
Planning application no. SL/2019/0841

The Courthouse, Burneside Road,
KENDAL, LA9 4NF

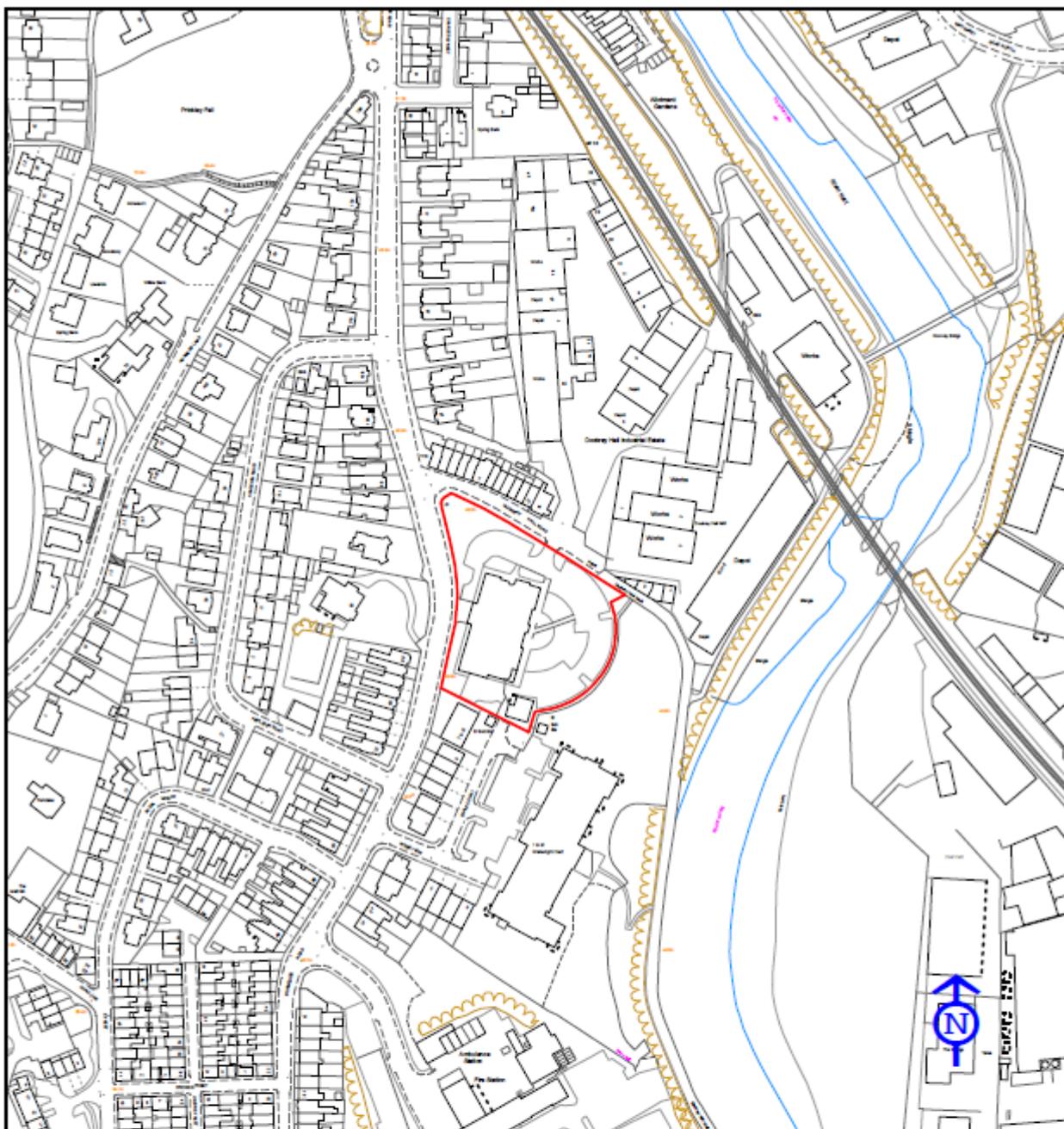
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SL/2019/0841

**The Courthouse
Burneside Road
KENDAL
LA9 4NF**

Scale: 1:2500

Summary

SL/2019/0841

PARISH: Kendal

The Courthouse, Burneside Road, KENDAL, LA9 4NF

PROPOSAL: Demolition of existing building and redevelopment to form 64 retirement living apartments for older people (sixty years of age and/or partner over fifty five years of age), guest apartment, communal facilities, access, car parking and landscaping

APPLICANT: Churchill Retirement Living

GRID REF: E 351473 N 493501

COMMITTEE DATE: 25 March 2021

CASE OFFICER: Andrew Martin

This is an application seeking full planning permission for a development of 64 retirement living apartments on the site of the former magistrates court in Burneside Road, Kendal. Retirement living accommodation is one of a number of types of specialist housing recognised as meeting the diverse needs of older people.

The site is within the development boundary of the town and directly adjoins the Kendal Conservation Area. The site is largely within Flood Zone 3, which is at the highest risk of flooding.

A significant section of the report concentrates on the applicant's contention that the inclusion of affordable housing would make the development unviable. Having subjected the applicant's viability case to two separate reviews, this argument is accepted.

The application raises a number of other complex and interrelated issues, including local concerns which focus mainly on access, parking and the mass of the building. Having judged these issues against the relevant development plan policies and other material considerations, including the National Planning Policy Framework and the associated Government Planning Practice Guidance, the application is recommended for approval, subject to a number of conditions.

Recommendation

The application is recommended for approval subject to:

- a) adoption by the Planning Committee of the "Habitat Regulations Assessment Report, Tyler Grange, Report Number: 12519_R02a_GP_LP, 27 September 2019" to meet the Council's responsibilities as a competent authority in accordance with The Conservation of Habitats and Species Regulations 2017

(as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019); and

b) conditions.

1.0 Description and proposal

Site description

- 1.1. The application site extends to an area of 0.54 hectares, positioned east of Burneside Road, immediately south of the junction with Dockray Hall Road. It is within the development boundary of the town and abuts Kendal Conservation Area to the west. It is not allocated for any particular use.
- 1.2. The site falls away appreciably from Burneside Road, reflecting the general topography of the area which slopes down eastwards towards the River Kent. The site overlaps Flood Zones 2 and 3. The River Kent is designated as a Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC). The site appears under reference BLR26 in the Council's Brownfield Land Register 2019 with the comment that it would "only be considered suitable for housing subject to sequential and exception test as it lies within Flood Zone 3."
- 1.3. The site is currently occupied by a former magistrates court, which closed in June 2017. The existing building has a gross floor area of approximately 2,126.66 sq. m . contained within two storeys set at a level approximately two metres below Burneside Road. It has a wide footprint relative to its height, resulting in a prominent shallow-pitched roof. Overall the building has a squat appearance relative to its neighbours. Vehicular access is via Dockray Hall Road, serving a car park of 62 spaces which wraps around the north and east of the building. A pedestrian access from Burneside Road connects with the building at first floor level via a bridged walkway.
- 1.4. The character of the surrounding area is predominantly residential. On the far side of Burneside Road, and within the conservation area, development comprises a mix of terraced, semi-detached and detached 2½ storey units, elevated above the road. To the south are Earle Court and Wainwright Court, sheltered accommodation developments of mainly three storeys. And to the north of the site, the far side of Dockray Hall Road is fronted by an extended and stepped terrace of two and three storey properties. Dockray Hall Road also provides access to Dockray Hall Road Trading Estate, which the applicant's Design and Access Statement describes as consisting of "25 medium sized businesses."
- 1.5. Burneside Road is a main route into the north of the town. There are double yellow lines on both sides of the carriageway adjoining the application site. Parking restrictions continue southwards towards the town centre on the eastern side of the road, but there is some controlled on-street parking on the

western side; 1-hour free parking with no return within 1 hour except for permit holders. On-street parking is generally unrestricted along Burneside Road north of the application site.

- 1.6. Dockray Hall Road is a vehicular cul-de-sac, but with pedestrian and cycle connections through to the path along the right bank of the River Kent. A small section of public footpath FP 536267 runs along the eastern end of Dockray Hall Road, between the entrance to the Trading Estate and the River Kent. Two separate arms of the National Cycle Network (Route 6) pass along Dockray Hall Road and Windermere Road. There are double yellow lines along the southern side of the road, adjoining the application site, but on-street parking is unrestricted along the northern side.

Proposal

- 1.7. The application proposes demolition of the former magistrates court and redevelopment of the site with a new building comprising 64 “retirement living apartments”, based on a T-shape footprint, orientated approximately 75 degrees counter-clockwise. That part of the building fronting Burneside Road comprises 4 storeys of accommodation (expressed as 3½ storeys), whereas the “tail” of the building, projecting towards the eastern boundary of the site, reduces to 3 storeys. The ground floor of habitable accommodation is proposed to be set at a level of 47.90m AOD, marked by the top of a substructure that underpins the whole building. This level ensures that the habitable accommodation is safe from flooding. The eastern half of the substructure will be perforated by a series of 900mm wide x 1800mm high apertures designed to allow flood water to pass under the building.
- 1.8. The proposed schedule of accommodation is as follows:

Floor	No. of bedrooms		Total
	1	2	
Ground	8	7	15
First	13	6	19
Second	15	5	20
Third	5	5	10
Totals	41	23	64

- 1.9. The ground floor also has a guest suite and an owner’s lounge.
- 1.10. Finished floor levels (FFL) are as follows:

Floor	FFL
Ground	47.900

First	50.610
Second	53.310
Third	56.010

- 1.11. The internal arrangement of the building employs a typical configuration for this type of development: a double bank of apartments separated by a central corridor. This leads to a deep floor plan, which in this case is spanned by a double-pitch roof on both principal wings. The mass of the building is broken up into a number of distinct elements, with significant breaks in the ridgeline on the eastern wing (as the building steps down with the topography) and series of projecting bays on both wings. External materials are listed to be: render and stone for the walls; slate for the roof; and uPVC windows.
- 1.12. Vehicular access is retained from Dockray Hall Road. 38 parking spaces are proposed, wrapping around the north and east of the building and partly re-purposing the existing car park. There are two principal pedestrian accesses to the building: (1) a bridged entrance from Burneside Road connecting to the first floor; and (2) a ramped and stepped access rising from the car park and connecting to a rear entrance on the ground floor.
- 1.13. Most of the existing trees on the north and west boundary are to be retained. The area of the site to the south and east of the building is identified as a landscaped “amenity zone.”

2.0 Planning history

- 2.1. There is no relevant planning history for the site itself, but there are two proposals on the adjoining business park that are referred to in the third party representations:
- SL/2005/1002, (Unit 8-10 Dockray Business Park), Change of Use From Existing Warehouse/Distribution Centre to New Snooker and Bowling Leisure Facility, REFUSED 07 December 2005
 - SL/2008/0607, (The Gateway Unit, Dockray Hall Industrial Park), Change of Use to Children's Soft Play Area and Synthetic Ice Rink, REFUSED, 01 August 2008

3.0 Consultations

- 3.1. The application was originally publicised in November 2019. It was re-publicised in February 2021 following: (a) design amendments (Including changing the accommodation mix from 39 no. 1-bedroom units and 25 no. 2-bedroom units to 41 no. 1-bedroom units and 23 no. 2-bedroom units); (b) an update to the Transport Statement; and (c) to make public the various documents relating to scheme viability.

Kendal Town Council

3.2. Comments as follows:

02 December 2019

“No objections.

“The committee positively endorses the inclusion of swift boxes to this application

“The committee accepts the development of this site as previously outlined at the pre-application stage. The committee would like assurances that “local” limestone is to be used and in accordance with the heritage report, the colour of the slates is local.

“During building works off road storage, loading, unloading and potential obstructions as have been suggested in the neighbour’s responses require addressing. Solutions are required to reduce congestion with the volume of traffic as well as the different and varied traffic volume after completion. Specific attention should be given to the entrance onto Burneside Road from Dockray Hall Road (Entrance and Exit) and especially the current lack of visibility.

“The committee felt that liaison between Cumbria County Council and South Lakeland District Council should be encouraged to formulate a travel plan to encourage active travel: cycles, short routes along the river, user friendly routes to actively encourage alternative methods of transport. Whilst the committee celebrates the sustainability of the site, it would be enhanced with electric charging points, solar panels and enhanced bicycle storage.

“A widening of Dockray Hall Road was suggested on the north side of the site where there is available land as far as the entrance. The committee would value the applicant and officer’s response to this suggestion. This could easily include a new footpath and would result in enhancing the junction and improve safety and access.”

Local highway authority and lead local flood authority (Cumbria County Council)

3.3. Comments as follows:

01 March 2021

“I can confirm that our previous response dated 11 August 2020 should still apply.

“The drainage strategy has been updated with further detail, further design work has resulted in proposed storage larger than proposed in the previous revision. This does not affect our recommendation which was for approval with [four] conditions.”

11 August 2020

“We recommend that this application can be approved with conditions.

“Groundwater flooding at this location is hydraulically linked to the level of the River Kent so the measures taken to reduce flood risk from the river also manage the risk from groundwater. The proposal for infiltration drainage has been dropped because Seasonally High Groundwater Levels are likely to be at the surface. United Utilities have agreed to accept drainage into their sewer and the infiltration proposal has been revised to an attenuation strategy.

“The Transport Assessment relies on a study conducted by the developer looking at eight sites that are operated by the proposed operator. The eight sites are situated in suitably similar circumstances to those at this site so the conclusions of the study are reasonable.

“On street parking is a problem for residents in the surrounding area and it should be ensured that there is no overspill parking onto the surrounding streets due to this development. The study concludes that only one car parking space per three residential units are needed and the provision proposed here is more than one space for every two residential units, which is more than is needed for the worst case of the eight study sites. Parking problems surrounding an apparently similar development nearby may be explained because that development is likely to have many more staff associated with it than the proposed development.

“This proposed development is located near to Kendal town centre and has potential to be served by sustainable modes of transport. The proposed users are typically less likely to use the private car than the population at large and the transport study shows that the proposed use of the development will generate fewer trips and lower demand for parking than the existing use as a magistrates court.

“There remains a concern that the permitted use class could allow more intensive use by cars should the business model change in the future and we would recommend a condition to ensure that this cannot happen.

“Developments should encourage sustainable modes of transport such as walking and cycling and we would encourage the developer to look at providing further access for these users on the desire lines.

“There has been no discussion of construction impacts in the submitted documents and should planning consent be awarded these issues should be resolved by pre-commencement condition.

“Four conditions are recommended.”

Countryside Access (Cumbria County Council)

3.4. Comments as follows:

01 March 2021

“Public footpath 536267 follows an alignment to the eastern side of the proposed development and must not be altered or obstructed before or after the development has been completed[. If] the Footpath is to be temporarily obstructed then a formal temporary closure will be required [...]”.

Cumbria Constabulary, Community Safety Unit

25 November 2019

- 3.5. The Community Safety Unit has offered a number of comments on crime prevention, including keeping vegetation trimmed to improve surveillance, maintaining appropriate levels of external illumination, gating the main entrance to the site and making various physical adaptations of the building – including the provision of alarms and the installation of doors and windows to an appropriate standard

United Utilities

26 November 2019

- 3.6. No objection in principle to surface water discharging to the existing surface water sewer, subject to a condition: (1) restricting flows to 6.5l/s in any storm event; and (2) requiring the installation of a non-return valve before foul water discharges into the 675mm diameter combined sewer.

Environment Agency

- 3.7. Comments as follows:

19 February 2021

“We have reviewed the amended plans and drainage strategy report [...].Our stance and comments [...] remain unchanged as a result of the amendments. “

26 November 2019

“We have no objection to the proposal in principle but wish to make the following comments:

“The planning application is accompanied by a Flood Risk Assessment (FRA) prepared by Peter Brett Associates (referenced: 30481/4093/4001/001; dated 27 September 2019). We have reviewed the FRA in so far as it relates to our remit and we are satisfied that the development would be safe without exacerbating flood risk elsewhere if the proposed flood risk mitigation measures are implemented.

“As the 2017 Kent and Gowan Inland Modelling Study is outdated, using the 1 in 1000 year model as a proxy for 1 in 100 year (plus climate change allowance of 35%) is acceptable to inform the proposed finished floor levels of 47.9m AOD.

“The proposed development must proceed in strict accordance with this FRA and the mitigation measures identified as it will form part of any subsequent planning approval. Any proposed changes to the approved FRA and / or the mitigation measures identified will require the submission of a revised FRA.

“In our letter referenced NO/2019/111946/01-L01, dated 14 August 2019 we provided detailed comment on the proposal to use floodable voids, we stated that the Environment Agency position is that we cannot explicitly support the use of floodable voids, amongst other reasons, because if deemed inherently necessary for the mitigation of flood risk impacts caused by the development then they must be maintained to provide that function for the lifetime of the development. This is a matter that is beyond our control to enforce.

“The FRA has demonstrated that the proposed void will create a gain of floodplain storage of approximately 332m³ up to a 1 in 100 year (plus climate change allowance of 35%) modelled event. The FRA includes the maintenance programme for the voided space and the design specification to allow flood conveyance; all of which must be strictly adhered to for the reasons outlined.”

Natural England

3.8. Comments as follows:

17 February 2021

Confirmed that previous comments apply.

14 February 2020

“Natural England agree with the conclusions of the Habitats Regulations Assessment and advise that a CEMP [Construction Environment Management Plan] should be submitted prior to works commencing on site. This should include appropriate pollution prevention measures and biosecurity measures to protect the adjacent River Kent SSS/SAC.

“The applicant will also need to apply for a European Protected Species licence if planning permission is gained, as detailed in the submitted bat survey.

“We note that the Ecological Report recorded swifts flying over the site during the survey and that swift bricks have been recommended as an enhancement. As stated in our previous comments the proposed building is in a prime location and of a suitable height to offer ideal opportunities for nesting swifts. The proposed building should be able to provide at least 20 swift bricks, which are cheap and easy to install but could provide a significant biodiversity gain. We advise the applicant contact the local Swifts in the Community group for further advice.

“Other on-site enhancements should also be incorporated where appropriate such as green roofs, hedgehog houses, bug hotels, native planting and bird boxes etc.

which will not only benefit nature but also the people living in the proposed development.”

South Lakeland District Council

Specialist – Arboriculture

3.9. Comments as follows:

25 February 2021

“The submitted Arboricultural report and Arboricultural Impact Assessment is acceptable and accurately represents the trees on the site. If this development is approved, please attach a condition to require the development to be carried out in accordance with the submitted documents.”

Public protection

05 March 2021 (repeating earlier comments from 06 December 2019)

3.10. Recommends conditions in respect of: (1) land contamination; (2) the need for a Construction Environment Management Plan (CEMP); (3) limiting construction working hours; and (4) limiting noise within the living room(s) and bedroom(s) of the approved apartments once occupied.

Street Scene

28 June 2019

3.11. Street Scene has commented that it would like to see the anticipated vehicle movement (by way of a swept path analysis for a 26 tonne refuse vehicle), location of collection point and dwell time required to uplift the waste and recycling.

Principal Specialist People

3.12. Comments as follows:

25 February 2021

“Need and demand

“The 2017 Strategic Housing Market Assessment (SHMA) identifies a need for 153 new affordable dwellings annually up to 2036 (3060 in total over the period 2016 to 2036) of which 67 dwellings are needed in the Kendal Housing Market area annually (1340 in total over the period 2016 to 2036). The evidence shows that the need is more weighted towards smaller 1-2 bedroom homes, though there is still a need for larger 3+ bedroom homes. The SHMA identifies the need for 72 specialist (sheltered, extra care, enhanced sheltered) housing units for older people annually during the period 2016-36 based on the significant increase in

the over 75s age range. Cumbria County Council's evidence of need for extra care housing shows a shortfall of 500 extra care housing units in South Lakeland. A shortfall of 164 units was identified in Kendal from 2016 to 2025.

"Work has started on a 104 unit extra care scheme at Oxenholme and Wainwright Court is also in close proximity to this proposal which is also an extra care scheme.

"The Housing Register as of September 2020 shows a total of 1642 households who express a need to live in Kendal. Of these, 1015 need a 1 bedroom home, 428 need a 2 bedroom home and 199 need a 3+ bedroom home. There are 953 applicants who express the need for either a ground floor flat or bungalow (NB applicants can choose more than one option) and there are 18 applicants who need accessible accommodation.

"The Older Persons' Housing Strategy supports the need for a range of housing options that will help older people to downsize into more suitable accommodation freeing up family sized homes. CS6.2 of the Core Strategy requires a mix of house sizes and types. The mix proposed is retirement living apartments for older people (sixty years of age and/or partners over fifty five years of age) comprising 41 one bedroom and 23 two bedroom homes."

Neighbours / third parties

- 3.13. We have received 22 letters of representation. Some of these are resubmissions of earlier comments following re-consultation of the application in February 2021. One letter supports the development and nine letters are explicitly marked as objections. The remaining letters offer comment or raise concerns. The objections and concerns cover the following issues:

Principle of development

- Support the concept of retirement living apartments, which could potentially free up family homes elsewhere.

Access and parking

- Too little car parking. An underestimate of the parking needs of the adjoining Wainwright Court development has led to an overspill of visitors etc. onto the adjoining streets. This leads to highway dangers.
- Court use has been abandoned and does not constitute a valid baseline. Traffic movements attributed to the Court use in the Transport Statement is an exaggeration based upon local residents' experiences.
- The applicants have not assessed the actual traffic conditions on Dockray Hall Road to establish a baseline.

- Dockray Hall Road is substandard; it is narrow; it has a steep gradient up to the junction with Burneside Road; the mouth of the junction is too narrow for large vehicles to enter and exit at the same time.
- Dockray Hall Road is a busy pedestrian thoroughfare
- There are a cluster of vehicular entrances onto Dockray Hall Road at its eastern end.
- The applicant fails to account for extra vehicle movements the site will generate through deliveries of e.g. groceries, parcels, internet orders along with visits from carers, medical professionals and those providing services to the residents.
- There are lots of traffic incidents that have not been reported; street furniture has been damaged; drainpipes have been knocked off of cottages; cars have been rear-ended or have lost wing mirrors.
- There has been a massive increase of traffic into and out of the Dockray Hall Estate over the last 20 years; it is now 7 days a week.
- Heavy vehicles that are too large to enter Dockray Hall Estate frequently block the entrance to the magistrates court when loading/unloading.
- A condition should prohibit vehicles over 3.5tonnes from accessing the site before 9.30am and after 3:30pm, to avoid busy times.
- Construction and demolition traffic entering and leaving the site via Dockray Hall Road will create a danger. Any permission should be conditional upon construction and demolition traffic accessing the site (via a ramp) directly from Burneside Road and/or via Webb View.
- Residents should have direct access to the existing riverside path without having to enter Dockray Hall Road.
- Entrance footbridge on Burneside Road positioned dangerously.

Design

- Significant effect on the townscape given building's scale.
- Development will be monolithic and overbearing.
- Scale of building will be a massive visual intrusion to road users, in particular pedestrians using Burneside Road. Mass of building onto Burneside Road needs to be significantly reduced.
- Developer should be required to produce photomontages so that visual impact can be fully assessed, particularly the view along Burneside Road heading out of town.

- Approve of the attractive design of the replacement building.
- Concerned about loss of view of Kendal Castle.
- Roof should be covered with blue/green/grey natural slates
- uPVC windows, rather than wood or metal, will have a clumsy appearance in close proximity to the conservation area.
- Landscaping around the unoccupied substructure could be used to reduce the apparent mass of the building.

Infrastructure

- Is United Utilities satisfied that the current foul sewer system and waste water treatment works is adequate to deal with the increased pressure from this development?
- Development should make a contribution of £17,686 towards reconfiguration of local health practices.

Amenity

- Overlooking of properties in Wainwright Court and of Wainwright Court's amenity space.
- The proposed development sits too close to Burneside Road and Dockray Hall Road and will impact on the quality of life of residents on both these roads through loss of light and loss of privacy.
- The plans show the existing landscaping at the junction of Burneside Road/ Dockray Hall Road being retained. This is essential for the privacy of the residents of Dockray Hall road as without it, pedestrians on Burneside road are at the same level as the bedroom windows and thus be able to look directly in to some of them.
- Developer should provide a scheme for the monitoring and mitigation of the impact of construction vibration on nearby residential properties.
- Noise and disturbance during construction.

Biodiversity

- Swift bricks should be incorporated into the development to contribute to an increase in biodiversity net gain.

4.0 Relevant planning policies

South Lakeland Core Strategy

4.1. The following Core Strategy policies are considered relevant to the proposal:

- CS1.1: Sustainable Development Principles
- CS1.2: The Development Strategy
- CS2: Kendal Strategy
- CS6.2 – Dwelling mix and type
- CS7.1: Meeting the Employment Requirement
- CS7.2: Type of Employment Land Required and Sectoral Split
- CS8.1: Green Infrastructure
- CS8.2: Protection and Enhancement of Landscape and Settlement Character
- CS8.4: Biodiversity and Geodiversity
- CS8.6: Historic Environment
- CS8.7: Sustainable Construction, Energy Efficiency and Renewable Energy
- CS8.8: Development and Flood Risk
- CS8.10: Design
- CS10.2: Transport impact of new development
- C19: Sites of Archaeological Interest

South Lakeland Land Allocations Development Plan Document

4.2. The following Land Allocations DPD policies are considered relevant to the proposal:

- LA1.0: Presumption in favour of sustainable development
- LA1.1: Development boundaries

South Lakeland Development Management Policies Development Plan Document (DMDPD)

4.3. The following DMDPD policies are considered relevant to the proposal:

- DM1: General Requirements for all development
- DM2: Achieving Sustainable High Quality Design
- DM3: Historic Environment.
- DM4: Green and Blue Infrastructure, Open Space, Trees and Landscaping
- DM5: Rights of Way and other routes providing pedestrian, cycle and equestrian access
- DM6: Flood Risk Management and Sustainable Drainage Systems
- DM7: Addressing Pollution, Contamination Impact and Water Quality
- DM8: High Speed Broadband for New Developments
- DM9: Parking Provision, new and loss of car parks
- DM11: Accessible and Adaptable Homes

Other material considerations

National Planning Policy Framework

4.4. The following sections are considered relevant to this application.

2. Achieving sustainable development
4. Decision-making
8. Promoting healthy and safe communities
9. Promoting sustainable transport
11. Making effective use of land
12. Achieving well-designed places
14. Meeting the challenge of climate change, flooding and coastal change
16. Conserving and enhancing the historic environment

Cumbria Development Design Guide

Affordable Housing Planning Policy Guidance Note March 2020

5.0 Assessment

The principle of development

Proposed use

- 5.1. Although proposed as accommodation for a specific age group, it is explicit in the application that the apartments will fall within Class C3 of The Town and Country Planning (Use Classes) Order 1987 (England) (as amended), encompassing use as a dwellinghouse, meaning that development plan policies relating to residential development will apply. However, it may be appropriate to enforce the proposed age restriction if that has the potential to mitigate impacts that might otherwise result in a refusal of planning permission.
- 5.2. The former magistrates court is within the settlement limits of Kendal, one of two Principal Service Centres identified by policy CS1.2 (The Development Strategy) of the Core Strategy as being the focus for the bulk of new housing and employment development.
- 5.3. Also of relevance to the proposal, Core Strategy policy CS6.2 (Dwelling mix and type) states:

“The provision of purpose-built and/or specialist accommodation for the elderly, in appropriate locations within selected settlements in accordance with CS1, and well served by public transport and local services, will be supported, provided that it does not detract from the character of the surrounding areas or involve the use of land safeguarded for employment purposes where the need for such safeguarding remains. The Council will liaise and negotiate with the County Council Adult Social Care Services how older persons housing needs will be accommodated using findings contained within relevant studies and reports (such as the 2009 Planning4Care Report).”
- 5.4. And Policy CS9.1 (Social and community infrastructure) makes clear that the Core Strategy seeks to improve the health and wellbeing of all residents, through, amongst other things:

“Meeting needs and requirements associated with residential care housing, extra care housing and other types of housing for older people as identified in relevant reports and studies (for example the 2009 Planning4Care Report).”
- 5.5. Paragraph 001 of the Government’s Planning Practice Guidance on “Housing for older and disabled people” in unequivocal in its message that:

“The need to provide housing for older people is critical.”

- 5.6. The Government Guidance recognises retirement living, the product proposed in this application, as one of a number of types of specialist housing designed to meet the diverse needs of older people.

Existing use

- 5.7. Core Strategy policy CS7.1 (Meeting the employment requirement) states that “good quality unallocated sites which are currently in employment use will be preserved”. However, the policy has a footnote clarifying that “for the purposes of this policy, employment land is defined as land for industrial/business development and covers use classes B1a (offices), B1b (research & development), B1c (light industry), B2 (general industry) and B8 (storage & distribution)”. The magistrates court does not fall within any of these use classes and so policy CS7.1 does not apply.

Habitat creation, urban greening and climate change.

- 5.8. Principle 9 in Policy DM2 (Achieving Sustainable High Quality Design) of the DMDPD states:

“New development should incorporate measures that support and enhance habitat creation and urban greening ensuring that provision reflects the local biodiversity evidence base and reduces the factors contributing to, and responds to the effects of climate change.”

- 5.9. The policy cross refers to Appendix 1 in the DMDPD, which lists seven “measures that should be considered.” Where applicable in this case, these measures are discussed further under subsequent headings in this report.

Affordable housing

- 5.10. Core Strategy policy CS6.3 (Provision of affordable housing) states that:

“On all schemes of nine or more dwellings in the Principal/Key Service Centres [...] no less than 35% of the total number of dwellings proposed [shall be] affordable.”

- 5.11. The policy also acknowledges that:

“Exceptionally, a lower requirement for affordable housing will be acceptable where there is clear evidence that it would make the development unviable.”

- 5.12. Paragraph 64 of the NPPF states that:

“Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership [...]”

- 5.13. However, it acknowledges a number of exemptions to this requirement, including development which, as in this case:

“[...] provides specialist accommodation for a group of people with specific needs (such as purpose-built accommodation for the elderly or students)”

- 5.14. Where an applicant considers that the provision of affordable housing would render a development unviable then the Core Strategy clearly places the onus on them to make the case. This is consistent with the Government’s more general Planning Practice Guidance on Viability, which states (in paragraph 008) that:

“Where a viability assessment is submitted to accompany a planning application this should be based upon and refer back to the viability assessment that informed the [development] plan; and the applicant should provide evidence of what has changed since then.

“The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and viability evidence underpinning the plan is up to date, and site circumstances including any changes since the plan was brought into force, and the transparency of assumptions behind evidence submitted as part of the viability assessment.”

- 5.15. Paragraph 007 of this Guidance describes some of the circumstances in which viability assessment might be justified, including:

“[...] where particular types of development are proposed which may significantly vary from standard models of development for sale (for example build to rent or housing for older people)”

- 5.16. This is repeated in paragraph 015 of the Government’s general Planning Practice Guidance on “Housing for older and disabled people”.

- 5.17. The viability assessment currently underpinning the council’s development plan is the “South Lakeland Development Management Policies DPD and CIL Viability Assessment” (“The Local Plan Viability Assessment”), produced by Aspinall Verdi and published in September 2017. This is available online and is referred to on a number of occasions in the following discussion.

- 5.18. Also of relevance in this case is Vacant Building Credit, described in paragraph 026 of the Government’s Planning Practice Guidance on Planning Obligations as follows:

“National policy provides an incentive for brownfield development on sites containing vacant buildings. Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought. Affordable housing contributions may be required for any increase in floorspace.”

- 5.19. In this case, taking into account Vacant Building Credit, the percentage of affordable housing is calculated as $35 \times (1 - (\text{existing floorspace} / \text{proposed floorspace})) = 35 \times (1 - 2126 / 5529) = 21.5\%$.
- 5.20. However, even at this lower percentage the applicants have concluded that the costs in developing this site make it unviable to deliver any affordable housing.
- 5.21. Their case was set out initially in an Affordable Housing and Viability Statement dated October 2019¹. This document, together with all of the others referred to in this section of the report, are available to view in full online.
- 5.22. As is usual in these circumstances the applicant's viability statement was subjected to independent review. Not by Lambert Smith Hampton in this case (LSH declared a conflict of interest), but, in the first instance, by Adams Integra in a report dated March 2020. Adams Integra concluded that the proposed development "is not viable and if it went ahead would not be able to support an affordable housing payment."
- 5.23. At the applicant's request the application was held in abeyance over the summer of 2020 whilst they considered the potential impacts of the Covid-19 pandemic. In October 2020 they updated their viability report to reflect the change in the mix of units since the original submission². The updated report was, again, subjected to independent review; this time by Aspinall Verdi³. Aspinall Verdi's conclusion is that with an adjustment to some of the assumed project costs this development could afford a contribution of £653,406 towards the provision of affordable housing. This figure was reduced from £1,242,710 after it was agreed that income from ground rent should be removed in anticipation of forthcoming legislative changes⁴.
- 5.24. Other documents relating to viability and referred to in this report (and all available to view in full online) are:
- Response to Aspinall Verdi Affordable Housing & Viability Review, Planning Issues, Town Planning and Architecture, January 2021.
 - Argus appraisal, Planning Issues, Town Planning and Architecture, 08 February 2021 (Provided without prejudice).
 - Argus appraisal (v2a) for Kendal Magistrates' Court, Aspinall Verdi, 12 February 2021.

¹ Affordable Housing and Viability Statement, Planning Issues, Town Planning and Architecture, October 2019

² Affordable Housing and Viability Statement, Planning Issues, Town Planning and Architecture, Updated Report - October 2020

³ Kendal Magistrates Court FVA Report, Aspinall Verdi, 24 December 2020

⁴ See Argus appraisal (v2a) for Kendal Magistrates' Court, Aspinall Verdi, 12 February 2021

- Sales and Marketing Data, Planning Issues, Town Planning and Architecture, 15 February 2021.
- 5.25. All three of the viability appraisals/ reviews available in this case employ the same standardised approach set out in the Government's Planning Practice Guidance. Nevertheless, even within the two separate reviews that we have commissioned there are significant differences of opinion. And more than can be accounted for by just the modest change in the accommodation mix that occurred between the preparation of the two documents. Adam Integra's experience suggests that the applicant's assumptions are all reasonable; Aspinall Verdi has adopted a more critical position. It is important to stress that neither Adams Integra nor Aspinall Verdi's conclusions should be read as recommendations. Nor are they determinative. They are material considerations to be weighed in the overall planning balance.
- 5.26. The following discussion concentrates on the areas where Aspinall Verdi has challenged the applicant's assumptions. References to Planning Issues (acting for the applicants) have been abbreviated to PI and Aspinall Verdi to AV.

Land value

- 5.27. It is helpful in this case to begin with a discussion about land value: the minimum price at which the site can be reasonably assumed to sell for the purposes of the viability appraisal.
- 5.28. Paragraph 013 of the Government's Planning Practice Guidance on viability states: "To define land value for any viability assessment, a benchmark land value should be established on the basis of the existing use value (EUV) of the land, plus a premium for the landowner. The premium for the landowner should reflect the minimum return at which it is considered a reasonable landowner would be willing to sell their land. The premium should provide a reasonable incentive, in comparison with other options available, for the landowner to sell land for development while allowing a sufficient contribution to fully comply with policy requirements. Landowners and site purchasers should consider policy requirements when agreeing land transactions. This approach is often called 'existing use value plus' (EUV+)."
- 5.29. The various viability reports and reviews submitted in respect of this application discuss an appropriate benchmark land value (BLV) to be used in this case, with PI and AV eventually settling on a working assumption of £320,000. This comes from two sources of analysis: (1) an appraisal of the potential for reusing the existing building as offices, managed workspace etc. (the existing use value); and (2) an appraisal of redeveloping the site for extra-care accommodation (an alternative use value). Furthermore, £320,000 broadly equates to the £240,000 per acre cited in The Local Plan Viability Assessment for residential brownfield land in the District. AV stresses that the £240,000 per acre figure was never

intended to be used in site-specific appraisals. Nevertheless, in this case it accepts that it offers a useful validation of the £320,000 figure arrived at through the other analyses undertaken to support this application.

- 5.30. We know from Land Registry information that in February 2019 the site was actually sold (to Wren Properties Ltd) for a “price stated to have been ... £955,000 exclusive of VAT”. We also know that at the time this planning application was submitted Wren Properties Ltd remained the owners of the site (that is revealed on the application form). And we further understand that the current applicants have an option to acquire the site from Wren Properties, subject to obtaining planning permission.
- 5.31. It is clear from the Government’s Planning Practice Guidance that using BLV as the basis of concluding a viability appraisal is regarded as best practice and the actual price paid (or to be paid) for land is largely irrelevant. In fact, as a warning to developers, the Guidance stresses in several places that:
- “Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan.”
- 5.32. In other words, the consideration of viability in the planning process is not a means by which developers can attempt to obtain compensation for poor commercial decisions.
- 5.33. The Guidance does, however, acknowledge that market evidence can be used as a cross-check of benchmark land value, and to that end paragraph 014 states:
- “Local authorities can request data on the price paid for land (or the price expected to be paid through an option or promotion agreement)”.
- 5.34. We have made that request in this case, but PI have not provided the information, stating (in response to a specific question posed by AV) that:
- “Given the confidentiality of the terms of sale, our client is not in a position to release the terms of sale. We note that the NPPG states that local authorities “may ask” for this detail. Our client considers that given they are not using purchase price for viability purposes and are following the standardized approach to viability this information will not be released.
- “Our client’s consistent position is that they will not release detail of land agreements. This is their position across all sites they are involved with. We therefore do not have this detail available.”
- 5.35. This is an unhelpful response. It denies a useful cross-check and it does not aid the transparency referred to in paragraph 008 of the Planning Practice Guidance on Viability – quoted above. Nevertheless, neither the fact that this information is unavailable, nor any unevicenced conclusions that one might be tempted draw from that fact, are justifiable reasons for refusing planning permission. We have an

agreed BLV and the remaining analysis of viability should proceed on that basis.

- 5.36. There is a significant amount of common ground between PI and AV, albeit with some “without prejudice” commitments. The gross development value of the scheme has been agreed, as have: (1) base build costs; (2) abnormals (albeit that AV reserves the right to recommend these costs be reviewed by a QS.); (3) the costs of external works; (4) empty property costs; and a variety of other sales and legal fees. There are, however, appreciable differences of opinion on certain costs and on the percentage of the developer’s return.
- 5.37. Even on the basis of its more cautious costs analysis, AV accepts that a 21.5% contribution of affordable housing would render the development unviable. It would result in a negative residual land value (RLV) of £728,193, in excess of £1m below the BLV of £320,000. However, by using the BLV as an assumed RLV and then working backwards with its own assumptions of costs, AV concludes that the development could afford a commuted sum of £653,406. In other words, AV’s assumptions of costs would see the site changing hands for the agreed BLV, with £653,406 still available as a contribution towards affordable housing.
- 5.38. PI disputes this; its assessment of costs produces an RLV of £107,568; over £200,000 below the agreed BLV. It also highlights the conclusion of the earlier review undertaken by Adams Integra, where all of its assumptions about costs were accepted.
- 5.39. The key areas of difference between PI and AV are discussed in detail below. It is important to restate at this point that the onus is on the applicant to provide evidence to demonstrate how the relevant assumptions in The Local Plan Viability Assessment may be inapplicable in this case. Having said that, it is equally important that where the applicant has provided evidence, we weigh it carefully in the balance.

Contingency

- 5.40. The Government’s Planning Practice Guidance on viability acknowledges (paragraph 012) that when undertaking a viability assessment:
- “ ... explicit reference to project contingency costs should be included in circumstances where scheme specific assessment is deemed necessary, with a justification for contingency relative to project risk and developers return.”
- 5.41. PI has factored in a contingency cost of 5% on the agreed base build cost, equating to £399,782. In its report, Adams Integra accepts this as “a fair and reasonable assumption”.
- 5.42. AV on the other hand has maintained the 3% figure that appears in The Local Plan Viability Assessment, equating to £239,855 - £159,927 lower than PI’s figure. Given that the applicants: (1) have already completed an assessment of abnormal costs using their in-house estimators; and (2) will already have

reliable benchmark costs based upon the recent completion of a scheme in Penrith, AV considers that 3% remains reasonable in the circumstances.

- 5.43. PI challenges this. It maintains that this is not a straightforward site to develop and is particularly high risk in terms of unforeseen costs and construction risks. It highlights the particular difficulties presented by the topography and the need for a significant under-build in order to address the flood risk. PI also makes the point that contingency figures need to be considered in a broader context. Its adjusted estimated external costs are 8% of base build costs (£639,614), significantly less than the assumption in The Local Plan Viability Assessment, which (on page 55) cites a figure of 15% on the basis that this “is a more than sufficient enough allowance for a plan-wide study (given we have included 3% ‘normal’ abnormalities and 3% contingency)”. PI also notes the statement on page 56 of The Local Plan Viability Assessment that:

“Higher contingencies are sometimes included in site specific appraisals, but these are generally for specific abnormal costs or ground conditions which are not part of a high level plan wide viability assessment.”

- 5.44. PI makes further points. It draws attention to the fact that AV has accepted a 5% figure for contingency costs in other plan-wide assessments, citing Northampton in 2019 and Babergh in 2020. PI acknowledges that plan-wide figures in other parts of the country may not be directly comparable, but includes them to demonstrate that its 5% figure is not an outlier in a national context. It also draws attention to the Land Allocations DPD Viability Study April 2013 (and the annexed South Lakeland CIL Viability Study), where, in Chapter 7 (Appraisal Assumptions – Development Costs) there is the statement (paragraph 7.25) that:

“For previously undeveloped and otherwise straightforward sites we would normally allow a contingency of 2.5% with a higher figure of 5% on more risky types of development, previously developed land and on central locations. So the 5% figure was used on the brownfield sites and the 2.5% figure on the remainder.”

- 5.45. Finally, PI draws attention to a number of appeal decisions where a figure of 5% for contingency costs has been accepted in respect of recent approved and comparable schemes. In some cases these decisions cite other appeals as a precedent. PI also highlights a review by AV of one of the applicant’s other schemes, a project in Basingstoke (involving demolition of a police station) which PI considers to be directly comparable, where a figure of 5% for contingency costs was also accepted.

Professional fees

- 5.46. The Government’s Planning Practice Guidance on viability acknowledges (paragraph 012) that when undertaking a viability assessment costs include:

“[...] professional, project management, sales, marketing and legal costs incorporating organisational overheads associated with the site.”

- 5.47. PI has factored in a figure of 10% of base construction costs for professional fees, equating to a figure of £879,520. In its report, Adams Integra accepts a figure of 10% as “a fair and reasonable assumption”.
- 5.48. AV makes the point that The Local Plan Viability Assessment includes an allowance of 6.5% for professional fees, and stresses the fact that this was accepted following industry consultation. AV has asked PI to provide a detailed breakdown of costs to justify the higher figure in this case, but none has been supplied. Instead, PI has stated that:
- “Given the nature of the proposal for vulnerable older people and the site constraints and abnormal costs associated with flooding issues, a mid-range of the typical 8-12% range is considered entirely appropriate in this instance.”
- 5.49. PI has referred again to SLDC’s Land Allocations DPD Viability Study from April 2013, which states (at paragraph 7.23) that:
- “For residential development we have assumed professional fees amount to 10% of build costs in each case. This is made up as follows:
- | | |
|----------------------|-------|
| Architects | 6% |
| QS and Costs | 0.5% |
| Planning Consultants | 1% |
| Others | 2.5%” |
- 5.50. This breakdown obviously pre-dates The Local Plan Viability Assessment (2017). Nevertheless, PI considers that it is “is a typical split in our experience”, albeit emphasising that the Burnside Road project will require additional specialist advice, particularly from structural engineers in addressing the flood risk issue.
- 5.51. AV’s final review has accepted the lower end of the range presented by PI (8%), equating to a figure of £639,614, £239,906 less than the figure in PI’s assessment.
- 5.52. PI considers AV is being inconsistent in adopting a figure of 8%, having accepted 10% on similar schemes in Basingstoke and Market Harborough. It also draws attention to a recent “Plan Viability & CIL Review Study” undertaken by AV for Babergh & Mid Suffolk District Councils (October 2020), where professional fees have been assumed to be “10% of BCIS build cost”.
- 5.53. As a sensitivity analysis, PI has supplied an updated appraisal (08 February 2021) in which “on a without prejudice basis [professional fees] been reduced to 9% [...] for illustrative purposes.” At this reduced percentage, professional fees equate to a figure of £777,176. Even so, at £54,939 the residual land value still remains well below the benchmark land value of £320,000.

Marketing and Sales Agents Fees

- 5.54. As mentioned above, the Government's Planning Practice Guidance on viability acknowledges (paragraph 012) that when undertaking a viability assessment costs include:
- “ [...] professional, project management, sales, marketing and legal costs incorporating organisational overheads associated with the site.”
- 5.55. PI has factored in a figure of 5% of sales values for marketing and sales agents fees: 3.5% for marketing (equating to £558,355); and 1.5% for sales agents fees (equating to £239,295) – a total of £797,650. A further £600 per dwelling is included for sale legal fees. In its report, Adams Integra accepts these figures as “a fair and reasonable assumption”.
- 5.56. AV accepts the figure for sale legal fees, but challenges the argument that the marketing and sales agents fees should rise above the percentages included within The Local Plan Viability Assessment, which are 3% and 1% respectively; figures, which AV reminds us, were accepted following to industry consultation.
- 5.57. AV further comments that:
- “We note that CRL (and competitors) will tend to operate a combined in house and external agent arrangement to ensure that as wide a purchaser contact base can be compiled and managed over the extended sales period. Also, that CRL have central, regional and local sales and marketing teams campaigning on multiple levels and work closely with local agents.
- “We note from the CRL scheme at Penrith that marketing is online. We have applied a more modest marketing budget in line with the Plan Viability report.”
- 5.58. Applying the marketing and sales agent's fees from The Local Plan Viability Assessment, would equate to £479,581 plus £167,174 in this case: a total of £646,755, which is £150,895 less than the figure in PI's appraisals.
- 5.59. In response, PI has provided a number of pieces of additional evidence, including a marketing costs analysis based upon five recently completed schemes in Cirencester, Bridport, Waterlooville, Caterham and Waltham Abbey. This shows an average marketing figure of 7.49%. It also draws attention to recent appeal decisions in Redditch and Basingstoke where a figure of 5% was agreed. Furthermore, it highlights what it considers to be another inconsistency in AV's position, referring again to the recent “Plan Viability & CIL Review Study” undertaken for Babergh & Mid Suffolk District Councils where in the “Appraisal build cost inputs & assumptions” AV lists the marketing and promotion costs of elderly accommodation at 5% of market value, with the additional comment that “Comparable scheme analysis shows higher costs over ‘general needs market housing”.

Finance

- 5.60. The Government's Planning Practice Guidance on viability acknowledges (paragraph 012) that when undertaking a viability assessment costs include:
- "[...] general finance costs including those incurred through loans"
- 5.61. PI has constructed a cashflow analysis which assumes an interest rate of 6.5% over: (1) a pre-construction period of 6 months; (2) a construction period of 15 months; and (3) a sales period of 48 months. This equates to an overall finance figure of £1,046,332. Once again, Adams Integra agrees that this is "a fair and reasonable assumption."
- 5.62. AV points to the fact that the assumed interest rate in The Local Plan Viability Assessment is 6.25%. But, more significantly, it queries the length of the sales period and has reduced it to 36 months in a cashflow analysis of its own. It justifies this shorter period on the basis that through the process of agreeing a benchmark land value the potential of the site to accommodate extra-care accommodation has been acknowledged, and there is evidence to show that the existing extra-care accommodation adjoining the site (Wainwright Court) sold out in 36 months. On this basis AV's foreshortened cashflow arrives at an overall finance figure of £704,525, £364,323 less than appears in PI's appraisal.
- 5.63. PI challenges this conclusion on a number of fronts. First, it stresses that extra-care accommodation is different to its retirement living product; the latter tending to sell less quickly. PI has attached what it describes as an optimistic and highly ambitious sales rate to this development of 1.33 units per month. The Sales and Marketing Data supplied by PI on 15 February 2021 for five schemes across the country completed before the Covid-19 pandemic show an average monthly sales rate of 0.8 units per month. More locally, drawing on evidence from Queen Elizabeth Court in Kirkby Lonsdale (a similar form of development built and managed by McCarthy & Stone), PI states that this has "achieved a sales rate of broadly only 1.1 per month in what is a higher value location". Interestingly, this sales rate was anticipated by the appraisal we commissioned from NPS Group in 2012 to advise us on the viability aspects of the planning application for Queen Elizabeth Court⁵. In paragraph 3.9 of its report NPS Group concluded that:
- 5.64. "[...] it is our view that the assumption of an average of 1.25 unit sales per month from release of the completed units for sale is not far from what we would expect to see at the present time."
- 5.65. PI also makes the point that the extra-care scheme assumed to be an appropriate alternative use in the benchmark land valuation exercise exhibits one other

⁵ This is appended to the July 2012 Committee report and is available to view online under reference SL/2012/0425

significant difference: the greater need for communal/shared space will achieve fewer units within the same building envelope. PI's alternative use analysis assumed 53 extra-care units on the site, compared to the 64 retirement living units in the submitted scheme. Therefore, even at the same sales rate, an extra-care scheme would inevitably sell out faster.

- 5.66. PI's updated appraisal (08 February 2021) referred to in the discussion of professional fees above has adjusted the interest rate to 6.25% in line with The Local Plan Viability Assessment. Nevertheless, the residual land value still remains well below the benchmark land value of £320,000.

Profit

- 5.67. In answer to the question: How should a return to developers be defined for the purpose of viability assessment? - the Government's Planning Practice Guidance on viability states:

"For the purpose of plan making an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers in order to establish the viability of plan policies. Plan makers may choose to apply alternative figures where there is evidence to support this according to the type, scale and risk profile of planned development."

- 5.68. The Local Plan Viability Assessment assumes a baseline profit of 20% for private housing and 6% for affordable housing, leading to a blended rate of 17.5% on schemes with a policy-compliant mix. This was increased from an initial suggestion of 17.5% and 6% (blended 15%) following industry consultation.
- 5.69. PI includes a figure of 20% in its appraisal, resulting in a figure of £3,296,327. As with many of the other inputs in its calculations, Adams Integra concludes that this is "a fair and reasonable assumption".
- 5.70. AV challenges this, asserting that 20% "is clearly unsustainable given the negative RLV and the lack of affordable housing." It assumes a figure of 17.5% in its review, equating to £2,932,004 - £364,323 less than PI's figure.
- 5.71. The basis of AV's point is that if the applicant cannot deliver an RLV that exceeds the BLV, and/or it cannot deliver a policy-compliant percentage of affordable housing then it should not expect a profit margin of 20%. The former might be true; the applicants may ultimately have to trim their expectations of profit in order to lift the RLV to a level where the current landowner is prepared to sell the site. That will be a negotiation separate from the planning process. But AV's latter point does not automatically follow. If a 20% profit margin can be justified in its own terms then the fact that it may result in a reduced percentage of affordable housing (or none at all in this case) is not, in itself, a reason to refuse planning permission. To pursue that line of argument risks no development at all, which is not the ultimate objective of viability assessment for planning purposes. It may seem unjust that a developer can expect a profit of 20% having provided no affordable housing at

all, but that is always a potential outcome using the standardised approach to viability assessment set out in the Government's Planning Practice Guidance.

- 5.72. PI's position is supported by a significant amount of evidence. First, 20% accords with the baseline figure in The Local Plan Viability Assessment. PI states that the blended rate of 17.5% would never be relevant in this case because even if the development were able to make a contribution towards affordable housing it would be by way of a financial contribution, as AV assumes in its appraisal. There would be no on-site provision of affordable housing to justify the lower risk inherent in the blended rate.
- 5.73. Second, PI points to the fact that the Government's Planning Practice Guidance on Viability and on "Housing for older and disabled people" acknowledges that the applicant's proposals fall into a category that "may significantly vary from standard models of development for sale", bringing a greater risk. PI highlights common risk factors that have been identified for this type of development in a number of recent appeal decisions, including:
- Retirement living housing must be fully completed and operationally ready before sales commences as older people are less likely to buy 'off plan' without seeing, for example, the benefit of the communal facilities.
 - The accommodation is restricted to a particular market, inevitably limiting its marketability; and
 - Reduced sales rates achieve a slower return on investment, with a longer period of uncertainty and exposure to costs.
- 5.74. Linked to the above, Appendix 4 of PI's "Response to Aspinall Verdi Affordable Housing & Viability Review" includes a list of 33 planning applications for comparable developments submitted by the applicant or McCarthy & Stone, and approved (or pending approval) within the last three years, where a 20% developer return has been accepted as appropriate by the local planning authority concerned. These examples are from all around the country and include developments in Market Harborough and Basingstoke where the local planning authorities were represented by AV. The AV report for Basingstoke states that a profit level of 20% is at a "level which we have seen on similar retirement living schemes and therefore we have adopted the same figure in our appraisals."

Affordable housing – conclusions

- 5.75. The viability assessment underpinning the current development plan makes certain assumptions about gross development value and costs in its expectation of residential sites across the District achieving a policy-complaint percentage of affordable housing. If an applicant considers that those assumptions are inapplicable to a particular site then it is for them to provide the evidence.

- 5.76. In this case, the applicants have provided an “Affordable Housing and Viability Statement” which concludes that the particular requirements of retirement living development combined with the exceptional technical challenges presented by this site mean the site is unable to provide any affordable housing at all. Applying the standardised approach set out in the Government’s Planning Practice Guidance, the applicant’s analysis demonstrates a residual land value below the benchmark land value at which the site can reasonably be expected to sell.
- 5.77. The applicant’s assessment has been reviewed twice, firstly by Adams Integra, which accepted the conclusions, and then by Aspinall Verdi, which has concluded that the development can afford a commuted sum of £653,406. Aspinall Verdi’s conclusion falls back on many of the baseline assumptions contained within the viability assessment underpinning the current development plan.
- 5.78. The applicant has provided considerable evidence to demonstrate that these baseline assumptions are incorrect. It has provided evidence from its experience with similar developments elsewhere, corroborating appeal decisions, and examples of Aspinall Verdi having been inconsistent in its arguments. We have nothing substantive to counter this evidence, which suggest that we would be in a very weak position to defend an appeal were this application to be refused. A position undoubtedly made weaker by the fact that the first of the two consultants we employed to review the position (Adams Integra) accepted all of the applicant’s key arguments.
- 5.79. It is disappointing that this site is unable to deliver the 35% affordable housing that we would normally expect as a minimum. However, the applicants have submitted clear evidence that this level of provision would make the scheme unviable, which, by extension, makes it policy complaint. And we can take some comfort from the fact that, although the development is not providing affordable housing, it is, nevertheless, providing specialist elderly accommodation and thereby meeting another of the sectoral housing pressures bearing on the District.

Accessible and adaptable homes

- 5.80. Policy DM11 of the DMDPD requires all new homes to meet the optional Building Regulations Requirement M4(2): Category 2 – Accessible and Adaptable Dwellings and, on schemes of over 40 dwellings, for 5% of the units to meet the Building Regulations M4(3) wheelchair adaptable standards. This will be secured by a condition in this case.

Designing out crime

- 5.81. DMPDP policy DM2 (Achieving Sustainable High Quality Design) expects, amongst other things, that development proposals should create and maintain safe and secure environments through designing out crime and designing in community safety.

- 5.82. The Community Safety Unit with Cumbria Police has offered a number of comments on crime prevention. For the most part these relate to matters that are beyond the control of the local planning authority, but they have been passed on via the applicant's agent. Concerns about the control of vegetation and external illumination can be addressed in dealing with the relevant recommended conditions.

Contributions towards health

- 5.83. The NHS Morecambe Bay Clinical Commissioning Group has lodged an objection to the proposal on the strength of its potential impact upon local health services. The objection is one of a number that CCG has lodged in respect of major residential developments across the District. In this case the CCG has explained that its objection can be overcome by a financial contribution of £17,686 towards the reconfiguration of a named local health practices.
- 5.84. For a contribution of this nature to be justified it would have to meet the requirements of Regulation 122 of the CIL Regulations 2010, which states that planning obligations can only be imposed where they are:
- a) Necessary to make the development acceptable in planning terms;
 - b) Directly related to the development; and
 - c) Fairly and reasonably related in scale and kind to the development.
- 5.85. In this case, and in all of the other recent cases where the CCG has made similar requests for funding, the arguments being advanced do not fulfil the Regulation 122 criteria; they are couched in terms of a general overview of practice capacity considerations, rather than a detailed analysis of the impacts of the development concerned. The CCG has been advised of this. It has also been advised to engage with the ongoing local plan review to consider whether contributions could be incorporated into new/updated land allocations and/or dealt with through the Community Infrastructure Levy.

Flood risk

- 5.86. The bulk of the application site lies within Flood Zone 3, which is at the highest risk of river flooding.
- 5.87. Paragraph 155 of the NPPF establishes the broad principle that:
- 5.88. "Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere."
- 5.89. To this end, Core Strategy policy CS8.8 (Development and Flood Risk) expects most new development to be located in flood risk zone 1. And it goes on to state

that development within the Environment Agency's flood risk zones 2, 3a and 3b will only be acceptable when it is compatible with national policy and when the Sequential Test and the Exception Test, where appropriate, have been satisfied. This is irrespective of any protection afforded by flood defences.

- 5.90. The reference to national policy takes us to the NPPF and the government's associated Planning Practice Guidance (PPG). Paragraph 158 of the NPPF establishes that:

"The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding."

Sequential Test

- 5.91. Applying the Sequential Test to a specific planning application means that if, having first established an area of search within which it would be practicable for the proposed development to be located, there are other reasonably available sites at a lower risk of flooding than the one being proposed, then the application should not be permitted.
- 5.92. Having said that, it should also be noted that paragraph 033 of the government's Planning Practice Guidance on Flood risk and coastal change states that:
- "When applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken."
- 5.93. In other words, the Sequential Test does not have to be applied slavishly, a common sense approach is called for.
- 5.94. It is for the "developer [to] justify with evidence to the local planning authority what area of search has been used when making the application⁶". In this case that evidence is set out in a Sequential Test Statement supplied by the applicant's agent in October 2020⁷. This can be viewed in full online.
- 5.95. The submitted Sequential Test Statement examines 54 sites in Flood Zone 1 taken from the Council's Strategic Housing Land Availability Assessment, the Brownfield Register, the Council's planning register for sites with planning permission and any sites that were being marketed at the time. All 54 sites are rejected as being sequentially preferable for a variety of reasons, including: (1) having already been developed (or in the process of development); (2) being too small; or (3) being too distant from the town centre to maintain the level of accessibility required for

⁶ National Planning Practice Guidance, Flood risk and coastal change, Paragraph: 034

⁷ Sequential Test Statement, Former Magistrates Court, The Courthouse, Burneside Road, Kendal, Planning Issues, October 2020, Rev A

retirement living. The document concludes “that the sequential test has been passed for the proposed development at the former Magistrates Court, Kendal.” This is not an unreasonable conclusion in the context of the evidence provided.

Exception Test

- 5.96. Where, as in this case, a proposal passes the Sequential Test, consideration then turns to the Exception Test – whether there are any special circumstances that would justify development in an area at high flood risk.
- 5.97. For the Exception Test to be passed it should be demonstrated that⁸:
- a. the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
 - b. the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall
- 5.98. Both elements of the exception test should be satisfied for development to be permitted.

Wider sustainability benefits

- 5.99. There a number of compelling arguments that can be advanced in this case. First, the site is classed as previously-developed, which is nearly always preferable as a location for development than greenfield land. Second, the site occupies a very accessible location, close to the centre of the largest settlement in the District. This makes it highly sustainable. And third, linked to the previous point, it is particularly well-suited to retirement living.

Scheme lifetime

- 5.100. Paragraph 163 of the NPPF is clear that development should only be allowed in areas at risk of flooding where, in the light of a site-specific flood-risk assessment, five specific criteria are met. Meeting those criteria in this case will ensure that the second branch of the Exception Test is satisfied.
- 5.101. Two documents submitted by the applicant are relevant to this issue: a Flood Risk Assessment (FRA)⁹ and a Drainage Impact Assessment¹⁰. Each of the criterion in paragraph 163 of the NPPF is now examined in the context of both documents.

⁸ National Planning Policy Framework, paragraph 160

⁹ Flood Risk Assessment, Former Magistrates Court, Burneside Road, Kendal, Stantec, Project Ref: 30481/4093/4001 | Rev: 1 | Date: September 2019

¹⁰ Drainage Impact Assessment, Former Magistrates Court, Burneside Road, Kendal, Stantec, Project Ref: 30481/4093, Doc Ref: C, January 2021

- a. Within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location
- 5.102. The bulk of the application site is within Flood Zone 3, fringed by areas of Flood Zone 2. There is no practicable means of reducing flood risk by reconfiguring the development of the site.
- b. The development is appropriately flood resistant and resilient
- 5.103. All of the habitable accommodation within the development will be set above 47.90m AOD, which represents the 1 in 100 year flood level, plus a 35% allowance for climate change and a further 600mm of freeboard. The rear (east) of the substructure below 47.90m AOD has been designed as a void to allow flood water to pass through. The FRA demonstrates that this void will increase flood storage capacity above the current position by approximately 332m³ in the modelled 1 in 100 year (plus climate change allowance of 35%) event.
- c. It incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
- 5.104. Core Strategy policy CS8.8 acknowledges the risk of flooding from a variety of sources, including surface water. The policy states that all new development will only be permitted if it can be demonstrated that (amongst other things): surface water is managed in a sustainable way.
- 5.105. This has been reinforced by DMDPD policy DM1 (General Requirements for all development) which expects all new development to be provided with the necessary infrastructure for dealing with surface water disposal.
- 5.106. The stated purpose of DMDPD policy DM6 (Flood Risk Management and Sustainable Drainage Systems) is “[to] ensure existing and new development is not exposed to flood risk and to prioritise the promotion of Sustainable Drainage Systems.” To that end it states that:
- “Development proposals should include the use of appropriate sustainable drainage systems which are designed to control surface water run off close to where it falls and mimic natural drainage systems as closely as possible.”
- 5.107. Furthermore, the policy states that:
- “Surface water should be managed at the source, with reduced transfer and discharge elsewhere.”
- 5.108. And, consistent with the Government’s Planning Practice Guidance¹¹, the policy expects surface run off to be discharged as high up the following hierarchy of drainage options as reasonably practicable:

¹¹ Paragraph: 080 Reference ID: 7-080-20150323

- into the ground (infiltration at source);
 - to a surface water body;
 - to a surface water sewer, or other suitable surface water drainage system;
 - to a combined sewer.
- 5.109. The applicant's FRA initially assumed that ground infiltration would be an option on this site, but further investigation has shown that seasonally high groundwater levels would make this impractical. The latest proposal, detailed in the applicant's Drainage Impact Assessment is to direct surface water at an attenuated rate via underground geocellular tanks into the existing 300mm United Utilities' surface water sewer beneath Dockray Hall. United Utilities has confirmed that this is acceptable in principle, subject to conditions.
- 5.110. Disposing of surface water via a sewer is lower down the hierarchy of drainage options than would be preferable, but this is a site where infiltration is demonstrably impractical. The lead local flood authority accepts this and raises no objection to the proposal, subject to conditions.
- d. Any residual risk can be safely managed
- 5.111. The applicant's FRA stresses that any residual risk is greatly reduced by the fact that the finished ground floor level includes an allowance for 35% climate change, plus an additional 600mm of freeboard. It further stresses the need for regular maintenance of the surface water drainage infrastructure. A SuDS¹² Maintenance Plan is included with Appendix G of the applicant's Drainage Impact Assessment and the lead local flood authority is recommending that adherence to this is included within a condition.
- e. Safe access and escape routes are included where appropriate, as part of an agreed emergency plan.
- 5.112. The main entrance to the proposed building provides a safe access and escape route, connecting the first floor level (set at 50.610m AOD) , with Windermere Road at a level of approximately 49.40m AOD - around 1.5m above the modelled 1 in 100 year flood event.

Flood risk – conclusions

- 5.113. The evidence shows that the Sequential and Exception Tests are passed in this case. The applicant's FRA demonstrates that the proposed development will be safe from the risk of flooding during its lifetime and will not increase flood risk

¹² Sustainable Drainage Systems

elsewhere. In fact, the proposed void in the substructure should help to reduce wider flood risk.

Character of the area

Policy background

- 5.114. Core Strategy policy CS1.1 (Sustainable Development Principles) expects “[...] high quality, localised and appropriate design [to be] incorporated into all developments to retain distinctive character/sense of place and enhance the existing built environment.” It is a further requirement of Core Strategy policy CS8.10 (Design) that “[the] siting, design, scale and materials of all development should be 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.”
- 5.115. The objective of these policies has been strengthened in the latest version of the NPPF which states at paragraph 124 (under the heading of “Achieving well-designed places”) that:
- “The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”
- 5.116. DMDPD policy DM1 (General Requirements for all development) states that new development should respond appropriately to the site’s locational context, local and settlement character and distinctiveness; and DMDPD Policy DM2 (Achieving Sustainable High Quality Design) expects new development to make “a positive contribution to the overall sense of place of the locality, informed by the uses and activities around the proposal, the historic context of the site, historic street patterns, plot boundaries, grain/massing, height and materials of nearby development and features.”
- 5.117. The site also abuts Kendal Conservation Area.
- 5.118. Core Strategy Policy CS8.2 (Protection and enhancement of landscape and settlement character) states that “[development] proposals should demonstrate that their location, scale, design and materials will protect, conserve and, where possible, enhance [amongst other things] [the] setting of, and views into and from the AONB, the National Parks, [and] conservation areas [...]”
- 5.119. Core Strategy Policy CS8.6 is explicit that the Core Strategy supports a number of objectives, including:
- “The safeguarding and, where possible, enhancing of historic environment assets, including their characteristic settings and any attributes that contribute to a sense of local distinctiveness. Such assets include listed buildings and features (both

statutory and locally listed), conservation areas, scheduled ancient monuments and registered parks and gardens.”

- 5.120.** DMDPD Policy DM3 (Historic Environment) expects the setting of all historic assets to be weighed in the planning balance.
- 5.121. Paragraph 189 of the NPPF establishes that in determining applications that are likely to affect heritage assets,:
- “... local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting.
- 5.122. And paragraph 190 requires local planning authorities to identify and assess the particular significance of any heritage asset that may be affected by a proposal, including development affecting the setting of a heritage asset.

Discussion

- 5.123. The application site has a varied locational and historic context, although certain characteristics stand out.
- 5.124. The length of Burneside Road running from the former magistrates court towards its junction with Windermere Road is fronted by residential properties of between 2 and 3 storeys. Development generally respects the fall of the topography eastwards towards the river. Many of the properties on the west side of the road are perched at a higher level, with some on the east being set down a whole storey into the ground – notably the former magistrates court itself and Earle Court, the development adjoining it to the south. This response to the topography is a strong characteristic of the local area.
- 5.125. The position of the application site on the outside of a distinct curve in Burneside Road places it at a focal point in views along the road when approaching from both directions, although the existing building is not prominent; a result of its setback in the site, relatively low profile and the screening effect of the trees adjoining the junction with Dockray Hall Road.
- 5.126. The run of dwellings on the west side of Burneside Road opposite the application site are all within the Kendal Conservation Area. The Architectural Quality Map that forms part of the Kendal Conservation Area Character Appraisal identifies this group as “Unlisted buildings that make a particular positive contribution to the special architectural or historic interest of the area.” They comprise a mix of detached, semi-detached and terraced properties ranging in height from 2 to 2½ storeys. They display a number of common and attractive characteristics: external finishes are predominantly natural stone under natural slate roofs and many of the buildings feature steeply-pitched, full height, gabled projections.
- 5.127. Recent development to the south has more of an institutional character. Earle Court, fronting Burneside Road, comprise, a series of separate

3 storey blocks of flats. Wainwright Court, set further back from Burneside Road to the east of Earle Court, is a single large block of 61 flats ranging in height from 3 to 3½ storeys

- 5.128. In the case of the current proposals, the response to flood risk has had a significant impact on the form of the development; the lead local flood authority has insisted that the lowest habitable floor is set at a level above the identified flood risk. In this case, that level has been set at 47.90m AOD, for the reasons discussed above. 47.90m is approximately 2m above the existing level of the site adjoining Burneside Road (although between 1.1m and 1.6m below the street level itself) and approximately 3m above the lowest section of Dockray Hall Road contiguous with the application site boundary.
- 5.129. To accommodate the LLFA's requirement the entire footprint of the proposed building is shown sitting on a substructure, the top of which is set at the 47.90m level. This will be most apparent in views from Dockray Hall Road, where the substructure will appear as an elevated plinth set above the falling ground. This will contrast noticeably with the local tradition of buildings stepping down in harmony with the topography, best represented in the immediate area by the cascade of terraced cottages on the north side of Dockray Hall Road. The approach in the current application is an unfortunate visual consequence of essential contemporary requirements to address flood risk, although it is mitigated in this case by various design devices, including steps and access ramps rising to the ground floor level (notably the feature on the north-east elevation) and numerous large openings in the substructure to permit the throughflow of floodwater.
- 5.130. The building does still appear to fall with the topography; an impression achieved by the variable storey heights of the different building elements sat on top of the substructure, reducing from 4 storeys fronting Burneside Road down to 3 storeys at the eastern end of the site, and reinforced by use of a stepped ridgeline. This works very successfully. The extended relationship this creates with properties on the west side of Burneside Road is illustrated on three sections (shown on drawings 30044KD-P014A and 30044KD-P015 A). These show the principal ridge height of the proposed building (61.41m), set generally below the ridge heights of existing buildings, reflecting again the overall fall of the topography eastwards. The exception to this is at the southern end of the proposed building, where the stepped down ridge (59.27m AOD) is higher than the lower section of the ridge on the existing building directly opposite (88 Burneside Road) by 1.88m. Nevertheless, the overall impression of buildings cascading towards the river is maintained.
- 5.131. Although presenting 4 storeys of accommodation to Burneside Road, only 3 storeys will be clearly visible; the ground floor and the underpinning substructure are set below the level of the street. And, with the exception of the three projecting gables, the visible 3 floors of accommodation are expressed as 2½ storeys, with the upper floor served by dormer windows breaking the eaves. Nevertheless, the building is still taller than its immediate neighbours on the same side of

Burneside Road. At 61.41m AOD the principal ridge fronting Burneside Road will be 3.29m higher than the ridge of 7 – 9 Earle Court (58.12m AOD) to the south and 5.43m higher than the ridge of 2 Dockray Hall Road to the north. This principal ridge is actually only 1.2m higher than the highest part of the roof on the existing magistrates court, but the proposed building will be much more assertive, mainly as a result of it being a lot closer to Burneside Road. This is clearly illustrated in the comparative computer-generated impression of the development viewed approaching the site from south along Burneside Road. This is titled “NPA Visuals” in the online list of documents.

- 5.132. The application site already marks a distinct beak in character when approaching the town centre from the north along Burneside Road. Development on the east side of the road, south of Dockray Hall Road has a more institutional feel, beginning with the existing magistrates court – albeit that the existing building on the site is relatively inconspicuous. The design of the replacement building is predicated on the principle that this existing change in character should be regarded as a gateway, justifying a more prominent structure. This is a sound urban design principle. And in this case it will result in a striking, oblique view of the principal north-east façade of the building leading your eye around the gentle sweep of Burneside Road towards its junction with Windermere Road. It will still be screened by the landscaping on the northern boundary, which is to be retained and strengthened, but will be taller and more prominent.
- 5.133. Overall, the proposed building is judged to be an appropriate design response to the site, including the setting of the adjoining conservation area. The nature of the accommodation leads to a suitably imposing structure for this gateway location, albeit that the building’s scale and mass are cleverly articulated using a local palette of materials and through the use of gables and dormers, all of which are typical of the area. The design also responds sensitively to the limitation imposed by the need to deal with flood risk.

Archaeology

- 5.134. The application is supported by an Archaeological Desk Based Assessment¹³. This concludes that whilst there is a theoretical low/moderate potential of uncovering some residual archaeological features of the Post-Medieval or Modern periods, it is likely that any remains would have been removed by the construction of the magistrates court. The Assessment concludes that no further archaeological work is warranted.

¹³ Archaeological Desk Based Assessment, Land at Burneside Road, Kendal, Orion, August 2019

Trees

- 5.135. The site contains a number of existing trees, most prominently along the boundary with Dockray Hall Road and in the angle of the junction between Dockray Hall Road and Windermere Road. When the trees close to the junction are in leaf they are very effective in screening the magistrates court in views from the north along Windermere Road.
- 5.136. All of the significant trees, and groups of trees, have been subjected to an arboricultural assessment¹⁴, using BS 5837:2012, "Trees in relation to design, demolition and construction", which is the industry standard. 43 individual trees and 6 groups have been assessed, with all but five individual specimens falling with the two lower categories; category C, trees with a life expectancy of at least 10 years; and category U, trees with a life expectancy of less than 10 years. The five better quality specimens all fall with category B: trees with a life expectancy of more than 20 years.
- 5.137. Notwithstanding the general poor quality of the trees, their potential to continue screening the site is acknowledged and all but four individual trees and three groups are shown for retention. Unfortunately, two of the individual trees to be removed are better quality category Bs, but the vast majority of the specimens along Dockray Hall Road are to be retained. These are clearly marked on the accompanying Tree Protection Plan¹⁵.
- 5.138. The Council's Specialist (Arboriculture) considers that the submitted material accurately represents the trees on the site. He raised no objection to the proposal, but has asked that, if the application is permitted, a condition is attached requiring the development to be carried out in accordance with submitted Arboricultural assessment & Method Statement.

Living conditions

- 5.139. There are a number of existing properties surrounding this site, with the occupants of some having expressed concern about the potential for an adverse impact upon their living conditions.
- 5.140. DMDPD policy DM1 (General Requirements for all development) establishes that, subject to other policies within the development plan, development will be acceptable provided that, amongst other things, it:

¹⁴ Arboricultural assessment & Method Statement, Former Magistrates Court, Burneside Road, Kendal, Barrell Tree Consultancy, 27 January 2021.

¹⁵ Tree protection plan, Barrell Plan Ref: 19143-4 (Based upon Layout 30044KD-P002 Rev C)

“ensures the delivery of acceptable levels of amenity, privacy and overshadowing for existing, neighbouring and future users and occupants through:

- provision of adequate spatial separation distances between existing and proposed properties and buildings; and
- retention and/or provision of adequate public, private and shared spaces and landscaping”

5.141. To address specifically the potential impact of the development upon daylight and sunlight the application is accompanied by two Daylight and Sunlight Studies¹⁶, one considering impacts within the development itself and the other assessing impacts on those neighbouring properties judged most likely to be affected. The studies are based upon the numerical tests laid down in the Building Research Establishment (BRE) guide ‘Site Layout Planning for Daylight and Sunlight: a good practice guide, 2nd Edition’, which is generally regarded as the industry standard for assessing impacts on daylight and sunlight in the planning process. Assessing how development might impact upon outlook, privacy, and how overbearing it might be, are generally more subjective judgements.

Impacts within the development itself

- 5.142. The relevant Daylight and Sunlight Study demonstrates that all but two of the proposed habitable rooms within the development surpass the minimum recommended Average Daylight Factor (ADF) recommended by the BRE. The two rooms falling below are both on the ground floor; the living room to unit 01 (window 24) and the living room to unit 10 (window 56). The reduced daylight in these locations is a consequence of the rooms in question facing out into a semi-enclosed courtyard.
- 5.143. Failing to meet the minimum ADF is not, in itself, a reason for refusing planning permission; it is a matter that will need to be weighed in the overall planning balance. With that in mind the Daylight and Sunlight Study stresses that whilst two of the habitable rooms in the development fell short of the standard, the remainder of the 190 assessed all achieved the minimum requirement.
- 5.144. The amount of sunlight reaching each of the proposed units is largely dependent on orientation, and with developments of the nature proposed within this application it is not unusual for there to be units that will receive no direct sunlight at all. In this particular case the Daylight and Sunlight Study tells us that 52% of the living rooms have at least one window facing within 90 degrees of due south, meaning that the units in question will receive some measure of direct sunlight.

¹⁶ (1) Daylight and Sunlight Study (Within Development), Right of Light Consulting, 24 October 2019; and (2) Daylight and Sunlight Study (Neighbouring Properties), Right of Light Consulting, 24 October 2019

Impact upon neighbouring development

5.145. The Daylight and Sunlight Study into the impacts upon neighbours, assesses eight properties: 13 & 14 Dockray Hall Road, 88, 90 & 92 Burnside Road and 7 to 9 Earle Court. It concludes that:

“All neighbouring windows (that have a requirement for daylight or sunlight) pass the relevant BRE diffuse daylight and direct sunlight tests. The development also passes the BRE overshadowing to gardens and open spaces test.”

5.146. Further impacts upon the living conditions of these, and other, properties in the immediate vicinity are considered below.

Dockray Hall Road

5.147. To the north of the application site Dockray Hall Road falls sharply from its junction with Burnside Road down to the entrance of Dockray Hall Industrial Estate. On the north side of the road a terrace of 13 two and three-storey properties steps down from the Burnside Road junction, terminating just short of (and opposite) the vehicular entrance to the existing magistrates court. Currently, this terrace views the application site through some appreciable boundary tree planting and across an intervening car park, looking towards the twin-gabled, northern elevation of the magistrates court. The minimum separation distance from the closest dwelling in the terrace (no. 14) to the magistrates court is approximately 30m.

5.148. The proposed redevelopment presents a more massive building in the aspect from Dockray Hall Road. It reproduces a twin-gabled elevation on that part of the building closest to Dockray Hall Road, but the separation distance to the existing terrace reduces to approximately 26m. And the ridge height rises appreciably, from 56.39m AOD on the closest part of the magistrates court to 61.41m AOD in the proposal – an increase of 5m. The view from Dockray Hall Road will now also include a three-storey (plus plinth) projection to the east, albeit at a minimum distance from the existing terrace in excess of 45m.

5.149. Section D-D on drawing 30044KD-P015 Revision A, clearly illustrates the relationship between the Dockray Hall Road terrace and the existing and proposed buildings where they are at their closest. The change appears quite dramatic, although the span of the proposed building is relatively narrow at this point; 20m, reduced from approximately 25m on the magistrates court. And it will continue to be viewed through retained vegetation on the boundary. Nevertheless, the outlook from the existing properties will change appreciably. On balance this relationship is judged acceptable.

5.150. Overlooking of the fronts of the properties in Dockray Hall Road will occur from the ground, first and second floors of the proposed building: from kitchen windows in the north-east gable set back furthest from Burnside Road, at a minimum distance of approximately 26m; and from kitchen and living room balconies in the gable

closest to Burneside Road, at minimum distances of approximately 28m and 27m respectively. The fronts of the affected properties already represent a public façade and these distances are judged acceptable in their context.

- 5.151. It is significant to note that the majority of the existing trees along the boundary of the site with Dockray Hall Road are to be retained, and that the submitted Landscape Strategy Masterplan is indicating additional planting in this location. The detail of this would be resolved through a condition if planning permission is granted.

Earle Court

- 5.152. Earle Court is a three-storey block of apartments positioned to the south of the application site. It is accessed from the east via Webb View, but has a frontage to Burneside Road, from where it appears to be a storey below ground level. The apartments in Earle Court have a predominantly east/west outlook; the elevation facing the application site is blank save for one small secondary window at ground floor level. The proposed relationship is judged to have no adverse impact on the living conditions of existing residents

Wainwright Court

- 5.153. Wainwright Court is a part 3 and part 3½ storey sheltered housing development positioned east of Earle Court and also accessed via Webb View. The north elevation, facing onto the application site, is 3 storeys high and features numerous habitable room windows and balconies. Wainwright Court has communal landscaped grounds that wrap around the eastern boundary of the application site. We have received representations from some residents of Wainwright Court concerned about the potential for overlooking, of windows and outside amenity space, and the overbearing nature of the proposals.
- 5.154. The overall ridge heights of Wainwright Court and the building now proposed are very similar. In fact, the entrance section of Wainwright Court is taller, with a maximum surveyed height of 62.47m AOD; approximately 1m above the highest section of the ridgeline in the proposed building. The height of Wainwright Court falls away modestly to the north, with the ridgeline stepping down to 60.72m AOD and then 60.24m AOD at the point closest the current application site boundary.
- 5.155. The separation distance between Wainwright Court and the proposed building is not consistent; it will range between approximately 33 and 37m. There will be considerable mutual overlooking, some direct, and some more oblique. And combined with the physical presence of the new building, the outlook and sense of privacy currently enjoyed by residents occupying the northern end of Wainwright Court will change appreciably. But not to a point that would justify a refusal of planning permission. Residents using the communal landscaped grounds will be aware of being overlooked, particularly from the windows and balconies in the three storey south-east elevation, which come to approximately 8m

from the boundary. But that is not an unusual situation for shared space of this nature.

84 - 88 Burneside Road

- 5.156. 84 - 88 Burneside Road are the northernmost three dwellings in a terrace of nine properties on the west side of the road extending northwards from its junction with Ashleigh Road. The terrace is predominantly two-storeys in height, although no. 88 has a two-and-a-half-storey gable facing the main road. The two-storey element of the terrace has been surveyed with a ridge height of 58.74m AOD.
- 5.157. Currently these properties look directly towards and over the lower, twin-gabled projection at the southern end of the magistrates court. The ridges of these gables have been surveyed at 56.40m, roughly level with the eaves height of 84 - 88 Burneside Road.
- 5.158. The magistrates court will sit approximately 1.5m further back from the frontage with Burneside Road. And although the southern section of the new building introduces a modest step down, the ridge of this part of the building will be 0.53m higher than that of the existing terrace opposite. The eaves will be approximately 0.7m higher. This relationship is illustrated on section A-A on drawing 30044KD-P014A. Given the separation distance of over 22m between the opposing front faces of the existing and the proposed properties this relationship would be far from overbearing.
- 5.159. There will be mutual overlooking between the existing and proposed properties. This will occur more or less directly from front windows in the lower, southern elevation of the proposed building, from a combination of living rooms and bedrooms over all four floors, albeit that the windows on the ground floor will be below street level when viewed from Burneside Road. Again, given the separation distance of over 22m, and the fact that this overlooking will occur across an already busy public thoroughfare, this relationship is not regarded as unacceptable.

90 Burneside Road

- 5.160. 90 Burneside Road is a detached, two-and-a-half-storey property on the west side of the road. It is set back approximately 30m from the frontage and is elevated noticeably relative to the main carriageway. Its ridge level has been surveyed at 67.38m AOD. It will look directly towards the main three-and-a-half-storey frontage of the proposed apartment block that faces onto Burneside Road (ridge height 61.41m AOD), with a separation distance between the opposing front faces of the buildings in excess of 50m. This relationship is illustrated on section B-B on drawing 30044KD-P015 Revision A. There is the potential for mutual overlooking between the existing and proposed properties although, currently, that would be mitigated to a significant degree by dense planting on the roadside boundary of 90 Burneside Road. However, even without this planting, the resulting relationship is judged to be acceptable in terms of both physical impact and privacy.

92 Burneside Road

5.161. 92 Burneside Road is another detached, two-and-a-half-storey property on the west side of the road. It too is elevated relative to the main carriageway, with a ridge height surveyed at 62.64m AOD. However, it sits closer to the roadside boundary than no. 90 – approximately 13m at the closest point. The property will look directly towards the main three-and-a-half-storey frontage of the proposed apartment block that faces onto Burneside Road (ridge height 61.41m AOD), with a separation distance between the opposing front faces of the buildings of approximately 47m. This relationship is illustrated on section C-C on drawing 30044KD-P014A. There is the potential for mutual overlooking between the existing and proposed properties although, but given the levels and the separation distance the resulting relationship is judged to be acceptable in terms of both physical impact and privacy.

94/96 Burneside Road

5.162. These are a pair of semi-detached, two-and-a-half-storey properties facing the north-west corner of the application site. Their relationship with the proposed apartment will be oblique and there will be no appreciable issues in respect of either physical impact or privacy.

Construction working

- 5.163. A number of the representations we have received raise concerns about the potential impacts from construction, which is not unusual where development is proposed within such a constrained location.
- 5.164. The Council's Public Protection Team is recommending a condition requiring a Construction Management Plan (CEMP) - addressing issues such as storage of plant and materials, measures to control the emission of dust and dirt, etc. – and a condition limiting construction working hours to 0800 - 1800 Monday to Friday and 0900 – 1300 on Saturdays, with no work on bank holidays. Restrictions of this nature will not eliminate disturbance, but experience suggests that they will offer some amelioration.

Access and parking

5.165. Concerns about the perceived inadequacy of the vehicular access to the site and a supposed unacceptably low level of parking being provided in the proposals feature significantly in the representations we have received. Local residents make numerous references to Dockray Hall Road being substandard for the amount of traffic it already carries, which includes vehicles accessing the Dockray Hall Industrial Estate. Comments highlight Dockray Hall Road's relative narrowness, the steep gradient up to the junction with Burneside Road and the fact that this junction is too narrow to permit large vehicles to enter and exit at the same time. There are references to unreported incidents of damage to cars, street furniture and houses. A common concern in the submitted representations is that the

increased traffic associated with this proposal will represent a danger to the significant numbers of pedestrians and cyclists that use Dockray Hall Road as a thoroughfare. Some comments draw attention to earlier applications on the Dockray Hall Industrial Estate - specifically: (a) a snooker and bowling leisure facility; and (b) a children's soft play area and synthetic ice rink – having been refused on highway grounds. More than one of the letters we have received conclude that the current application should also be refused unless a different access into the site can be found, e.g. from Webb View or directly from Burneside Road.

- 5.166. Another common concern is that the level of parking being proposed appears comparable to the ratio accepted for the adjoining Wainwright Court development, a ratio which local residents consider has underestimated demand from visitors (family, friends, health care professionals etc.) resulting in a local increase in on-street parking which has led to congestion and reduced road safety.

Policy position

- 5.167. Core Strategy policy CS10.2 (Transport impact of new development) expects “Development [to] be designed to reduce the need to travel and to maximise the use of sustainable forms of transport appropriate to its particular location”.
- 5.168. Policy CS10.2 establishes a number of other criteria aimed at ensuring that new development: (1) provides for safe and convenient access on foot, cycle, public and private transport; (2) is capable of being served by safe access to the highway network without detriment to the amenity or character of the locality; (3) can be accommodated by the existing road network without detriment to the amenity or character of the surrounding area; and (4) incorporates parking standards that are in accordance with any adopted local policy and guidance.
- 5.169. DMDPD policy DM9 (Parking Provision, new and loss of car parks) expects all developments to have acceptable levels of car, motorcycle and bicycle parking having regard to relevant appropriate guidance, which is currently provided in the Cumbria Development Design Guide.
- 5.170. Paragraph 108 of the NPPF is clear that in assessing specific applications for development, it should be ensured that:
- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
 - b) safe and suitable access to the site can be achieved for all users; and
 - c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
- 5.171. Significantly, paragraph 109 is unequivocal in stating that:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

Discussion

5.172. The application is accompanied by a Transport Statement¹⁷ which emphasises the accessibility of the site to a variety of local services and facilities, making it particularly well suited to the proposed development.

Trip generation

5.173. The Transport Statement assesses trip generation using the former magistrates court as a baseline. Some of the representations we have received question this approach; they consider that the previous use has now been abandoned and that any baseline should be established by undertaking local traffic surveys, which would give a more accurate impression of the likely impacts, particularly in the context of the traffic movements associated with the Dockray Hall Industrial Estate, which are perceived to have increased significantly in recent years.

5.174. Considering first the issue of abandonment, under the heading of Planning obligations (and specifically in considering vacant building credit) paragraph 028 of the Government’s Planning Practice Guidance summarises the concept of abandonment for planning purposes as follows:

“The courts have held that, in deciding whether a use has been abandoned, account should be taken of all relevant circumstances, such as:

- the condition of the property
- the period of non-use
- whether there is an intervening use; and
- any evidence regarding the owner’s intention”

5.175. These criteria stem from a court case dating from 1985 - The Trustees of Castell-y-Mynach Estate v Taff-Ely BC, and they set the bar very high. And, in the case of the former magistrates court, it is evident that abandonment does not apply: the property remains in good condition; the period of non-use is brief (currently less than four years); there has been no intervening use; and, as evidenced by the current proposals, there remains a clear intention to maintain the development potential of the site. Taking all of these things into account, it is considered logical and reasonable to regard law courts as the established use of the site and to treat

¹⁷ Transport Statement, Paul Basham Associates, Revision 4, 20 January 2021

that use as a baseline against which to judge the likely impacts of any proposed redevelopment on the surrounding highway network.

- 5.176. Given that the court building is no longer in use, the applicant's Transport Statement uses TRICS (Trip Rate Information Computer System database). This is an "industry standard" database of trip rates associated with different types of development and is widely used, and accepted, for transport planning purposes in the United Kingdom, specifically to quantify the trip generation of new developments. TRICS does not contain a specific category for law courts, so the Transport Statement uses the 'Employment Office' category, which, it states "is used elsewhere in projects involving the redevelopment of Magistrates Courts/police stations."
- 5.177. Based upon the existing floorspace of the magistrates court (2,126 sq. m.), TRICS estimates a total of 265 vehicle trips (arrivals and departures) within the 12 hour period spanning a normal working day, which equates to 22 trips per hour. For the baseline office use this includes 36 arrivals and 33 departures during the morning peak (0800 – 0900) and 2 arrivals and 33 departures during the afternoon peak (1700 – 1800).
- 5.178. As a cross-check, the Transport Statement considers the existing parking provision on the site, positing that if each of the existing 62 spaces had been used only once per day then that would have resulted in 124 two-way trips, i.e. one arrival and one departure. This is a crude calculation; some spaces may have been used more than once and some not at all. And it fails to take into account service vehicles that may not have used marked parking bays. But it represents a reasonable assumption for the lower end of the likely trip rates associated with the former use. Which means that baseline figure is somewhere between 124 and 265 two-way trips per day.
- 5.179. Some local residents have commented that these figures do not reflect their experiences of when the court was in operation; they believe the figures to be an exaggeration. But, in the absence of hard evidence to the contrary, there is a defensible logic to the applicant's analysis, which has been accepted by the local highway authority as a reasonable basis upon which to progress an assessment.
- 5.180. In order to understand the typical trip generation rates likely to be associated with the proposal, the applicants Transport Assessment includes "Lodge Parking Survey Results" ("the Parking Survey") based upon eight of its established retirement living developments elsewhere in the country. This is reproduced in full in Appendix H of the Transport Statement. Analysing the data collected from these eight sites, the Transport Statement estimates that the average daily trip rate per unit is 1.49, 0.74 arrivals and 0.75 departures. This covers all vehicles, including goods vehicles making deliveries. Applying this trip rate to the 64 units proposed in the current application gives an overall total of 95 daily movements – 47 arrivals and 28 departures. This is below the bottom end of the range calculated for the existing use.

Parking

- 5.181. The applicant's Transport Statement begins its assessment of the parking requirement for the development by reference to the guidance in Appendix 1 (Parking) of the Cumbria County Council's Development Design Guide. It equates the proposal to the "Sheltered housing wardened" category in the Design Guidance, which suggests the following parking requirements:

Residents	Visitors	Disabled	Cycle parking
1 space per 4 units PLUS 1 space per resident staff PLUS access for ambulance	1 space per 5 units	1 space for every 10 spaces	1 space for every 10 spaces

- 5.182. For the proposed 64 unit scheme this would suggest a requirement for the following:

Residents	Visitors	Disabled	Cycle parking
17 + ambulance	13	3	6

- 5.183. The proposal exceeds this parking requirement, providing a total of 38 spaces, including three disabled bays. There is no defined ambulance bay, but the ground floor site plan includes vehicle tracking for a fire tender up to the rear access of the building and it can be imagined that, in an emergency, ambulances might also use the main entrance onto Windermere Road. Cycle parking, we are told, will be provided within a large "buggy store" located in the rear courtyard.
- 5.184. The applicants have provided further evidence in respect of parking. The Parking Survey in Appendix H of the Transport Assessment presents evidence to show that, based upon surveys of eight other established retirement living developments operated by the applicants, average demand for parking is 0.28 spaces per units and average provision is 0.42 spaces per unit. Applying those figures to the current scheme, we might expect to see demand for 18 spaces and the provision of 27 spaces. Actual provision (38 spaces) exceeds both figures.

Access and parking – conclusions

- 5.185. There are significant local concerns about the potential for the traffic movements and parking demand likely to be generated by this proposal to exacerbate existing local problems. Specific reference is made to the adjoining Wainwright Court development, where the local perception is that the parking demand was originally underestimated. This leads to an understandable concern that if this latest development has been incorrectly assessed, then demand for on-street parking will increase as will the potential for accidents.
- 5.186. Whatever the position in respect of Wainwright Court, the current application must be considered on its own merits. It is a "retirement living"

scheme, based upon a model which the applicants have implemented in many other locations around the country, and for which they now have considerable evidence in respect of trip generation and parking demand. Applying that evidence to this case supports the applicant's assertion that the likely trip generation will be significantly lower than that associated with the lawful use of the site as a law court, and that parking demand will be well within the capacity being provided. The local highway authority accepts these conclusions.

- 5.187. Given the NPPF's position that planning permission should only be refused where "residual cumulative impacts on the road network would be severe", it would be difficult enough to advance a highway objection in this case even if we could demonstrate some adverse impact. The fact that we cannot, coupled with the fact that the applicants have the support of the local highway authority, means that it would be all but impossible to defend a reason for refusal on highway grounds in this case.
- 5.188. Having said that, the trip generation and parking characteristics presented in this case are clearly particular to the applicant's development model for "retirement living", and would likely be very different if the scheme were proposed as unrestricted housing, which would be within the same use class. This is a point highlighted by the local highway authority. Therefore, in order to ensure that the underlying assumptions in the applicant's Transport Statement hold true, it will be necessary to impose an occupancy restriction based upon age. This is normal in these circumstances and the particular condition being recommended mirrors many that have been applied on appeal decisions.

Biodiversity

- 5.189. The strategic objectives of the Core Strategy include:

"Ensuring that new development safeguards and enhances the natural and built environment, [and]

"[Increasing] the resilience of ecosystem services (the processes by which the environment produces resources utilised by humans) by protecting against harm to biodiversity and taking opportunities to enhance and create ecologically-diverse habitats in all locations."

International designations

- 5.190. Policy CS2 (Kendal Strategy) states that, amongst other things, [the] Council and its partners aim to:

"Ensure that new development safeguards and enhances the natural environment and local biodiversity – notably the SSSIs and SACs within the area, including the River Kent and its tributaries – and opportunities are taken to create new habitats."

5.191. Policy CS8.4 (Biodiversity and geodiversity) includes a statement that:

“Development proposals that would have a direct or indirect adverse effect on nationally, subregional, regional and local designated sites and non-protected sites that are considered to have geological and biodiversity value, 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 natural habitats; and
- Prevention, mitigation and compensation measures are provided.”

5.192. The application site lies within 10km of three so-called “European Sites” for purposes of The Conservation of Habitats and Species Regulations 2017 (“the 2017 Regulations”). These are:

- The River Kent Special Area of Conservation (SAC);
- Morecambe Bay Pavements SAC;
- Morecambe Bay (& Duddon Estuary) SAC / RAMSAR / Special Protection Area (SPA).

5.193. The River Kent and Morecambe Bay are also Sites of Special Scientific Interest (SSSIs).

5.194. South Lakeland District Council (SLDC) is termed a “competent authority” for the purposes of the 2017 Regulations, meaning that in situations where it intends to permit a project with potential effects on a “European Site”, either alone or in combination with other plans or projects, further consideration of those effects is necessary. This requires SLDC to undertake a Habitat Regulations Assessment (HRA).

5.195. A HRA involves four stages.

- Stage 1 involves screening to determine if the development is likely to have a significant effect on a European site and whether a full Appropriate Assessment (AA) is required;
- If required, Stage 2 involves undertaking an AA to determine whether the project will adversely affect the integrity of any given European site(s), in view of their conservation objectives. Conservation objectives specify the overall target for a site’s qualifying features (habitats and species/populations listed in Annex I and II of the 2017 Regulations) in order for that feature to be maintained or restored, to reach favourable conservation status.

- Stage 3 is triggered if significant adverse effects are identified in stage 2. This stage requires alternative options to be examined to avoid significant impacts on European sites.
 - If it is deemed that the project should proceed for Imperative Reasons of Overriding Public Interest (IROPI), Stage 4 involves an assessment of compensatory measures which would be required.
- 5.196. In any situation where a planning application has the potential for effects on a European Site the applicant is under an obligation to provide the information necessary to inform the HRA. In this case that information has been provided in a Habitat Regulations Assessment Report prepared by Tyler Grange¹⁸. This is published in full online. The 2017 Regulations require us to consult Natural England and the Environment Agency with this information. In this case both have been consulted and both have commented.
- 5.197. In this case the applicant's Habitat Regulations Assessment Report concludes that the proposed development only has the potential for effects upon the integrity of The River Kent SAC; the other European Sites are too far removed to be impacted. Therefore, the Report proceeds with an AA for The River Kent SAC only, wherein it concludes that the potential construction impacts of the development can be controlled via a standard Construction Environment Management Plan (CEMP) and that any potential residual impacts from the operational phase (taking into account controls already exercised by existing organisations) can be adequately mitigated by ensuring that occupants are provided with information in sales packs, drawing attention to the importance of The River Kent SAC (and SSSI) and what residents can do to protect it.
- 5.198. The Environment Agency has not commented on the Habitat Regulations Assessment Report, but Natural England has confirmed that it concurs with the document's conclusions and has recommended that a CEMP should be submitted prior to works commencing on site. This should include appropriate pollution prevention and biosecurity measures to protect the adjacent River Kent SSSI/SAC.
- 5.199. Given Natural England's confirmation it is recommended that the analysis and conclusions of the applicant's Habitat Regulations Assessment Report are adopted as meeting the local planning authority's obligations under the 2017 Regulations in this case and that any permission includes conditions requiring: (a) a CEMP; and (b) agreement to the content of an information pack to be made available to future residents.

¹⁸ Habitat Regulations Assessment Report, Tyler Grange, Report Number: 12519_R02a_GP_LP, 27 September 2019

Other ecological matters

5.200. Policy CS8.4 (Biodiversity and geodiversity) includes a statement that:

“All development proposals should:

- Protect, enhance and restore the biodiversity and geodiversity value of land and buildings;
- Minimise fragmentation and maximise opportunities for restoration, enhancement and connection of natural habitats (including links to habitats outside South Lakeland); and
- Incorporate beneficial biodiversity and geodiversity conservation features, including features that will help wildlife to adapt to climate change where appropriate.

“Proposals should particularly seek to contribute towards the UK priority habitats and species in South Lakeland, and any additional Cumbria Biodiversity Action Plan species.”

5.201. Furthermore, DMDPD policy DM4 (Green and Blue Infrastructure, Open Space, Trees and Landscaping) expects all development proposals to result in environmental net gains for biodiversity, unless it can be demonstrated that this is not possible. The policy reflects the government’s position in paragraph 170 of the NPPF.

5.202. The application is accompanied by an Ecological Appraisal¹⁹. This concludes that habitats on the site have minimal importance, “and necessary losses will be compensated as part of the development design”. The site has a very high coverage of buildings and hard surfaces; nevertheless, the submitted Appraisal acknowledges the potential to enhance the biodiversity of the site.

5.203. The application is also accompanied by a Bat Survey Report²⁰. This shows that main building court building contains the following bat roosts:

- A small soprano pipistrelle day roost with a peak count of two bats at the chimney at the north of the building;
- A small common pipistrelle day roost with a peak count of one bat above the balcony at the south-western corner; and
- A small soprano pipistrelle day roost with a peak count of one bat near the gutter at the south-eastern corner.

¹⁹ Ecological Appraisal, Former Kendal Magistrates Court, Tyler Grange, 27th September 2019

²⁰ Bat Survey Report, Former Kendal Magistrates Court, Tyler Grange, 27th September 2019

5.204. The Bat Survey Report includes recommendations to ensure that demolition of the main court building occurs in a manner which meets the legislative responsibilities in respect of protected species. These recommendations are cross-referred in one of the conditions included in the recommendation of this report. The recommendations of the Bat Survey Report also include proposals for replacement bat roost features. These proposals can be incorporated into the scheme to secure environmental net gains for biodiversity (in compliance with policy DM4) required by another condition in the recommendation of this report; a scheme which could also respond to other suggestions that have emerged in the representations – the incorporation of swift bricks for example.

6.0 Conclusion

- 6.1. The former magistrates court is within the settlement limits of Kendal, one of two Principal Service Centres identified by policy CS1.2 (The Development Strategy) of the Core Strategy as being the focus for the bulk of new housing and employment development. The proposal is for 64 retirement living apartments, one of a number of types of specialist housing recognised as meeting the diverse needs of older people.
- 6.2. The nature of the accommodation makes it liable to contribute to affordable housing in compliance with Core Strategy policy CS6.3 (Provision of affordable housing). However, in this case, the applicants have submitted compelling evidence that the provision of any affordable housing would render the scheme unviable.
- 6.3. The bulk of the application site lies within Flood Zone 3, which is at the highest risk of river flooding. Nevertheless, the proposed development is judged to pass the required Sequential and Exception Tests, with the proviso that all habitable accommodation is placed no lower than a level of 47.90m AOD. With this restriction the proposal is judged to satisfy the requirements of Core Strategy policy CS8.8 (Development and Flood Risk). Ground infiltration, the preferred method of dealing with surface water disposal, is not an option in this case. Instead, attenuated flows of surface water will be directed to an existing surface water sewer. This has been agreed with Unite Utilities, and makes the development compliant with DMDPD policy DM6 (Flood Risk Management and Sustainable Drainage Systems).
- 6.4. The application site occupies a prominent position on the entrance to the town along Burneside Road. It also abuts Kendal Conservation area. The proposed building is judged to be an appropriate design response to the site, including the setting of the adjoining conservation area. The nature of the accommodation leads to a suitably imposing structure for this gateway location, albeit that the building's scale and mass are cleverly articulated using a local palette of materials and through the use of gables and dormers, all of which are typical of the area. The design also responds sensitively to the limitation imposed by the need to deal with flood risk. Overall, the proposal is judged consistent with the expectations of: (1)

- Core Strategy policies CS1.1 (Sustainable Development Principles), CS8.2 (Protection and enhancement of landscape and settlement character) and CS8.6 (Historic environment): and (2) DMDPD policies DM1 (General Requirements for all development), DM2 (Achieving Sustainable High Quality Design) and DM3 (Historic Environment).
- 6.5. The bulk of the existing trees on the site are to be retained, meeting the expectations of DMDPD policy DM4 (Green and Blue Infrastructure, Open Space, Trees and Landscaping).
- 6.6. The impact of the development upon existing and future residents has been fully assessed through daylight and sunlight analyses and consideration of cross-sections. The building will be more imposing than the existing magistrates court, and there will be an appreciable increased impact on some existing properties – particularly those at the eastern end of Dockray Hall Road. But none of these impacts are judged unacceptable in the context of DMDPD policy DM1 (General Requirements for all development).
- 6.7. There is considerable local concern that the trip generation rates and parking demand associated with the proposal has been underestimated. Residents draw attention to problems of overspill parking associated with the adjoining Wainwright Court development. Attention is also drawn to the narrowness of Dockray Hall Road, which will provide access to the development, and the difficult junction with Burneside Road.
- 6.8. Whatever the position in respect of Wainwright Court, the current application must be considered on its own merits. It is a “retirement living” scheme, based upon a model which the applicants have implemented in many other locations around the country, and for which they now have considerable evidence in respect of trip generation and parking demand. Applying that evidence to the current application supports the applicant’s assertion that the likely trip generation will be significantly lower than that associated with the lawful use of the site as a law court, and that parking demand will be well within the capacity being provided. The local highway authority accepts these conclusions. That being the case, the proposal is judged consistent with the expectations of Core Strategy policy CS10.2 (Transport impact of new development) and DMDPD policy DM9 (Parking Provision).
- 6.9. The application site lies within 10km of three so-called “European Sites” for purposes of The Conservation of Habitats and Species Regulations 2017 (“the 2017 Regulations”). In this case a Habitat Regulations Assessment Report submitted by the applicant concludes that the proposal only has the potential to impact upon the integrity of The River Kent Special Area of Conservation (SAC); the other European Sites are too far removed to be affected. And with a condition requiring a Construction Environment Management Plan (CEMP) the applicant’s report concludes that any potential adverse impacts on the SAC can be successfully mitigated.

- 6.10. It is recommended that the analysis and conclusions of the applicant's Habitat Regulations Assessment Report are adopted as meeting the local planning authority's obligations under the 2017 Regulations in this case and that any permission includes conditions requiring: (a) a CEMP; and (b) agreement to the content of an information pack to be made available to future residents. Conditions to that effect will also ensure that the objectives of Core Strategy policy CS8.4 (Biodiversity and geodiversity) are met.
- 6.11. A separate appraisal confirms that the site itself has limited ecological value, although a bat survey has revealed a number of roosts. Conditions are proposed in order to ensure that: (1) the impact upon bats is addressed in accordance with the best practice established in the bat survey; and (2) the development achieves a net gain in biodiversity – all consistent with DMDPD policy DM4 (Green and Blue Infrastructure, Open Space, Trees and Landscaping).

7.0 Recommendation

7.1. The application is recommended for approval subject to:

a) adoption by the Planning Committee of the "Habitat Regulations Assessment Report, Tyler Grange, Report Number: 12519_R02a_GP_LP, 27 September 2019" to meet the Council's responsibilities as a competent authority in accordance with The Conservation of Habitats and Species Regulations 2017 (as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019); and

b) the following 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:

- PLANNING - Site Plan – ROOF (41+23) 64 Option, 30044KD-P002 Revision C
- PLANNING - Site Plan - GRND FLOOR (41+23) 64 Option, 30044KD-P003 Revision C
- PLANNING - Ground Floor Plan, (41 + 23) 64 Option, 30044KD-P004 Revision B

- PLANNING – First Floor Plan (41 + 23) 64 Option, 30044KD-P005 Revision B
- PLANNING – Second Floor Plan (41 + 23) 64 Option, 30044KD-P006 Revision A
- PLANNING – Third Floor Plan (41 + 23) 64 Option, 30044KD-P007 Revision A
- PLANNING – Roof Plan (41 + 23) 64 Option, 30044KD-P008 Revision A
- PLANNING – North West Elevation, (41 + 23) 64 Option, 30044KD-P009 Revision B
- PLANNING – North East Elevation, (41 + 23) 64 Option, 30044KD-P0010 Revision B
- PLANNING – South East Elevation, (41 + 23) 64 Option, 30044KD-P0011 Revision B
- PLANNING – South West Elevation, (41 + 23) 64 Option, 30044KD-P0012 Revision B
- PLANNING - Substructure Layout, (39 + 25) 64 Option, 30044KD-P0013 Revision A
- PLANNING - Section A-A & C-C, 30044KD-P014, Revision A
- PLANNING - Section B-B & D-D, (39 + 25) 64 Option, 30044KD-P0015 Revision A

REASON: For the avoidance of doubt and in the interests of proper planning.

External materials

Condition (3): External walls and roofs shall be finished in accordance with the materials shown on the approved plans, and in accordance with stone and slate specifications that shall first have been submitted to, and approved in writing by, the local planning authority. Notwithstanding any annotations to the contrary on the approved plans, all stone and slate must comprise natural, locally-sourced materials.

REASON: To ensure compliance with: (1) policies CS8.6 (Historic Environment) and CS8.10 (Design) of the South Lakeland Core Strategy; and (2) policies DM1 (General Requirements for all development), DM2 (Achieving Sustainable High Quality Design) and DM3 (Historic Environment) of the South Lakeland Development Management Policies Development Plan Document.

Accessible and adaptable homes

Condition (4): All of the apartments hereby approved shall be constructed to meet the Building Regulations M4(2) standards for accessible and adaptable homes and three of the dwellings shall be constructed to Building Regulations M4(3) wheelchair adaptable standards.

Reason: To secure an appropriate level of compliance with Policy DM11 of the Development Management Policies Development Plan Document.

Broadband

Condition (5): No individual apartment hereby approved shall be first occupied until connected to the necessary infrastructure to enable access to high speed (superfast) broadband.

Reason: To comply with Policy DM8 (High Speed Broadband for New Developments) of the Development Management Policies Development Plan Document.

Highways

Condition (6): Occupation of the apartments (excluding any on-site staff) shall be restricted at all times to people of 60 years of age and above, or those of at least 55 years of age and living with a spouse or partner of 60 years or above.

REASON: To ensure that predicted traffic trip generation rates and parking demand are adhered to, in the interests of ensuring highway safety and to safeguard the amenity of the existing area in accordance with: (1) policy CS10.2 (Transport impact of new development) of the South Lakeland Core Strategy; and (2) policies DM7 (Addressing Pollution, Contamination Impact, and Water Quality) and DM9 (Parking Provision, new and loss of car parks) of the South Lakeland Development Management Policies Development Plan Document.

Condition (7): None of the apartments hereby approved shall be first occupied until the parking, access and manoeuvring areas shown on approved drawing PLANNING - Site Plan - GRND FLOOR (41+23) 64 Option, 30044KD-P003 Revision C have been constructed and made available for. Thereafter, all parking, access and manoeuvring areas must be retained as approved for the lifetime of the development.

REASON: To maintain highway safety in accordance with: (1) policy CS10.2 (Transport impact of new development) of the South Lakeland Core Strategy; and (2) policies DM1 (General Requirements for all development) and DM9 (Parking Provision, new and loss of car parks) of the South Lakeland Development Management Policies Development Plan Document.

Construction management

Condition (8): No development shall commence until a Construction Environment Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include:

- details of designated areas for construction vehicle parking, maneuvering, loading and unloading;
- details of storage areas for construction plant and materials;
- details of measures to control the emission of dust and dirt during construction;
- measures to control noise and vibration from plant, equipment and procedures during construction, including from any rock pecking and excavations;
- confirmation of an embargo on the burning of waste material;
- a scheme for recycling / disposing of waste resulting from excavations;
- details of a construction lighting scheme, designed to minimise light spillage from the site boundary;
- procedures for the cleaning of site entrances and the adjacent public highway;
- details of proposed wheel washing facilities;
- procedures for the sheeting of all HGVs taking spoil to/from the site to prevent spillage or deposit of any materials on the highway;
- management of junctions to and crossings of the public highway including the footway;
- details of any proposed temporary access points (vehicular / pedestrian);
- details of surface water management during the construction phase;

- details of any mitigation needed to prevent interference with public rights of way throughout the duration of the construction phase; and
- a biosecurity protocol to protect the adjacent River Kent SSS/SAC.

Thereafter, the construction phase of the development shall proceed in accordance with the approved CTMP.

REASON: In the interests of safeguarding the amenity and ecological interest of the existing area in accordance with: (1) policy CS8.4 (Biodiversity and geodiversity) of the South Lakeland Core Strategy; and (2) policies DM4 (Green and Blue Infrastructure and Open Space) and DM7 (Addressing Pollution, Contamination Impact, and Water Quality) of the South Lakeland Development Management Policies Development Plan Document.

Condition (9): Construction work shall not take place outside the hours of 0800 – 1800 Monday to Friday or 0900 – 1300 on Saturdays, nor at any time on bank holidays.

REASON: In the interests of safeguarding the amenity and ecological interest of the existing area in accordance with: (1) policy CS8.4 (Biodiversity and geodiversity) of the South Lakeland Core Strategy; and (2) policies DM4 (Green and Blue Infrastructure and Open Space) and DM7 (Addressing Pollution, Contamination Impact, and Water Quality) of the South Lakeland Development Management Policies Development Plan Document.

Noise

Condition (10): No individual apartment hereby approved shall be first occupied until a validation report has been submitted to, and approved in writing by, the local planning authority confirming that ambient noise levels do not exceed: (a) 35dB LAeq 16hour within the apartment's living room(s) and bedroom(s); and (2) do not exceed 30dB LAeq 8hour within the apartment's bedroom(s) between the hours of 2300 and 0700.

REASON: In the interests of safeguarding the amenity of the proposed apartments in accordance with policy DM7 (Addressing Pollution, Contamination Impact, and Water Quality) of the South Lakeland Development Management Policies Development Plan Document.

Land contamination

Condition (11): No development shall commence until a Phase Two Geo Environmental Site Assessment has been submitted to, and approved in writing by, the local planning authority. Thereafter, the development shall proceed in accordance with the recommendations of the approved Assessment. None of the apartments hereby approved shall be first occupied until a Validation Report, detailing the nature of any contamination found during development and any relevant remediation works undertaken, has been submitted to, and approved in writing by, the local planning authority.

REASON: In the interests of safeguarding the amenity of the proposed apartments in accordance with policy DM7 (Addressing Pollution, Contamination Impact, and Water Quality) of the South Lakeland Development Management Policies Development Plan Document.

Flood risk

Condition (12): None of the apartments hereby approved shall be first occupied until the surface water drainage infrastructure for the site has been completed in accordance with the details contained within the Stantec Flood Risk Assessment (Project Ref: 30481/4093/4001, Rev: 1, dated September 2019), as amended by the Stantec Drainage Impact Assessment (Project Ref: 30481/4093, Doc Ref: C, dated January 2021). The geocellular tanks shall be lined with membranes complying with a specification that shall first have been submitted to, and approved in writing by, the local planning authority. Once installed, the membranes shall be integrity tested, with records made of leakage rates and any remediation. The surface water drainage infrastructure shall not be deemed complete until the results of the integrity testing have been submitted to, and approved in writing by, the local planning authority. Thereafter, the approved surface water drainage infrastructure shall be maintained for the lifetime of the development in accordance with the approved details.

REASON: To reduce the risk of flooding and to promote the use of a sustainable surface water drainage scheme in accordance with policy CS8.8 (Development and Flood Risk) of the South Lakeland Core Strategy and policy DM6 (Flood Risk Management and Sustainable Drainage Systems) of the South Lakeland Development Management Policies Development Plan Document.

Condition (13): No development shall commence until a maintenance scheme for the flood water voids shown on approved drawing PLANNING - Substructure Layout, (39 + 25) 64 Option, 30044KD-P0013 Revision A has been submitted to, and approved in writing by, the local planning authority. Thereafter, the voids shall be maintained for the lifetime of the development in accordance with the approved scheme.

REASON: To reduce the risk of flooding in accordance with policy CS8.8 (Development and Flood Risk) of the South Lakeland Core Strategy and policy DM6 (Flood Risk Management and Sustainable Drainage Systems) of the South Lakeland Development Management Policies Development Plan Document.

Landscaping

Condition (14): No development shall commence until a soft landscaping scheme has been submitted to, and approved in writing by, the local planning authority. The scheme shall include details of: (i) planting plans; (ii) existing vegetation to be retained; (iii) written specifications and schedules of proposed plants noting species, planting sizes and proposed numbers/densities; (iv) an implementation timetable; and (v) a schedule of landscape maintenance proposals for a period of not less than five years from the date of completion of the scheme. Thereafter, the approved landscaping scheme shall be implemented and maintained in accordance with the agreed details and timetables.

REASON: To safeguard and enhance the character of the area in accordance with policy LA1.3 of the South Lakeland Land Allocations Development Plan Document and policy DM4 (Green and Blue Infrastructure, Open Space, Trees and Landscaping) of the South Lakeland Development Management Policies Development Plan Document.

Condition (15): No development shall commence until the tree protection measures specified in the Arboricultural Assessment & Method Statement (produced by Barrell Tree Consultancy, dated 27 January 2021) and shown on the associated Tree protection plan (Barrell Plan Ref: 19143-4 (Based upon Layout 30044KD-P002 Rev C)) have been fully installed. Thereafter, the tree protection measures shall be retained for the duration of all construction work and that work shall proceed in accordance with the other requirements of the Arboricultural Assessment & Method Statement.

REASON: To protect existing trees in accordance with policy DM4 (Green and Blue Infrastructure, Open Space, Trees and Landscaping) of the South Lakeland Development Management Policies Development Plan Document.

Biodiversity

Condition (16): No development shall commence until a scheme demonstrating that the development will achieve a biodiversity net gain, measured using the Defra Biodiversity Metric 2.0 (or such later version as may be promoted by Defra at the time that the required scheme is submitted), has been submitted to, and approved in writing by, the local planning authority. Thereafter, the development shall proceed in accordance with the approved scheme and the net gain shall be maintained for the lifetime of the development.

REASON: To meet the requirements of: (1) policy DM4 (Green and Blue Infrastructure, Open Space, Trees and Landscaping) of the of the South Lakeland Development Management Policies Development Plan Document; (2) paragraph 170 of the National Planning Policy Framework.; and (3) section 40 of the Natural Environment and Rural Communities Act 2006.

Condition (17): The demolition of the main court building shall proceed in accordance with the recommendations of the submitted Bat Survey Report, produced by Tyler Grange and dated 27th September 2019.

REASON: To ensure that protected bat species are afforded the necessary legal protections during demolition.

Condition (18): None of the apartments hereby approved shall be first occupied until an information pack to be made available to future residents, highlighting the significance and sensitivity of The River Kent Special Area of Conservation (SAC), has been submitted to, and approved in writing by, the local planning authority. Thereafter, the information pack shall be made available to all future residents for the lifetime of the development.

REASON: To reinforce compliance with policy CS8.4 (Biodiversity and geodiversity) of the South Lakeland Core Strategy.

Lighting

Condition (19): None of the apartments hereby approved shall be first occupied until any required external lighting has been installed in accordance with a scheme that shall first have been submitted, and approved in writing by, the local planning authority. The scheme must include confirmation from a qualified ecologist that it has been designed to minimize harmful impacts on: (1) the River Kent and Tributaries Site of Special Scientific Interest (SSSI); (2) the River Kent Special Area of Conservation (SAC); and (3) protected species.

REASON: To mitigate the potential impacts on: (1) the River Kent and Tributaries Site of Special Scientific Interest (SSSI); (2) the River Kent Special Area of Conservation (SAC); and (3) protected species, all in accordance with policy CS8.4 (Biodiversity and geodiversity) of the South Lakeland Core Strategy.

Sustainable construction

Condition (20): The development shall proceed in accordance with a scheme incorporating as many of the provisions within the “List of Measures that support and enhance habitat creation, urban greening and respond to the effects of climate change” contained in Appendix 1 of the Development Management Policies Development Plan Document as is reasonably practicable in the circumstances. No development shall commence until the scheme has been submitted to, and approved in writing by, the local planning authority.

REASON: To incorporate measures that support and enhance habitat creation and urban greening ensuring that provision reflects the local biodiversity evidence base and reduces the factors contributing to, and responds to the effects of climate change, in accordance with policy DM2 (Achieving Sustainable High Quality Design) of the South Lakeland Development Management Policies Development Plan Document.