0 Analysis

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

- Principle of development
- Design and impact on streetscene
- Residential amenity
- Flood risk and drainage
- Trees and biodiversity
- Highways and parking
- Any other matters

5.2 **Principle of development** (NPPF Sections 2 and 5; Strategic Policies and Land Allocations DPD policies SP1, SP2, SP6; and Development Management DPD policy DM1)

5.2.1 The site is located within the urban boundary of Lancaster and lies adjacent to existing residential development and is close to existing public transport links. In accordance with policy SP2, the site is identified as being within a sustainable location where residential development can be accommodated.

5.2.2 The Council cannot demonstrate a five-year housing land supply (currently stands at approximately 2.4yrs) and policy SP6 identifies that an average of 685 dwellings per annum are required to meet the district's housing requirement need. A 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. Policy DM1 also states that proposals must also accord with the Council's latest Strategic Housing Market Assessment (SHMA). In this respect, table 4.7 of the SHMA identifies a need for 2 and 3 bed detached units within this area of the district.

5.2.3 Therefore, given the current situation, the principle of low-level residential accommodation located in established garden areas within a sustainable location would be supported in principle. Notwithstanding this point, the proposal is still subject to all other relevant material considerations which will be discussed in the following sections.

5.3 **Design and impact on streetscene** (NPPF Section 12; and Development Management DPD policies DM29 and DM30)

5.3.1 In conjunction with Section 12 of the NPPF, policy DM29 states the Council will expect development contribute positively to the identity and character of the area through good design, having regard to local distinctiveness, appropriate siting, layout, palate of materials, separation distances, orientation and scale. In addition to this, policy DM30 encourages development to deliver high standards of sustainable design.

5.3.2 The application proposes 1no. 3-bed detached dwelling and materials would comprise of natural stone to the front and side elevations with render to the rear under a slate roof and hardwood windows throughout. This choice of materials would be in keeping with that of the surrounding area and are considered acceptable in this location subject to the precise details being provided through condition.

5.3.3 In terms of scale, massing and design, the proposed dwelling would not reflect the terraced properties that make up the character of the area however, a similar single detached dwelling was

granted in 2002 under planning application 02/01318/FUL on the opposite side of the street The 2002 building is of a comparable scale and is of a similar design to what is being proposed here. Whilst the Council notes the public comments relating to how the proposal does not integrate itself into the streetscene and character of the area, considering the dwelling opposite the site and sympathetic choice of materials utilised within the scheme, it is considered that the provision of a single dwelling would not have a significant adverse visual impact on the area to warrant a refusal of consent on this ground alone. This is consistent with the approach adopted on the previous applications and whilst these were ultimately refused for various reasons, the applications were for 2no. detached dwellings and it was considered these were acceptable in terms of the design and their siting within the streetscene.

- 5.3.4 In terms of the scale of the overall area of the site, the proposed dwelling and garden would be sited on a parcel of land measuring c.370sqm. Due to the constraints of the site, the garden and parking areas have to be located to the sides of the property. The side garden would measure c.120sqm and would feature an 11m depth, whilst the parking to the other side would be of a similar scale. This outdoor space is considered proportionate to the scale and size of the dwelling and would not represent overdevelopment of the site.
- 5.4 **Residential amenity** (NPPF Section 12; and Development Management DPD policies DM2 and DM29)
- 5.4.1 Policy DM29 states that the Council will expect development to ensure there is no significant detrimental impact to amenity in relation to overshadowing, visual amenity, privacy, overlooking, massing and pollution.
- 5.4.2 Considering the impact on the neighbouring properties, in comparison to the previous applications, this scheme has attempted to limit the impact by reducing the number of dwellings from two to one and by also siting the proposed building centrally within the site.
- 5.4.3 Elevated views from the proposed dwelling would be from both side (east and west) and front (south) elevations. The rear (north) elevation features no openings. Direct views east and west from the side elevations would be c.10m to the shared boundaries and c.21m to the nearest outriggers (the main dwellings are located c.25m away) of 5 Dalton Road and 44 Grasmere Road to the east and 3 Dalton Road and 41 Ullswater Road to the west. These distances are considered sufficient and meet the requirements outlined in policy DM29 in terms of separation distances. Whilst the proposed dwelling would not face directly to the gardens of 42 Grasmere Road and 39 Ullswater Road which are located just to the north of the site, the proposal is sited in close proximity to these boundaries (less than 2m), and it is likely that there would be angled views towards these garden areas. However, it is recognised that due to the close nature of the terraced properties combined with narrow gardens, there is already an element of mutual overlooking between gardens from the main dwellings that line both Grasmere Road and Ullswater Road. Therefore, any angled views from this proposed dwelling are unlikely to result in a significant adverse effect in terms of overlooking or loss of privacy on these garden spaces. Views from the front would be towards the highway and raise no significant concerns.
- 5.4.4 Considering the impact in terms of overbearingness and loss of light, as outlined above, the proposal is sufficiently distanced from the gardens and dwellings of 5 Dalton Road and 44 Grasmere Road to the east and 3 Dalton Road and 41 Ullswater Road to the west. This will ensure that these properties retain sufficient levels of light and that the proposed dwelling does not appear unduly overbearing when viewed from either the dwellings or garden spaces.
- 5.4.5 As outlined above in paragraph 5.4.3, the rear elevation of the property would be in close proximity to the gardens of 42 Grasmere Road and 39 Ullswater Road. The dwelling would run parallel to each boundary for c.6.5m and 5m. These gardens, like others in the vicinity, have a long and narrow layout. The siting of a dwelling in such close proximity to these gardens would appear overbearing to the occupiers and users of these immediate gardens and is also likely to have an impact on light levels considering the solar orientation. The overbearing impacts are also likely to be exacerbated by the rear blank elevation which spans c.4.2m in height and 11m in length as the lack of any visual animation is likely to appear oppressive when viewed from these viewpoints. Due to the narrowness of the gardens, it is also likely that the gardens beyond those closest to the application site would also be overshadowed. Whilst it is acknowledged that by reducing the number of dwellings from two

to one and siting it more centrally within the site, this has reduced the overbearing and loss of light impacts in comparison to the previous application. However, the dwelling still commands a large footprint combined with a two-storey height and as such has not sufficiently addressed the concerns highlighted on the previous application. Therefore, such a proposal is considered to be unduly harmful to the standard of living for the neighbouring properties with regards to overbearingness and loss of light.

5.4.6 Considering the amenity for the proposed dwelling and future occupiers, the internal layout would provide for c.120sqm spread over two floors which meets the minimum requirements outlined in the Nationally Described Space Standards and policy DM2. All habitable rooms are served with an outlook that is proportionate to the size and layout of the room to ensure suitable levels of light. As outlined in paragraph 5.3.4, the proposal cannot provide for a 10m deep rear garden, however, the garden space to the side does achieve this distance as well as providing for c.120sqm of space. This provides for a suitably sized outdoor space, and this would also be relatively well screened from the highway due to the large stone wall fronting the highway. As such, it is considered that the proposal can provide for a suitable level of amenity for any future occupiers of the building.

5.5 **Flood risk and drainage** (NPPF Section 14; and Development Management DPD policies DM33, DM34 and DM35)

5.5.1 As outlined in paragraph 1.2, the site is susceptible to groundwater flooding and is classified as having a medium potential. This is based on the data contained with the Council's Strategic Flood Risk Assessment. Policy DM33 requires proposals to minimise the risk of flooding to people and property by taking a sequential approach which directs development to the areas at the lowest risk of flooding and the policy notes that consideration should be given to all sources of flood risk. The policy specifically states "*New development will need to satisfy the requirements of the sequential test and exception test where necessary in accordance with the requirements of national planning policy and any other relevant guidance. Where proposals fail to satisfy the requirement of these tests they will be refused.*"

5.5.2 Paragraph 168 of the NPPF states: "*The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.*"

5.5.3 When assessing flood risk and applying the sequential test, it is acknowledged that this matter was not raised on the previous applications. This is partly because the Council's overall understanding of the government's flood risk policies and guidance evolved and improved as a result of planning appeal inquiry. The outcome of this appeal, amongst other things, identified that the need for a sequential test is triggered for sites at risk from flooding from any source.

5.5.4 A flood risk assessment and sequential test was submitted by the agent during the course of this application. With regards to the sequential test, the document outlines that the applicant owns the site and nearby dwellings and there is little space for alternative development sites within close proximity. Whilst the content of this document is noted, this information lacks any significant detail. Land ownership is not a suitable reason to reduce the scope of the sequential test and as the application is for a single open market dwellinghouse, there is no justified reason why it must be located here. In addition, the test has failed to identify or rule out any other sites within the district that could accommodate a similar form of development. In the absence of an adequate sequential test, it cannot be concluded that there are no other sites available for the proposed development which are at a lower risk of flooding. Policy DM33 and the NPPF are clear that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

5.5.5 The flood risk assessment outlines that mitigation measures and engineering design can be implemented in order to demonstrate that the proposals would be safe for the lifetime of development. However, this represents an improper attempt to rely on the exception test set out in the NPPF.

- 5.5.6 Paragraph 169 of the NPPF is clear that, only if the sequential test is passed (i.e. it is demonstrated that it is not possible for the development to be located elsewhere at a lower risk of flooding), should the exception test then be applied and any site-specific flood risk assessment be taken into consideration. The NPPF is clear that the exception test comes after the application of the sequential test. Paragraph 169 states: *“If it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied.”*
- 5.5.7 The NPPG makes the point more forcefully. Paragraph 032 of the ‘Flood Risk and Coastal Change’ section states: *“The Exception Test should only be applied as set out in Table 2 and only if the Sequential Test has shown that there are no reasonably available, lower-risk sites, suitable for the proposed development, to which the development could be steered.”*
- 5.5.8 Given the sequential test is not passed, it would be improper to consider matters pertinent to the exception test (i.e. whether the scheme would provide wider sustainability benefits to the community that outweigh flood risk; and whether the development could be made safe for its lifetime, without increasing flood risk elsewhere). This is consistent with paragraph 031 of the NPPG, which states: *“The Exception Test is not a tool to justify development in flood risk areas when the Sequential Test has already shown that there are reasonably available, lower risk sites, appropriate for the proposed development. It would only be appropriate to move onto the Exception Test in these cases where, accounting for wider sustainable development objectives, application of relevant local and national policies would provide a clear reason for refusing development in any alternative locations identified.”* Essentially, the NPPG guides that, not only must the exception test come after the sequential test, but that it is inappropriate to even consider the exception test at all if the sequential test is not passed.
- 5.5.9 To conclude, the application has failed to provide for a substantial and robust sequential test and as such, the Council cannot be satisfied that there are no other reasonable available sites for the proposed development that are at a lower risk of flooding.
- 5.5.10 Policy DM34 sets out the Council’s approach to managing surface water and sets out the requirement for a positive approach towards sustainable drainage solutions which can be incorporated into the design of development. The Council advocates the use of the SuDS hierarchy which is set out in Policy DM34 of the Development Management DPD. Any proposed development should consider how the surface water arising from the site should be managed with SuDS measures given priority as any solution. DM35 states new development must demonstrate adherence to the National Planning Practice Guidance (water supply, wastewater and water quality) for sewerage infrastructure.
- 5.5.11 The application form and plans indicate that surface water is to be dealt with via a soakaway located under the proposed parking area with the size dependent on the result of percolation testing. Whilst the information provided is limited and no evidence has been provided to demonstrate that a soakaway would be a viable, given the location in an established residential area which is close to a main drain and sewer system, there is likely to be an achievable solution. This can be covered by condition and is consistent with the approach adopted by the planning inspector on the previous appeal. As such, it is considered that there would be no conflict with policies DM34 and DM35.
- 5.6 **Trees and biodiversity (NPPF Section 15; Strategic Policies and Land Allocations DPD policy SP8; and Development Management DPD policies DM44 and DM45)**
- 5.6.1 Policy DM45 states the Council will support the protection of trees and hedgerows that positively contribute, either as individual specimens or as part of a wider group, to the visual amenity, landscape character and/or environmental value of the location. New development should positively incorporate existing trees and hedgerows. Where this cannot be achieved the onus is on the applicant to justify the loss of trees and hedgerows as part of their Arboricultural Implications Assessment (AIA).
- 5.6.2 The AIA submitted with the application identifies that 8 trees are to be felled, 2 are categorised as C and 6 are categorised as U. To compensate for this loss, the scheme proposes 25m of hedgerow along the northern and western boundary as well 4 new trees to be planted in the garden to the side of the property.

- 5.6.3 Whilst there is a question mark over the categories given to some of the affected trees, it is clear from the constraints of the site that the trees cannot be retained as this would compromise the siting of the dwelling. In addition, the site can also not accommodate the replanting 3:1 ratio adopted by the Council's Tree Policy (2010) document. The proposed planting of 4 new trees and 25m of hedgerow would be contained within the site and this can be secured by condition. This is an improvement over the previous application and whilst the loss of the trees is regrettable, the loss will be partially mitigated by this replacement planting although these will take time to mature. It is also worth noting that these are trees located in domestic gardens and they are not protected by a tree preservation order nor are they located within a Conservation Area.
- 5.6.4 The submission includes an Ecology Report which includes an assessment of the site for protected species, specifically bats and great crested newts, found that there is little realistic likelihood of these species being present at the site. The garages and trees were inspected for Potential Roost Features but were found to be either narrow and featureless or with superficial features that offered no roosting potential. The report included various pre-cautionary conditions that can be attached to any planning consent.
- 5.6.5 The application site lies within the median distance travelled of 3.454km (identified through the Recreational Disturbance Study for the Local Plan) to get to the European designated sites of Morecambe Bay, which is designated as a Special Protection Area (SPA), Special Area of Conservation (SAC), Ramsar site and Site of Special Scientific Interest (SSSI).
- 5.6.6 As a result of the proximity of the residential development to the sensitive site, it is considered that a proportionate Habitats Regulations Assessment (HRA) is required to assess the recreational disturbance impacts on the coastal designated sites resulting from the development, the report is contained within a separate document. The HRA concludes that without mitigation, the proposed development could have detrimental impacts upon Morecambe Bay SAC, Morecambe Bay & Duddon Estuary SPA and Morecambe Bay Ramsar site. However, with the implementation of the mitigation outlined above, it is considered that the proposed development will have no adverse effects on the integrity of the designated sites, their designation features or their conservation objectives, through either direct or indirect impacts either alone or in-combination with other plans and projects. The mitigation measures in the form of homeowner packs can be adequately covered by a condition attached to any planning consent in consultation with Natural England.
- 5.7 **Highways and parking** (NPPF Sections 9 and 12; Development Management DPD policies DM29, DM60 and DM62)
- 5.7.1 Policy DM29 states that all development should incorporate suitable and safe access to the existing highway network and road layout design which is also reinforced by policy DM60.
- 5.7.2 The existing garages appear to be used in association with 3 and 5 Dalton Road and 41 Ullswater Road. Although domestic in scale and design, the overhanging vegetation and dilapidated nature of them suggests they are not frequently in use for motor vehicles entering and exiting the site. Notwithstanding this the proposal would result in the loss of garages which currently have the potential to provide off street parking. It is acknowledged that on street parking is at a premium in this location and although the development would result in the potential displacement of vehicles, the level is not considered to be significant enough to warrant a refusal. The proposal would require maximum of two spaces which is also shown on the proposed plan, and this would utilise part of the existing dropped kerb. The plans also indicate good levels of visibility for vehicles entering and exiting the site which is essential to ensure highway safety.
- 5.7.3 County Highways have raised no objection to the scheme citing the proposal would not have an unacceptable impact on highway safety, nor would the cumulative impacts on the road network be severe. A list of conditions has been suggested and could be included on any planning consent.
- 5.8 **Any other matters**
- 5.8.1 The majority of the comments are considered to have been covered in the body of this report. The outstanding comments relate to the impact and pollution from construction phase of development and the development would set an unwanted precedent.

5.8.2 Considering the noise/pollution impacts from the construction phase of the development, whilst this is noted, the scale of development is not significant, and any disturbance is likely only to be short lived. Taking the second point, this application has been considered on its own merits with consideration given to the relevant material considerations listed above.

## **6.0 Conclusion and Planning Balance**

6.1 This application would provide for a single dwellinghouse which would make a small contribution to meeting the districts housing need and this would carry moderate weight. There would also be limited small scale economic benefits in terms of employment during the construction phase of the development. However, the proposal raises significant concerns in terms of the impact upon the amenity of various neighbouring properties. In addition to this, the proposal has failed to satisfy the requirements of the sequential test and as such, there remains clear reasons to refuse the application which are not outweighed by the moderate benefit of the provision of a single dwellinghouse.

## **Recommendation**

That Planning Permission BE REFUSED for the following reasons:

1. The site is located within an area at risk from groundwater flooding and the application has not satisfied the requirements of the sequential test inasmuch that it has not demonstrated that the development cannot be accommodated elsewhere within the district that would be at a lower risk of flooding. Therefore, the proposal is contrary to policy DM33 of the Review of the Development Management Development Plan Document and Section 14 of the National Planning Policy Framework.
2. The proposed development by reason of the siting, scale and proximity to the shared boundaries would appear as an overbearing form of development which would also likely result in a loss of light on the garden spaces of the neighbouring properties to the north of the site. This would result in an unacceptable level of harm to the amenity of the occupiers of these affected properties. Therefore, the proposal is contrary to policy DM29 of the Review of the Development Management Development Plan Document and Section 12 of the National Planning Policy Framework.

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

In accordance with Article 35 of the above Order, your decision notice contains reasons for the refusal, specifying policies and proposals within the Development Plan which are relevant to the decision.

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