

Agenda Item	A6
Application Number	22/01542/OUT
Proposal	Relevant demolition of part of front boundary wall, demolition of existing building and outline planning application for the erection of up to 51 dwellings and the creation of new vehicular and pedestrian accesses, retaining walls and regrading of land
Application site	Land East of The Limeburner's Arms Main Road Nether Kellet Lancashire
Applicant	Oakmere Homes
Agent	Mr Dan Ratcliffe
Case Officer	Mrs Jennifer Rehman
Departure	N/A
Summary of Recommendation	Approve subject to conditions and completion of Section 106 Agreement. Delegate back to Chief Planning Officer to finalise legal agreement.

1.0 **Procedural Matters**

- 1.1 Following a committee site visit on the 18 November, this application was reported to Planning Committee on 25 November 2024. The Planning Committee resolved to approve the development subject to conditions and the completion of the legal agreement. The previous Officer Report is appended to this report as a background paper.
- 1.2 This application is being reported back to Planning Committee because the applicant's position in respect of affordable housing (for the purposes of the s106 drafting) varies from what Member's considered when deciding to grant planning permission.
- 1.3 Since the resolution, the Climate Emergency Review of the Local Plan (CERLP) has also been adopted.
- 1.4 This report will focus on the change in position in relation to the affordable housing provisions and changes to the sustainable design policies only. The background paper provides a full and complete account of the site and surroundings, site history and an assessment of proposal and other material planning considerations.
- 1.5 For completeness, the report will set out details of the proposal and our overall recommendation having regard to the changes.

2.0 Proposal

- 2.1 The applicant, Oakmere Homes, seeks outline planning permission for the demolition of the existing agricultural buildings and the erection of up to 51 dwellings with associated access. Matters pertaining to layout, scale, appearance, and landscaping are reserved for subsequent approval.
- 2.2 A new vehicular access is proposed off Main Road. This takes the form of a priority-controlled junction and includes off-site highway improvements works along Main Road to facilitate the access. This comprises traffic calming measures (buildouts and give way markings), carriageway narrowing and footway provision along the site frontage. The access will require the relevant demolition of the existing stone wall and removal of the existing hedgerow. Replacement retaining walls in natural limestone are proposed behind the required visibility splays (for the access). A new pedestrian access is proposed via the existing farm track.
- 2.3 A parameters plan supports the application which attempts to define which areas of the site could be developed and which areas of the site would be left as open space or landscaped (described as a green buffer). The application is also supported by an indicative layout plan to demonstrate one way in which the site could be developed. Both the indicative layout plan and the parameters plan are not for approval.

3.0 Consultation Responses

- 3.1 A summary of all the consultation responses to this application are set out in section 4.0 of the background paper. Following the Committee's resolution and in response to the Council's Habitat Regulations Assessment (HRA), Natural England confirmed they have no objection to the development subject to securing appropriate mitigation.
- 3.2 Lancashire County Council's Historic Environment Team (HET) provided comments on the 22 November 2024 ahead of Planning Committee. This is not reported in the background paper but would have been verbally updated. Notwithstanding this and for the avoidance of doubt, the HET team confirmed the site had low-nil archaeological potential. No further comments or representations have been made to the application following the resolution.

4.0 Analysis

- 4.1 The main considerations in the re-assessment of this application are:
- Affordable Housing
 - Sustainable Design
- 4.1.1 **Affordable housing NPPF Chapter 5 (Delivering a sufficient supply of homes); Development Management (DM) DPD policies: DM1 (Residential Development and Meeting Housing Needs), and DM3 (The Delivery of Affordable Housing).**
- 4.1.2 Paragraph 61 of the NPPF relates to the governments objective to significantly boost the supply of homes. It also states that the overall aim should be to meet an areas identified housing need, including an appropriate mix of housing types for the local community. Affordable housing is an important form of housing that contributes to meeting the needs of different groups in the community.
- 4.1.3 Paragraph 64 of the NPPF goes on to state '*where a need for affordable housing is identified, planning policies should specify the type of affordable housing required (including the minimum proportion of Social Rent homes required), and expect it to be met on-site unless:*
- a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and*
 - b) the agreed approach contributes to the objective of creating mixed and balanced communities'.*

- 4.1.4 Policy DM3 sets out the requirements for affordable housing for all new residential development in Lancaster District. For development proposals over 10 units on greenfield sites in the Rural East (including the Kellet's) there is a 40% on-site affordable housing requirement.
- 4.1.5 When the application was previously reported to Planning Committee, the application indicated the development would provide policy-compliant affordable housing (40%). The affordable housing affordable was afforded significant weight in the planning balance and was to be secured by the planning obligation (s106 agreement).
- 4.1.6 Since the resolution to approve, the applicant and planning authority (under delegated authority) have been negotiating the terms of the planning obligation in respect of affordable housing and public open space. There have also been unfortunate delays caused as a consequence of legal titles and land ownership, but these issues have now been resolved.
- 4.1.7 The applicant contends their position to provide 40% affordable housing remains unchanged from when the proposal was submitted in late 2022 and reported to Planning Committee in November 2024. The issue of dispute relates to the applicant's request to include a "standard clause" in the s106 to review the affordable housing provided should viability be a consideration.
- 4.1.8 Viability is a material consideration. Paragraph 59 of the NPPF states:
- 'Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force....'*
- 4.1.9 Policy DM3 states:
- 'Where compelling and detailed evidence demonstrates that the provision of affordable housing in accordance with the above requirements would have a disproportionate and unwarranted negative impact on the viability of a proposed development, applicants may, in agreement with the Council, provide fewer affordable dwellings than would ordinarily be acceptable, review the tenure or mix of dwellings, or provide a financial contribution in lieu of onsite provision. Such evidence must include an open book financial viability appraisal which will need to accord with guidance in the emerging Viability Protocol SPD'.*
- 4.1.10 The applicant has provided no evidence to demonstrate the provision of affordable housing would have a disproportionate and unwarranted negative impact on the viability of the development. The applicant claims due to the outline nature of the proposal, it remains unclear what quantum of development can be accommodated on the site, and as such they reserve the right to consider development viability if and when the need arises. This would be at the reserved matters stage, similar to when other financial contributions are calculated.
- 4.1.11 It is accepted policy DM3 does allow viability to be considered when assessing the amount of affordable housing to be provided as part of development proposals. However, this is only in the case where compelling evidence, which would be independently assessed, has been provided. It is possible to provide legal clauses within a planning obligation to require policy-compliant affordable housing (in this case 40%) unless robust viability evidence demonstrates a lower percentage of affordable homes or nil can be justified. This is not a "standard clause" in legal agreement but has been used historically. Furthermore, we are seeing an increasing number of appeal cases whereby Section 73 applications have provided a mechanism to review viability where clauses in the Section 106 agreement do not exist.
- 4.1.12 Fundamentally, the local planning authority would not accept a lower level of affordable housing unless a viability position was robustly justified. This would involve having the viability assessment independently assessed by our appointed viability consultant with the costs for such an assessment recovered by the applicant. This process can be achieved within the planning obligation.

4.1.13 However, what the applicant has failed to consider is the effect of their proposal (to include provisions for viability to be considered) in the overall planning balance. Our previous recommendation and the Committee's resolution attached significant weight to the provision of 40% affordable housing in favour of the proposal. This combined with other benefits, including the provision of market housing, were considered to outweigh the identified harm.

4.1.14 With the inclusion of the viability clause in the Section 106 agreement, it is important to note the provision of affordable housing could be anywhere between 40% and nil, subject to justifying a reduction of affordable housing through viability evidence. Policy DM3 does allow for viability to be considered in respect of affordable housing, as does the NPPF, although the NPPF does state the weight given to viability evidence is a matter for the decision-maker. This is something the Planning Committee need to be live to in reaching their overall planning balance.

4.2 **Sustainable Design and Renewable Energy** NPPF sections: 12 (Achieving well-designed places) and 14 (Meeting the challenge of climate change, flooding and coastal change); Development Management (DM) DPD policies: DM29 (Key Design Principles), DM30a (Sustainable Design and Construction), DM30b (Sustainable Design and Construction – Water Efficiency), DM30c (Sustainable Design and Construction – Materials, Waste and Construction) and DM53 (Renewable and Low Carbon Energy Generation)

4.2.1 In the context of the climate change emergency that was declared by Lancaster City Council in January 2019, the effects of climate change arising from new development in the district and the possible associated mitigation measures will be a significant consideration in the assessment of proposals. The Council is committed to reducing its own carbon emissions to net zero by 2030 while supporting the district in reaching net zero within the same time frame. Buildings delivered today must not only contribute to mitigating emissions, but they must also be adaptable to the impacts of the climate crisis and support resilient communities. The Climate Emergency Review of the Local Plan (CERLP) was adopted in January 2025 (after the earlier resolution) and provided a partial review of the DM DPD and the SPLA DPD. This introduced policies DM30a, DM30b and DM30c which provide specific requirements in relation to sustainable design and construction.

4.2.2 An Energy Statement had been submitted with the application. This set out what renewable and low carbon options would be available and potentially viable for the development but did not provide a clear position on what will be provided as part of the development. The submitted Energy Statement pledges to adopt a 'fabric first' approach that would exceed minimum requirements of Part LA 2013 building regulations.

4.2.3 When the application was first reported and resolved to be approved, policy DM30 only sought to *encourage* high standards of sustainable design. Consequently, a planning condition was recommended requiring a statement setting out energy efficiency and sustainability measures to be incorporated into the final design of the dwellings.

4.2.4 The newly adopted sustainable design policies are more stringent and will require measures beyond that set out in the initial Energy Statement. The development must now accord with the new requirements (DM30a to DM30c), specifically securing a fabric first approach to reach a minimum of 75% reduction in carbon emissions against Part L of the Building Regulations 2013 (and 100% reduction for dwellings building on or after 01/01/2028), as well as achieving, as a minimum, the optional requirement set through Building Regulations G2: Water Efficiency (or any future successor requirement). DM30c requires development to be more environmentally conscious, including climate change mitigation and adaption. During construction, a Construction Management Plan would need to consider the requirements of DM30c having regard to lifecycle emissions and the management of waste, materials and soil resources.

4.2.5 Securing compliance with these new policies is necessary to make the development acceptable and can be secured by planning condition. This has been accepted by the applicant.

5.0 Conclusion and Planning Balance

5.1 In accordance with the strategic development strategy for the district, the application site is located in a sustainable rural settlement where housing growth is supported in principle. The provision of up to 51 dwellings at a time when the Council cannot demonstrate an adequate supply of housing,

weighs substantially in favour of the development. In addition, the proposal will provide up to 40% affordable dwellings, subject to viability evidence. The provision of market and affordable housing continues to attract significant weight. Other benefits arising from the development include traffic calming measures, footway provision and improvements to the pedestrian environment along Main Road, together with upgrades to the local bus stops. The proposal also includes contributions to make off-site improvements and enhancements to the equipped play area, the provision of new young persons' equipment and improvements to the playing pitch at the village recreation area benefiting the wider community as well as future residents of the development. This should be afforded moderate weight. There are also social and economic benefits from the provision of employment and upskilling through the construction phases and the knock-on effect to the supply chain (securing short-term economic benefits), though these benefits are relatively small overall and therefore afforded limited weight in favour of the development.

- 5.2 The applicant has demonstrated a safe and suitable access can be provided and the impacts of development traffic would not lead to safety concerns or have residual cumulative impacts that would be severe on the network. Subject to pre-commencement conditions, it has been demonstrated that there are options available to ensure the development can be drained sustainability and without causing a flood risk elsewhere. With mitigation, the impacts of the development on protected species are considered acceptable with the applicant demonstrating there is sufficient scope to secure net gains in biodiversity at the reserved matters stage. It has also been demonstrated and assessed that the development would not compromise the operation of the adjacent quarry or public house and that acceptable standards of amenity for existing and future residents should be capable of being secured as part of the reserved matters. In relation to these matters, the proposals confirm to the aims and objectives of the relevant local plan policies and the NPPF.
- 5.3 The main issues weighing against the proposal relate to the localised landscape impacts and the less than substantial harm identified to the setting of the Conservation Area. The harm to the landscape and the countryside area is potentially capable of being minimised through embedded design mitigation at the reserved matters stage, though the loss of countryside cannot be mitigated in full. It is considered that the proposal will cause harm to the significance of Nether Kellet Conservation Area through development within its setting. It is considered that this harm could also be minimised to some degree through good design although harm will still exist. However, it is considered that this harm is outweighed by the public benefits of the scheme, in particular the provision of both market and affordable housing in the context of a significant undersupply of housing land. The adverse effects arising from the construction phases of the development on both the amenity of the area and nearby residents are temporary and can be minimised through appropriate construction method statements. Therefore, the harm arising from this is afforded only limited weight in the planning balance.
- 5.4 Paragraph 61 of the NPPF sets out that to support the government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed. The Council's most recent Housing Land Supply Statement (January 2025) identifies a housing land supply of only 2 years (reduced since the earlier resolution), which is a significant shortfall against the required 5-year supply requirement. Paragraph 11 of the NPPF (the presumption in favour of sustainable development) also requires that, where a local planning authority cannot demonstrate a 5-year supply of deliverable housing sites, permission should be granted unless the application of policies in the NPPF that protect areas or assets of particular importance (such as heritage assets and areas at risk of flooding) provide a clear reason for refusing permission, or any adverse impacts would significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the Framework, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well designed places and providing affordable homes.
- 5.5 On balance, whilst the development is considered to cause less than substantial harm to the setting of designated heritage assets, it is considered that this is outweighed by the public benefits of the scheme and would therefore not provide a clear reason to refuse permission. The harm to the setting of the Conservation Area and the other identified adverse impacts set out above (localised landscape harm and loss of open countryside) would not significantly and demonstrably outweigh the benefits. The delivery of general market housing is afforded significant weight as would the provision of affordable housing. At this stage, and in the absence of any viability evidence it is assumed the policy-complaint level of affordable housing would be provided. Any reduction to that

would need to be robustly evidenced at the reserved matters stage. If robustly evidenced (in accordance with policy) a reduction in affordable homes would remain policy compliant and a benefit to the scheme. Should the viability lead to nil affordable homes, there would be no additional benefit above the significant benefits arising from the delivery of homes generally. Given the significant undersupply of housing within the district, it is considered that the benefits continue to outweigh the harm caused through the impacts on the setting of the heritage assets and the location of the development within the open countryside. On this basis, it is recommended that planning permission should be granted.

Recommendation

That Outline Planning Permission **BE GRANTED** following the satisfactory completion of a Legal Agreement within 3 months of the date of this Committee meeting. In the event that a satisfactory Section 106 Agreement is not concluded within the timescale above, or other agreed extension of time, delegate authority to the Chief Officer – Planning and Climate Change to refuse planning permission on the grounds that the obligations which make the development acceptable have not been legally secured, and the following planning conditions:

The legal agreement shall secure:

- Provision of 40% affordable housing, with precise details determined at reserved matters stage.
- Financial contributions for open space calculated at reserved matters stage to go towards the equipped play area, provision of young persons facilities and improvements to the playing pitch at the village recreation area.
- Provision of on-site amenity greenspace.
- Setting up of a management company; and
- Management and Maintenance of all landscaping, unadopted roads, lighting and drainage infrastructure, on-site open space, and on-site watercourses
- Biodiversity net gain, including an updated metric at the time of a reserved matters application, which continues to demonstrate 10% net gain and a Landscape and Ecological Creation and Management Plan showing 30 year management and investigation of peat on site and scheme for compensation/re-use.

subject to the following conditions:

Condition no.	Description	Type (indicative)
1	Timescale for submission of reserved matters application	Standard
2	Development in accordance with Approved Plans (location plan and access)	Standard
3	Final surface water sustainable drainage strategy to be submitted	Pre Commencement and concurrent with first reserved matters
4	Construction surface water management plan	Pre Commencement
5	Construction Environmental Management Plan To include ecology measures, amenity and highway matters and requirements to meet policy DM30c.	Pre Commencement
6	Employment and Skills Plan	Pre Commencement
7	Details of finished floor and site levels (including gardens and open space) and any retaining structures	Pre Commencement
8	Precise scheme for ecology mitigation and enhancement	Pre Commencement
9	Precise details of site access and associated off site highway improvements	Pre Commencement
10	Precise design details of the site access retaining walls and railings including scaled dimensions, materials, and stonework details (and sample panel).	Pre Commencement
11	Updated Arboricultural Implications Assessment/ Tree Protection Plan	Pre Commencement and concurrent with first reserved matters

12	Details of housing mix to accord with policy DM1	Pre Commencement and concurrent with first reserved matters
13	Details of the internal estate roads	Prior to commencement of estate roads
14	Scheme for external lighting (street lighting and lighting of any open space)	Above Ground
15	Submission for a Sustainable Design Statement including Energy and Carbon Statement addressing the requirements of policies DM30a to DM 30c	Pre commencement
16	Sustainable drainage system operation and maintenance manual.	Pre Occupation
17	Contaminated land verification report based on mitigate in Site Investigation and unforeseen contamination.	Pre Occupation
18	Verification report of constructed sustainable drainage system.	Pre Occupation
19	Details of the homeowner packs	Pre Occupation
20	Requirements of M4(2) accessibility and adaptability	Control
21	All dwellings to meet the Nationally Described Space Standards	Control
22	Provision of turning and parking	Control
23	Limit to maximum of 2 storey	Control
24	Development to meet as a minimal optional requirement of Building Regulations G2 (water Efficiency)	Control
24	Protection of visibility splays	Control

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

In accordance with the above legislation, Lancaster City Council has made the recommendation in a positive and proactive way to foster the delivery of sustainable development, working proactively with the applicant to secure development that improves the economic, social and environmental conditions of the area. The recommendation has been made having had regard to the impact of development, and in particular to the relevant policies contained in the Development Plan, as presented in full in the officer report, and to all relevant material planning considerations, including the National Planning Policy Framework, National Planning Practice Guidance and relevant Supplementary Planning Documents/ Guidance

Background Papers

Officer Report for 22/01542/OUT reported to 25 November 2024 Planning Committee