

SCHEDULE: (a)

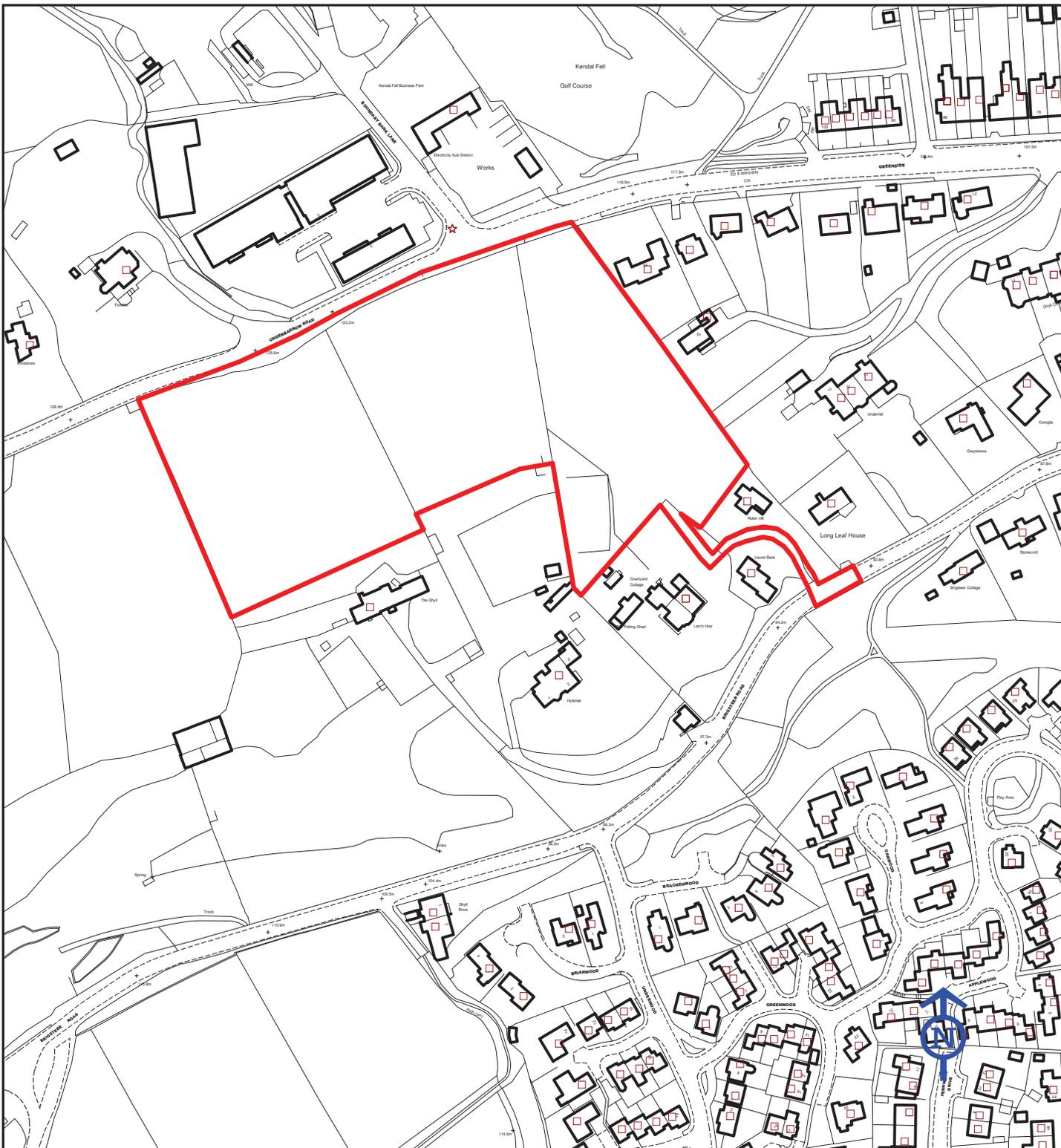
SL/2016/0413

PARISH: KENDAL
Land adjacent to Underbarrow Road

PROPOSAL: Construction of 41 dwelling houses and 6 apartments, including site access roads, car parking areas and garages

APPLICANT: Russell Armer Ltd

Grid Ref: E: 350618 N: 492309



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SL/2016/0413

**Land adjacent to:
Underbarrow Road
KENDAL
LA9 5RS**

Scale 1:2500

SUMMARY

Summary for this Report

1. The application was considered at the planning committee on 24 November 2016 where Members resolved:
2. That delegated authority be issued to grant planning permission subject to the completion of a S106 Agreement with regard to the provision of the affordable housing, the long term management and maintenance of the open space and communal surface water drainage scheme and appropriate conditions.
3. Following the November committee, the County Council commissioned an independent technical review of the drainage scheme. The assessment generally confirmed the County Council previous response that the information provided was acceptable. It did however raise a number of issues, concluding that the impact on off-site properties could not be adequately assessed and recommended the submission of additional information and clarification. The applicant has responded and the County Council has confirmed that the issues raised in the independent technical review have now been satisfactorily addressed.
4. In view of the technical review, the application is being reported back to the planning committee. The review, while not changing the County Council's conclusion or materially altering the drainage scheme, does form a material change in circumstances. This report addresses all the planning issues, Members are reminded that they previously resolved to grant this scheme, and the main issue for consideration is the additional information supplied in respect of the surface water drainage.
5. This report consolidates the original committee report and the late representations provided prior to and during the November committee. In respect of drainage the report is amended at the following sections: Consultations –Cumbria County Council Local Lead Flood Authority (paragraphs 32 - 29) and Neighbours/Other(paragraphs 70 - 81); Applicant's Representations (paragraphs 104 - 127); Assessment - Principle of development and key issues (paragraphs 192 - 193) and Drainage (paragraphs 233 - 240); and Conclusion (paragraphs 262 - 265). The opportunity has also been taken to detail the proposed conditions.

RECOMMENDATION

6. That delegated authority be issued to GRANT planning permission subject to the completion of a S106 Agreement with regard to the provision of the affordable housing, the long term management and maintenance of the open space and communal surface water drainage scheme and appropriate conditions.

SUMMARY PROVIDED IN THE PREVIOUS REPORT

7. The site is part of a larger area of land allocated for residential development by Policy LA1.3 of the South Lakeland Land Allocations Development Plan Document (DPD). Policy LA2.8 of the DPD provides the key requirements for the development of the site and these are emphasised within the adopted Development Brief. Policy LA2.8 and the Development Brief require a strong green infrastructure framework and high quality built form reflecting local

distinctiveness in order to integrate the development into this sensitive location on the edge of the National Park and the historic town of Kendal.

8. The application proposes 47 dwellings and includes access arrangements, an indicative landscaping scheme and drainage details. The proposals include a mixture of two and three storey houses set back from Underbarrow Road with predominantly large detached houses throughout the remainder of the site. The scheme proposes to retain the trees alongside Underbarrow Road, including the row of protected limes.
9. The scheme proposes 10 (21%) affordable dwellings. Policy CS6.3 acknowledges that in some cases, a lower affordable housing requirement will be acceptable where there is clear evidence that it would make the development unviable.
10. The applicant has carried out a Viability Assessment in support of the reduced amount of affordable housing proposed. A review of the Viability Assessment has been carried out by Lambert Smith Hampton and is included as Appendix 1 within Part II of this agenda.

Note – in accordance with Section 100B(2) of the Local Government Act 1972, copies of this appendix are excluded from inspection by members of the public as the appendix contains information as described in Schedule 12A of the Act, as amended by the Local Government (Access to Information) (Variation) Order 2006, as follows:-

- Information relating to the financial or business affairs of any particular person (including the authority holding that information). (Paragraph 3)

11. The main issues relate to whether the development meets the key requirements within the adopted policies and in particular the provision of affordable housing and the impact the proposed development will have upon the site, the landscape / townscape and on surrounding residents. The access arrangements - pedestrian / cycle links, public transport access, drainage and contamination are also key issues.

DESCRIPTION AND PROPOSAL

Site description

12. The site is located at the western edge of Kendal. It is to the south of Underbarrow Road which is accessed via Greenside and the historic Kendal Conservation Area and leads towards Underbarrow and Scout Scar. The site is bound by residential properties to the east and south and the Kendal Fell Business Park to the north. While the site is physically close to the town centre, access to the site from the town is via steeply sloping roads and paths.
13. The site forms the eastern part of a site allocated for residential development. It slopes steeply downwards from Underbarrow Road toward Brigsteer Road, where a number of large houses are located at a lower level. There are four groups of trees within the site, including trees subject to a Tree Preservation Order and distinctive stone walls running from north to south and bounding the site edges.

Proposal

14. This is a full planning application and includes:
 - the erection of 47 dwellings;
 - access arrangements which include the relocation of the 30mph speed limit, a roadway which would link to the development site to the west, a road into the main body of the site splitting to form two cul-de-sac and a footpath link along the northern side of the site linking Greenside to the site to the west;
 - a surface water and foul drainage scheme which includes the installation of surface water storage pipes, a hydrobrake and a pipeline through third party property to the combined sewer in Brigsteer Road.
15. The scheme proposes a variety of house sizes and types with the 8 affordable units in three locations along the front of the site. The house designs are varied, with three storey and terraced properties fronting onto Underbarrow Road and larger detached units to the rear. An area of open space and play area is proposed adjacent to the adjoining site to the west.
16. The scheme proposes 10 (21%) affordable dwellings. The applicant has carried out a Viability Assessment in support of the reduced amount of affordable housing proposed. An independent technical review of the Viability Assessment has been carried out by Lambert Smith Hampton and is included within Part II of this Agenda.
17. Other supporting documents include a Landscape and Visual Impact Assessment, Transport Assessment, Ecology and Tree Assessments, Flood Risk Assessment and Contaminated Land Assessment.

HISTORICAL CONTEXT

18. A similar application (SL/2015/1189) was submitted at the end of last year. The application was withdrawn to allow the developer to resolve drainage issues and revise the layout of the scheme.
19. An application (SL/2016/0582) by a different developer for the western part of the allocated site was refused at the November Committee.

CONSULTATIONS

Kendal Town Council:

20. The Town Council recommend refusal of the application for the following reasons:-
 - The shortage of affordable housing;
 - Relatively poor design on this very functional development in a sensitive approach to Kendal;
 - Contamination;
 - Surface water clearance;
 - Potential loss of amenity to certain properties; and

- Travel and transport considerations.

Cumbria County Council - Highways:

Transport Assessment

21. We have read over the updated traffic survey including Glebe Road and the A6 Milnthorpe Road which currently has some congestion in the peaks however the information provided indicates the impact of the development on the junction will not be severe.
22. The proposals aim to improve the pedestrian linkage with Kendal to the east by introducing a footway connection to Greenside, this is accepted and welcomed.
23. As the main access road through the site will connect to the adjoining development site a swept path analysis has been produced to show the route is suitable for the provision of a bus service. However, the provision of a bus route to the site might be found to be problematic due to the scale of this development. An alternative might be to have a travel plan (TP) bond based on a mega rider ticket price for 1 year. This bond can be used for the resident to access the rural wheels - 8(reduction) x 52(weeks) x £119(weekly ticket) = £49504

Access and Internal Layout

24. The visibility splays for both vehicular and pedestrian access are acceptable with the proposed extension of the speed limit order. The parking provision seems acceptable.
25. Conditions have been requested requiring the submission of road and path construction details, implementation of the alterations to the speed limit, access roads and paths, provision of parking prior to occupation.

Travel Plan

26. The details provided in the travel plan are acceptable but it is recommended that the travel plan is amended to show that the rural wheels will be promoted in the “welcome pack” to new residents. It shows clear targets, the appointment of a travel plan co-ordinator and action plan. The applicants view on this element is commended. It is evident that the document is seen as a living document to be amended and would evolve on a yearly basis after monitoring and reviewing.
27. Given the size of the development, the Travel Plan monitoring period is the full build period plus 12 months in order to ensure final occupiers benefit from the Travel Plan measures. The Travel Plan Administration Fee Contribution required is therefore £6600 (£1320 x 5yrs).

Cumbria County Council - Local Lead Flood Authority (LLFA):

The LLFA made the following comments in respect of the original application.

28. The Flood Risk Assessment (FRA) shows that the developer has undertaken extensive site investigation when looking at the opportunities to dispose of surface water via infiltration techniques. The developer has shown that both the soil type and topography are not conducive to infiltration techniques across the whole site and therefore they are looking at alternative methods of discharging surface water. Cumbria County Council have supported the proposal for

surface water to be discharged to the combined United Utilities system on Brigsteer Road after the flow has been restricted via attenuation methods to greenfield runoff, this has now been approved by United Utilities. The developer has shown that certain areas are suitable for infiltration and they will provide infiltration and attenuation in those areas to reduce the discharge to Greenfield Runoff rate.

29. The topography of the site is steeply sloping towards the rear of properties on Brigsteer Road and the developer has taken into consideration exceedance routes to further attenuate surface water flow.
30. The LLFA made the following comments in response to the Dosser MCA report (dated 11 November 2016) submitted on behalf of the occupiers of neighbouring properties in objection to the scheme.
31. The work by the applicant has covered techniques from comprehensive site investigation including deep boreholes used by other authorities in the south, disposal to ground via multiple soakaways and ultimately to combined sewer. It is the combination of the technical details that we have approved with details on climate change agreed by LLFA well before the recent changes this year. LLFA still have no concerns with the technical details provided by the developer.
32. The LFRA commissioned an independent technical review of the drainage scheme to support their response to the application. The independent technical review by WSP Parsons Brinckerhoff supports the ground investigation carried out. Questions have been raised with regard to the written drainage strategy, calculations, their correlation to the ground investigation report and the safety factors used; lack of information with regard to the bunds and construction requirements. The report concludes that a key issue is quantification of off-site flood exceedance events and whether this is acceptable. Without additional information the likelihood and severity of increased flood risk to off-site properties cannot be assessed, and the adequacy of the proposed mitigation cannot be assessed.
33. Additional information and justification has been submitted by the applicant. The LFRM except that there is no need to review the written drainage strategy given the evolution of the drainage design to address issues; the catchment details are sufficient to show and correlate with the calculations, the modelling of individual plot drainage is unnecessary; the infiltration rate used has been clarified and the safety factor is acceptable. The additional information with regard to the bund/berm detail and the soakaway information is now considered acceptable.
34. The LLFA has confirmed that the additional information provided satisfies the outstanding enquiries they had with the drainage scheme.

Cumbria County Council Highways - Historic Environment Officer:

35. The archaeological geophysical survey report identifies a number of features on the site of potential archaeological interest and of local significance. A condition is recommended requiring an archaeological evaluation and where necessary a scheme of archaeological recording.

South Lakeland District Council:

Housing Strategy and Delivery Manager:

36. It is disappointing that there are only 8 affordable properties proposed, when the requirement in line with Policy CS6.3 of the Core Strategy would provide 16. It is understood that the developer has put forward a viability study and should this not be accepted we would expect that more affordable properties were brought forward. In terms of the mix of size and tenure, the evidence shows a definite weighting of need towards the smaller properties. Whilst, 3 bedroom properties are needed, the need is heavily weighted towards 1 and 2 bedroom properties. If any more properties were added following the results of the viability appraisal, it would be most appropriate for them to be smaller properties.
37. Please note, these comments were made prior to the increase in the number of affordable dwellings to 10.

Environmental Protection Officer

Contaminated Land

38. The Environmental Health Department is satisfied that the process followed by the applicant in investigating the possibility that this land has previously been affected by contamination is in accordance with both local and national guidance.
39. This process begins with a desk top assessment and walk over of the site in question which then informs an initial conceptual model to be developed. In this situation the REC report (REC, May 2014) has identified a range of potential sources of contamination, potential pathways, and both human and environmental potential receptors. The preliminary risk assessment has suggested a low risk from on-site contaminants and a moderate risk from off-site contaminants. This has subsequently led to an intrusive ground investigation and the development of a 'Tier 1' qualitative contaminated land risk assessment.
40. The ground investigation and risk assessment have identified elevated levels of some contaminants within the eastern field. Mitigation measures have been proposed. The contaminated topsoil is to be stripped and removed thus breaking the potential pathway between source and receptor. Finally, a validation report will be produced following development to ensure that the pathway has been broken.
41. When exploring the possibility that the contaminants may have migrated from an adjacent location, consideration should be given to the absence of elevated levels of contamination in the samples of leachate. This would suggest that there is no impact on ground water from the contaminants (within the scope of the borehole) which would be expected had the contamination migrated from another site.
42. Ground gas monitoring indicated the site falls within Characteristic Situation 1 in accordance with CIRIA 665 which states ground gas protection measures are

not needed. Radon protection measures are to be incorporated into the design of the properties.

43. In summary, we are satisfied that the investigation and risk assessment have been undertaken correctly, and that the proposed mitigation measures are suitable for the development.

Noise

44. The Noise Assessment concludes that the existing noise around the site should not prohibit granting of planning permission, with the mitigation measures proposed. Further assessment is however required to assess the individual requirements for properties facing towards the Kendal By-pass. A condition to ensure that the mitigation measures proposed are delivered is requested.

Construction

45. Conditions requiring a Construction Method Statement to control noise and dust during construction and to restrict the hours of construction have been requested.

Air Quality

46. The Air Quality Assessment concludes that the development of the allocated site will have a negligible impact on sensitive receptors. It is the Council's stance that any predicted negative impact, even if negligible, should be off-set with mitigation. Additional measures are therefore required and could include electric charging points and improvements to cycle infrastructure and public transport.

Arboricultural Officer

47. The applicants have submitted a tree survey report and Arboricultural Impact Assessment (AIA) which accurately appraises the trees on the site. The proposed development will require the removal of a number of trees, some of which are protected by a Tree Preservation Order (TPO). The purpose of the Tree Preservation Order is to provide legal protection to trees from unnecessary, inappropriate or pre-emptive tree removal from the site prior to the design of a housing scheme. In consideration of this planning application the condition of the trees, protected or otherwise, including their safe useful life expectancy in the proposed future use of the site has been considered. The development requires some groundworks in close proximity to trees proposed to be retained on the site. The applicants have included method statements for these operations in the AIA which are satisfactory for the proposed operations.
48. The development proposed removes a Horse Chestnut tree (T3) and 2 Maples (G4) protected by a TPO. The protected trees proposed for removal to facilitate the scheme have a number of defects caused by decay fungi, and storm damage which limit their long term viability within a housing development. Other trees not protected by a TPO are to be removed, mainly trees in the area described as the 'Tennis Courts' in the southern corner of the site, and trees next to the proposed new site entrance. These trees are in a generally poor condition and should not constrain the development of the site. Replacement tree planting can be designed to develop into long term contributions to the amenity of the area. The green infrastructure plan indicates that replacement tree planting can be realistically achieved on the site, to the level required to

satisfactorily mitigate the removal of trees. Further details relating to proposed replacement tree planting such as location, species, size, numbers and aftercare need to be agreed. A condition should be attached to planning permission, if granted, requiring the submission of a planting scheme for approval in writing prior to the commencement of development.

49. A condition should also be attached to planning permission, if granted, requiring the development to be carried out in full accordance with the submitted tree reports and Arboricultural Impact Assessment by Envirotech ref Russell Armer Underbarrow AIA 02/02/16 rev 05/04/16.

United Utilities:

50. The proposals are acceptable subject to conditions requiring the implementation of the drainage scheme, including the restriction of flow to 5 litres a second and a management and maintenance scheme.

Natural England:

51. No objection in respect of statutory nature conservation sites. The Authority should consider the impact on the National Park using national and local policies. No assessment has been made with regard to protected species.

Neighbours / Others:

52. A petition of objection signed by 171 people was reported at the November Committee as a late item. The petition stated - We would like SLDC to carefully consider a planning permission application from a local developer. We don't believe they have truly considered all the evidence we have supplied them with. The land is toxic and even when cleared we believe water saturation will make it toxic again due to local old landfills. We live in a high risk flood area. We believe this development is putting more homes at risk of flooding.
53. Letters of objection have been received from or on behalf of the occupiers of 12 properties within the vicinity of the site. The objections are summarised as follows:
54. *Principle*
 - Growth projections raise questions about the accuracy and sustainability of the housing need forecasts in the development plan.
55. *Highway matters*
 - The majority of traffic leaving the site will travel down Greenside and onto Beast Banks, Queens Road or Gillinggate which are already identified as having traffic problems and associated safety issues.
 - The site is not accessible on foot as it is a long way from the town, at the top of a steep hill with no continuous footpath. Junctions and paths between the site and the town are awkward for pedestrians.
 - The developer should pay for a roundabout and traffic calming measures at the junction of Greenside and Bankfield Road plus footpaths to town on both sides of Greenside and Beast Banks.

- Increased traffic on already congested and dangerous roads. The Transport Assessment underestimates the over capacity at junctions and ignores the combined effect with development at Stainbank Green and further industrial development on Underbarrow Road.

56. *Landscape Impact and Design*

- Location adjacent to the National Park and Kendal Conservation Area.
- Adjacent development is of low density Victorian and mid C20th housing. The development is high density and of an uncompromising urban nature out of keeping with the surroundings and will form an inappropriately hard urban edge to the town, contrary to the planning brief.
- The designs are non-descript and of a scale and massing unsuitable for the site and fail to meet the intention of the Development Brief.
- There is no evidence that the properties will be designed to meet future environmental requirements.
- Lack of green screening along boundaries and green corridors within the site. Removal of trees will have a seriously detrimental visual impact.
- The Ecology Report is dated October 2014.

57. *Drainage*

- Lower areas surrounding the site suffer from water logging in heavy rain with the upper part of Greenside like a river during the extreme weather last December. Flooding also occurred on Brigsteer Road.
- Lack of confidence in the surface water plan and the response from the Local Lead Flood Authority. It is believed that the Flood Risk Assessment underestimates the potential risk to properties downstream and does not take full account of Storm Desmond. The report does not include rigorous tests.
- The site is on relatively impermeable limestone bedrock. Due to compacting during development questionable whether the permeability data from the Greenside site will have any relevance to the developed site.
- Blind Beck is at capacity when it rains and additional water will exacerbate this.
- Potential failure of storage tanks and bunds with associated flooding onto adjacent land.
- Decision which may affect surface water should not be taken before the Section 19 Kendal Flood Investigation is completed.
- A report by Dossor MCA (Mr Taylor) dated 11 November 2016 was received and reported as a late item at the November committee. The report related to surface water drainage and contaminated land and was submitted on behalf of the owners of adjacent property.
- The letter and report raise concerns with regard to the adequacy of the hydrogeological evaluation and testing carried out at the site, the drainage

calculations stating that a 40% climate change event should have been used not 30%, maintenance of soakaway systems, failure of systems which would contribute to overloading adjacent soakaway catchments further degrading the whole system having a major impact on the area. The differing responses to this proposal and the adjacent proposal have also been queried.

- The Ghyll and Hylands having downhill and adjacent locations are exposed to a substantial risk from flooding to their homes and over saturation of their gardens and grounds. The installation of an interceptor drain along the rear of the properties is recommended.
- Further concerns were raised with regard to releveling and earth infilling which are considered to pose a risk of softening and sliding of slopes and structures, posing a risk to adjacent property particularly during the construction phase.
- Since the November Committee a further report from Dossor MCA (Mr Taylor) dated 17 January 2017 has been received. The report provides a critique of the additional information submitted by the applicant prior to the committee and the amended drainage plan received on the day of the committee. The report makes particular reference to the additional bunds proposed along the southern boundary with the Ghyll and Hylands by the amended drainage plan (received 24 November 2016).
- Comments in the report include: the lack of detailing for the proposed bunds; the inclusion of bunds indicates the developer and CCC are aware of the risk of flooding to the Ghyll; the contour drawings indicate that the spur road will be a conduit for exceedance flows towards the Ghyll; infiltration rates vary; the data is incomplete and optimistic in respect of soil infiltration rates; existing infiltration rates will not be representative of the developed site and the lack of evidence to support assertions

58. *Contaminated Land*

- Lack of evidence with regard to gas migration from the three landfill sites above the site.
- Arsenic and lead in the eastern field make this unsuitable for development. Lack of evidence with regard to the source – if it came from the landfill sites will this not continue.
- The Dossor Report (referred to in the Drainage section of this report), raises concerns with regard to the adequacy of the testing carried out to determine the extent, type and risks arising from contaminated land on the site and arising from landfill sites nearby. The document question the potential links between the landfill sites and contamination on the site, the potential for contamination to evolve new flow paths and the suitability of the site for development.

59. *Affordable Housing Provision*

- Failure to provide affordable housing in line with SLDC policy.
- The only justification for developing fields could be to help young people get on the housing ladder.
- An increased affordable provision could be provided by increasing the density within the centre of the site and reducing the ratio of roads to properties.
- Failure to take full account of costs, policy requirements, difficulty in developing the site when negotiating the land value.

60. *Amenity at adjacent property*

- The proximity of considerable communal areas adjacent to the boundary is likely to affect amenity value.
- Overshadowing and loss of solar gain due to the higher level of the site and spacing of the houses.
- Loss of privacy.
- Overbearing scale and appearance of a wall of buildings along the southern boundary.
- Lack of sensitivity in boundary treatments.
- Lack of SLDC policy on separation distances.
- Adverse impact on the amenity of the development approved at the Ghyll.

61. *Other matters*

- Impact on private access, utility easements and surface water flows.
- The plan must be considered in relation to two other suggested developments in the area - the adjacent Oakmere development and the Draft Cumbria Minerals and Waste Local Plan which implies development at Kendal Fell Quarry.
- Covenants on adjacent properties restrict development in each plot resulting in low density development which must remain so.
- A further letter was received from Burnett's Solicitors (8 February 2017) on behalf of the occupiers of The Ghyll raising concerns with regard to the date of information being displayed on the website, reference to an amended drainage plan and committee reporting. The letter included a further report by Dossor MCA (dated 17 January 2017 and referred to in the Drainage section of this report).

Applicant's Representations

Viability

62. The abnormal works on the Russell Armer site relating to the topography, drainage and contamination are compounded by the need to position an access road at a particular level on the site to provide a connection into Oakmere's site (to the west). It is clear that this connection is being driven by the Development Brief. While this is indicative there is a clear requirement for a central amenity space of which Russell Armer's proposal has provided half despite being only 40% of the gross site area. This consequently pushes the access road down slope into the steeper contours which results in significant engineering works to enable the site to be developed with a connection to the Oakmere site.
63. In effect what is happening is that the development is being driven by South Lakeland District Council's Brief which results in significant costs and constraints on Russell Armer's side of the site which is subsidising the ability of the neighbouring site to produce 35% affordable housing. While we fully realise that the applications cannot be legally connected in any way, the argument is a fact and holds good in relation to the amount of works that is required of Russell Armer's site to implement the Development Brief as a whole. Clearly the Council and ourselves would like to see the site developed as a whole but there is a significant risk that it ends up not being delivered because of the difficulties of making the eastern part of the site work.
64. The applicant has spoken to the landowners on several occasions and while some concessions were made to land value and profit margins prior to the original application being made, there appears to be no solution that would allow the site to be sensibly developed out based upon the current situation.
65. The applicant has pointed out that the independent viability appraisal by Lambert Smith Hampton (included within the part II appendix) omits the Rural Wheels and Travel plan Monitoring Constrictions when concluding that the scheme can viably provide 10 affordable homes. If these contributions were to be required the affordable provision would need to be reduced to nine dwellings resulting in the loss of plot 34 - 2 bed rental house.

Previous Late Item Report

66. The following was included within the late items report. The applicant responded to the Dossier Report.

REC Contamination

67. Firstly, paragraph 3.28 in Mr Taylor's report details the presence of contaminated ground in the middle and eastern fields of the Russell Armer site. Elevated levels of arsenic, lead and minor exceedance of benzo (a) pyrene have been detected, when compared to a screening level compliant with values demonstrating that a risk to human health definitely does not exist. Exceedance of these levels does not mean that a pollutant linkage exist, only that further risk assessment or remediation is required. These exceedances have been detected within an area of the site where reworked natural materials have been found. The soil descriptions and double plots have identified coal to be present within the shallow soils in this area which is a legitimate source for these contaminants. Leachable levels of these contaminants have been found to be

negligible and following the placement of a cover system as recommended in the Remediation Statement any pollutant linkages to site users will be broken. Pollutant linkages to offsite receptors were never present to begin with. It should be noted that Kendal is in an area of metalliferous rocks and soils and as such elevated levels of arsenic and lead are found in natural soils and rocks.

68. With regards to para 3.41 the landfilling operations up gradient of the development site have been taken into consideration when assessing pollutant linkages to the proposed development with assessment of migration of ground gases, fugitive dusts, groundwater flow, etc. Based on the results to date, the siting of a housing development between the area of landfill and the respondents premises have no bearing on existing or future pollutant linkages. To date, no pollutant linkage has been detected between the historical landfill and the development site. Any pollutant linkages present between the landfill and downgradient premises are present with or without the development. The respondent is referring to offsite potential sources that are not affected by or have any bearing on the development site itself.

Drainage

69. The initial Flood Risk Assessment (FRA) was completed following extensive site investigation and consultation with the Lead Local Flood Authority and United Utilities.
70. This memorandum has been compiled in particular to address concerns raised during the planning process regarding properties The Ghyll and Hylands located to the south and downslope of the site and to addresses comments made by Dossor MCA.

Climate Change allowance -

71. In line with guidance that was current at the time the drainage strategy was developed, an increase in rainfall of 30% was applied. In February 2016 climate change allowances were revised, the Flood Risk Assessment Report was completed in December 2015.
72. The February 2016 revisions to climate change allowances contain radical changes to the climate change allowances relating to river and watercourse peak flows, rainfall allowance remains much the same. Two allowances are provided for the rainfall allowance, a central allowance of 20% and an upper allowance of 40%. The 30% allowance is the average figure and is therefore still widely considered the appropriate figure for design. The Environment Agency and LLFA have accepted this approach.
73. Nevertheless further work has been undertaken during detailed design with every soakaway individually designed. During this process we have exceeded the requirements and current guidance, taking a conservative approach of using a 40% increase in line with the upper allowance for design. The requirement is only to assess a 40% allowance to understand the range of impacts, the use of 30% as the central figure would be entirely justifiable.

SuDs -

74. In line with the SuDS hierarchy where possible disposal of surface water via infiltration drainage is proposed.
75. Although the soils are suitable for infiltration drainage, other site specific constraints such as topography, depth to bedrock and proximity to buildings / available space have affected the location and suitability of soakaway drainage. These aspects were thoroughly investigated and considered during design. A surface level model of the bedrock was developed based on the extensive ground investigations undertaken and infiltration rates were also mapped throughout the drift.
76. In relation to the developed area only (9.4% of the total site) is to be positively drained and this is to be attenuated and connected to the combined sewer located on Brigsteer Road. This has been approved by United Utilities (UU).
77. It was deemed necessary to positively drain (connect to main drainage) certain areas of the site with disposal off-site to ensure conservative design and that flood risk is not increased for properties located downslope due to the concentration of rainwater. Considerable effort and expense has been incurred in designing and securing a route through third party land for sewers.

RGP Response to Dosser MCA Report -

78. An objection containing a report by Dosser MCA dated 11th November has been brought to our attention. The report contains no detailed design yet recommends an entirely inappropriate land drain for which there is no basis or design calculations. It also contains unsubstantiated claims regarding runoff quantities, erroneous information relating to climate change and exaggerations regarding limestone erosion which occurs over millennia rather than short term as is implied by the report. The opinion presented conflicts with British Geological Survey Information which has been confirmed by site investigation and is therefore considered factually incorrect in our opinion.
79. As demonstrated by the FRA climate change has been accounted for. This was current at the time and remains current as the average for the current climate change allowance range. The 40% referred to is not the design requirement it is the upper end of the range in the new allowances.
80. The report refers to a large volume of water being injected into the bedrock. This is not the case, bedrock level has been accounted for during design. Without exception each soakaway structure is located entirely within the drift, this is clear in the FRA. An absolute minimum depth between the regolith and base of infiltration structures is 0.3m, in the majority of cases significantly greater.
81. The report references volume of water however there is no effort made to quantify this. We have designed each soakaway throughout the site on an individual basis. For each soakaway contributing area has been quantified, volume of runoff quantified and discharge rate quantified.
82. Soakaways have been sized and drainage split to ensure diffuse disposal of surface water to the drift. There are no instances where rainfall is excessively concentrated. Areas of the proposed development site where this was a possibility have been identified and are to be positively drained with discharge

to the combined sewer at an attenuated rate. We have therefore endeavoured to match the existing greenfield runoff conditions in line with NPPF, best practice and recommendations in the SuDS manual.

83. Soakaway structures and retaining structures have been designed in tandem and have accounted for one another. In all cases soakaways are located at depth so that they are within the existing drift. Engineered embankments are to be reinforced with geogrids and retaining walls are also proposed. These have been designed in accordance with the latest design standards taking into account the site specific ground conditions and topographic constraints. We therefore consider that there is no basis for the assertion that slopes will be unstable.
84. Following the independent technical review, the applicant submitted further information and justification to address the matters raised. The submissions include: clarification with regard to calculations, catchment areas, overland flow routes, safety factors, bund and berm section plans, soakaway plan and schedule and a revised drainage layout plan.

POLICY ISSUES

South Lakeland Core Strategy (CS):

85. Planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. Paragraph 14 of the National Planning Policy Framework sets out a presumption in favour of sustainable development. This means approving development proposals that accord with the Development Plan without delay. Planning should be plan-led with the Development Plan forming the primary policy document where consistent with the provision of the National Planning Policy Framework.
86. CS1.1 Sustainable Development Principles provides criteria for new development.
87. CS1.2 The Development Strategy states that approximately 55% of new development in the district will be in the Principle Service Centres of Kendal and Ulverston, comprising 35% in Kendal. The Land Allocation DPD allocates sites for development fulfilling the requirement for a five year land supply and the aims of this policy.
88. Policy CS2 Kendal Strategy states that provision will be made for 3,080 new residential dwellings between 2003 and 2025. 35% of new housing should be affordable, up to 60% of which should be delivered as social rented based on local need. The policy seeks to:
 - implement the development and mitigation strategy proposed in the Kendal Transport Plan;
 - improve accessibility to and within the town centre;
 - improve local green infrastructure;
 - ensure greenfield development is sympathetic to the landscape character of Kendal, the historic character and setting and address archaeological impacts;

- ensure new development safeguards and enhances the natural environment and local biodiversity (SSSIs and SACs within the area including the River Kent and its tributaries); and
 - minimise air pollution and flooding;
89. CS6.1 Meeting the housing requirement states that new residential developments will be identified in the Allocations of Land DPD.
90. CS6.2 Dwelling Mix and Type seeks to ensure that development offers a range of housing sizes and types which is easily adaptable for everyone.
91. CS6.3 Provision of Affordable Housing states that schemes in Kendal must include a minimum of 35% affordable dwellings. The Council will ensure that any planning permission is subject to appropriate conditions and / or planning obligations to secure the provision of affordable housing in perpetuity.
92. Policy CS6.6 Making Effective and Efficient Use of Land and Buildings states that the Council will seek to make effective and efficient use of land and buildings. The policy provides a target density of at least 30 dwellings per hectare. Higher densities will be sought on appropriate sites, particularly those in or adjoining Kendal. Exceptionally, a lower density will be supported where there is a proven need and environmental constraints mean it is not suitable for a high density development.
93. Policy CS7.3 Education and Skills states that where appropriate, development proposals should make a contribution to education and training needs.
94. Policy CS8.1 Green Infrastructure Policy states that the Core Strategy will seek to:
- ensure green infrastructure is incorporated into new developments, particularly where it can be used to mitigate the negative impacts of the development.
 - protect and enhance important open spaces within settlements to contribute towards an improved network of green corridors of value for wildlife, recreation and the amenity needs of the community.
 - protect species and habitats and create new habitats and wildlife corridors where biodiversity conservation and enhancement is affected by development. Ensure the protection and enhancement of watercourses and wetlands which are important contributors to the network of blue and green corridors for wildlife, recreation and the amenity needs of the community.
95. Policy CS8.2 Protection and Enhancement of Landscape and Settlement Character states that development proposals should be informed by and be sympathetic to the distinctive character landscapes identified in the Cumbria Landscape Character Guidance and Toolkit. Proposals should demonstrate that their location, scale, design and materials will protect and conserve the special qualities and local distinctiveness of the area.
96. Policies CS8.3a and CS8.3b Open Space, Sport and Recreation provide accessibility standards for the provision of facilities. Where development is located outside the accessibility standards, appropriate provision will be required on site. This will be based upon the number of people who will be living in the area.

97. Policy CS8.4 Biodiversity and Geodiversity states that all development proposals should protect, enhance and restore the biodiversity and geodiversity value of land and buildings. It also states that development proposals that would have a direct or indirect adverse effect on nationally, sub-regional, regional and local designated sites will not be permitted unless they cannot be located on alternative sites that would cause less or no harm; the benefits of the development clearly outweigh the impacts on the features of the site and the wider network of rural habitats; and prevention, mitigation and compensation measures are provided.
98. Policy CS8.6 Historic Environment supports safeguarding and where possible enhancing historic environment assets.
99. Policy CS8.7 Sustainable Construction, Energy Efficiency and Renewable Energy states that new development will be required to meet the Code for Sustainable Homes as required by Building Regulations.
100. Policy CS8.8 Development and Flood Risk seeks to ensure most new development is located in Flood Risk Zone 1. New development will only be permitted where it can be demonstrated that it would not have a significant impact on the capacity of an area to store flood water, measures required to manage any flood risk can be implemented, surface water is managed in a sustainable way and provision is made for long term maintenance of flood protection / mitigation measures.
101. Policy CS8.10 Design seeks development of a character which maintains or enhances the quality of the landscape or townscape and, where appropriate, should be in keeping with local vernacular tradition. Where necessary, the Council will publish design guidance for particular sites. Design that supports and enhances local distinctiveness will be encouraged. New developments should protect and enhance key local views and features / characteristics of local importance and incorporate layouts that reinforce specific local distinctiveness.
102. Policy CS9.1 Social and Community Infrastructure seeks to improve the health and wellbeing of residents. This will be achieved through ensuring appropriate social and community infrastructure (including health and cultural facilities) are in place from the onset.
103. Policy CS9.2 Developer Contributions the Council will require new development to secure improvements which are necessary to make the development acceptable by planning condition or obligations. Planning obligations may also be required for maintenance payments, to meet the initial running costs of services and facilities. Infrastructure contributions could include improvements to highways, public transport and Travel Plans, health care and education facilities, recreations provision, biodiversity and enhancement of public realm.
104. Policy CS10.1 Accessing Services promotes the improvement of accessibility by improving bus and rail services, promoting a network of safe cycle and walking routes linking residential areas with employment areas, town and local centres, schools and recreational open space facilities.
105. Policy CS10.2 Transport Impact of New Development requires that development be designed to reduce the need to travel and to maximise the use of sustainable forms of transport. Development proposals should provide for

safe and convenient access and foot, cycle, public and private transport, be served by safe access to the highway network without detriment to the amenity or character of the locality, the expected nature and volume of traffic generated by the proposal can be accommodated by the existing road network without detriment to the amenity or character of the surrounding area, local air quality or highway safety. Where a development would have significant transport implications, it should be accompanied by an air quality assessment, transport assessment and a travel plan.

Development Plan Document (DPD): Local Plan Land Allocations:

106. The DPD was adopted on 17 December 2013 therefore forms an integral part of the Development Plan. The site consists of the western part of a larger site allocated for residential development by Policy LA1.3 of the DPD. The policy provides an indicative number of houses for the whole site of 153.
107. Policy LA2.8 South of Underbarrow Road seeks to ensure that the site delivers a high quality sustainable development and that landscape, transport, drainage and biodiversity impacts are effectively managed. The policy states that a brief will be prepared to guide development and requires that development makes provision of the following:-
 - a landscape and green infrastructure framework incorporating the retention of trees and hedgerows, integration with any adjacent amenity open space, a strong landscaped buffer along the boundary with the Lake District National Park and landscaping along the northern boundary;
 - submission and approval of a transport assessment and travel plan, including the widening of Underbarrow Road, the provision of lit footway and the provision of pedestrian and cycle access through the site to Underbarrow Road;
 - the submission of an assessment to examine the risk of contamination arising out of the former landfill activity at Kendal Fell Quarry and implementation of any necessary mitigation measures.

Supplementary Planning Document - South of Underbarrow Road, Kendal:

108. The supplementary planning document (SPG) was adopted in April 2015. The document provides a development framework for achieving a development on the site which reflects local vernacular and respects the site's edge of Kendal location next to open countryside and the Lake District National Park. The specific recommendations are discussed within the assessment section of this report.
109. The framework within the brief is based upon sound planning reasons which seek to ensure that development is appropriate to the site and does not harm the edge of the town and the landscape. The brief has been through consultation and has been formally adopted as an SPG. It is therefore a material consideration.

Saved Policies of the South Lakeland Local Plan (LP):

110. Saved Policy C6 Sites of International Nature Conservation Importance and saved Policy C7 National Sites seek to ensure that development does not have a significant effect on the nature conservation interest of the site.
111. Saved Policy C11 Tree Preservation Orders seeks to protect trees close to development.
112. Saved Policy C19 Site of Archaeological Interest seeks to ensure that an appropriate programme of archaeological work is provided to record and / or preserve remains where necessary.
113. Saved Policy Tr9 Better Ways to School seeks improvements where the scale and location of development makes such provision possible.
114. Saved Policy S2 South Lakeland Design Code seeks development that takes account of distinctive local character and context is of an appropriate design.
115. Saved Policy S3 Landscaping requires a high standard of landscaping and long term maintenance.

National Planning Policy Framework (NPPF):

Promoting Sustainable Transport

116. Paragraph 32 - Development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe.

Requiring good design

117. Paragraph 56 - The Government places great importance on the design of the built environment. Good design is a key aspect of sustainable development and should contribute positively to making places better for people.
118. Paragraph 58 requires that local plans include policies that set out the quality of development that will be expected. Policies should aim to ensure that development adds to the overall quality of an area, establishes a strong sense of place, responds to local character and history and is visually attractive as a result of good architecture and landscaping.

Delivering a wide choice of high quality homes

119. Paragraph 50 - Where there is an identified affordable housing need, policies should be set for meeting this need on site. Such policies should be sufficiently flexible to take account of changing market conditions over time.

Promoting healthy communities

120. Paragraph 73 - Access to high quality open spaces, sport and recreation can make an important contribution to the health and wellbeing of communities.

Meeting the challenge of climate change and flooding

121. When determining applications local planning authorities should ensure that flood risk is not increased elsewhere.

Conserving and enhancing the natural environment

122. Paragraph 109 - The planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and minimise the impacts on biodiversity and providing net gains where possible.

Conserving and enhancing the historic environment

123. Paragraph 128 states that where a development has the potential to include heritage assets with archaeological interest developers should submit an appropriate desk-based assessment and where necessary a field evaluation.

124. Paragraph 129 requires that LPA's consider that impact of a proposal on a heritage asset and avoid or minimise conflict between conservation and the proposal.

125. Paragraphs 131 – 134 provide criteria for assessing the impact of development upon heritage assets.

Planning Conditions and obligations

126. Para 204 - Planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

Council Plan 2014 – 2019:

127. The Council has four priorities: the economy; housing; environment; and culture and wellbeing. It states that the Council will help deliver new affordable and open market housing and enhance and protect the district's high quality environment.

Localism Act

128. The Localism Act 2011 is aimed at empowering local agencies and people to deliver and better the Government agenda. It is not directed to deliver less, but to deliver at levels to maximise or exceed Government's strategic objectives. The NPPF (The National Planning Policy Framework) and Development Plan policies are not altered by the Localism Act.

129. The Localism Act introduces local finance considerations as a planning consideration in so far as they are material to the application.

Human Rights Act

130. This application has been determined to accord with the rights and limitations of the Act in relation to Article 6 (Right to a fair and public hearing), Article 8 (Right to respect for private and family life, home and correspondence), Article 14 (Prohibition of discrimination) and Article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property).

ASSESSMENT

Principle of development and key issues

131. The application was previously considered at the November Planning Committee where Members resolved that delegated authority be given to grant planning permission subject to a S106 and conditions. The scheme has not materially altered since the November committee. The independent technical review commission by the LLFA has however provided a statutory consultation response which forms a material change to the circumstances in which the decision was made. It is the content of this review, the additional information submitted by the applicant and subsequent response from the LLFA which form the key issues for consideration at this time.
132. The following section provides the 'Principle of development and key issues' within the November Committee report.
133. The site consists of the eastern 2.69 hectares of a larger (6.5 hectare approximately) site which is allocated for residential development by Policy LA1.3 of the Development Plan Document (DPD): Local Plan Land Allocations. The principle of development on the site and its acceptability in sustainable terms is therefore already established within the Development Plan.
134. It would be preferable for the entire allocated site to be considered as a whole. However, as the application has been submitted it must be determined on its own merits. A separate application (SL/2016/0582) for the western part of the allocated site is to be considered at this planning committee.
135. This is a full planning application which seeks planning permission for the erection of 47 dwellings. The application includes the access arrangements for this part of the allocated site, the layout and design of the houses and an indicative landscaping scheme. The fundamental issue is whether the development meets the key requirements of Policy LA2.8 and the Development Brief which has been adopted as a Supplementary Planning Document. More specifically, the main issues relate to:
 - Viability and the provision of affordable housing;
 - The layout and design of the housing scheme and the consequent impact upon the appearance of the site, the townscape and landscape settings and residential amenity;
 - The landscaping and the consequent impact upon the appearance of the site, the townscape and landscape settings;
 - The transport assessment and access arrangements into, within and around the site; and
 - Drainage.
136. Other issues include air quality, contaminated land and noise constraints, ecology and archaeology.

Viability and Affordable Housing

137. The applicant has carried out a Viability Assessment in support of the reduced amount of affordable housing proposed. An independent review of the Viability Assessment has been carried out by Lambert Smith Hampton and is included within Part II of this agenda.
138. The application as originally submitted proposed to provide 98 affordable units consisting of the following mix:
- 1 x 1 bed flat, 2 x 2 bed flats and 1 x 2 bed house for affordable rent;
 - 4 x 3 bed houses for discounted sale.
139. In this case, the independent review concludes that this site is not viably capable of providing the full policy expectation of 35% affordable housing (16 units). The review does however conclude that an additional 2 affordable houses can viably be provided on the site.
140. The National Planning Practice Guidance states that where the deliverability of the development may be compromised by the scale of planning obligations and other costs, a viability assessment may be necessary. This should be informed by the particular circumstances of the site and proposed development in question. Assessing the viability of a particular site requires more detailed analysis than at development plan level. Where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations.
141. Policy CS6.3 takes into account viability and states that, 'a lower affordable housing requirement will be acceptable where there is clear evidence that it would make the development unviable'.
142. The independent Viability Appraisal recognises that the site has significant abnormal development costs which include:
- 'The additional costs associated with developing a steeply sloping site, external costs arising from the enhanced external finishes such as the amount of stone proposed in this scheme or the amount of open space and layout arrangement sought by the Development Brief. Of particular note is the conclusion that the layout is inefficient featuring single sided development along the Underbarrow Road and southern boundaries, the provision of a significant amount of open space and the road through to the remaining part of the allocated site. Additional costs also arise from the treatment of contaminated land in the eastern field and the need to take drainage for part of the site through third party land.'*
143. The majority of the proposed houses are large detached units which meet the open market need identified in the Strategic Housing Market Assessment. The scheme also includes a small number of two and three bedroom houses and flats within the open market housing mix in accordance with Policy CS6.2 of the Core Strategy.
144. The applicant has agreed to provide a further 2 x two bed houses as affordable units, providing a total of 10, in line with the independent recommendation. The proposal therefore accords with the requirements of Policy CS6.3 of the Core Strategy.

Townscape and Landscape Impacts

Policy and context

145. The starting point when assessing the proposed layout is the context in terms of both the policy background and the character and setting of the area. Policies within the Development Plan and within the NPPF place significant emphasis upon good design which contributes to establishing a strong sense of place responding to local character. Policy CS1.1 of the Core Strategy states that it must be ensured that a high quality, localised and appropriate design is incorporated into all developments to retain distinctive character / sense of place and enhance the existing built environment and Policy CS2 seeks to ensure greenfield development is sympathetic to the landscape character of Kendal and to the historic character and setting. Policies CS8.2 and CS8.10 of the Core Strategy and saved Policy S2 of the Local Plan expand on the context and design principles.
146. Policy LA2.8 seeks to ensure that development has a landscape and green infrastructure framework incorporating the retention of trees and hedgerows and landscaping along the northern boundary.

Layout and design

147. The scheme is designed in two distinct sections, the properties fronting Underbarrow Road and those within the main body of the site behind.
148. The Development Brief aims to ensure the housing fronting onto Underbarrow Road takes reference from the scale and size of properties along Greenside. The houses are set back from Underbarrow Road by a landscaped area which ensures retention of the protected limes along the boundary. The houses are also set back behind an access drive and public footpath reflecting the green spacing along Greenside and Victoria Road.
149. The scheme includes a range of terraces, rising in scale from small two storey units at the eastern end to three storey buildings then lower two storey semi-detached houses and terraces. These reflect the varying scale of the properties around the green at Greenside and the more substantial Victorian Terraces on the northern side of the road. The units towards the west of the site become more spacious. The designs reflect the scale, proportions and layout of nearby property but have a contemporary finish. The timber cladding on the original scheme has been removed and a greater degree of stone has been introduced. A mixture of stone walls and hedging will form the front boundaries in keeping with Greenside.
150. The housing within the main body of the site is of a more usual housing development with contemporary design and scale. The Development Brief acknowledges that development in this space may be slightly more intensive. The proposal is not however overly dense, at an average of 17.4 dwellings per hectare across the whole of the site. The scheme includes a variety of design concepts and the layout reflects the rectangular field pattern and linear form of the townscape to the east of site. The proposals will retain open spaces within the site breaking up the roofscape and providing pockets of greenspace similar to the Greenside area.

Landscaping and open spaces

151. The scheme retains key groups of trees identified within the Development Brief along the northern boundary, in the centre of the site and on the eastern boundary. While trees are to be removed to allow development of the site these will be replaced and enhanced with additional planting along the site boundaries and within focal points.
152. The scheme includes an area of open space / landscaping along the northern boundary with Underbarrow Road which will form the function of a green corridor as envisaged in the Development Brief. A larger area of open space in the northwest corner adjacent to Underbarrow Road is also proposed as recommended in the Development Brief and is intended as a play area in conjunction with the adjacent site. Open areas are also proposed on the steeply sloping land in the southeast corner and within the centre of the site around protected trees.
153. A detailed scheme, including species and sizes will be required to ensure that the indicative scheme is implemented to enhance the appearance of the site. Details of the play equipment will also be required.

Impact on the surroundings

154. It is acknowledged that as an allocated site, the development will affect the character and appearance of the site and surroundings. The well-conceived layout, landscaping and design will ensure that the proposed development relates well to the geography and historical pattern of surroundings. The immediate frontage onto Underbarrow Road will provide a good quality design using vernacular tradition and appropriate and good quality materials. As a new development leading into the town and the conservation area, the development will pick up on detailing from the historic environment and ensure that the new housing is appropriate to the setting and entrance to the town.
155. The development within main body of the site respects the scale of neighbouring buildings. The land levels, trees and rectangular road pattern have been used to create a development appropriate to the context and surroundings.

Residential amenity and impact on surrounding properties

Eastern boundary

156. The houses at the north eastern end of the site adjacent to Underbarrow Road have been reduced in scale and moved away from the boundary. The houses will be approximately 12m from the boundary at the closet point and 16m from the side of the adjacent house. This distance widens between the houses and the position of the window on the side, while they will be approximately 1.4m higher, this is not unreasonable. There is a parking and amenity area adjacent to the boundary, these will however be filtered by planting along the boundary.
157. Moving further down the boundary, the properties to the east are located at a lower level. The two larger houses at plots 19 and 20 have been designed to minimise impact. The adjacent house at 19 Greenside has large windows facing the site and is located approximately 2.5m lower than the proposed house at plot 20 and slightly higher than plot 19. At a distance of 16 to 14m

respectively the proposed new dwellings will not adversely affect sunlight, amenity or privacy.

Southern boundary

158. The site is bound by a number of properties at a lower level. The properties to the south east corner of the site are considerably lower at the bottom of a steep banking. The ridge heights of the closest two properties are between 2 and 5 metres lower than the floor levels of the houses proposed. These houses are however approximately 35 and 60 metres to the south of the proposed houses. The distance, steepness of the banking and orientation will ensure that the proposals do not adversely affect sunlight, appear overly large or overbearing or affect privacy at these properties.
159. Hylands is located immediately to the south of the corner of the site. The property is however off-set from the proposed houses and separated from the main development by a parcel of allocated land within the ownership of that property and not within the application site.
160. The Ghyll is also at a lower level than the site. The house is however screened by a row of trees within the main garden and less mature planting along the boundary. Outline planning permission has also been granted for residential development at The Ghyll which is likely to include the construction of a driveway along the rear of the house. The closest house proposed would be orientated with its side onto the garden and separated from the house at The Ghyll by approximately 25m (the floor level being approximately 2.5m higher than The Ghyll). A pair of three storey houses also proposed but these are over 18m from the boundary and 35m from the house. Two other houses are approximately 12m from the boundary and 1.4m higher than the boundary but these are adjacent to a divorced part of the garden. The distance, height, orientation and existing screening, together with additional planting along the boundary will not adversely affect privacy and amenity or compromise the development at The Ghyll.

Conclusion

161. The scheme has evolved to respect the aims of the Development Brief, providing housing of an appropriate scale and design and high levels of landscaping including the retention of key trees and open spaces. The proposal therefore accords with the design and landscaping policies within the Core Strategy and the NPPF.
162. The proposals therefore accord with the aims of Policy LA8.2, Policies CS2, CS8.6, CS8.1, CS8.2 and CS8.10 of the Core Strategy and saved Policy S2.

Transport and Access

Accessibility

163. A Transport Assessment has been submitted which considers the whole of the allocated site. The opinions and assumptions expressed are considered robust and the proposal will not have an undue impact upon the conditions of the surrounding road network.

164. The Town Council and members of the public have raised concerns with regard to the congestion and pedestrian safety. It is acknowledged that the development will increase traffic at junctions. However, the junctions mentioned are distant from the site and already experience delays. The additional traffic from both this and the adjacent site will dissipate over distance and time periods, and will not result in a significant increase in queuing or delays. The County Council as Highway Authority has confirmed that the junction modelling does not show that the impacts of the development are severe, which is the test within the National Planning Policy Framework.
165. The nearest public transport link is a bus stop approximately 420m from the eastern corner of the site. The town centre and facilities are also accessed via steep gradients to / from the site. There are however limited means of improving this general accessibility to and from the site. Measures such as improving paths and cycle links along Greenside and Beast Banks would not be directly linked to the impacts of this development but are a wider aspiration for the area. It is proposed to link the site by a footpath to the top of Greenside, and whilst a number of crossings are necessary, there are footpath links to the town centre and facilities.
166. The scale of the development would not viably sustain an extension to the bus service. However, a Travel Plan to encourage access by other means than the car is considered appropriate. This can be achieved through the inclusion of conditions and requirements within a S106.

Access to site

167. The proposals include pedestrian access at the eastern end of the site and a vehicular access toward the western side from Underbarrow Road. The access arrangements meet the requirements of Cumbria County Council and involve the relocation of the speed limit with associated traffic calming measures. These measures would need to be implemented prior to the main development commencing and thus ensure the access point is safe for development traffic.
168. If the adjacent site were to be developed first and the speed limit relocated to the west of the access to that site, the measures within this application would not be required.

Internal access arrangements

169. The layout is sensible and in line with Manual for Streets. The layout is constrained by the topography, shape of the site and the desire to front development toward Underbarrow Road. There is therefore limited scope to alter the overall layout. The scheme does however provide additional footpath links within the site to improve accessibility.

Conclusion

170. The access arrangements are acceptable, the access routes will not be substantially affected by additional traffic, or safety adversely affected, and accessible links are available with the addition of Rural Wheels and a Travel Plan to encourage use of such facilities. The proposal therefore accords with Policies CS9.2, CS10.1, CS10.2, and LA2.8, and saved Policy Tr9.

Drainage

171. A Flood Risk Assessment has been produced which acknowledges that while the site is not at risk of flooding, surface water runs through and over the site with overland run-off apparent during short high intensity rainfall.
172. Site investigation has been carried out including the use of trial pits and boreholes. The site is located over a minor aquifer of high vulnerability and high level bedrock. Investigations show variable depth of soil between 1.5 and 3 metres with good infiltration. However, deep borehole trails failed to drain. These results indicate that whilst a proportion of the surface water can be disposed of through infiltration to soakaways, a range of methods are required. The investigations have been carried out in accordance with the appropriate guidance and Cumbria County Council as Local Lead Flood Authority is satisfied that the investigations present an accurate picture of the site circumstances on which to base a drainage design. The independent review assessed the site investigation and raises no concerns with regard to the extent or methods used.
173. The independent review raised queries with regard to the catchment area, calculations for house soakaways and the correlations of calculations and plans. It concludes that the likelihood of severity of increased flood risk to off-site properties and the adequacy of the proposed mitigation cannot be assessed.
174. The applicant has provided additional information to address these queries, including justification and clarification of safety factors, catchment areas, calculations, soakaway plan and schedules. This information provides sufficient detailing to determine the infiltration, attenuation and dispersal of water through and off the site.
175. The drainage scheme has been designed to capture the rainfall within the site and positively drain areas and reduce run-off. Where ground conditions allow an infiltration system will be provided, this mainly consists of soakaways for houses within gardens. Permeable paving is also to be utilised where possible. This is however not an option for the whole of the site and a positive drainage system with storage and an attenuated flow is proposed. The storage has been calculated using the appropriate figures, including a 100 year return period, a 30% allowance for climate change and for failure. A hydrobrake is proposed which will limit outflow from the storage to 5l/s. This surface water will discharge into the combined sewer in Brigsteer Road with the consent of United Utilities. The pipeline will be routed through the driveway / gardens of properties between the site and Brigsteer Road. This pipeline is included within the application site.
176. Additional information has been submitted to address the points raised in the independent review with regard to the impact upon properties downstream. This information includes cross sections for the bund and berm detailing. Account has been taken of flows toward adjacent properties lower than the site, potential failures in the system and exceedance routes. Measures include the provision of a bund along the southern boundary with The Ghyll and Hylands, and berms (engineered bunds on the downward slope) between the houses and the properties at and adjacent to Larch How in the south east corner.

177. The LLFA has advised that it does not consider that the independent review contradicts the previous advice given. It does however raise queries with regard some of the assumptions and detailing. These matters have now been addressed and the LLFA has confirmed that the additional supporting information satisfies the outstanding queries. Officers consider that these matters have been dealt with thoroughly in accordance with local and national planning policies and guidance, including the revised climate change allowances.
178. Cumbria County Council as Local Lead Flood Authority remain in support the proposal for surface water to be discharged to the combined United Utilities system on Brigsteer Road after the flow has been restricted via attenuation methods to greenfield run-off. The submitted scheme is considered robust and in accordance with national and local guidance and Policy CS8.8 of the South Lakeland Core Strategy.

Air quality

179. While it is agreed that the development will have a negligible impact upon air quality at the site and within the Local Air Quality Management Area, such incremental impacts where pollution already exceeds EU limits is not acceptable. Measures are therefore required to mitigate this impact such as improvements to foot and cycle ways and electric vehicle charging points. The introduction of improved footpath and cycle links into the town centre would not however be a reasonable requirement given the scale of the scheme and provision of a bus service would not be viable.
180. The National Planning Practice Guidance recommends mitigation measures be included within schemes and this has been successfully achieved in schemes at Lumley Road and Kendal Parks with the inclusion of conditions requiring electric charging points. Measures such as electric charging points and rural wheels area are therefore also proposed to meet air quality mitigation requirements.
181. The proposal therefore meets the aim of Policy CS2 to minimise air pollution.

Contaminated land and noise constraints

182. A contaminated land assessment and mitigation scheme has been submitted with the application. The Environmental Health Officer has confirmed that the investigations and assessment have been carried out in accordance with the appropriate guidance and that a robust mitigation scheme is proposed. The investigation found the presence of arsenic and lead in the eastern field only with no gas migration through the site. As contamination has not been found in the adjacent field and given the type of contamination it is likely that the pollution occurred from previous activities on site rather than transfer from the nearby landfill sites. The remediation scheme proposes to remove the contaminated materials from the site to an authorised waste disposal site. These works will improve the quality of the land, resulting in a site safe for the proposed use and a reduction in risk to adjacent property.
183. The Noise Assessment concludes that the existing noise around the site should not prohibit granting of planning permission, with the mitigation measures proposed. Further assessment is however required to assess the individual

requirements for properties facing towards the Kendal Fell Business Park. This matter can be dealt with by condition.

184. The proposal therefore accords with the aims of Policy LA2.8 to ensure risk is mitigated.

Ecology and Archaeology

Trees

185. The scheme involves the removal of a group of trees alongside Underbarrow Road to accommodate the access point. These trees are in poor condition with extensive die back. The removal and the introduction of an appropriate landscaping and tree planting will therefore provide an enhancement in the long term. Similarly the group of trees at the 'Tennis Court' are in poor condition. Their removal will allow a development of this part of the site and enhancement with the introduction of new planting.

Ecology

186. An Ecology Appraisal has been submitted with the application. The majority of the site comprises of poor semi-improved grassland with low ecological value, four groups of trees including an area of woodland in the southern corner

187. Other than bats using the areas around the trees for foraging no evidence of protected species was found at the site. The loss of a group of trees and development of the site will not adversely impact upon bat habitat and with suitable planting, particularly around the site boundaries, connections through the site could be enhanced.

188. The location and type of development, together with an appropriate drainage scheme and construction management regime would ensure there is no significant likely effect on the nearby SAC or SSSI.

Archaeology

189. A Heritage Impact Assessment has been submitted which concludes that there is a risk that below ground prehistoric archaeology remains. There is however no evidence that these remains will be of high importance and such remains do not pose a constraint to development. The County Council Historic Environment Officer agrees with this conclusion and has requested a scheme to ensure any such remains found during construction are recorded.

Financial benefits to Local Authorities from the development

190. In accordance with the requirements introduced by Section 115 of the Housing and Planning Act 2016. The financial benefits of the proposed development are estimated below.

Source	Benefit
Community Infrastructure Levy	£256,783.66 - based on assumed claim of the social housing exemption for the 10 affordable dwellings and no self-build exemption. This figure will change after 1 January 2017.

Council Tax Income	£56,922 - SLDC element - £6,304 (estimate based on 43.9 Band D equivalents).
New Homes Bonus	£63,847 - SLDC element - £51,078 (estimate based on 44.4 Band D equivalents, excludes affordable dwelling supplement).

191. Any financial considerations would add to the overall benefits in delivering the 5 year housing land supply and identified housing need on this allocated site.

CONCLUSION

192. Members have previously concluded that the application is acceptable. The application has been reported back to the planning committee due to the additional independent technical review provided by the LLFA. This review forms a material change in circumstances. The queries raised by the review have been addressed by the applicant with the submission of additional supporting information. The drainage scheme is acceptable and accords with the aims of policy CS8.8 of the Core Strategy and the aims of the NPPF.
193. The site has been allocated for development and is therefore considered to be sustainable in terms of location. It will be linked to existing footpaths into the town however there is limited scope to improve this further. As the site is allocated, this is not a reason to withhold planning permission. Access arrangements and the impact on the wider highway will not be adverse and measures will be taken to minimise pollution.
194. The proposal will provide a well-conceived development with housing of a scale, design and siting to reflect the position on the edge of the Kendal Conservation Area and the town. The development will meet the key requirements of Policy LA2.8 and the Development Brief. Key area of open space and protected trees will be retained and enhanced with additional planting.
195. In conclusion, the proposed development meets the aims of local and national planning policies including those within the South Lakeland Local Plan and the Development Brief. Officers have taken the opportunity to set out in full the recommended planning conditions.

RECOMMENDATION: GRANT

That delegated authority be issued to GRANT planning permission subject to the completion of a S106 Agreement with regard to the provision of the affordable housing, the long term management and maintenance of the open space and communal surface water drainage scheme and appropriate conditions.

Condition (1) The development hereby permitted shall be commenced before the expiration of THREE YEARS from the date hereof.

Reason To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Condition (2) The development hereby permitted shall be carried out in accordance with the following approved plans:

- The 'Site Plan' drawing number - URK.100C;
- The 'Site Sections' plan drawing numbers - URK.105C, URK.106B, URK.107B, URK.108;
- The house/apartment types as annotated on the 'Site Plan' URK.100C and detailed within the 'House Types' booklet received by the Local Planning Authority on 17 October 2016;
- The 'Drainage Layout' plan drawing number K31324-A1-100G by R G Parkins & Partners;
- The 'Bund Layout and Details South-Western Field' drawing number K31324/A1/SK03 by R G Parkins & Partners;
- The SW Plot Drainage Soakaway Schedule by R G Parkins & Partners;
- The 'Typical Bund Detail' plan drawing number K31324/A1/SK02 A by R G Parkins & Partners;
- The Proposed Gateway Feature' plan drawing number 2014/1406/SRF/0001 Rev A
- The 'Boundary Treatments' plan drawing number URK.103B.

Reason For the avoidance of doubt and in the interests of proper planning.

Condition (3) a) No development, including site clearance/preparation or drainage works, shall commence out in the eastern field (hatched green on drawing number 002 of the E3P Report) until a phasing scheme for the implementation of the remediation scheme within section 3 of the E3P Report (Ref:10-619-R1 dated October 2016) - 'Remediation & Enabling Works Performance Specification' has been submitted to and approved in writing by the Local Planning Authority.

b) The remediation scheme shall be implemented in accordance with the approved phasing scheme and the requirements of section 3 of the E3P Report (Ref:10-619-R1 dated October 2016) - 'Remediation & Enabling Works Performance Specification'.

c) Within 3 months of the completion of measures identified in the approved remediation scheme, or before the dwellings within the eastern field are occupied, whichever is the earlier, a

- Reason To ensure that safe pedestrian access to the nearest public transport and facilities is available in accordance with policy CS10.1 and CS10.2 of the South Lakeland Core Strategy.
- Condition (7) No dwelling shall be occupied until the 30mph speed restriction has been relocated in accordance with drawing number 2014/1406/SRF/0001 Rev A, by The Modal Group Ltd and in accordance with a detailed scheme for the design of the feature which has first been submitted to and approved in writing by the Local Planning Authority.
- Reason The works are required to take place before development to ensure that traffic is travelling at a safe speed to accommodate the new access point in accordance with policy CS10.2 of the South Lakeland Core Strategy.
- Condition (8) a) Before the dwellings hereby approved are first occupied an updated Travel Plan shall be submitted to and approved in writing by the Local Planning Authority.
- b) The provisions of the approved Travel Plan shall thereafter be implemented.
- Reason To ensure that the use of modes of transport other than the private car are encouraged in accordance with policy CS01.1 and CS10.2 of the South Lakeland Core Strategy.
- Condition (9) a) No development shall commence until a phasing scheme for the implementation of the drainage scheme shown on drawing number K31324-A1-100 G by R G Parkins & Partners has been submitted to and approved in writing by the Local Planning Authority.
- b) The drainage scheme shall be implemented in accordance with the approved plan and phasing scheme.
- c) Before the dwellings in each phase are occupied, a validation report (that demonstrates that the drainage scheme has been carried out in accordance with the approved plan) must be submitted to the Local Planning Authority.
- d) The drainage scheme must thereafter be retained in accordance with the approved plan.
- Reason The phasing scheme is required before development commences to ensure that drainage is provided at appropriate times and to ensure adequate provision is made for the management of surface water and sewage disposal in accordance with saved Policy S26 of the South Lakeland Local Plan.
- Condition (10) a) No development shall take place, including any works of site preparation, drainage or contaminated land remediation, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall provide for:

- i. the movement, access, exit, parking and turning of construction traffic;
 - ii. the parking of vehicles of site operatives and visitors;
 - iii. Loading and unloading of plant and materials;
 - iv. storage of plant and materials used in constructing the development;
 - v. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - vi. wheel washing facilities;
 - vii. Measures to control the emission of dust and dirt during construction;
 - viii. Measure to control surface water during construction; and
 - ix. Measures to control noise and vibration.
- b) The approved Construction Method Statement shall be adhered to throughout the construction period.

Reason		These details are required to be approved before the commencement of development to safeguard the amenity of neighbouring occupiers in accordance with National Planning Policy Framework para 17 Core Principles and paras 121- 123.
Condition	(11)	Site preparation, drainage, remediation or construction works shall not take place outside the hours of 8.00am to 6.00pm Mondays to Fridays and 9.00am to 1.00pm Saturdays and at no time on Sundays, Bank or Public Holidays.
Reason		To safeguard the amenity of neighbouring occupiers in accordance with National Planning Policy Framework para 17 Core Principles and para 123.
Condition	(12)	The development shall not proceed except in accordance with the strategy described in the Arboricultural Impact Assessment for Proposed Residential Development prepared by Envirotech (deposited with the Local Planning Authority on 29 April 2016) and a phasing plan and a plan showing the position of the tree protection fencing which have been submitted to and approved in writing by the Local Planning Authority.
Reason		For the avoidance of doubt and to prevent harm to protected trees in accordance with Policies CS8.1 and CS8.2 of the South Lakeland Core Strategy and saved Policies C11 and S18 of the South Lakeland Local Plan.
Condition	(13)	<p>a) No development shall commence until a phasing scheme for the implementation of a programme of archaeological work has been submitted to and approved in writing by the Local Planning Authority.</p> <p>b) The programme of archaeological work shall be carried out in</p>

accordance with the approved phasing scheme and in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The written scheme of investigation shall include the following components:

- i) an archaeological evaluation;
- ii) archaeological recording programme the scope of which shall be dependent upon the results of the evaluation; and
- iii) a phasing scheme for the implementation of the archaeological evaluation

Where the results of the programme of archaeological work recommend, there shall be carried out within two years of the completion of that programme on site, or within such timescale as otherwise agreed in writing by the Local Planning Authority:

- i. an archaeological post-excavation assessment and analysis;
- ii. preparation of a site archive ready for deposit at an appropriate store;
- iii. compilation of an archive report; and
- iv. the preparation and submission of a report of the results for publication in a suitable specialist journal.

Reason These details are required to be approved before the commencement of development to ensure any remains on site are properly recorded in accordance with saved Policy C19 of the South Lakeland Local Plan.

Condition (14) a) Before the dwellings at plots 23 to 31, 32 to 36 and 48 are occupied, noise mitigation measures shall be installed in accordance with a scheme which has first been submitted to and approved in writing by the Local Planning Authority.

b) Before these plots are occupied validation report to confirm that all works undertaken on site have been completed and shall be submitted to the Local Planning Authority.

c) The noise mitigation measures shall be retained at all times thereafter.

Reason To safeguard the amenity of future occupiers of the site in accordance with National Planning Policy Framework para 17 Core Principles and para 123.

Condition (15) a) Before the superstructure of the dwellings is constructed, full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. The details shall include:-

- i) hard surfacing materials;
- ii) minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units etc.);

- Reason To ensure the development is of a high quality design in accordance with Policy CS8.10 of the South Lakeland Core Strategy and saved Policy S2 of the South Lakeland Local Plan.
- Condition (18) The roofs shall be covered with Campo Heritage Slate, unless an alternative is submitted to and approved in writing by the Local Planning Authority before any of the superstructure is erected.
- Reason To ensure the development is of a high quality design in accordance with Policy CS8.10 of the South Lakeland Core Strategy and saved Policy S2 of the South Lakeland Local Plan.
- Condition (19) a) Before the final top surface of the roads, drives and paths are constructed, samples and details of the materials to be used submitted to and approved in writing by the Local Planning Authority.
- b) Development shall be carried out in accordance with the approved details unless otherwise agreed in writing with the Local Planning Authority.
- Reason To ensure the development is of a high quality design in accordance with Policy CS8.10 of the South Lakeland Core Strategy and saved Policy S2 of the South Lakeland Local Plan.
- Condition (20) a) No dwelling shall be occupied until a scheme for the provision of electric vehicle charging points for a minimum of 15% of the dwellings hereby approved has been submitted to and approved in writing by the Local Planning Authority.
- b) The electric charging points shall be installed in accordance with the approved scheme.
- Reason To provide for low emission in the interest of air pollution minimisation and in accordance with policy CS2 of the South Lakeland Core Strategy.