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Planning application no. SL/2019/0743

Land North of Meadowbank Business  
Park, Shap Road, KENDAL, LA9 6NY

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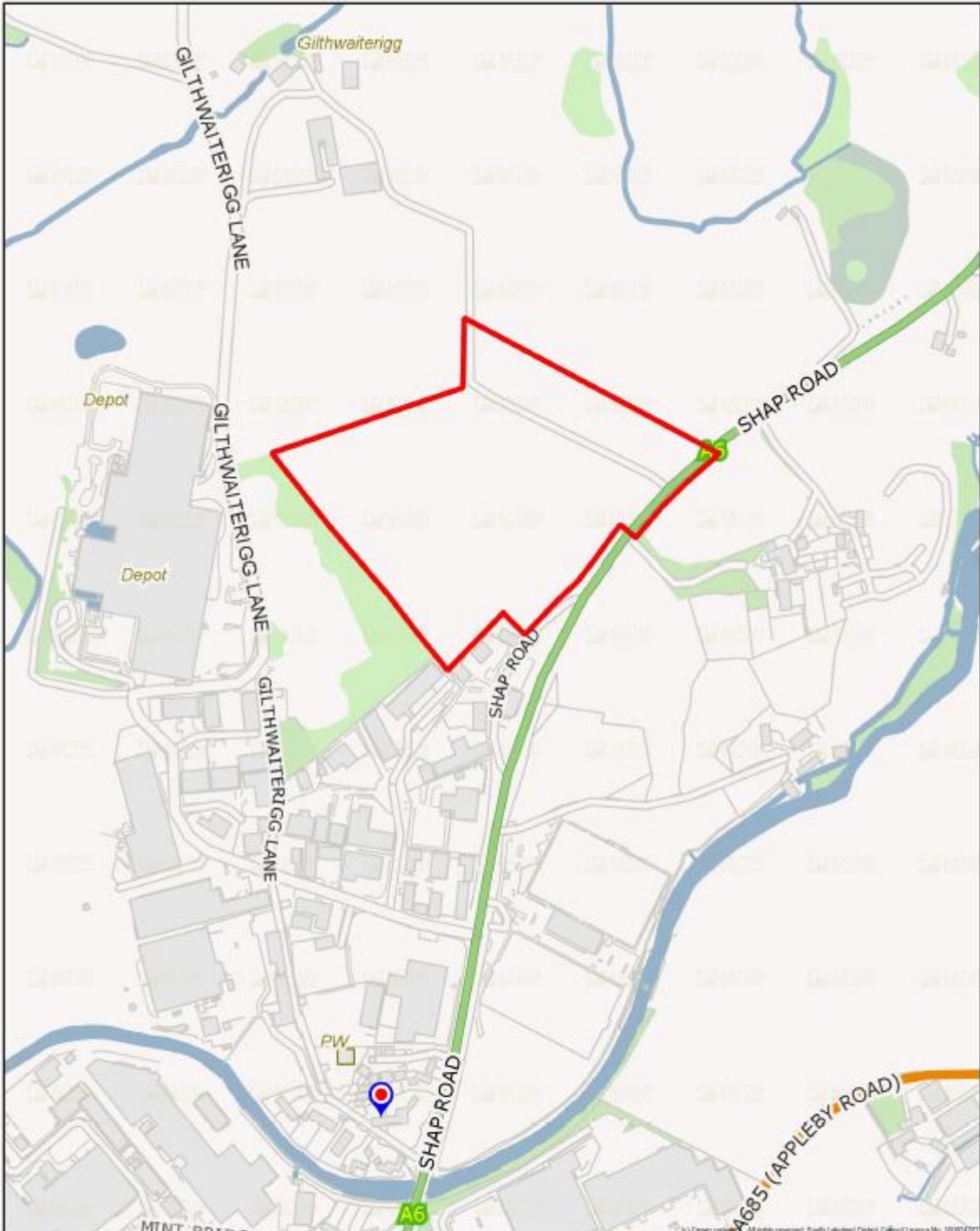
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**SL/2019/0743**

Land North of Meadowbank Business Park, Shap Road KENDAL LA9 6NY



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## Summary

SL/20219/0743

PARISH: Kendal

Land North of Meadowbank Business Park, Shap Road, KENDAL, LA9 6NY

PROPOSAL: Hybrid application: 1. Full Application for motor dealership (sui generis) including workshops, access roundabout, spine road and internal compartmentation area access junctions. 2. Outline Planning Application all matters reserved, apart from access, for employment business park (indicatively B1/B2 6400m<sup>2</sup> & B8 2500m<sup>2</sup>).

APPLICANT: R Smith (Windermere) Ltd t/a Rayrigg Motors Ltd

GRID REF: E: 340236 N: 497272

COMMITTEE DATE: 16 June 2022

CASE OFFICER: Andrew Martin

An earlier version of this proposal was considered by the Planning Committee in October 2021, when Members resolved to approve the application subject to a section 106 agreement and a number of conditions. Since then the proposal has undergone some significant amendments, requiring further consideration by the Committee.

The application site lies within the development boundary of Kendal on land allocated for development by Land Allocations DPD policy LA1.8 (Local Employment Allocations). The policy lists the “Acceptable Uses” for the site as those falling within Classes B1 (Business) and B2 (General industrial) of The Town and Country Planning (Use Classes) Order 1987 (as amended).

The application has been submitted as a hybrid: part full and part outline. The full element proposes a motor dealership (sui generis) and associated structures, together with an access roundabout on the A6 and a new estate road. The outline element proposes an employment business park comprising a mix of uses falling within Classes B1, B2 and B8 (Storage or distribution). Given that this mix differs from the “Acceptable Uses” listed in policy LA1.8 the application has been: (1) publicised as not being in accordance with the provisions of the development plan in force in the area, as required by 15(2) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended); and (2) brought to Committee for determination in accordance with the Council’s Constitution.

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 are clear that to the extent that development plan policies are material to an application for planning permission it is a statutory requirement that the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.

In this case, the range of uses proposed in the application is not in accordance with some of the provisions of the development plan. However, the allocating policy is demonstrably out-of-date; it assumes a need for employment land based upon an annual target that has been repeatedly missed. And it displays a lack of flexibility, which is at odds with the thrust of more recent advice in the NPPF. Consequently, having regard to paragraph 11 of the NPPF, the principle of developing this site for the uses proposed needs to be judged against more up-to-date material considerations in general, and policies within the NPPF in particular. And, on that basis, the principle of what is proposed is judged acceptable: the proposed mix of uses is responding to current market signals; the site is well-suited to a motor dealership; and by providing some key elements of infrastructure there is a good chance that it will open up the remainder of the allocation to meet current demand for further serviced employment land.

The updated proposal is further in conflict with the development plan by now including 50m of land beyond the development boundary of the town. The justification for this is threefold: (1) that it provides space for the sustainable disposal of the considerable amount of surplus topsoil that will be generated by the development; (2) that it provides an enhanced opportunity for landscape mitigation; and (3) that it offers the prospect of achieving the required biodiversity net gain entirely on-site. These arguments have considerable merit, and, in the circumstances, with a condition to limit use of the area in the manner proposed, they are judged to be material considerations of sufficient weight to justify the departure from policy

Other key policies relevant to the determination of this application remain up-to-date and having considered the comments from statutory consultees and third parties, and having secured various amendments to the proposal, the application is recommended for approval subject to a section 106 agreement and conditions.

## Recommendation

The application is recommended for approval subject to a section 106 agreement and planning conditions. It is further recommended that Committee authorises: (1) the making of the order necessary under section 257 of the Town and Country Planning Act to permit the consequential diversions of footpaths no. 536002 and 570013 shown on drawing no. HT1324.1.REV C and; (2) confirmation of such an order subject to no unresolved objections.

## 1.0 Background

- 1.1. An earlier version of this proposal was considered by the Planning Committee in October 2021, when Members resolved to approve the application subject to a section 106 agreement and a number of conditions. Since then the proposal has undergone some significant amendments, requiring further consideration by the Committee. The main drivers for these amendments are: (1) a relocation further

north of the proposed roundabout on the A6 (a consequence of a third-party ransom that would have made the original scheme undeliverable); and (2) the need for a cost-effective method for disposing of topsoil. The amended application was re-publicised in February 2022.

- 1.2. It is the applicant's expectation that, in the absence of any changes to the development plan or other material planning considerations, Members will honour the key decisions they made in October of last year, and in this reconsideration will concentrate solely on the amendments to the application. That is not an unreasonable expectation, but reconsideration of any unresolved application must always take Committee back to first principles, which is why the latest amendments have been presented in the context of an update to the original report.

## 2.0 Description and proposal

### Site description

- 2.1. The application site is located on the northern edge of Kendal, on the west side of the A6. It extends to an area of 6.7 hectares, 5.2 hectares of which is within the development boundary of the town, with a further 1.5 hectares extending approximately 50m into open countryside to the north. The site encompasses agricultural fields either side of a private vehicular access to Gilthwaiterigg, and a short length of the highway on the A6.
- 2.2. The application site takes the form of a distorted square with boundaries that are, for the most part, well defined by a combination of hedges and low walls. The north-west and north-east boundaries face open countryside, with the latter formed by an arbitrary line across an existing field. The south-west boundary abuts land with planning permission for employment development. The south-east boundary is more complex. It abuts, and partly overlaps, the A6, and includes the northern end of the layby that serves the existing Meadowbank Business Park. It also includes part of the highway verge to the west of the A6, which currently contains four trees. The southern tip of the application site abuts the boundary of the Business Park. There is an existing field access adjoining the junction of the layby. This also marks the beginning of a public footpath (no. 536002) that doglegs its way across the application site, hugging the south-east and north-east boundaries before crossing the private road to Gilthwaiterigg and continuing northwards.
- 2.3. The speed limit on the A6 increases from 30mph to 40mph from a point just north of the layby junction. There is a field access on the east side of the A6 at this point.
- 2.4. The green field element of the application site generally slopes upwards from south to north, from a low point of approximately 56m AOD adjoining Meadowbank Business Park to approximately 62m AOD at the highest points on the north-east

boundary. However, site levels vary appreciably. For example, from the high points of 62m AOD the north-east boundary dips to just over 59m AOD at its lowest, leading to a pronounced undulation which is clearly visible from the A6. The highest part of the site is located west of centre where a drumlin reaches just over 66m AOD. This too is clearly visible from the A6.

- 2.5. The entire application site is within Flood Zone 1, although the low point on the north-east boundary referred to above, and another low point on the north-west boundary, both show as areas prone to surface water issues on the GOV.UK website's flood risk maps.
- 2.6. The boundary of the Lake District National Park is situated approximately 2.5km to the west and 3km to the north.

## Proposal

- 2.7. The application has been submitted by Mr R Smith (Windermere) Ltd (trading as Rayrigg Motors Ltd) and is a hybrid proposal: part full and part outline. The areas covered by the full and outline components of the scheme are shown on the marked up version of the site layout drawing<sup>1</sup>. The overall concept is to form an industrial estate served by a new roundabout off the A6, positioned towards the northern end of the south-east boundary. This will link to a spine road extending in a straight line to the north-west boundary, following the route of the existing private road to Gilthwaiterigg. The main developable area of the site is intended to be to the south of this spine road, within the development boundary of the town; the recently-extended area to the north is proposed for the new spine road, disposal of topsoil and habitat creation. The intention is to level the developable part of the site at 61m AOD overall via a cut and fill operation. This is illustrated on drawing no. HT1324.1.109 P01. 61m AOD will also define the approximate level of the new spine road, infilling an appreciable dip currently evident along the existing private road that it will replace. The fill to the north is shown to be graded down from the level of the spine road to the north-east boundary.
- 2.8. The new roundabout will be constructed via an agreement made with Cumbria County Council under section 278 of the Highway Act. The agreement will also include an associated extension of the existing 30mph northwards along the A6.

## Full application

- 2.9. The full application covers approximately a quarter of the site (1.8 hectares) and provides details of: (1) the new roundabout on the A6; (2) the spine road; (3) a proposed (Kia) motor dealership covering an area of approximately 1 hectare; and (4) a shared access road serving the outline area of the site. The intention has

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<sup>1</sup> HT1324.1.101 P01 Revision E, PROPOSED SITE LAYOUT MEADOWBANK DEVELOPMENT, LAND AT SHAP ROAD, KENDAL

always been that the proposed motor dealership would provide a new home for the Rayrigg Motors Kia franchise that previously operated from Windermere. That franchise has recently been sold to Lloyd Motor Group and now trades as Lloyd Kia South Lakes, currently operating from Northgate on the White Lund Industrial Estate in Morecambe. Nevertheless, we are told that it is still the intention for the dealership to relocate to Kendal if and when this permission is granted. We are also told that Rayrigg Motors former site in Bowness-on-Windermere has now been permanently closed.

- 2.10. The proposed motor dealership comprises a main showroom, two “shelter buildings” and a car park providing a total of 228 spaces, including six disabled spaces and 39 with electric vehicle charging points.

## Principal buildings

### Main showroom

- 2.11. The main showroom is detailed on drawing PROPOSED KIA SHOWROOM, HT1324.1.102 P01, Revision F. It is a predominantly two storey, flat-roofed building, with a footprint measuring 41.50m x 28.00m and with an overall height of 8.00m. The ground floor is shown with an internal display area for 13 vehicles, six service bays and various offices. An upper mezzanine level is shown with more offices and a small incidental café. The showroom has a small single storey projection to the west, measuring 10.00m x 8.56m and an overall height of 4.40m. The extension will function as a covered drive-through entrance with an outside seating area above accessed from the mezzanine café in the main building.
- 2.12. The building has large sections of curtain glass in south-east, north-west and north-east elevations. There are also significant areas of “green wall” proposed on the south-east and south-west elevations. The remainder of the elevations are to be finished with black aluminium cladding. This is a recent change to Kia’s corporate colours; Members will recall that when they last considered this application the corresponding areas were a garish red. The flat roof of the building will be a “green roof”.

### Shelter buildings

- 2.13. There are two separate buildings proposed: (1) a single storey, flat (green) roof, vehicle shelter with a footprint measuring approximately 10.7m by 5.7m and a height of approximately 3m; and (2) a Perspex clad bike shelter with a footprint measuring approximately 5.5m by 4m and a concave roof which peaks at 2.5m.

## Outline application

- 2.14. The remainder of the application site, extending to approximately 5 hectares, is submitted in outline, with all matters other than access (which is to be taken from the

spine road) reserved for further approval. Illustrative details on the latest site layout drawings show six individual plots ranging in size from 2 to 2.2 acres. Each plot is annotated with the name of a potential tenant.

## 3.0 Planning history

3.1. The following history is relevant:

- 5/99/2208 - (Adjoining site to the south), Warehouse Extensions & Associated Offices & Loading Bays - Resubmission of 5/99/0393, Approved 14-Jul-2000

## 4.0 Consultations

4.1. The application has been publicised three times: first when the application was initially registered in September 2019; then again in September 2021 following receipt of: (1) a number of amended drawings; and (2) an updated Flood Risk Assessment; and finally in February 2022 following the latest set of amendments. The application has been publicised as not being in accordance with the provisions of the development plan in force in the area, as required by 15(2) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

## Kendal Town Council

4.2. Comments as follows:

### 11 October 2021

The committee wanted to ensure that proper notice is taken of the comments of Chris Crewdson, of Beck Mills Farm, dated 3rd December 2019 and that a suitable solution is found to the entry and exit to his field if the current application is successful. The field entrance is directly where the proposed roundabout would be and the committee felt this to be unsafe from a Highways viewpoint and impracticable for agricultural vehicles, but had seemingly not been addressed in either the application or consultee responses.

### 07 October 2019

“No objections” subject to further comments.

“The committee raised the following objections notwithstanding that the site is designated suitable for potential commercial development.

“The mock-up of the approach to the business site shows the removal of an important visual amenity, the view of Kendal that visitors arriving from the North see. This is detrimental to the appearance of the area.

“The committee feels that given the proposers own transport assessment to encourage walking and cycling they were surprised at a car dealership as most employees and all people visiting the proposed site will be arriving by their own car.

“This application seems to be unrealistic and should be viewed in the light of the declared climate emergency and the Councils own transport policy and air quality assessment.

“The committee also question the viability of the current waste plan as highlighted by the United Utilities and Environmental Agency.”

## Skelsmergh & Scalthwaitrigg Parish Council

02 March 2022

Our previous comments relating to landscaping to screen the development from this parish only seem to have resulted in a narrow ‘native woodland’ belt of trees in the field adjacent to the Gillthwaiterigg farm drive. Since the site boundary extends for over twice that width into the field the PC insists on a doubling of native woodland cover with raised ground moulding in the same manner as the nearby Lakeland site in Gillthwaiterigg Lane. Elsewhere the planting proposals on other boundaries should be strengthened and deepened to reduce the rural intrusion represented by this development.

We hope that this development will have its intrusiveness reduced as much as possible.

01 October 2019

4.3. No objection – given the planning background.

## Cumbria County Council

### Local highway authority

4.4. Comments as follows:

08 March 2022

I note the proposed change to the overall site extents and increase in size, the repositioning of the access road and roundabout. However, to all intents and purposes the principle of the site layout and the impact on the highway has

not materially changed and hence the comments and position remain the same as our previous response.

The site has been allocated for employment use and as such we are supportive of the principle of development here. The highways issues had been mostly accepted since April 2020 and we recommend that the proposal can be approved with conditions.

The sustainability of the proposal relies on good sustainable transport connections towards Kendal which do not exist at the moment so these will have to be delivered by way of a Section 106 agreement to provide a bus service into the site, to provide off site works in the form of a footway/cycleway to connect to existing infrastructure on A6 Shap Road, to monitor the Travel Plan.

In part 5.7 of the submitted Transport Assessment, the applicant commits that "As part of the reserved matters application, the Applicant will enter into discussions with the public transport operators to facilitate the introduction of bus service(s) to the vicinity of the site" after having said earlier in the document that public transport will serve the site.

The proposed roundabout and gateway features are part of the public highway and the main road through the development is intended for adoption. These will need to be designed and constructed in accordance with our guidance and standards and a condition and inclusion in the suitably worded legal agreement will be needed to secure this. The proper delivery of the roundabout to acceptable standards will require an amendment to the Traffic Regulation Order to extend the 30mph speed limit to the north of the roundabout which should be funded by the developer.

I also note that there is only the single main access shown to the main site. In accordance with the CDDG [Cumbria Development Design Guide], a secondary, Emergency Vehicle Access (EVA) should be provided. It would appear that a suitable access can be provided from the old A6 layby to the south of the Kia site. This would also provide a useful, direct pedestrian link to the site for those walking from the town centre or retail park / supermarkets.

Although there has been some swept-path tracking provided, further details of the sites will be required in due course to demonstrate that the roads, footways, radii and other layout parameters are compliant with the CDDG.

[The local highway authority's recommended obligations/conditions are included in the recommendation of this report, with appropriate modifications to ensure compliance with paragraph 56 of the NPPF]

24 September 2021

The site has been allocated for employment use and as such we are supportive of the principle of development here. The highways issues had been mostly accepted since April 2020 and we recommend that the proposal can be approved with conditions.

In our comments of 10 December 2019 we had unresolved concerns about the whether the size of the roundabout may have to increase and intrude into the detailed site layout, and whether the detailed element could be serviced without obstructing the highway. It has been demonstrated since then that the proposed detailed development can be serviced fully within the development site and that the roundabout will operate well within capacity so there is no concern that its land take will need to increase.

The sustainability of the proposal relies on good sustainable transport connections towards Kendal which do not exist at the moment so these will have to be delivered with a section 106 agreement to provide a bus service into the site, to provide off site works in the form of a footway/cycleway to connect to existing infrastructure on A6 Shap Road, to monitor the Travel Plan. In part 5.7 of the submitted Transport Assessment, the applicant commits that "As part of the reserved matters application, the Applicant will enter into discussions with the public transport operators to facilitate the introduction of bus service(s) to the vicinity of the site" after having said earlier in the document that public transport will serve the site.

The proposed roundabout and gateway features are part of the public highway and the main road through the development is intended for adoption. These will need to be designed and constructed in accordance with our guidance and standards and a condition and inclusion in the suitably worded legal agreement will be needed to secure this. The proper delivery of the roundabout to acceptable standards may require a Traffic Regulation Order to extend the 30mph speed limit which should be funded by the developer.

[The local highway authority's recommended obligations/conditions are included in the recommendation of this report, with appropriate modifications to ensure compliance with paragraph 56 of the NPPF]

## Lead local flood authority

4.5. Comments as follows:

08 March 2022

The infiltration coefficients of the sub-soil suggest that the ground is suitable for infiltration and this is what has been proposed. The LLFA very much welcome the infiltration and zero run-off approach by the adoption of green roofed building - dealing with surface water as close to its source as

possible is always the best strategy to reduce problems downstream. The developer should also consider whether grey water recycling can also be [provided] in the buildings during the detailed design phase. This would further reduce the run-off. These comments apply to the outline strategy for the Kia site but also to the wider site where a similar approach seems suitable based on the previous submission.

The LLFA has no objection to the outline drainage proposals for the Kia site nor the Surface Water Drainage principle overall, however, further details will obviously be required in due course and we have recommended these in the conditions listed below. Refer to the CDDG Appendix 7 - Drainage Checklist, but this evidence and further consideration should include (this is not an exhaustive list)

- Detailed drainage calculations (including storage);
- Exceedance flow diagram;
- Analysis of the pollution potential for each site based on an end-use class worse scenario, following the pollution and treatment indices in the Ciria SUDS Manual. Treatment should focus on natural / green, passive techniques;
- Consideration of additional SUDS features to control run-off such as rainwater recycling;
- Consideration of other SUDS / landscaping features to provide added bio-diversity, habitat and amenity benefits;
- Details of the fill material and construction of the pad to demonstrate that the infiltration / percolation from the surface can reach the sub-soil layers and back into the ground without causing horizontal flow paths;
- SUDS / drainage infrastructure maintenance schedule;
- Access road drainage proposals following the NPPF hierarchy;
- Evidence of any third party agreements required to permit connection to a watercourse out-with the red-line boundary.

[The lead local flood authority's recommended obligations/conditions are included in the recommendation of this report, with appropriate modifications to ensure compliance with paragraph 56 of the NPPF]

24 September 2021

The outline element of the application should include

## 1. A flood risk assessment (FRA) considering all sources of flooding.

### 1.1. Groundwater

A groundwater model has been provided based on known data and reasonable assumptions looking at seasonally high conditions. The groundwater model describes Seasonally High Groundwater Level (SHGL) at static equilibrium at an approximately flat level of 59mAOD at the lower parts of the site. Higher groundwater levels have been observed at higher parts of the site but these are considered to be rapidly responding to rainfall and reducing to the 59mAOD equilibrium level. This explanation does fit the data and monitoring and mitigation measures are proposed at 4.2.3. We accept that the SHGL can be anticipated at 59mAOD across the developed site which is 2m below the proposed ground level and therefore the infiltration strategy can work for the site.

### 1.2. Surface Water

The applicant proposes to accommodate the surface water flooding underneath the development. We accept the principle but are unconvinced about the method as granular fill is only 30% void space when designed to be used in soakaways but this will be a 2m high embankment supporting a car park and car wash so at least 70% of the filled in flood volume may be displaced. Set against this, a proportion of the runoff that causes the surface water flooding originates within the development site so will be picked up by the site drainage and no longer feed the surface water flooding. We recommend that a condition is applied to review and mitigate for impacts of development on the surface water flooding.

#### 2a. An outline drainage strategy and layout plan.

The outline drainage strategy is based on a worst case scenario and includes permeable car parks for treatment but with no infiltration into the soil below. Petrol interceptors at the outlet of the permeable sub-base connect to a swale and the surface of the car parks run out over a grass filter strip into the swale. The swales are connected by pipes to geocellular soakaways. At the base of slopes there are mini swales shown which are intended to pick up any seepage of groundwater.

...

The outline drainage strategy includes multiple SuDS techniques in a treatment train so meets the treatment standards of SuDS Manual Chapter 26 for all surfaces. We welcome the principle of this drainage strategy as a good SuDS solution. A sustainable drainage system should be designed for ease of

maintenance and the maintenance detail for the Geocellular Soakaways/SuDS Crates should be corrected as per point 5. below.

A condition will be needed to ensure that the eventual SuDS solution delivers at least the same benefits as the outline drainage strategy, especially due to the concerns about the design infiltration rate detailed below which may mean that amendments are needed.

### 3a. Preliminary calculations.

The infiltration rate chosen for design is 20 times faster than the infiltration rate that looks to be justified by the testing. As a result the developer proposes an outline design relying on 13 geocellular soakaways (termed "SuDS Crates" in the submission) of standard 3m x 20m x 0.5m dimensions, but our estimate is that approximately 60 of these soakaways are needed.

These will cover a significantly large area of the site and may interfere with the intentions that the developer has to develop the area. The geocellular soakaways can be below the surface but they need to be accessible so cannot be built over.

Set against this concern is a mitigating factor that this outline design was based on a worst case scenario of high risk of pollution. If the actual development is lower in risk this would allow a revised design with fewer soakaways if infiltration through permeable paving is allowable on the surface. There may be other alternatives that can be used to reduce the land take such as using infiltration basins.

Another possibility is that it is possible that the fill can be engineered to have a higher infiltration rate than the soil on site but this would mean that the development platform would have to be made of engineered fill brought in from elsewhere and the cut material would have to be removed from site.

We have significant concerns about this apparent error but as it is an outline design and it is possible to drain the site with significant mitigation then we don't object but would recommend a condition to ensure that the eventual SuDS solution delivers at least the same benefits as the outline drainage strategy.

### 4. Evidence of any in principle third party agreements needed in order to connect drainage to a third party system if necessary.

We welcome the knowledge that no third party agreement is required because the route belongs to the same landowner as the development site.

Detailed element

The detailed application (Detailed SuDS design for the Kia element) should include the above items fully detailed plus

## 2b. Detailed drainage strategy, layout plan, and design drawings

The detailed drainage strategy includes green roofs and walls, and rainwater harvesting, which will overflow in extreme weather conditions to discharge through geocellular soakaways. The car parking area is amended to use infiltration through permeable paving. This meets the treatment standards and we welcome this SuDS solution. A condition will be needed due to concerns about the design infiltration rate.

## 3b. Detailed calculations

As described in 3a. the infiltration rate chosen for design is 20 times faster than the infiltration rate that looks to be justified by the testing. As a result the developer proposes a detailed design relying on 2 geocellular soakaways, but our estimate is that approximately 4 of these soakaways are needed. We don't think that this will have a significant impact on the intentions of the developer for the site but it will need to be secured by condition to review the design and amend as necessary.

## 5. A maintenance program and ongoing maintenance responsibilities, with a maintenance manual for unadopted drainage.

A SuDS Management and Maintenance Plan has been provided which lists actions that need to be taken to keep the drainage system operating as designed but does not assign responsibility for those actions to any party. This needs to be done for the detailed element but may be resolved by a pre commencement condition.

The actions listed are acceptable except in the case of the Geocellular Soakaways/SuDS Crates which are both a soakaway and an attenuation tank so need to be maintained as such.

- Maintenance actions missing from the list include:
- Monthly removal of debris from the catchment surface.
- Annual inspection of inlets, outlets, overflows, vents, and the floor of the tank. Repairs where necessary.
- Annual (more frequently as necessary) removal of sediment and debris in pre treatment components.
- The remedial action of replacing the soakaway as required.

- The annual monitoring action of checking that the soakaways are emptying as expected.
- 5 yearly survey of the inside of the tank and removal of sediment if necessary.

These actions need to be added to the maintenance manual and carried out in operation which could be secured with a condition.

## 6. Details of exceedance flood routing across the surface of the site.

Not supplied. No further information has been provided. This element can be resolved by condition.

## 7. A construction phasing plan.

Not supplied. No further information has been provided. This element can be resolved by condition.

[The lead local flood authority's recommended obligations/conditions are included in the recommendation of this report, with appropriate modifications to ensure compliance with paragraph 56 of the NPPF]

## Historic Environment Officer

4.6. Comments as follows:

15 February 2022

The applicant has helpfully commissioned an archaeological geophysical survey of the site and the results indicate that there is a low potential for significant archaeological assets to be disturbed by the construction of the proposed development. I therefore have no objections to the application and I do not wish to make any recommendations.

## Environment and Regulatory Services

4.7. Comments as follows:

25 February 2022

No further comments.

23 September 2019

The majority of the application site is outside the adjacent Minerals Safeguarding Area for Sand and Gravel. A section of the A6 (from which access to the site will be taken) falls just within this safeguarding area which

covers an extensive area of open land around the edge of Kendal. It is anticipated that additional sand and gravel resources will be required before the end of the Plan period (2030), especially in the south and west of the county.

As it is only a section of the A6 and not the application site itself that falls within the Minerals Safeguarding Area, I consider the proposed development will not have any impact on the ability to access the surrounding mineral resource in the future.

I consider that criterion 4 of Policy DC15 (Minerals Safeguarding) in the adopted Cumbria Minerals and Waste Local Plan is satisfied.

Cumbria County Council as minerals planning authority therefore does not object to this application.

## Countryside Access Officer

4.8. Comments as follows:

16 February 2022

Public Footpath 536002 follows an alignment to the east and north of the proposed development area 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 there is a 12 week lead in time for this process [...]

I note from previous correspondence that a formal diversion of the footpath had been agreed and the path was to be diverted to follow the access road to Gilthwaiterigg farm, but I have no further information to show if this has been progressed, I also note that my colleague Sandra Smith has recently been in touch with you but it appears no formal decision has been made in regard of formally diverting the footpath, I require further clarification on how this matter is to be resolved.

25 September 2019

This sounds positive. Such a diversion would be processed under Section 257 of the Town and Country Planning Act as it is needed to enable development to take place. SLDC have an arrangement whereby applications made to them for this are processed by Cumbria County Council but the associated legal order is made and confirmed by them. Please open a dialogue with SLDC as soon as you can to ensure that this is put in motion in this case.

20 September 2019

The proposed development would obliterate a section of a public footpath which is numbered 536002 therefore I object to the application.

And then, following confirmation from the applicant's agent that "if planning permission is granted the landowner [...] has agreed that the public footpath can be diverted down the access lane to Gilthwaiterigg Farm.

## Lake District National Park Authority

4.9. No comments received.

## Environment Agency

4.10. Comments as follows:

04 March 2022

We previously objected to the application in our consultation response dated 03 October 2019 as the Foul Drainage Assessment submitted with the application indicated the possibility of a temporary package sewage treatment plant being installed for the proposed motor dealership in advance of a final connection to the mains foul drainage system for the development as a whole.

The applicant now proposes connection to the mains drainage system in preference to the provision of a temporary package sewage treatment plant. We therefore withdraw our objection provided a condition requiring connection to the mains drainage system before first occupation of any building is included in any planning approval.

03 October 2019

We object to the proposed development as submitted because it involves the use of a non-mains foul drainage system in circumstances where it may be reasonable for the development to be connected to a public sewer but inadequate justification has been provided for the use of a non-mains system. We recommend that the application should be refused on this basis.

Private sewage treatment facilities should only be used where it is not reasonable for a development to be connected to a public sewer, because of the greater risk of failures leading to pollution of the water environment posed by private sewerage systems compared to public sewerage systems.

## Natural England

4.11. Comments as follows:

23 March 2022

Confirmed no additional comments

## 01 May 2020

The submitted Ecology Report shows that the existing biodiversity value of the site is mainly poor quality semi-improved grassland.

The email attachment indicates that the biodiversity net gain calculator has been used and that biodiversity net gain is achievable on site. It appears from the correspondence that the applicant is not planning to give the detail on how this will be delivered at this stage of the application process, but will submit this as a subsequent Discharge of Condition. We have no objection to this approach given that it has been demonstrated that a net gain is achievable.

The mitigation for protected species in Section 7 of the Ecology Report should be conditioned, to include the outlined mitigation for hedgerow and tree retention, amphibians, badger, bats, nesting birds, brown hares, and reptiles.

The proposed enhancements in Section 7 of the Ecology Report should also be Conditioned and include: native shrub/tree species and wildflower planting; wildlife friendly SuDS options; bat boxes and bird boxes, and specifically the inclusion of swift bricks.

Please also note our previous comments on surface and foul water discharge. Any discharges from the site, during both the construction or operational phases, must not lead to a deterioration in the water quality of the River Kent SSSI/SAC which lies 250m to the south of the development site.

## 08 November 2019

Natural England have already provided a response to this consultation (295468) and would like to add to this that the proposal does provide a good opportunity to provide additional nesting sites in the form of swift bricks, as this area of Kendal already has an established colony and other nest sites and good feeding opportunities nearby.

## 11 October 2019

Due to the proximity of the River Kent & Tributaries SSSI and River Kent SAC our main concerns are drainage. We note that there is a temporary package treatment plant proposed. The applicant should be guided by the Environment Agency's advice in this respect.

With regards to surface water run-off we advise that suitable SuDS are implemented on-site in order to retain pre-construction greenfield rates, and to remove pollutants. Due to the proposed use of the site, oil interceptors on surface drains may be required.

Natural England has produced standing advice to help planning authorities understand the impact of particular developments on protected species where they form part of a SSSI or in exceptional circumstances. We note that neither a desktop survey or walkover survey has been concluded to assess the biodiversity value of the site.

Your authority has a duty to have regard to conserving biodiversity as part of your decision making. Conserving biodiversity can also include restoration or enhancement to a population or habitat. Examples of biodiversity net gains that could be implemented as part of this scheme include green roofs, restoring or planting hedgerows, planting of native trees and wildflower planting to attract pollinators.

## United Utilities

4.12. Comments as follows:

02 October 2019

### Drainage

In accordance with the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG), the site should be drained on a separate system with foul water draining to the public sewer and surface water draining in the most sustainable way.

[Conditions and informatives recommended]

## South Lakeland District Council

### Specialist – Arboriculture

4.13. Comments as follows:

30 March 2022

I have reviewed the submitted Arboricultural Reports and plans by Arbconsultants Ltd in relation to this development. The Arboricultural Impact Assessment provides an accurate representation of the trees on the site. The report concludes that in order to facilitate this development, 8 trees will need to be felled and 31 trees transplanted with a tree spade into the adjacent scrub land area as shown on the Landscape Masterplan drawing number 1100-2\_700 Rev 4.

The trees to be felled can be mitigated by wider landscaping tree planting as indicated on the Landscape Masterplan. The details for the transplanted trees

such as the specific proposed transplant location in the scrub area, site specific transplant method statement, tree anchoring method and aftercare measures should be confirmed in writing by the LPA prior to commencement of development.

The hedgerow report is an accurate reflection of the condition and status of the hedgerow. Though assessed as 'not important' in regard to the hedgerow regulations 1997, the hedgerow is nonetheless a habitat asset which should be replaced as part of this development. One option would be the inclusion of a replacement mixed native species hedgerow to the north of the 'new scrub biodiversity planting' area adjacent to the proposed main access road. This would give a softened finish to the site and also increase biodiversity scores for the development. As per the tree transplanting details, the specific species mix and planting details can be confirmed by a suitably worded planning condition.

## 15 September 2021

I have reviewed the submitted plans and in particular the landscape masterplan which provides details of the proposed tree planting throughout the site. The proposed tree planting will mitigate the necessary tree loss as a result of the highways improvements and roundabout on the Shap Road verge. Perimeter hedgerows and trees are retained in this scheme, and protection measures for the retained trees can be provided as part of a pre-commencement planning condition in the event that planning permission is granted.

There would be scope for further tree planting around the perimeter of the site and I would encourage the landscape architects to consider appropriate species of trees in these areas when compiling a soft landscaping scheme for the development. The specific details of which can be agreed by condition.

## Strategy

### 4.14. Comments as follows:

The application site forms an area of land allocated for employment development as shown on the adopted policies map and referred to in the Land Allocations DPD as 'Land North of Meadowbank Business Park'. It also includes a small area of land shown on the adopted policies map as part of an existing employment site (Meadowbank Business Park & Adjacent Area).

## The Development Plan / Key Issues

The relevant adopted development plan document is the South Lakeland Local Plan Core Strategy (adopted 2010), Land Allocations DPD (adopted 2013) and the Development Management Policies DPD (2019). The key relevant policies are contained in Policy CS7.1, CS7.2, CS8.2, LA1.8, DM1, DM2 and DM4.

### South Lakeland Local Plan Policies:

Core Strategy CS7.1, which sets out a requirement for around 4 hectares of employment land to be allocated per annum between 2010 and 2025. It specifies the Council will seek to maintain a rolling provision of five years' worth of high quality, unconstrained land for each employment land market sector, that is readily available for development at any one time.

Core Strategy CS7.2, which sets out the amount of land required to meet different employment sectors. The site in question is classified as a local employment site.

Core Strategy CS8.2 which requires proposals to be informed by and sympathetic to the distinctive character landscape types and that proposals by their location, scale, design and materials protects, conserves and where possible enhances the special qualities and local distinctiveness of the area, and distinctive settlement character;

Land Allocations LA1.8 which states acceptable uses on the site include B1 and B2.

Development Management Policies DM1 which specifies development will be acceptable where it responds appropriately to the site's locational context, local and settlement character and distinctiveness;

Development Management Policies DM2 which contains a set of design principles to be applied where appropriate.

Development Management Policies DM4 which specifies development proposals should – unless it can be demonstrated that it is not possible – result in environmental net gains for biodiversity, green and blue infrastructure.

### Policy Appraisal

It is essential the site as a whole supports the delivery of economic growth whilst also ensuring it promotes the creation of high value jobs consistent with the aims and objectives of the Local Plan and Council Plan.

The proposal includes a use that is defined as sui generis (car show room); on approximately a third of the site; and this is subject to a full application. The remainder of the site is subject to an outline application for a range of B1, B2

and B8 uses, as part of a 'business park' with no known users or detailed plans submitted. The key question is the extent to which the 'business park' is a genuine proposal, and if so, what steps have taken place in terms of marketing and identifying the site for potential occupiers which can support an employment element in parallel with the car showroom element. Is there a strategy and timetable for bringing this forward?

The Local Plan (Land Allocations paragraph 1.19) sets out the overall approach to considering uses that fall outside the employment use classes when considering development in employment sites, key factors to consider in this regard are:

- the extent to which a proposal can support delivery of infrastructure which will facilitate appropriate employment development on the rest of an employment site; where the case, favourable weight may be given, provided they can be justified in principle in terms of wider economic policies and objectives.
- adopting a flexible approach to high quality enabling development where it can be shown to be essential to the delivery of employment sites; where compatible with the overall vision for the site and maintaining the District's supply of employment land and premises.

### High quality sustainable design

The application site is located in a key gateway location on the entrance to Kendal. It is especially important development on the site is of a high quality design, sensitive to the surrounding local context and characteristics; this being urban/rural edge. Opportunities to introduce sustainable design techniques should be exploited, especially where these can maximise energy efficiency and help mitigate and adapt to the effects of climate change.

### Green Infrastructure / Biodiversity / Landscaping

Local plan policy CS8.1 and DM4 require the incorporation of green infrastructure within new developments, of a size and type appropriate to the site, its context and identified local needs. Proposals need to clearly demonstrate how it will secure net gains for biodiversity (using a biodiversity/ecological assessment). Given the site's rural/urban edge location, landscaping (trees and planting) may have a role to play in assisting with the provision of net gains for biodiversity. Sensitive treatment of the northern boundary will be required in this respect as identified in the Land Allocations DPD.

### Highways – Sustainable transport links

It is essential the proposal supports sustainable transport movements, thinking about how all users will access the site. There is a need to ensure there is safe and sustainable means of accessing the site with linkages to the rest of the town and nearby facilities (supermarkets/ bus stops and rail provision). Appropriate pedestrian and cycle links including footways along Shap Road where they don't exist should be provided.

### Other matters

Policy DM8 requires developers to make suitable provision for high speed broadband connectivity in new developments and the Council generally expects commercial development to provide fibre to the premises (FTTP) infrastructure. The developer should provide evidence of early engagement with Openreach and provide an indication of whether FTTP infrastructure will be provided and the likely speeds that will be achievable.

### Conclusion

It is essential the site can provide and support a range of employment uses that meets the requirements set out in the Local Plan and objectives of the Council Plan as a whole. The extent to which an element of non 'B' employment uses as proposed, can be considered to satisfy current Local Plan policy will need to be measured in terms of how it aids the delivery of the remainder of the site for 'B' uses. It is essential a significant element of the allocation site is safeguarded for such uses, and that the introduction of non B uses does not undermine the ability to do this, by setting precedent for other non – B uses to be accommodated on the site. There should therefore be clear demonstration that there has been and is a commitment to realise the vision of the site as a 'business park' for B uses, and that efforts are taking place to ensure this is delivered.

## Economic Development Team

4.15. Comments as follows:

09 April 2020

The land north of Meadowbank Business Park, Shap Road, is an allocated employment site and offers a natural extension to the existing employment in the Shap Road area.

Development of the right nature is encouraged here and it is considered that this represents a significant opportunity to bring the site forward and enable development which might otherwise not be possible. The investment into the associated infrastructure would enable the business park to be developed, which would see a substantial portion of the site delivered for B1/B2 uses.

This high value employment is welcomed and in line with the aspirations set out in the Local Plan and South Lakeland's Economic Strategy.

We have been actively engaged with the applicant and are satisfied of the commitment to deliver the business park element, which is key to our support of the proposals. Indeed, it is our understanding that this is an essential part of the business plan and that occupiers need to be secured on the rest of the site to make to make it viable.

The site has been actively marketed for a number of months and several of our existing local businesses have expressed an interest. These consist of businesses wishing to expand their operations or relocate to a bigger premises; this would help create jobs and grow the local economy. Some of this interest is now well developed and time precious to ensure they can meet their business needs. We remain in regular communication with the developer and interested businesses and would be keen to continue an open dialogue to play an active role in the business park element of the scheme.

The relocation of Rayrigg Motors to this site would see those jobs safeguarded and the creation of some additional employment opportunities, but importantly would also free up their existing site in South Lakeland for further employment uses. We understand the applicant is in discussions with another business about repurposing this space should they vacate it.

## Public Protection

4.16. Comments as follows:

**03 March 2022**

Recommends conditions in respect of: (1) electric vehicle charging points; and (2) a construction method statement

**06 October 2021**

Environmental Health has no further observations.

**19 August 2020**

Comments as follows:

Air quality (further to the comments of 10 October 2019 and following consideration of the Wardell Armstrong Air Quality Assessment)

As the [Air Quality Assessment] indicates the operational impact of the development will be negligible. However, a recommendation is made for a green travel plan and electric vehicle charging points. I would advise that the

latter – electric charging points is more pertinent to the development should you wish to add a green condition.

However, it is important that the developer / contractors incorporate the report - Recommendations for Site Specific Mitigation (5.1.14) into the development project management and Construction Method Statement.

[Note: The requirements of section 5.1.14 of the Wardell Armstrong report referred to are explicitly referred to in the proposed condition for a Construction Environment Management Plan]

### 29 January 2020

4.17. Comments as follows:

#### Noise

I can confirm that the Noise Assessment by Martec Environmental Consultants Ltd., dated 22 January 2020 is satisfactory.

[The Martec report refers only to the development proposed by the full application. A condition requiring a further noise assessment linked to the outline application is included within the recommendation]

### 28 November 2019

4.18. Comments as follows:

#### Contaminated land

I refer to the additional information provided in regarding the Phase One Study, which is satisfactory.

However, the suggested condition (from my email dated 10th October, 2019) [see below] is still relevant as it refers to action required should any contamination be found during development and the required Validation Statement upon completion of the development.

[A version of the condition referred to is included as part of the recommendation]

### 10 October 2019

4.19. Comments as follows:

#### Contaminated Land:

Condition recommended

### Noise:

Further clarification is required in respect of noise.

In regards to the outline application prior to development an assessment of the existing noise climate shall be submitted to and approved in writing by the Local Planning Authority. This shall be undertaken by a suitably qualified acoustic consultant.

In regards to the Car Dealership an assessment shall be undertaken by a suitably qualified acoustic consultant [in accordance with BS4142] which shall identify all proposed plant and equipment, car washing facilities, mot / service access, vehicle delivery, and identify measures which are required to control the impact of that noise.

All measures implemented prior to occupation of the buildings to be retained as such thereafter.

### Air Quality:

The Air Quality report is inadequate in that other than for the construction phase (dust management) it provides no assessment of the background air quality levels or implications regarding the proposed development. As such it does not determine if any mitigation measures are required.

### Light:

Condition recommended

### Construction Method Statement:

Condition recommended

## Neighbours / third parties

- 4.20. It was reported in October 2021 that we had received four representations explicitly tagged as objections; three tagged as observations and another five letters of support. After re-publicising the application with the latest amendments we have received two further objections and one further observation. One of the objections relates specifically to the proposed footpath diversion and is discussed under the heading of the report.
- 4.21. The objections raise the following issues:
- Development not wanted or needed.

- No need to expand further into the countryside when there are already vacant buildings and undeveloped brownfield sites.
- Red buildings (as suggested) would be out of character.
- To impose into this landscape a set of ugly, square, prefabricated industrial units will be entirely out of keeping and will fundamentally change the character of this area – Cumbrian countryside with a right of way across a field.
- SLDC needs to stand firm in protecting Kendal’s environment.
- Development will impact on privacy of those occupying small, quiet, rural communities north of the application site.
- Unacceptable degree of noise and disturbance.
- Proposed scale of the development is entirely incompatible with the nature of the location and surroundings. Proposal will dominate the landscape and will be entirely out of scale with the traditional farms and cottages in the area.
- Amendment to extend application site boundary beyond development boundary of the town will exacerbate impacts of the proposal.
- Proposal will significantly increase traffic, both through town (past a busy school, housing and shops) and through Burneside.
- Site only sporadically served by public transport
- Speeds already excessive on this stretch of Shap Road. Current traffic calming measures (changing the speed limit zones) ineffective. Roundabout will not calm traffic; it will potentially create an additional hazard with increased risks.
- Town should strive to remain a historic market town and the gateway to The Lakes, not just another grim, northern, industrial town.
- Puts residents at greater risk of flooding. Allocation precedes the devastating floods of 2015.
- Adding more hard surfaces and increasing run-off not sensible given that aftermath of Storm Desmond still not fully dealt with. Proposals will potentially increase risk to town centre.
- Claim that the proposal will create jobs needs to be carefully evaluated. If jobs simply relocate from Windermere or from Mintsfeet how many new roles will actually be created?

4.22. The observations raise the following issues:

- Why is there a need for such a significant roundabout, when considerably larger developments on the same road have not required one? Is this linked to the proposed Kendal Northern Relief Road project?
  - The roundabout needs to take into account the position of the existing field access on the east side of the road.
  - This development is the ideal situation for a new nesting site for these communal nesting birds and would contribute strongly towards reinstating swift colonies in Kendal.
- 4.23. The five letters of support come from local businesses expressing an interest in the employment land opportunities presented by the outline element of the planning application. We also have an email from the applicant's agent listing expressions of interest from a total of eight businesses; the five who have written in independently, plus three more.

## 5.0 Relevant planning policies

### South Lakeland Core Strategy

- 5.1. The following Core Strategy policies are considered relevant to the proposal:
- CS1.1: Sustainable Development Principles
  - CS1.2: The Development Strategy
  - CS2: Kendal Strategy
  - 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
  - CS8.7: Sustainable Construction, Energy Efficiency and Renewable Energy
  - CS8.8: Development and Flood Risk
  - CS8.10: Design
  - CS9.2: Developer contributions
  - CS10.2: Transport impact of new development

- C19: Sites of Archaeological Interest

## South Lakeland Land Allocations Development Plan Document

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

- LA1.0: Presumption in favour of sustainable development
- LA1.1: Development boundaries
- LA1.8: Local Employment Allocations

## South Lakeland Development Management Policies Development Plan Document (DMDPD)

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

- DM1: General Requirements for all development
- DM2: Achieving Sustainable High Quality Design
- DM4: Green and Blue Infrastructure, Open Space, Trees and Landscaping
- 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

## Other material considerations

### National Planning Policy Framework

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

2. Achieving sustainable development
4. Decision-making
6. Building a strong, competitive economy
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

## 15. Conserving and enhancing the natural environment

### Cumbria Development Design Guide

### Cumbria Landscape Character Guidance and Toolkit (2011)

## 6.0 Assessment

### The principle of development

- 6.1. To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (see section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004).

### The presumption in favour of sustainable development

- 6.2. Paragraph 8 of the National Planning Policy Framework (NPPF) introduces the overarching economic, social and environmental objectives central to achieving sustainable development. It is often forgotten that the social objective includes “ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations”.
- 6.3. Paragraph 9 of the NPPF is clear that these objectives should be delivered through the preparation and implementation of development plans and the application of the policies in the NPPF; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.
- 6.4. To these ends paragraph 11 of the NPPF states that plans and decisions should apply a presumption in favour of sustainable development. Paragraphs 11(c) and 11(d) tell us that for decision-taking this means:
- c) approving development proposals that accord with an up-to-date development plan without delay; or
  - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>2</sup>; or
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 6.5. Paragraph 12 of the NPPF tells us that:

“Where a planning application conflicts with an up-to-date development plan [...] permission should not usually be granted.”
- 6.6. Paragraph 11 is relevant in this case given that the adoption of the Core Strategy in 2010 pre-dates the earliest version of the NPPF published in 2012. The Land Allocations DPD was adopted later, but much of the preparation preceded publication of the NPPF – a point acknowledged by the DPD in paragraph 1.19.
- 6.7. The process of assessing the extent to which existing development plan policies may be out-of-date has started with the ongoing Local Plan Review. The South Lakeland Draft Local Plan Policy Review, published June 2021, (“the Policy Review”) examines each policy in the various Development Plan documents and assesses them against the following factors:
  - Degree of alignment with the 2019 National Planning Policy Framework (NPPF)<sup>3</sup>
  - Findings of new relevant up to date evidence
  - Degree to which policy requirements and objectives have been met as evidenced through decision-making, monitoring and implementation
  - Changes in local circumstances and priorities, including the Council Plan.
- 6.8. Based upon these factors the Policy Review assigns each policy to one of the following three review categories:
  - Category 1 – Likely to require significant review, and amendment/or replacement

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<sup>2</sup> The policies referred to are those in the NPPF (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 176 of the NPPF) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63 of the NPPF); and areas at risk of flooding or coastal change.

<sup>3</sup> Now superseded by the 2021 version of the NPPF

- Category 2 – Likely to require less substantive review and amendment/refreshment
  - Category 3 — Very limited or no case for change
- 6.9. The Policy Review stresses that these categories are “not fixed and open to review and discussion”. And just because a policy might need “significant” review is not an indication that it is necessarily out-of-date; it is more an indication of the work that will be necessary in order to ensure that the policy remains consistent with the latest evidence and the policies within the NPPF. Nevertheless, in applying the test in paragraph 11 of the NPPF, the commentary in the Policy Review is a useful starting point.

## Employment strategy

- 6.10. The inclusion of a motor dealership and Class B8 uses into the mix of uses proposed by this application is in conflict with policy LA1.8 of the Land Allocations DPD, meaning that the application is not in accordance with provisions of the development plan. And it has been publicised as such as required by The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). Members will need to decide where the following analysis of policy and other material considerations justifies granting planning permission in accordance with the statutory provisions set out above.

## Policy background

- 6.11. Amongst the Sustainable Development Principles established by Core Strategy policy CS1.1 is a recognition that “there is a need to grow the local economy in a sustainable way, supporting the vitality and viability of service centres, fostering local business development and rural diversification and attracting new investment into the area, thus reducing dependency on lower-paid sector jobs and high level jobs in areas outside the district.” There is also an acknowledgment that “[most] new developments should be directed to existing service centres where there is adequate service and infrastructure capacity to accommodate the required levels of development.”
- 6.12. The Development Strategy for the District, expressed through Core Strategy policy CS1.2, makes manifest these broad principles by establishing a settlement hierarchy with the largest towns of Kendal and Ulverston at the top. These two Principal Service Centres are identified to accommodate approximately 55% of new housing and employment development during the plan period – up to 2025.
- 6.13. Policy CS7.1 states that “[the] Core Strategy will seek to ensure that around 4 hectares of employment land are allocated per annum between 2010 and 2025”, 60 hectares in total, and that the “Council will seek to maintain a rolling provision of five

years' worth of high quality, unconstrained land for each employment land market sector, that is readily available for development at any one time. This will be distributed across the District in accordance with the sequential hierarchy in [policy] CS1 [...]"

- 6.14. Policy CS7.2 establishes a “sectoral split” for employment land, identifying the rate at which different types of site will come forward over the plan period, also based upon the sequential hierarchy established in policy CS1.
- 6.15. The Land Allocations DPD adds detail to this, partly informed by an Employment Land Review conducted by Lambert Smith Hampton<sup>4</sup> in early 2012. Amongst other things the review concluded that, on the basis of take-up rates at that time, only around 36 hectares of employment land would be needed by 2025 – appreciably less than the 60 hectares anticipated by the Core Strategy.
- 6.16. Table 2 of the DPD sets out the Overall Employment Requirement and Balance between Settlements. For Kendal this indicates a need for 9 Strategic Employment Sites, 9 Business-Science Parks and 2 Local Employment Sites during the plan period. To meet these needs specific sites are allocated by policies LA1.6, LA1.7 and LA1.8 respectively.
- 6.17. Policy LA1.8 (Local Employment Allocations) lists three sites in Kendal, including Land North of Meadowbank Business Park<sup>5</sup>, which represents the larger part of the current application site. The Meadowbank allocation covers 5.15 hectares and is identified on the Kendal North East Inset Map (Map 1.2). The policy lists the “Acceptable Uses” for the site as those falling within Classes B1 (Business) and B2 (General industrial) of The Town and Country Planning (Use Classes) Order 1987 (as amended). The full definition of these classes is:

Class B1. Business<sup>6</sup>

Use for all or any of the following purposes—

- a) as an office other than a use within class A2 (financial and professional services),
- b) for research and development of products or processes, or
- c) for any industrial process,

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<sup>4</sup> Employment Land Review for South Lakeland District Council, Lambert Smith Hampton, February 2012.

<sup>5</sup> The other two sites are: (1) Land South of K Shoes, Natland Road (1 hectare); and (2) Land at Shap Road Industrial Estate (0.34 hectares).

<sup>6</sup> Use Class B1 was effectively revoked in September 2020, and replaced by Use Class E(g), but for any planning applications submitted before 1 September 2020, as in the current case, the legislation is clear that the Use Classes in effect when the application was submitted will be used to determine the application.

being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Class B2. General industrial

Use for the carrying on of an industrial process other than one falling within class B1 above

6.18. The supporting text for the allocation in paragraph 3.41 of the DPD states:

This 5.15 ha site north of the new Meadowbank Business Park offers a natural extension to existing employment areas in the Shap Road area. Because of limitations on the local highway network, this would only be suitable for B1 (office, research and development and light industrial) and B2 (general employment use). Key issues here are managing the impacts on the landscape throughout the site and the northern boundary in particular. The site has known surface water issues that will require mitigation. Development will also require a transport assessment and travel plan and incorporate pedestrian and cycle links to Shap Road. There will be a need for provision of a footway along west end side of the A6 connecting the site southwards towards the town centre.

6.19. The current application site also partially overlaps an Existing Employment Area identified by policy LA1.5 of the Land Allocations DPD. The red line clips the narrow strip of land sandwiched between the A6 and the layby, which forms part of the Meadowbank Business Park & Adjacent Area also identified on the Kendal North East Inset Map (Map 1.2). Policy LA1.5 establishes a presumption in favour of retaining Existing Employment Areas in employment use.

## The status of current employment policies

6.20. Commenting on the extent to which Core Strategy policy CS7.1 is working, the current Policy Review concludes that it “has not been successful”. Recent annual monitoring figures<sup>7</sup> demonstrate that the delivery of employment land has consistently fallen short of the annual 4 hectare target:

- 2014/15 (0.1 ha)
- 2015/2016 (0.0 ha)
- 2016/2017 (0.8 ha)
- 2017/18 (0.2 ha)

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<sup>7</sup> South Lakeland Local Plan – Annual Monitoring Report April 2019 to March 2020

- 2018/19 (0.5 ha)
  - 2019/20 (0.4 ha)
- 6.21. The Policy Review acknowledges that policy CS7.1 will need to be refreshed in the light of a Strategic Housing and Employment Needs Assessment (SHENA)) to establish employment land needs and a Strategic Housing and Employment Land Availability Assessment (SHELAA) to robustly assess existing allocations and consider a new portfolio of sites. There is also an acknowledgement that a refreshed policy will need “to have regard to market signals as to specific sectors different locational needs and any new growth sectors going forward.”
- 6.22. As things stand, policy CS7.1 is assigned a review category of 1, meaning that it is “Likely to require significant review, and amendment/or replacement”. The Policy Review stresses that these categories are “not fixed and open to review and discussion”. And just because a policy might need “significant” review is not an indication that it is necessarily out-of-date; it is more an indication of the work that will be necessary in order to ensure that the policy remains consistent with the latest evidence and the policies within the NPPF. Nevertheless, the commentary associated with the review of each policy provides a useful indication of how it fares against the test in paragraph 11 of the NPPF.
- 6.23. Policy CS7.2 is similarly assigned a review category of 1. Mirroring the missed overall target in policy CS7.1, the Policy Review also acknowledges that policy CS7.2 is not delivering land in the required locations and is not achieving its anticipated “sectoral split”. At the end of the monitoring year 2019/20 a total of 55 hectares of allocated land remained available for development, with Kendal identified as one of a number of areas with particularly poor performance. The Policy Review acknowledges that policy CS7.2 will also need refreshing in the light of refreshed in the light of a “New Employment Land and Premises Study” and, as with policy CS7.1, will need “to have regard to market signals as to specific sectors different locational needs and any new growth sectors going forward.”
- 6.24. The Policy Review records mixed fortunes in respect of the Local Employment Allocations identified by Land Allocations DPD policy LA1.8 and concludes that it will need to be “refreshed/amended in light of” the SHENA and SHEELA referred to above. The policy is assigned a review category of 2, meaning that it is “Likely to require less substantive review and amendment/ refreshment” than those assigned to Category 1, recognising some success in bringing these allocations forward. However, the three Local Employment Allocations in Kendal have not performed well. The Annual Monitoring Report April 2018 to March 2020 indicates: (1) no planning permissions, or applications having been submitted, for the Land South of K Shoes; (2) that the Land at Shap Road Industrial Estate is “effectively not currently readily available for business land use classes”; and (3) the only interest in respect of the Land North of Meadowbank Business Park is the current planning application.

6.25. Under the heading of Building a strong, competitive economy, paragraph 81 of the latest version of the NPPF states that “[significant] weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.” Paragraph 82 goes on to say that, amongst other things, planning policies should “be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances.” This principle is reinforced in paragraph 122, which, under the heading of Making effective use of land states:

Planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:

- a) they should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and
- b) in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.

6.26. Overall, it is clear from the current Policy Review that our existing employment policies are, for the most part, likely to require significant review, and amendment/or replacement. And, on the basis of the evidence available at the moment, it appears unlikely that they will be found to be up-to-date for the purposes of applying the presumption in favour of sustainable development set out in paragraph 11 of the NPPF. Notwithstanding the availability of allocated sites, the target of delivering 4 hectares of employment land annually has been repeatedly missed and, judged by the current application at least, the range of “Acceptable Uses” defined in the various allocations may well be defined too narrowly to achieve the flexibility expected by the NPPF.

## Discussion

6.27. The motor dealership proposed as part of this application is a sui generis use, meaning that it does not fall within any of the use class definitions established by The Town and Country Planning (Use Classes) Order 1987 (as amended)<sup>8</sup>. This is acknowledged by the applicants in their chosen description of the proposal. Consequently, this element of the proposal does not fall within the range of

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<sup>8</sup> This is explicit in Article 3(6)(e) of the Order which states that “No class specified in Schedule 1 or 2 includes use [...] for the sale or display for sale of motor vehicles”.

“Acceptable Uses” defined by Land Allocations DPD policy LA1.8. Neither do the Class B8 uses proposed in the mix for the outline element of the proposal – totalling 2,500 sq. m. of floorspace in the illustrative details.

- 6.28. The definition of Class B8 taken directly from The Town and Country Planning (Use Classes) Order 1987 (as amended) is as follows:

Class B8. Storage or distribution

Use for storage or as a distribution centre.

- 6.29. The two other Local Employment Sites identified for Kendal by the Land Allocations DPD both include Class B8 activities in addition to Class B1 and B2 in their range of acceptable uses. However, the Land North of Meadowbank Business Park, the allocation which largely coincides with the current application site, does not.

- 6.30. Neither the Economic Development Team nor the Strategy Team raises an objection in principle to the inclusion of Class B8 uses on the site. And B8 uses would not be inconsistent with the broad purpose of policy LA1.8, which is:

To ensure that a sufficient supply of employment land and premises is available to meet local employment needs and promote new business formation.

- 6.31. The reason for its omission in reference to the Meadowbank allocation is explained in paragraph 3.41 of the Land Allocations DPD:

Because of limitations on the local highway network, this [site] would only be suitable for B1 (office, research and development and light industrial) and B2 (general employment use).

- 6.32. This implies that other uses meeting the purpose of the policy and not being constrained by the limitations on the local highway network would also be consistent with this policy. Those two issues are discussed further below.

- 6.33. Assuming that our current employment policies are not up-to-date, which would be a reasonable conclusion in the light of the discussion above, other (up-to-date) material considerations in general, and policies within the NPPF in particular, must inevitably carry significant weight in deciding whether the principle of this development is acceptable.

- 6.34. Paragraph 1.19 of the Land Allocations DPD anticipates this issue. It recognises that the DPD was prepared before the first version of the NPPF was published and it establishes some additional guidance for “planning positively” when applying the presumption in favour of sustainable development. The wording in the current version of the NPPF is different, although the general principles established in the DPD are judged to remain sound. They are that applications should be determined:

- having regard to the employment benefits of uses that fall outside the employment use classes when considering development in employment areas and employment sites
- taking a flexible approach to high quality enabling development where it can be shown to be essential to the delivery of employment sites and premises, where compatible with the overall vision for the site and with maintaining the District's supply of employment land and premises

## Other material considerations

### General approach to motor dealerships

- 6.35. Motor dealerships have always presented a particular planning challenge. They have, and continue to be, identified as sui generis uses, not falling within any specific use class. Nevertheless, they are ubiquitous and are likely to remain so, even given the legislative move towards the sale of new electric vehicles only from 2030 onwards. And it is commonplace to see them on industrial estates, where their commercial character and associated traffic movements can be more easily accommodated. In that context the proposal in this application is following a well-established national pattern.

### Use classes

- 6.36. Recent amendments to The Town and Country Planning (Use Classes) Order 1987 have seen a relaxation in the rules governing the ability of land and buildings to move between use classes without the need for planning permission. For example, former B1 uses have now been moved into a new Class E (Commercial, Business and Service), allowing office and light industrial uses to change to retail as permitted development. This relaxation would still not allow a change from B1 to a motor dealership without planning permission, but it is evidence of the Government's desire to ease restrictions across a range of commercial activities. In that context, and given the established prevalence of motor dealerships on industrial estates, then, subject to compliance with other critical policy requirements, this general relaxation would weigh in favour of supporting this proposal.

### Employment benefits

- 6.37. The motor dealership proposed as part of this application does generate an element of employment: 40 jobs according to the applicant's planning statement. However, it is important to note that these jobs will not be new; they will be transferred with the existing business.
- 6.38. 40 jobs is also a potentially poor return from the associated site area (2.5 acres / 1 hectare). For example, when the application was originally submitted the site layout drawing for the development as a whole showed a plot of 4 acres (1.6 hectares)

within the outline area of the site (Plot Two) illustratively accommodating four buildings of 3,500 sq.m. each for Class B1/B2 uses. Government guidance on employment densities published in 2010<sup>9</sup> suggests that Class B1(c) and B2 uses – those typically found on a business park – will tend to provide one full-time employee (FTE) per 36 - 47 sq. m. of floorspace. So, at the least efficient end of this scale, the four buildings originally shown on Plot Two might have created 297 FTEs ((3,500 x 4) / 47). By that same calculation, the site currently proposed for Kia might create space for nearer 185 FTEs (297 x (2.5 acres / 4 acres) if developed for policy compliant Class B1/B2 uses – more than four times that on offer from the motor dealership.

### Enabling development

- 6.39. This proposal has the very real potential to perform an enabling role for the remainder of the site. In providing a new roundabout onto the A6 to meet its own needs and by committing to extending the new estate road to the north-west boundary the early delivery of the motor dealership will effectively absorb the main infrastructure costs associated with opening up the allocation, thereby helping to create a series of serviced plots for the B Class uses favoured by the allocating policy.
- 6.40. The Council's Economic Development Team fully supports this application. It sees considerable merit in safeguarding the jobs associated with the existing business and keeping them within South Lakeland District. And from direct discussions with the applicant the Economic Development Team is clearly convinced that, for the reasons outlined above, the motor dealership has the potential to unlock the allocation as a whole, thereby providing opportunities for other local businesses who have expressed a desire to expand their operations or relocate to bigger premises.

### Existing employment area

- 6.41. The Existing Employment Area clipped by the current application site is a tapering verge sandwiched between the A6 and an existing layby. It is now too small an area to be developed in isolation; it reads as having been left over after the development of the rest of the adjoining Meadowbank Business Park & Adjacent Area allocation. Incorporating this area to facilitate the construction of the new roundabout will not compromise the objectives of our employment policies in general, or policy LA1.5 of the Land Allocations DPD in particular.

### Employment strategy – conclusions

- 6.42. If we regard the employment policies in our development plan as being out-to-date for the purposes of applying paragraph 11 in the NPPF, which would be a

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<sup>9</sup> Employment Densities Guide, 2nd Edition | 2010, Homes and Communities Agency

reasonable conclusion in the circumstances, then the principle of the use proposed in this application falls to be determined against the relevant policies in the NPPF, And judged against the advice in paragraphs 81 and 82 of the NPPF in particular, discussed above, there would seem to be no reasonable grounds for rejecting this application in principle. Members accepted that conclusion in resolving to approve the application last year.

## Broader development strategy

- 6.43. The latest amendment to the application raises a new policy conflict in that the redefined red line now extends 50m north-east of Kendal's existing development boundary, which currently runs along the south-west side of the private vehicular access to Gilthwaiterigg. This takes the proposal into open countryside, contrary to the development strategy for the District established by Core Strategy policy CS1.2.
- 6.44. The applicant's justification for this breach has a number of threads. But it seems mainly to be a consequence of: (a) finding an acceptable location for the new access, without which the viability of bringing forward the allocation is threatened; and (b) the need to dispose of topsoil in a cost-effective manner, current local market conditions attributing it a negative value. The applicants also contend that: (a) an access following the alignment of the existing private road to Gilthwaiterigg would be best placed to serve further potential employment to the west, should that be identified as an appropriate location through the local plan review; and (b) the physical impact of the proposed works will be negligible, appearing as nothing more than a relatively modest increase in the width of the existing metalled access (no more than an additional 3.7% of 'hard works' is claimed) and a re-profiling of the field to the north that will completely re-naturalise over time. They also make the point that extending the application site northwards has a number of other advantages:
- Using the area for the disposal of topsoil will ensure that no off-site movement of excavated material will be required, thus reducing the carbon footprint and improving the sustainability of the construction phase of the works;
  - It will provide a more than sufficient space to meet the biodiversity net gain require for the current proposal; and
  - It will offer an opportunity for enhanced mitigation of the landscape and visual impact of the proposal relative to receptors north of the site.
- 6.45. Core Strategy policy CS1.2 does recognise certain circumstances in which exceptions to the general presumption against developing in the open countryside might be justified, stating that:

Exceptionally, new development will be permitted in the open countryside where it has an essential requirement for a rural location, is needed to sustain existing businesses, provides for exceptional needs for affordable housing, is an appropriate extension of an existing building or involves the appropriate change of use of an existing building.

- 6.46. None of the reasons offered by the applicants fits with these exceptions and this is a further reason why the application is judged not to be in accordance with provisions of the development plan - and an issue not considered by Members when they previously resolved to approve this application last year. Therefore, as with the conflicts with our employment policies, Members will need to decide whether any or all of the applicant's arguments qualify as material considerations of such weight as to justify granting planning permission in accordance with the statutory provisions set out above.
- 6.47. The weight to be attached to the applicant's arguments in respect of biodiversity net gain and the potential mitigation of landscape and visual impact will be discussed further under the relevant headings below. For the moment the discussion focuses on the issue of spoil disposal.
- 6.48. The applicants make the point that 20cm of topsoil removed from across the entire 5.12 hectares of the site to be developed will result in over 16,000 tonnes of material to be disposed of. In different circumstances this might be a marketable commodity, but, we are told:
- The extensive works on the Preston Western Distributor (PWD)/M55 Link north of Preston has flooded the market with such massive volumes of topsoil it has reduced its value to the negative cost of being a waste commodity.
- 6.49. And, for that reason, it is more cost effective to dispose of it on site. Whether or not these local market conditions persist, avoiding the transport of 16,000+ tonnes of "waste" material brings a significant environmental benefit and will undoubtedly reduce the carbon footprint of the proposal, which is a significant factor to be weighed in the overall balance.

## Highway impact

### Policy background

- 6.50. Core Strategy policy CS10.2 (Transport impact of new development) expects "Development will be designed to reduce the need to travel and to maximise the use of sustainable forms of transport appropriate to its particular location", an objective which underpinned the overall development strategy for Kendal and led to the current site being allocated for development.

6.51. 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.

6.52. Policy CS9.2 (Developer contributions) makes clear that “the Council will require new developments to secure improvements which are necessary to make the development acceptable by planning condition or obligations”, and areas where the policy explicitly concludes that this might be relevant include:

Transport relating to highways/roads, rail, waterways, bus/other vehicular public transport, cycle, bridleway and pedestrian access and the securing of Travel Plans.

6.53. The potential highway impacts associated with all of the allocations contained within the Land Allocations DPD were informed by two pieces of transport evidence: (1) an initial Transport Study undertaken by Cumbria County Council in 2012<sup>10</sup>; and (2) Further Highway Evidence to Support Submission SLDC Land Allocations DPD prepared by AECOM in 2013<sup>11</sup>. The conclusion of this work noted that the Kendal town centre transport network was under particular stress, with significant congestion at peak times. Paragraph 3.7 of the Land Allocations DPD summarises the position at that time as follows:

Cumbria County Council has examined the traffic impacts of the proposed land allocations and put forward a series of mitigating measures to ensure that congestion and air quality impacts are minimised. These measures include a combination of network-wide junction improvements and sustainable transport improvements. In applying Core Strategy Policies CS10.2 Transport Impact of New Development and Policy CS9.2 Developer Contributions, the Council will ensure that new development within the Kendal area makes an appropriate contribution to measures to mitigate the environmental impacts of traffic and that new development is subject to active travel planning.

6.54. The 2012 Transport Study also considered more significant mitigation options, including the Kendal Northern Development Route. But none of these was established as a prerequisite to development proceeding on the sites allocated in the Land Allocations DPD.

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<sup>10</sup> Kendal LDF Transport Study: Revised Modelling Results (Cumbria County Council, January 2012)

<sup>11</sup> Further Highway Evidence to Support Submission SLDC Land Allocations DPD (AECOM, March 2013)

- 6.55. The highway modelling for Land North of Meadowbank Business Park in the 2012 Transport Study covered a range of potential employment users, including those within Class B8. The later AECOM document assumed a narrower range of end users, and undertook calculations based upon 30% of the site occupied by B1 premises, with the remaining 70% occupied with B2 uses. The relevant summary from the AECOM document draws the following conclusions in respect of access:

The primary access would be from Shap Road as the site sits on the apex of the curve. The speed limit along Shap Road changes to National Speed Limit from 40mph midway along the south eastern boundary of the site. It would be advisable to extend the 40mph zone to include the site boundary. There is an access road which loops from Shap Road around several existing units before reconnecting to the road, next to the site boundary. Given the size of the proposed site, it is advisable to provide a new access into the site directly from Shap Road, however the existing loop road could be altered, subject to safety audits, to provide a secondary access point into the site. The north eastern part of the site is bordered by an access route to a property. A new junction on Shap Road would need to take proximity to this access junction into account.

There is a footway along the eastern side of the A6 which would provide a connection for pedestrians towards Kendal. There appears to be development occurring just to the west of the site it may be possible in the future for the site to be accessed from the west via this development, depending upon land ownership issues.

- 6.56. The AECOM document employs a standard matrix to summarise the key highway factors of: (1) visibility; (2) land ownership; (3) road width; (4) pedestrian access; and (5) integration. In the case of Land North of Meadowbank Business Park all are coloured green, interpreted in the key as “There are not considered to be any known highway factors which would prejudice delivery. No concerns.” The local highway authority’s comments at that time are summarised as “Satisfactory access can be achieved from Shap Road.”

- 6.57. The explanatory text in support of the allocation in paragraph 3.41 of the Land Allocations DPD summarises the highway issues as follows:

Because of limitations on the local highway network, this [allocation] would only be suitable for B1 (office, research and development and light industrial) and B2 (general employment use).

- 6.58. And:

[The development] will also require a transport assessment and travel plan and incorporate pedestrian and cycle links to Shap Road. There will be a need

for provision of a footway along west end side of the A6 connecting the site southwards towards the town centre.

## The status of current highway policies

6.59. The current Policy Review considers that the general principles contained within policy CS10.2 are still relevant and remain broadly in line with the NPPF. However, there is an acknowledgment that the policy will need refreshing in light of evidence relating to certain transport impacts. The policy is assigned a review category of 2, meaning that it is “Likely to require less substantive review and amendment/refreshment” than those assigned to Category 1. On that basis it is considered that we can continue to apply significant weight to this policy.

6.60. Paragraph 111 of the NPPF establishes an important principle that bolsters the approach in policy CS10.2 and is often quoted as an important material consideration:

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.

6.61. Turning to policy CS9.2, the Policy Review assigns a review category of 1 in acknowledgment of the fact that, amongst other things, it needs to be brought into alignment with more recent guidance contained within the NPPF and within the Community Infrastructure Levy (CIL) Regulations. The policy will also need to be updated to provide clarity in respect of specific infrastructure contributions in the light of new viability appraisal evidence. All that being the case, we should be affording very little, if any, weight to policy CS9.2, relying instead on the relevant guidance in the NPPF and the CIL Regulations, including the statutory tests in respect of planning obligations contained within Regulation 122

6.62. Of particular significance in respect of potential highway impacts, paragraph 110 of the NPPF states:

In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that [amongst other things] 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.

## Discussion

6.63. The content of the current application differs appreciably from the range of uses modelled in the highway evidence underpinning the Land Allocations DPD, not least through the introduction of a motor dealership. To address this the current

application is accompanied by a transport assessment<sup>12</sup> (TA) and travel plan<sup>13</sup> (TP), both prepared by iTransport Planning.

- 6.64. The TA begins with a baseline assessment, including an analysis of existing conditions, committed developments and planned highway network changes. It then sets out the rationale for the development proposals, before moving on to consider the likely impact of the development together with any necessary mitigation – which includes a link to the TP.

### Highway capacity and safety

- 6.65. The TA analyses the vehicular trip generation associated with the two main components of the scheme. For the proposed motor dealership it uses the 1,500 sq. m. floorspace of the main dealership building as the basis for the calculation, and for the outline element of the proposal it bases the calculation on the mix and quantum of B Class uses indicated in the illustrative proposals – 6,400 sq. m. of B1(c)/B2 uses and 2,500 sq. m. of B8 uses. Note that in focusing on Class B1(c), the calculation has assumed use for any industrial process and has specifically excluded use as an office (Class B1(a)) and/or use for research and development of products or processes (Class B1(b)).
- 6.66. The vehicular trip generation has been calculated using 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.
- 6.67. Using TRICS the TA estimates the total 2-way trip movements (arrival/departure) for the full range of proposed uses to be 74 during the AM peak (0800 and 0900) and 83 during the PM peak (1600 – 1700). That is significantly less than the 138 2-way trip movements assumed for the AM and PM peaks in the AECOM document used to support the allocation in the first place. The local highway authority accepts this conclusion, noting that “The Transport Assessment shows that the traffic impact is within the bounds that were modelled in the Kendal LDF Transport Study and therefore no further mitigation is required.” The local highway authority further notes that although the TA does not include any analysis of accident data, “the record does show a sequence of accidents that may be resolved if the proposed roundabout and gateway features bring about a reduction in road speed.”

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<sup>12</sup> Transport Assessment, Proposed Commercial Park Land West of A6 Shap Rd Kendal, Cumbria, Report Ref. 190828-786-TA V3, iTransport Planning. August 2019

<sup>13</sup> Travel Plan, Proposed Commercial Park Land West of A6 Shap Rd Kendal, Cumbria, Report Ref. 190828-786- TP V2, iTransport Planning. August 2019

- 6.68. From their earlier consideration of this application Members will recall concern about the potential impact of the roundabout on the safe use of the existing private accesses to Beck Mills Farm and Summerhow House (and Summerhow Cottages) on the east side of Shap Road. Based upon further technical evidence provided by the applicants, and the response from the local highway authority, Members were persuaded that neither of these accesses would be compromised by the proposals; indeed, it was accepted that the associated extension of the 30mph speed limit northwards along Shap Road would make the situation safer.
- 6.69. The proposed roundabout has now been relocated approximately 120m further north, well away from the access to Beck Mills Farm and in between the private accesses to Summerhow House and Kendal Camping and Caravanning Club Site on the east side of the road. As before, it is the local highway authority's position that neither of these accesses will be compromised by the proposals and that safe use of both will benefit from the extension of the 30mph speed limit.
- 6.70. The local highway authority is proposing that the existing 30mph speed limit on Shap Road (A6) is extended further north in association with these proposals. This, together with the construction of the new roundabout, will be achieved via a section 278 agreement made under the Highway Act. This is a separate statutory process that will be pursued directly between the local highway authority and the applicants. It is important that such an agreement is in place before any other development commences and this can be ensured by a negatively-worded obligation in a section 106 agreement or a covenant between the developer and the County Council in the 106 agreement.
- 6.71. A number of other conditions are proposed to ensure that the roundabout access on the A6 together with the main estate road and individual plot accesses are provided in a timely manner and to the appropriate standards.

## Connectivity

- 6.72. The Council's Strategy Team has commented that:

It is essential the proposal supports sustainable transport movements, thinking about how all users will access the site. There is a need to ensure there is safe and sustainable means of accessing the site with linkages to the rest of the town and nearby facilities (supermarkets/ bus stops and rail provision). Appropriate pedestrian and cycle links including footways along Shap Road where they don't exist should be provided.

- 6.73. And the local highway authority comments that:

The sustainability of the proposal relies on good sustainable transport connections towards Kendal which do not exist at the moment so these will have to be delivered with a section 106 agreement to provide a bus service

into the site, to provide off site works in the form of a footway/cycleway to connect to existing infrastructure on A6 Shap Road, to monitor the Travel Plan.

- 6.74. These comments resonate with the guidance in the NPPF which states that planning decisions should aim to achieve healthy, inclusive and safe places which (amongst other things) “allow for easy pedestrian and cycle connections within and between neighbourhoods”<sup>14</sup>.
- 6.75. In this case the applicants acknowledge the expectation in paragraph 3.41 of the Land Allocations DPD that development of the allocation will include the “provision of a footway along west end side of the A6 connecting the site southwards towards the town centre” and they are proposing to extend to the application site boundary the existing shared footway/cycleway along Shap Road (the A6) from its current termination point at the entrance to Kendal Rugby Club; an additional length of approximately 350m. The local highway authority has confirmed that there are no insuperable technical problems to such an extension and so it is proposed to address this requirement through a Grampian (negatively-worded) condition. This would prevent any of the approved use commencing until the footway/cycleway extension is complete and operational.
- 6.76. The local highway authority’s requirement for a bus service is not so straightforward. The applicants are not bus service operators and could only realistically meet this expectation by funding a new service or subsidising the extension of an existing service. The local highway authority does not want to get involved in this directly; it has suggested that a planning obligation could be used to force the applicants into a direct contract with an existing provider, delivering financial support for a specified period on the assumption that such a service would eventually become self-sustaining.
- 6.77. Laudable as this objective is, it will not satisfy the statutory tests in The Community Infrastructure Levy Regulations 2010 (as amended). Regulation 122 states that a “planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—
- 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.
- 6.78. Were it necessary to provide a bus service to support the allocation then one would reasonably have expected this to feature in paragraph 3.41 of the Land Allocations DPD, in addition to the requirement to extend the existing footway/cycleway. But

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<sup>14</sup> Paragraph 92 (a)

there is no such requirement. And, furthermore, as the local highway authority has acknowledged, there is nothing within the applicant's TA to suggest that the likely traffic impacts have grown beyond the bounds established by the Kendal LDF Transport Study and, therefore, beyond the levels anticipated at the time the site was allocated. Taking all of these matters into account, it would be very difficult indeed to argue that a bus service meets the necessity test established by Regulation 122(a). Even if it did, the vagueness of the current proposition would fail to meet Regulation 122(c). To be judged as "fairly and reasonably related in scale and kind to the development" the proposal would need to come with a far greater degree of precision.

- 6.79. Having said all of that the proposal does offer the prospect of improved access by bus. The extended footway/cycleway proposed along Shap Road will put the existing bus stop on Queen Katherines Avenue (outside Morrisons) within 800 metres, which is generally accepted to represent a comfortable 10 minute walk. And if levels of employment on the site eventually grow to a level that would sustain a direct bus service then that could be comfortably accommodated by the proposed road geometry.
- 6.80. More generally the applicants are committed to encouraging further modal shifts through the implementation of a travel plan. The application is accompanied by a framework document that establishes various principles, which, if the application is approved, will be developed into a full travel plan.
- 6.81. The local highway authority has confirmed that the submitted document is acceptable. It has also confirmed that it expects to perform an associated regulatory role, monitoring the implementation and management of the travel plan and enforcing its terms – as it does with a number of other travel plans operational in the District. This will be paid for by the developer and a figure of £6,600 has been agreed in this case, to be secured through a section 106 agreement.
- 6.82. It is recommended that the submission of full travel plans for each separate element of the proposal (the full and the outline) is incorporated into conditions on any permission.

## Parking

- 6.83. The full application shows 278 parking spaces, a generous allocation consistent with the nature of the use. Details of parking for the Outline Application are proposed to be a reserved matter. Conditions are proposed to ensure that parking is brought forward in a timely manner.

## Public right of way

- 6.84. DMDPD policy DM5 (Rights of Way and other routes providing pedestrian, cycle and equestrian access) states that new development affecting rights of way will be permitted where it:
- maintains and protects their character and function including their public visual amenities, and prevents their loss or provides for a satisfactory diversion; and
  - ensures they remain safe, attractive and accessible to potential users.
- 6.85. Public footpath no. 536002 starts from the site frontage with the A6 before doglegging across the application site, hugging the south-east and north-east boundaries before crossing the private road to Gilthwaiterigg and connecting to footpath no. 570013 which continues northwards. Both footpaths would be affected by the development, temporarily in parts during the construction phase and permanently to a lesser extent once the development is completed. The proposals have been discussed directly with the County Council's Countryside Access Team and a formal application for the necessary temporary and permanent diversions has now been submitted. This proposes a modest and logical realignment of both footpaths so that they skirt the development, making use of the wide highway verge along the A6.
- 6.86. One of the two additional letters of representation received following the latest republicity of the application objects on the basis that the proposed footpath diversion crosses third party land not acknowledged in the application documentation. This has subsequently been accepted by the applicants, although they make the point that because the area in question is also "Highways land maintained at public expense" the acceptability or otherwise of public access will ultimately be a decision for Cumbria County Council. If this continues to be a point of contention with the landowner then it will more properly be resolved as part of the quite separate process (prescribed under section 257 of the Town and Country Planning Act) to determine the footpath diversion application that has now been registered. For the moment Members just need to be content that the proposal meets the planning criteria in DMDPD policy DM5.
- 6.87. Determining the section s257 application is also the responsibility of the local planning authority. The conclusion of this report includes a recommendation to authorise: (1) the making of the order necessary under section 257 of the Town and Country Planning Act to permit the consequential diversions of footpaths no. 536002 and 570013 and; (2) confirming such an order subject to no unresolved objections.

## Landscape impact

### Policy background

- 6.88. Policy CS8.2 (Protection and enhancement of landscape and settlement character) is clear that development proposals should demonstrate that their location, scale, design and materials will protect, conserve and, where possible, enhance (amongst other things) the special qualities and local distinctiveness of the area, distinctive settlement character and the setting of, and views into and from the National Parks. The policy also expects proposals to be informed by, and be sympathetic to, the distinctive character landscape types identified in a range of resources, including the Cumbria Landscape Character Guidance and Toolkit.
- 6.89. Core Strategy policy CS8.10 (Design) expects the siting, design, scale and materials of all development to 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.
- 6.90. Subject to other policies in the development plan, DMDPD Policy DM1 (General Requirements for all development) states that development will be acceptable provided, amongst other things, it: (1) responds appropriately to the proposal site's locational context, local and settlement character and distinctiveness; (2) ensures the protection and enhancement of the District's natural, built and historic environment qualities and its distinctive landscapes and townscapes, including their public visual amenities through good design; and (3) ensures the protection, conservation and enhancement of the special qualities and settings of the Lake District National Park, including views into and out of this protected designated landscape, by supporting proposals only where it is demonstrated through a proportionate landscape assessment there would be no adverse effect upon their landscape character and visual amenity.
- 6.91. Policy DM2 (Achieving Sustainable High Quality Design) supports development provided certain design principles are met. These include ensuring that development: (1) responds appropriately to local and settlement character and reinforces and promotes local distinctiveness; and (2) responds appropriately to local context, landscape and built and natural environment setting. It also states that "[new] development should deliver variety, diversity and interest by [...] avoiding bland monotonous forms of development that promote little interest and variety".
- 6.92. The ongoing Policy Review assigns each of these policies a review category of 2, meaning that they are "Likely to require less substantive review and amendment/refreshment" than those assigned to Category 1. In its analysis of whether these policies are still working and/or whether their context has changed the Policy Review describes the principles underpinning them as continuing to be "appropriate" and "applicable". For the purposes of determining this application the policies are still judged to be up-to-date.

- 6.93. The supporting text for the allocation of this site in paragraph 3.41 of the DPD identifies “Key issues here are managing the impacts on the landscape throughout the site and the northern boundary in particular.”
- 6.94. Paragraph 176 of the NPPF makes clear that:
- Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues.
- 6.95. The 2021 version of the NPPF maintains the requirement established in the 2019 iteration that “the scale and extent of development within all these designated areas should be limited”, but now adds that “development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.”
- 6.96. In July 2017 the Lake District National Park was designated a UNESCO World Heritage Site, inscribed as a cultural landscape. As a World Heritage Site the Lake District National Park assumes the additional status of a heritage asset for the purposes of applying policies in the NPPF, meaning that any impact upon its significance needs to be weighed in the planning balance. In this regard the significance of the World Heritage Site stems from the fact that: (1) the spectacular landscape of the Lake District has been shaped by farming, industry, picturesque landscape design and the conservation movement; and (2) it has stimulated poets and artists of the romantic movement from the late 18th century and conservationists from the 19th century.

## Discussion

- 6.97. The application site occupies an exposed position at the northern gateway of the town, with open views towards and back from the Lake District National Park as well as intervening undesignated landscapes. The sensitivity of the location was acknowledged at the time the site was allocated, with paragraph 3.41 of the Land Allocations DPD flagging as a key issue the need to manage “the impacts on the landscape throughout the site and the northern boundary in particular.”
- 6.98. The current application is supported by a landscape and visual impact assessment (LVIA)<sup>15</sup>, which has been prepared in accordance with the Guidelines for Landscape and Visual Impact Assessment Third Edition (GLVIA) published jointly by the Landscape Institute and the Institute of Environmental Assessment in 2013. This is the “industry standard” for undertaking landscape and visual impact assessment. The LVIA was updated in March 2022 to assess the latest amendment to the proposals.

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<sup>15</sup> Landscape and Visual Impact Assessment, Galpin Landscape Architecture, August 2019

- 6.99. Figure 3 of the LVIA illustrates the intervisibility of the site in much more detail, depicting the so-called Zone of Theoretical Visibility (ZTV); areas calculated to have “bare earth” direct line-of-sight – i.e. not taking into account the mitigating effects of vegetation and existing development.
- 6.100. Within 1km of the site the ZTV is quite extensive, albeit that in reality the majority of views from the south and south-east are shielded by the built-up area of the town. Views from other directions will be far more exposed, with those from the east and west seen against the backdrop of open countryside. Views from the north will, in part, be seen against the backdrop of the town. Figures 4 - 7 of the LVIA include existing and photomontage views from four near-distance viewpoints (Viewpoints 1 – 4), based upon the proposed uniform site level of 61.0m AOD shown on the submitted Cut and Fill drawing, with viewpoint 1 having been updated to reflect the amended proposals. The photomontages are crude block representations based upon the mass of the showroom in the full element of the application and the indicative proposals for other buildings in the outline element.
- 6.101. As one might expect, the ZTV falls off appreciably with distance, although it does extend into the rising ground of the National Park, particularly to the north. Figure 8 of the LVIA contains existing and photomontage views looking south-east towards the application site from a public right of way across Birk Rigg within the National Park (Viewpoint 5) at a distance of just under 4km.
- 6.102. Given the hybrid nature of the proposal the LVIA has had to make certain assumptions about the number, size and disposition of buildings within the outline element of the application, including an assumption that finished floor levels will be set at 61mAOD, reflecting what is shown on the submitted Cut and Fill drawing and what is contained in the drainage strategy for the site. From the chosen viewpoints in the LVIA this assumption has no appreciable impact; all the photomontages show the buildings sitting reasonably comfortably in the selected viewpoints. However, what the viewpoints do not show are the shorter distance views from the rear of the commercial properties in Meadowbank Business Park, or from Gilthwaiterigg Lane where the proposed cut and fill could see the base of the proposed buildings set 5 or 6m above the existing site level. That is not necessarily unacceptable; any potentially significant adverse impacts could be mitigated through sensitive layout and landscaping. But given that the lead local flood authority is not yet convinced that the 61mAOD level is necessary to deliver a workable drainage scheme (see the “Flood risk” section of the report), and that a lot less cut and fill might ultimately be required, it would be premature at this stage to suggest that this ground level is acceptable for the Outline Application, even by implication.
- 6.103. The full element of the application contains considerably more detail. The elevations of the showroom building and other incidental structures are fully resolved. When the application was considered last year Members expressed concern about the visual impact of the garish red cladding shown on parts of the main showroom,

representing the corporate colours of Kia Motors, the intended occupant. Since then Kia has altered its corporate colours to black and this is reflected in the updated drawings. The building is still proposed with a green (planted) roof (as is the shelter building abutting the southern boundary of the Kia dealership) and there are significant areas of green (planted) walling on the south-east and south-west elevations. A considerable proportion of the site remains allocated for parking. The cut and fill necessary to achieve the 61mAOD for this part of the site has a far less dramatic visual impact than is indicated for the outline part of the site; there is a shallow depression running towards the north-east boundary that is shown to be filled to a maximum depth of 2m. And up to 3m of ground reduction is shown on the western boundary.

- 6.104. The application is supported by a Landscape Masterplan, which establishes certain broad principles for the development as a whole, including a commitment to protecting existing trees and hedges on or abutting the application site boundary, where it is practicable to do so. Relocating the roundabout means that only one existing tree in the highway verge now needs to be removed, whereas three were shown for removal in the earlier iteration of the design. However, the proposals do now involve the complete removal of the avenue of trees along the private vehicular access to Gilthwaiterigg. This was assessed as significant component of the landscape mitigation in the original submission. Nevertheless, the scheme does now propose that the entirety of the extended application site to the north of the Gilthwaiterigg access will be planted with “scrub” once the topsoil disposal planned for this area is complete. This will be a 50m wide landscaping strip, extended from an original proposal for 17m in response to representations from Skelsmergh & Scalthwaiterigg Parish Council. Assessing the revisions to the scheme, and balancing the impacts from the loss of the existing trees with the mitigation from the additional planting, the applicant’s LVIA concludes that the “revised iteration presents an improved aspect of landscape and visual amenity in comparison to the original proposal.”
- 6.105. Overall, there is nothing within the LVIA to indicate a level of landscape or visual impact not anticipated at the time the site was allocated for employment development. The near-distance impacts will be most severe, although arguably less so with a motor dealership than might have been the case with buildings constructed for the allocated Class B1 and B2 uses. The motor dealership comes with a reduced density of buildings, albeit that the corollary of this is a greater expanse of parking. Nevertheless, this can be significantly mitigated through landscaping – particularly through the retention of existing boundary planting and the addition of new planting throughout the site. Landscaping has been resolved to a greater degree in the full element of the application, which happens to occupy the most prominent part of the site. Here the landscape and visual impact of the various buildings will be softened by perimeter planting and the use of green walls and roofs. The fine detail of this can be determined through a condition. For the outline

element of the proposal the detail will be resolved via submission of reserved matters, although a condition encouraging the further use of green walls and roofs is being recommended. Subject to these conditions the proposal is judged to be compliant with the expectations of Core Strategy policies CS8.2, CS8.10 and DMDPD policies DM1 and DM2.

- 6.106. The LVIA has also considered longer distance views, particularly those to and from the National Park. The LVIA acknowledges that the National Park has a high sensitivity to change, but concludes through its analysis that the magnitude of change and the degree of significance in this case are both negligible. On that basis it is reasonable to conclude that: (1) the setting of the designated landscape is protected in accordance with the expectations of Core Strategy policy CS8.2 and DMDPD policy DM1; and (2), in the terms established by the NPPF, there is no harm to the significance of the World Heritage Site.

## Flood risk

### Policy background

- 6.107. It is an underlying principle in the various components of the District's development plan and in relevant Government policy and guidance that development should not increase flood risk elsewhere.
- 6.108. In this case the application site lies with Flood Zone 1, which is at the lowest risk of flooding by rivers or the sea. This was a significant factor in allocating the site for development in the first place.
- 6.109. Core strategy policy CS8.8 (Development and flood risk) acknowledges the risk of flooding from other sources, and in particular surface water. The policy states that all new development will only be permitted if it can be demonstrated that (amongst other things): it would not have a significant impact on the capacity of an area to store floodwater; measures required to manage any flood risk can be implemented; surface water is managed in a sustainable way; and provision is made for the long term maintenance and management of any flood protection and/or mitigation measures.
- 6.110. Policy CS8.8 is identified in the ongoing Policy Review as being within review category of 1: needing to be refreshed in the light of new evidence (including an updated of the Strategic Flood Risk Assessment which is currently in progress) and an updated understanding of flood risk and climate change impacts. It is also noted that the policy needs to align with the NPPF and needs to incorporate climate change implications.
- 6.111. Policy CS8.8 has been updated by DMDPD policy DM6 (Flood Risk Management and Sustainable Drainage Systems). The purpose of policy DM6 is "[t]o 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.”

Furthermore, the policy states that:

“Surface water should be managed at the source, with reduced transfer and discharge elsewhere.”

6.112. And, consistent with the National Practice Guidance , the policy expects surface run off to be discharged as high up the following hierarchy of drainage options as reasonably practicable:

- 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.

6.113. Policy DM6 has been assigned a review category of 2 by the ongoing Policy Review. The policy is regarded as being broadly aligned to the current NPPF, but it is noted that refreshment may be needed in light of any national policy changes. As things stand, it is considered that significant weight can still be attributed to this policy.

6.114. The supporting text for this particular allocation in paragraph 3.41 of the DPD states acknowledges that “The site has known surface water issues that will require mitigation.” This is reflected on the GOV.UK surface water flood risk map, which identifies known flooding issues in two areas of low ground, one on the north-east and one on the north-west boundary.

## Discussion

6.115. Work to satisfactorily address the flood risk on the site is the main reason why progress on this application has been delayed. Various technical assessments have been submitted over the months, culminating in a Flood Risk Assessment and Drainage Strategy Report (FRA) submitted in August 2021<sup>16</sup>, and recently modified to reflect the latest design changes<sup>17</sup>.

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<sup>16</sup> Flood Risk Assessment and Drainage Strategy Report, Ref: P21391, Insight GEO, August 2021

<sup>17</sup> Flood Risk Assessment and Drainage Strategy Report, Ref: P21391, Insight GEO, January 2022

- 6.116. The drainage strategy for the site as a whole mainly relies upon ground infiltration, which is the preferred approach in DMDPD policy DM6 and National Practice Guidance, with some associated attenuation from green roofs. It was unclear before the submission of the August 2021 FRA whether ground infiltration would be a viable option. Existing evidence, including the GOV.UK surface water flood risk map, suggested that the Seasonally High Groundwater Level (SHGL) might be a barrier to this approach. However, following further investigations, the LLFA is now prepared to accept that the SHGL achieves a static equilibrium at an approximately even level of 59mAOD, 2m below the 61mAOD that the applicants are proposing as a consistent development level following cut and fill. Ground infiltration is to be achieved through a combination of permeable paving (direct to the ground below), and geocellular soakaways. Based upon this approach the FRA contains a detailed design for the surface water drainage system for the full application and a broad strategy for the outline application.
- 6.117. The LLFA is broadly content with the proposed approach. Its earlier concerns about the assumed infiltration rate, mentioned in the report to Committee last year, are now resolved, although there are still a few technical aspects of the scheme that need to be refined. The LLFA is happy that these can be addressed through conditions and these are included within the recommendation of this report. To be clear, for the reasons explained under the “Landscape impact” heading of this report, the cut and fill proposals for that part of the site covered by the Outline Application are not being explicitly recommended for approval at this stage; the detailed review required by the LLFA may ultimately lead to a less visually intrusive solution for this part of the site.

## Foul drainage

- 6.118. Policy DM1 of the DMDPD states that, subject to other policies within the development plan, development will be acceptable provided it (amongst other things) ensures the provision of necessary infrastructure needs it may generate for example all the major services (including electricity/gas, surface and foul water disposal), in a sustainable and viable manner.
- 6.119. The Foul Drainage Assessment submitted with the application indicated the possibility of a temporary package sewage treatment plant being installed for the proposed motor dealership in advance of a final connection to the mains foul drainage system for the development as a whole. The Environment Agency objected to this aspect of the application; in its opinion private sewage treatment facilities carry a greater risk of failure and should not be used in circumstances, as here, where mains drainage is available. The applicants have accepted this point and the recommendation of this report includes a planning condition requiring connection to the mains drainage system before first occupation of any building.

## Biodiversity

6.120. 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

6.121. 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.

6.122. 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.

6.123. In this case the application site is in close proximity to the River Kent & Tributaries SSSI and River Kent Special Area of Conservation (SAC). Special Areas of Conservation are so-called “European Site” for purposes of The Conservation of Habitats and Species Regulations 2017 (“the 2017 Regulations”). 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 can require SLDC to undertake a Habitat Regulations Assessment (HRA) where, as in this case, Natural England recommends one is necessary

6.124. We were initially advised by Natural England that the proposal could have potential impacts on the River Kent Special Area of Conservation (SAC), mainly as a consequence of the original proposal including a temporary package treatment plant. However, as discussed above, the treatment plant has now effectively been withdrawn from the proposal (the development will be required to connect to existing mains drainage), obviating the need for an HRA in this case.

## Biodiversity net gain

6.125. DMDPD policy DM4 (Green and Blue Infrastructure, Open Space, Trees and Landscaping) expects all development proposals to result in environmental net gains for biodiversity, states that all development proposals:

...should, unless it can be demonstrated that it is not possible, result in environmental net gains for biodiversity, green and blue infrastructure and demonstrate how the use of multifunctional green and blue infrastructure will deliver wider requirements and objectives.

6.126. This reflects advice in paragraph 174 of the NPPF. And it also anticipates implementation of the recently enacted Environment Act which will establish a statutory obligation to achieve biodiversity gain as a condition of planning permission in certain circumstances.

6.127. The Biodiversity Statement<sup>18</sup> originally submitted with the application has now been updated with a “Bio-Diversity Assessment for Extended Site (December ’22) to reflect the latest amendments. This continues to assign a relatively low score to the existing site, acknowledging that it is predominantly “improved grassland in poor condition.” Using the latest version of the Defra Biodiversity Metric, the updated assessment shows that the first 17.5m belt of scrub planting currently proposed on the extended site area to the north of the private vehicular access to Gilthwaiterigg will deliver 2.24 habitat units, a 320% increase on the 0.70 habitat units which currently exist within the limits of the full application – a significant biodiversity net gain.

6.128. The position in respect of the Outline Application will not become completely clear until the reserved matters for the further phases have been finalised. That is an inherent complication with outline proposals. Nevertheless, we still need to be sure at this stage that the scheme has adequate capacity to meet the likely net gain requirement, and to that end there are two potential solutions on offer: (1) taking into account the additional 32.5m of new scrub planting in the extended site area to the north; and/or (2) continue to pursue the only option available before the site area was extended, by making improvements to three off-site parcels of agricultural land to the west (also controlled by the owner of the application site) described as

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<sup>18</sup> SL/2019/0743: Biodiversity Statement, March 2020

“unproductive due to groundwater issues [but which] offer great scope for biodiversity enhancement.” The off-site parcels cover a total area of 5.06 hectares.

- 6.129. No attempt has yet been made to quantify the likely gains from the off-site proposals, but there is no doubt that they will be appreciable. It is recommended the proposed section 106 agreement includes an obligation that no development associated with the “outline” component of the planning permission shall commence until a scheme demonstrating an associated minimum 10% biodiversity net gain has been submitted to, and approved in writing by, the local planning authority. This could be achieved entirely within the extended application site if it is practicable to do so, or could involve some or all of the off-site potential if necessary.
- 6.130. Natural England has confirmed that it has no objection in principle to deferring agreement to the detail of a scheme where a net gain is demonstrably achievable.
- 6.131. More recently, and in response to representations from Kendal Swifts, the applicants are now proposing the erection of five swift boxes on the south-west elevation<sup>19</sup>.

### Other ecological considerations

- 6.132. The accompanying Ecological Appraisal<sup>20</sup> draws conclusions from: (a) an initial data search and desk study of the site and an area within a radius of 2km; and (b) subsequent surveys undertaken by licenced ecologists in April and June 2019. The site was subject to a full botanical survey, followed by surveys to establish the presence or absence of bats, badgers, amphibians, nesting birds, brown hares, reptiles and red squirrel, either within the site or within a distance where they might be affected by the proposed development.
- 6.133. The Appraisal concludes that the plant species assemblages recorded at the site are all common in the local area and are considered to be of low ecological value. Recently updated Hedgerow Survey Report (March 2022) has confirmed that none of the hedgerows around the site perimeter are considered important under the Hedgerow Regulations (1997), although they are recognised as likely to be utilised as bird nesting habitat. Low numbers of common bat species were recorded foraging around the perimeter of the site, in particular along the hedgerow on the northern boundary. No bats were recorded roosting on site. Three hares were observed. However, the habitat at the site is noted as not being unusual in the local area and the Appraisal considers the risk to brown hares to be very low. No other notable or protected species were recorded on the site. Natural England concurs with this conclusion, acknowledging that the “existing biodiversity value of the site is mainly poor quality semi-improved grassland.”

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<sup>19</sup> SL/2019/0743: Statement re: habitat creation for Swifts (Apus apus)

<sup>20</sup> Ecological Appraisal, Land off Shap Road, Kendal, Envirotech June 2019

6.134. The Appraisal does include various recommendations for mitigation to ensure that working practices proceed in a responsible manner should unrecorded protected species enter the site during the construction phase. Natural England supports these measures and they are reflected in a number of the conditions in the recommendation of this report.

## BREEAM<sup>21</sup>

6.135. Core Strategy policy CS8.7 (Sustainable construction, energy efficiency and renewable energy) states:

New commercial buildings of more than 1000 sq. m. will normally be required to meet the BREEAM 'very good' standard and by 2013 new buildings will need to achieve the BREEAM 'excellent' standard.

6.136. This is acknowledged in the applicant's Planning Statement and is proposed to be covered by a planning condition if permission is granted.

## Amenity

6.137. 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:

ensures a safe, secure and healthy environment, both on and off-site, by protecting public and environmental health interests with regard to matters such as pollution [...]

6.138. DMDPD policy DM2 (Achieving Sustainable High Quality Design) expects new development that requires external lighting to:

- use the minimum illumination required to undertake the task; and
- minimise harm to the local amenity, wildlife, public and wider views through use of appropriate landscaping measures and sensitive forms of design; and
- be designed in a manner that avoids glare and erosion of tranquility and dark skies.

6.139. Paragraph 174 of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by, amongst other things:

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<sup>21</sup> Building Research Establishment Environmental Assessment Method

preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.

6.140. Paragraph 185 states that planning decisions:

... should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;
- b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and
- c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

## Land contamination

6.141. The application is accompanied by Phase 1 and 2 land contamination and ground investigation reports<sup>22</sup>. These conclude that the risk of contamination is low. The Public Protection Team accepts the conclusions of the reports, but has asked for conditions: (1) requiring the submission of validation reports before any buildings are occupied and (2) establishing a procedure in the event that unexpected contamination is encountered – a possibility acknowledged in the submitted reports. Appropriate conditions are included in the recommendation.

## Air quality

6.142. The application is supported by an Air Quality Assessment. This concludes that there are unlikely to be any adverse impacts during either the construction or operational phases of the development, subject to dust during the construction phase being controlled via measures in a Construction Environment Management Plan (CEMP). The Public Protection Team concurs with this conclusion and the recommendation of this report includes a requirement for a CEMP incorporating the necessary restrictions.

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<sup>22</sup> (1) Phase 1 Desk Study Report, Insight GEO (October 2019); and (2) Phase 2 Interpretative Ground Investigation Report, Insight Geo, September 2019

6.143. Although accepting the Assessment's conclusions that impacts within the operational phase will be negligible, the Public Protection Team considers these impacts could be further mitigated by a commitment to the provision of a significant number electric vehicle (EV) charging points; only five were shown on the original submission plans. This has subsequently been increased to 39. The provision of all 39 EV charging points is covered by a condition in the recommendation.

## Noise

- 6.144. It is inevitable that introducing employment development onto what is currently a green field site will introduce an element of extra noise, both from the commercial processes and from the associated traffic movements. This would have been understood at the time the site was allocated. And, to some extent, the impacts will be mitigated by the existing ambient noise conditions in the locality created by the A6 and established commercial development.
- 6.145. The application is supported by a Noise Assessment<sup>23</sup>. This considers the likely impact of the noisiest element of the proposals within the full element of the application (servicing and repair) on the nearest residential noise receptors – Summerhow House and Summerhow Cottages, situated approximately 120m east of the application site boundary on the far side of the A6. The conclusion of the Assessment is that, with certain restrictions, this element of the development will have a “low impact”. The Council's Public Protection Team concurs with this view. A number of conditions are proposed to enforce the specified restrictions.
- 6.146. The potential impacts of the outline element of the application are more difficult to predict, although by definition Class B2 (General industrial) uses, which are amongst those deemed “acceptable” by the allocating policy, includes those which do not exhibit the residential compatibility expected of Class B1 uses<sup>24</sup> (or the replacement Class E(g) uses in the latest iteration of The Town and Country Planning (Use Classes) Order 1987). Nevertheless, a condition is being recommended to ensure that the future design of any buildings constructed pursuant to any outline permission incorporates measures to minimise the propagation of noise to the lowest practicable level.
- 6.147. No condition is being recommended on either the full or outline permissions to limit hours of use during the operational phase of the development (although a condition is being recommended to limit works during the construction phase). It would be

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<sup>23</sup> Martec Environmental Consultants Ltd., 22 January 2020

<sup>24</sup> ... being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

unusual to restrict development in this way, particularly on an allocated employment site.

## Lighting

- 6.148. The use of excessive artificial lighting in this location could have a number of detrimental impacts: to wildlife; to road safety and to the general character of this edge of town location. A condition requiring a Construction Environment Management Plan is proposed to include controls over lighting during the construction phase of the development. Further conditions are being recommended to ensure that lighting parameters for the full and outline elements of any permission – addressing (1) the intensity of illumination; (2) predicted lighting contours; (3) proposed hours of illumination; and (4) the location and height of all lighting fixtures - are established and then adhered to for the operational phase of the development.

## Broadband

- 6.149. DMDPD policy DM8 (High Speed Broadband for New Developments) all proposals for new commercial development must demonstrate how they will provide future occupiers with sufficient broadband connectivity.
- 6.150. A Broadband Statement submitted by the applicants in April 2020 confirms that the A6 immediately adjacent to the site is a strategic arterial Openreach high speed broadband route and that each plot will be offered to open market fully serviced with high speed broadband. It is recommended that this is reinforced via a condition.

## Archaeology

- 6.151. Core Strategy policy CS8.6 (Historic environment) supports a number of objectives, including the “safeguarding and, where possible enhancement of, locally important archaeological sites and features within the historic environment.”
- 6.152. To examine the archaeological potential of the site in this case the applicants have commissioned an archaeological assessment which indicates that there is a low potential for significant archaeological assets to be disturbed by the construction of the proposed development. Having reviewed this document the County Council’s Historic Environment Officer concludes that “I therefore have no objections to the application and I do not wish to make any recommendations.”

## 7.0 Conclusion

- 7.1. This application has been submitted as a hybrid: part full and part outline. The full application proposes a motor dealership. The outline application proposes an employment business park comprising a combination Class B1, B2 and B8 uses.

- 7.2. To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.
- 7.3. In this case, the range of uses proposed in the application is not accordance with some of the provisions of the development plan. Although the land is allocated for employment purposes, the proposal for a car showroom (a sui generis use) together with a combination of B1, B2 and B8 uses extends beyond the definition of “Acceptable Uses” (B1 and B2) in the allocating policy.
- 7.4. However, the policy is demonstrably out-of-date; it assumes a need for employment land based upon an annual target that has been repeatedly missed. And it displays a lack of flexibility, which is at odds with the thrust of more recent advice in the NPPF. Consequently, having regard to paragraph 11 of the NPPF, the principle of developing this site for the uses proposed needs to be judged against more up-to-date material considerations in general, and policies within the NPPF in particular. And, on that basis, the principle of what is proposed is judged acceptable: the proposed mix of uses is responding to current market signals; the site is well-suited to a motor dealership; and by providing some key elements of infrastructure there is a good chance that it will open up the remainder of the allocation to meet current and future demand for further serviced employment land.
- 7.5. The updated proposal is further in conflict with the development plan by now including 50m of land beyond the development boundary of the town. The justification for this is threefold: (1) that it provides space for the sustainable disposal of the considerable amount of surplus topsoil that will be generated by the development; (2) that it provides an enhanced opportunity for landscape mitigation; and (3) that it offers the prospect of achieving the required biodiversity net gain entirely on-site. These arguments have considerable merit, and, in the circumstances, with a condition to limit use of the area in the manner proposed, they are judged to be material considerations of sufficient weight to justify the departure from policy.
- 7.6. There is local concern that the proposal will significantly increase traffic, both through the town and surrounding areas. There are comments that traffic speeds are already excessive on this stretch of Shap Road and that the proposed extension of the 30mph speed limit will be ineffective in tackling this. Further comments regard the proposed roundabout as just another hazard.
- 7.7. The content of the current application differs appreciably from the range of uses modelled in the highway evidence underpinning the Land Allocations DPD, not least through the introduction of a motor dealership. To address this the current application is accompanied by a bespoke Transport Assessment and Framework Travel Plan. Based upon these documents the local highway authority is satisfied that the likely traffic impact will be within the bounds of the original modelling. And,

contrary to local misgivings, it further notes that the proposed roundabout and associated extension of the 30mph speed limit on Shap Road have the very real potential to resolve the causes underpinning the existing local accident record.

- 7.8. Connectivity to the site will be significantly improved by the extension of the existing pedestrian / cycle route along Shap Road to the boundary of the application site. A modal shift from the use of the private motor car will be encouraged by travel plans for the two key phases of the development, supported by a financial contribution to fund monitoring by the local highway authority.
- 7.9. The application site occupies an exposed position at the northern gateway of the town, with open views towards and back from the Lake District National Park as well as intervening undesignated landscapes. The application is supported by a Landscape and Visual Impact Assessment (LVIA) which has examined key views. It is evident from this analysis that even with appropriate mitigation (including landscaping and the use of green roofs and walls) the development will have an appreciable residual impact in short distance views, but nothing beyond that anticipated at the time the site was allocated for employment development.
- 7.10. The application site lies with Flood Zone 1, which is at the lowest risk of flooding by rivers or the sea; a significant factor in allocating the site for development in the first place. However, there are records of local surface water flooding and considerable effort has gone into establishing the extent to which these events might compromise an effective sustainable drainage system. The lead local flood authority is now satisfied that the principle of a surface water drainage system based upon ground infiltration is acceptable. The further work necessary to resolve the outstanding details can be resolved via conditions. Foul drainage will be achieved by a connection to the mains drainage system.
- 7.11. The application site is in close proximity to the River Kent & Tributaries Site of Special Scientific Interest (SSSI) and River Kent Special Area of Conservation (SAC). In this case, the limited potential impact of the development on these particular assets does not require a Habitat Regulations Assessment; Natural England is satisfied that any potential impacts can be addressed through planning conditions.
- 7.12. The Biodiversity Statement accompanying the application assigns a relatively low score to the existing site, acknowledging that it is predominantly “improved grassland in poor condition.” Biodiversity net gain for the proposals within the full application will be now be achieved principally through planting on the extension of the application site north of the vehicular access to Gilthwaiterigg, augmented by on-site landscaping, including the use of sedum roofs and walls to various structures, and the installation of swift boxes. For the outline application net gain will be achieved through further planting north of the Gilthwaiterigg access and/or enhancements to two fields also within the landowner’s control.

- 7.13. Local amenity will be protected via conditions covering issues such as: land contamination (both known and unexpected); air quality; noise and lighting. It is recommended that the construction process is controlled by conditions requiring a Construction Environment Management Plan and placing a restriction on working hours. Other conditions are proposed to deal with: compliance with BREEAM; tree protection; and broadband connectivity.
- 7.14. Overall, notwithstanding that the proposed mix of uses is at odds with the expectations of LADPD policy LA1.8 (Local Employment Allocations), one of the most important policies for determining this application, other material considerations support the principle of development in this case, consistent with the requirements of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004.
- 7.15. Other key policies relevant to the determination of this application remain up-to-date and having considered the comments from statutory consultees and third parties, and having secured various amendments to the proposal, the application is recommended for approval subject to a section 106 agreement and conditions.

## 8.0 Recommendation

- 8.1. The application is recommended for approval subject to:
- a. A section 106 agreement (including Cumbria County as a signatory) to secure the following:

### Biodiversity net gain

- i. No development shall commence until a scheme demonstrating an associated minimum 10% biodiversity net gain (from the baseline conditions of the application site), either provided within the application site and/or incorporating the three off-site parcels of land referenced in the submitted Biodiversity Statement, has been submitted to, and approved in writing by, the local planning authority. The biodiversity net gain shall be calculated using Natural England's Biodiversity Metric 3.0, or such other Metric as shall have been adopted in its place by the time the scheme is submitted. The scheme must include: (1) a timetable for implementing the proposals; and (2) proposals for the management in perpetuity of any areas contributing to the overall biodiversity net gain.

### Construction of new roundabout and extension of the 30mph speed limit on Shap Road (A6)

- ii. No other development shall commence until: (1) the new roundabout access to the site (shown on approved drawing HT1324.1.101 P01, Revision E) has been completed in accordance with an agreement made with Cumbria County Council under s278 of the Highways Act; and (2) the 30mph speed limit on the A6 has been extended north of the new roundabout in accordance with a Traffic Regulation Order made by Cumbria County Council..

### Travel Plan monitoring

- iii. A contribution of £6,600 to be paid by the developer to the local highway authority to fund the monitoring of the final Travel Plans

b. And the following conditions:

Condition (1): Development on that part of the site identified as “the Full Application” on Proposed Site Layout, HT1324.1.101 P01, Revision E is hereinafter referred to as “the Full Permission”.

Development on that part of the site identified as the “Outline Planning Application all matters reserved” on Proposed Site Layout, HT1324.1.101 P01, Revision E is hereinafter referred to as “the Outline Permission”.

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

## THE FULL PERMISSION

Condition (2): The development to which the Full Permission relates shall begin not later than THREE YEARS from the date of this decision.

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 (3): The development to which the Full Permission relates shall be carried out in accordance with the following approved plans:

- SITE LOCATION PLAN, LAND AT SHAP ROAD, MEADOW BANK, SHAP ROAD, KENDAL,

HT1324.1.100CB, Issue P01, Revision A, 10 December 2021

- PROPOSED SITE LAYOUT, HT1324.1.101 P01, Revision E, 13 January 2022
- PROPOSED KIA SHOWROOM, HT1324.1.102 P01, Revision F, 14 January 2022
- SHELTER BUILDINGS, HT1324.1.111 P01, Revision A, January 2022
- Kia Detailed Drainage Plan, HT1324.1.113 P05, P01, Revision B, January 2022
- Cut and Fill, HT1324.1.109 P01,
- Landscape Masterplan 1100-2\_700 Revision 7, May '22
- Construction Phasing Plan, January 2022

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

## External materials

Condition (4): Unless agreed otherwise in writing by the local planning authority, the external walling and roofing materials for the buildings approved by the Full Permission shall be as specified in the application form and in the approved plans detailed above. Where relevant, the external walling and roofing materials are approved as a foundation for the green walls and roofs referred to further in condition 7 and indicated on approved drawings: (1) HT1324.1.102 P01, Revision F; (2) HT1324.1.111 P01, Revision A; and (3) Landscape Masterplan 1100-2\_700 Revision 7.

## Parking

Condition (5): The motor dealership approved in the Full Permission shall not commence trading until the parking shown on HT1324.1.102 P01, Revision F, including the 39 electric vehicle charging points, has been constructed and made available for use.

Reason: To ensure the timely provision of car parking in accordance with policy DM9 (Parking Provision, new and loss of car parks) of the South Lakeland Development Management Policies Development Plan Document.

## Travel plan

Condition (6): Within 6 months of the development approved by the Full Planning Permission opening for business, a Travel Plan for the ongoing business shall be submitted to the local planning authority for its approval. The Travel Plan shall: (1) identify targets for a modal shift from the use of private cars to sustainable transport modes for those visiting the development; (2) set out measures to achieve those targets; and (3) include a timetable for implementation. The timetable must include provision for the submission of an annual written report to the local planning authority (for the agreed lifetime of the Travel plan) reviewing the effectiveness of the Travel Plan to date and setting out any necessary amendments to the prevailing measures in order to achieve the agreed targets. Thereafter, the Travel Plan shall be implemented in accordance with the agreed targets, prevailing measures and timetable. The prevailing measures shall be those set out initially or as may subsequently have been agreed in writing by the local planning authority following each annual review.

Reason: To encourage the use of more sustainable modes of transport.

## Landscaping

Condition (7): No development associated with the Full Permission shall commence until there has been submitted to, and approved in writing by, the local planning authority a detailed soft landscaping scheme based upon: (i) the principles established in the submitted Landscape Masterplan 1100-2\_700 Revision 7; (ii) the green walls and roofs shown on drawings HT1324.1.102 P01, Revision F and HT1324.1.111 P01, Revision A; and (iii) mitigation / recommendations in section 7 of the submitted Ecological Appraisal (Report Reference 5220) produced by Envirotech Ecological Consultants and dated June 2019. 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) any essential external lighting; (v) an implementation timetable; and (vi) a schedule of landscape maintenance proposals for a period of not less than thirty years from the date of completion of the scheme. For the avoidance of doubt, the soft landscaping scheme for the Full Permission must include, as a minimum, the 17.5m wide belt of "New 'scrub' biodiversity planting" shown to the north of the new main estate road. 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 DM4 (Green and Blue Infrastructure, Open Space, Trees and Landscaping) of the South Lakeland Development Management Policies Development Plan Document.

## Biodiversity

Condition (8): No development associated with the Full Permission shall commence until an ecological strategy document, prepared by a qualified ecologist, has been submitted to, and approved in writing by, the local planning authority. The document shall set out a strategy for the provision of biodiversity improvements within that part of the site covered by the Full Permission, reflecting the mitigation / recommendations in section 7 of the submitted Ecological Appraisal (Report Reference 5220) produced by Envirotech Ecological Consultants and dated June 2019 and incorporating the provision of five swift boxes in accordance with the submitted document entitled "SL/2019/0743: Statement re: habitat creation for Swifts (*Apus apus*)". The strategy must link to the detailed landscaping scheme required by condition 7 and must include a schedule of maintenance proposals for a period of not less than thirty years from the date of completion of the development. Thereafter, the improvements shall be implemented and maintained in accordance with the approved strategy.

Reason: To contribute towards the net gain in biodiversity required by: (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.

## Tree protection

Condition (9): No development associated with the Full Permission shall commence until there has been submitted to, and approved in writing by, the local planning authority a method statement detailing measures for the protection of: (1) the existing trees to be retained outside of, but abutting, the application site; and (2)

all existing hedges to be retained on the boundary of the application site, all as marked on Landscape Masterplan, 1100-2\_700, Revision 7. The method statement shall include both physical protection measures and a schedule of working practices. No development associated with the Full Permission shall commence until all approved physical protection measures have been put in place. Thereafter, the physical protection measures shall be retained for the duration of the construction phase of the development and all work shall proceed in accordance with the approved schedule of working practices.

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.

## Land contamination

Condition (10): Once the construction of the development associated with the Full Permission is complete, the approved use shall not commence until a validation report and statement (in respect of land contamination) prepared by a competent person shall have been submitted to, and approved in writing by, the local planning authority. Referring to: (1) the Phase 1 Desk Study Report (October 2019); and (2) Phase 2 Interpretative Ground Investigation Report, Insight Geo (September 2019) submitted in support of this application, the validation report and statement shall detail all contamination found during the construction process and all necessary remediation undertaken.

Reason: To safeguard the amenity of the area in accordance with policy DM7 (Addressing Pollution, Contamination Impact, and Water Quality) of the South Lakeland Development Management Policies Development Plan Document.

## Noise

Condition (11): For the development approved by the Full Permission, all vehicle repairs and servicing shall be carried out inside the buildings hereby approved and only within areas of the buildings constructed with the sound reduction indexes listed to in section 7.0 of the submitted Noise Assessment prepared by Martec Environmental Consultants Ltd., dated. 22 January 2020. All repairs and servicing shall be carried out with the roller shutter doors kept closed.

Reason: To safeguard the amenity of the area in accordance with policy DM7 (Addressing Pollution, Contamination Impact, and Water Quality) of the South Lakeland Development Management Policies Development Plan Document.

Condition (12): Any extract / ventilation systems proposed for the motor dealership approved by the Full Permission shall be designed, installed and maintained not to exceed a noise level of 45 LAeq (free field) at the nearest residential properties, in accordance with section 7.0 of the submitted Noise Assessment prepared by Martec Environmental Consultants Ltd., dated. 22 January 2020.

Reason: To safeguard the amenity of the area in accordance with policy DM7 (Addressing Pollution, Contamination Impact, and Water Quality) of the South Lakeland Development Management Policies Development Plan Document.

## Lighting

Condition (13): The motor dealership approved in the Full Permission shall not commence trading until an external lighting scheme for this phase of the development has been submitted to, and approved in writing by, the local planning authority. The scheme shall include details of: (1) the intensity of illumination; (2) predicted lighting contours; (3) proposed hours of illumination; and (4) the location and height of all lighting fixtures; and must be designed to ensure that no light is directly visible to users of the public highway. Thereafter, external illumination of the site shall operate in accordance with the approved scheme.

Reason: In the interests of safeguarding the amenity of the area in accordance with Policies DM2 (Achieving Sustainable High Quality Design) and DM7 (Addressing Pollution, Contamination Impact, and Water Quality) of the Development Management Policies Development Plan Document.

## Flood risk

Condition (14): No development associated with the Full Permission shall commence until a fully detailed surface water drainage scheme based on the Flood Risk and Drainage Strategy Report P21391 dated January 2022 and the Appendices attached thereto, has been submitted to, and approved in writing by, the local planning authority.

The surface water drainage scheme must: (1) accord with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015), or any subsequent replacement national standards that are agreed in writing as an appropriate alternative by the local planning authority; and (2) must deliver the same treatment standard (as defined by The SuDS Manual Chapter 26) or better than that detailed in the Flood Risk and Drainage Strategy Report P21391 dated January 2022 and the Appendices attached thereto.

The drainage scheme submitted for approval shall also be in accordance with the principles set out in the Flood Risk and Drainage Strategy Report P21391 dated January 2022 proposing surface water discharging by infiltration via Sustainable Drainage techniques including green roofs and walls, rainwater harvesting, permeable surfacing wherever possible, grass filter strips, and swales. Mini infiltration basins are also an acceptable infiltration technique. The drainage scheme must also: (1) include full details of exceedance routes that minimise the risks to people and property resulting from excess rainfall; (2) be designed for ease of maintenance; 3) include full details of how the soakaways are connected / extended to the sub-soil / existing undisturbed ground where the infiltration testing has been undertaken; (4) include full details of the platform / earthworks construction materials and techniques to facilitate vertical infiltration through the interface with the existing ground to the infiltration level; and (5) include full details of the cut-off drains / swales at the base of the embankments with drainage destination to prevent surface water flow affecting neighbouring sites.

The development shall be completed, 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 (15): No development associated with the Full Permission shall commence until a scheme for the ongoing maintenance of the proposed surface drainage system for that phase of the development has been submitted to, and approved in writing by, the local planning authority. Thereafter, the associated surface drainage system shall be maintained in accordance with the approved scheme for the lifetime of the development.

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 (16): No development associated with the Full Permission shall commence until a construction surface water management plan for that phase of the development has been submitted to, and agreed in writing by, the local planning authority. Thereafter, the plan shall be adhered to for the duration of the associated construction works.

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 (17): The motor dealership approved in the Full Permission shall not commence trading until a surface water validation report has been submitted to, and approved in writing by, the local planning authority. The purpose of the validation report is to demonstrate that the associated surface water drainage scheme and exceedance routes have all been constructed and installed in accordance with the details approved in accordance with the relevant conditions in this permission and are operational.

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.

## THE OUTLINE PERMISSION

Condition (18): For the Outline Permission, approval of access (save for the agreed point of access to the County Road), details of the scale, layout and appearance of the building(s), and the landscaping of the site (hereinafter called the Reserved Matters) shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason: To ensure a satisfactory standard of development on site.

Condition (19): The development subject to the Outline Permission must be begun not later than whichever is the later of the following dates:

- a. FIVE YEARS from the date of this permission; or
- b. the expiration of TWO YEARS from the final approval of the reserved matters, or, in the case of approval on different dates, the final approval of the last such matters to be approved.

Application for the approval of the reserved matters must be made not later than THREE years from the date of this permission.

Reason: To comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

Condition (20): The development subject to the Outline Permission shall be carried out in accordance with the following approved plans (insofar as they relate to matters not reserved for further approval by condition 18):

- SITE LOCATION PLAN, LAND AT SHAP ROAD, MEADOW BANK, SHAP ROAD, KENDAL, HT1324.1.100CB, Issue P01, Revision A, 10 December 2021

- PROPOSED SITE LAYOUT, HT1324.1.101 P01, Revision E, 13 January 2022
- Proposed Emergency Vehicle Access (EVA) HT1324.1.EVA P01 12 May 2022
- Landscape Masterplan 1100-2\_700 Revision 7, May '22

Nothing on these drawings shall be interpreted as having fixed the site levels for any part of the development subject to the Outline Permission. Site levels remain to be agreed in association with the Reserved Matters referred to in condition 18 and the detailed surface water drainage scheme required by condition 30.

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

Condition (21): The development subject to the Outline Permission is limited to a maximum gross internal area of 6,400 sq. m. of B1/B2 floorspace and 2,500 sq. m. of B2 floorspace, all as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended).

Reason: These are the assumed floorspace figures used in the technical assessments submitted in support of the proposal.

## Parking

Condition (22): The layout details required by condition 18 shall include details of the parking to be provided for each separate Class B1, B2 and B8 unit hereby permitted. The parking must achieve the standards in the current Cumbria Development Design Guide (or such equivalent replacement guidance) unless supported by evidence supporting a different level of provision. All parking spaces with electric vehicle (EV) charging points must be clearly marked. The number of EV charging points must be consistent with the requirements of the development plan, or where the development plan is silent, must accord with accepted best practice.

Reason: To ensure the timely provision of car parking in accordance with policy DM9 (Parking Provision, new and loss of car parks) of the South Lakeland Development Management Policies Development Plan Document.

## Emergency vehicle access

Condition (23): No individual building approved by the Outline Permission shall be first occupied until the emergency vehicle access shown on drawing HT1324.1.EVA P01 has been completed and made available for use in accordance with a detailed specification that shall first have been submitted to, and agreed in writing by, the local planning authority.

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) policy DM1 (General Requirements for all development) of the South Lakeland Development Management Policies Development Plan Document.

## Travel plan

Condition (24): Within 6 months of the first occupation of each separate unit approved by the Outline Permission, or in accordance with such other timeframe as has been previously agreed in writing by the local planning authority, a Travel Plan for the respective unit shall be submitted to, and approved in writing by, the local planning authority. The Travel Plan shall: (1) identify targets for a modal shift from the use of private cars to sustainable transport modes for those visiting the unit; (2) set out measures to achieve those targets; and (3) include a timetable for implementation. The timetable must include provision for the submission of an annual written report to the local planning authority (for the agreed lifetime of the Travel plan) reviewing the effectiveness of the Travel Plan to date and setting out any necessary amendments to the prevailing measures in order to achieve the agreed targets. Thereafter, the Travel Plan shall be implemented in accordance with the agreed targets, prevailing measures and timetable. The prevailing measures shall be those set out initially or as may subsequently have been agreed in writing by the local planning authority following each annual review.

Reason: To encourage the use of more sustainable modes of transport.

## Landscaping

Condition (25): The landscaping details required by condition 18 shall include a detailed soft landscaping scheme based upon: (i) the principles

established in the submitted Landscape Masterplan, 1100-2\_700, Revision 7; and (ii) mitigation / recommendations in section 7 of the submitted Ecological Appraisal (Report Reference 5220) produced by Envirotech Ecological Consultants and dated June 2019. The scheme shall incorporate green walls and green roofs where it is practicable to do so. 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) any essential external lighting; (v) an implementation timetable; and (vi) a schedule of landscape maintenance proposals for a period of not less than thirty years from the date of completion of the scheme. For the avoidance of doubt, the soft landscaping scheme for the Outline Permission must include, as a minimum, the 32.5m wide belt of "Extended 'scrub' planting as requested by Skelsmergh & Scalthwaiterigg PC" shown to the north of the new main estate road. 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 DM4 (Green and Blue Infrastructure, Open Space, Trees and Landscaping) of the South Lakeland Development Management Policies Development Plan Document.

## Tree protection

Condition (26): No development associated with the Outline Permission shall commence until there has been submitted to, and approved in writing by, the local planning authority a method statement detailing measures for the protection of: (1) the existing trees outside of, but abutting, the application site; and (2) all existing hedges to be retained on the boundary of the application site, all as marked on Landscape Masterplan, 1100-2\_700, Revision 7. The method statement shall include both physical protection measures and a schedule of working practices. No development associated with the Outline Permission shall commence until all approved physical protection measures have been put in place. Thereafter, the physical protection measures shall be retained for the duration of the construction phase of the development and all work shall proceed in accordance with the approved schedule of working practices.

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 (27): No development associated with the Outline Permission shall commence until there has been submitted to, and approved in writing by, the local planning authority an ecological strategy document, prepared by a qualified ecologist. The document shall set out a strategy for the provision of biodiversity improvements within that part of the site covered by the Outline Permission, reflecting the mitigation / recommendations in section 7 of the submitted Ecological Appraisal (Report Reference 5220) produced by Envirotech Ecological Consultants and dated June 2019. The strategy must link to the landscaping of the site required by condition 18 and must include a schedule of maintenance proposals for a period of not less than thirty years from the date of completion of the development. Thereafter, the improvements shall be implemented and maintained in accordance with the approved strategy.

Reason: To contribute towards the net gain in biodiversity required by: (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.

## Land contamination

Condition (28): Once the construction of any individual building associated with the Outline Permission is complete, that individual building shall not be first occupied until a validation report and statement (in respect of land contamination) prepared by a competent person shall have been submitted to, and approved in writing by, the local planning authority. Referring to: (1) the Phase 1 Desk Study Report (October 2019); and (2) Phase 2 Interpretative Ground Investigation Report, Insight Geo (September 2019) submitted in support of this application, the validation report and

statement shall detail all contamination found during the construction process and all necessary remediation undertaken.

Reason: To safeguard the amenity of the area in accordance with policy DM7 (Addressing Pollution, Contamination Impact, and Water Quality) of the South Lakeland Development Management Policies Development Plan Document.

## Noise

Condition (29): The details required by condition 18 shall incorporate measures within the design of each building approved by the Outline permission to minimise the propagation of noise to the lowest practicable level relative to the existing noise climate as established by an associated baseline survey undertaken in accordance with BS4142.

Reason: To safeguard the amenity of the area in accordance with policy DM7 (Addressing Pollution, Contamination Impact, and Water Quality) of the South Lakeland Development Management Policies Development Plan Document.

## Lighting

Condition (30): The details relating to the layout and appearance of the building(s), and the landscaping of the site required by condition 18 shall include an external lighting scheme. The scheme must include details of: (1) the location and height of all lighting fixtures; (2) the intensity of illumination; (3) predicted lighting contours; and (4) proposed hours of illumination; and must be designed to ensure that no light is directly visible to users of the adopted highway. Thereafter, external illumination of the site subject to the Outline Permission shall operate in accordance with the approved scheme.

Reason: In the interests of safeguarding the amenity of the area in accordance with Policies DM2 (Achieving Sustainable High Quality Design) and DM7 (Addressing Pollution, Contamination Impact, and Water Quality) of the Development Management Policies Development Plan Document.

## Flood risk

Condition (31): No development associated with the Outline Permission shall commence until a fully detailed surface water drainage scheme based on the Flood Risk and Drainage Strategy Report P21391

dated January 2022 and the Appendices attached thereto, has been submitted to, and approved in writing by, the local planning authority.

The surface water drainage scheme must: (1) accord with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015), or any subsequent replacement national standards that are agreed in writing as an appropriate alternative by the local planning authority; and (2) must deliver the same treatment standard (as defined by The SuDS Manual Chapter 26) or better than that detailed in the Flood Risk and Drainage Strategy Report P21391 dated January 2022 and the Appendices attached thereto.

The drainage scheme submitted for approval shall also be in accordance with the principles set out in the Flood Risk and Drainage Strategy Report P21391 dated January 2022 proposing surface water discharging by infiltration via Sustainable Drainage techniques including green roofs and walls, rainwater harvesting, permeable surfacing wherever possible, grass filter strips, and swales. Mini infiltration basins are also an acceptable infiltration technique. The drainage scheme must also: (1) include full details of exceedance routes that minimise the risks to people and property resulting from excess rainfall; (2) be designed for ease of maintenance; (3) include full details of how the soakaways are connected / extended to the sub-soil / existing undisturbed ground where the infiltration testing has been undertaken; (4) include full details of the platform / earthworks construction materials and techniques to facilitate vertical infiltration through the interface with the existing ground to the infiltration level; and (5) include full details of the cut-off drains / swales at the base of the embankments with drainage destination to prevent surface water flow affecting neighbouring sites.

The development shall be completed, 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 (32): No development associated with the Outline Permission shall commence until a scheme for the ongoing maintenance of the proposed surface drainage system for that phase of the development has been submitted to, and approved in writing by, the local planning authority. Thereafter, the associated surface drainage system shall be maintained in accordance with the approved scheme for the lifetime of the development.

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 (33): No development associated with the Outline Permission shall commence until a construction surface water management plan for that phase of the development has been submitted to, and agreed in writing by, the local planning authority. Thereafter, the plan shall be adhered to for the duration of the associated construction works.

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 (34): No individual building approved by the Outline Permission shall be first occupied until a surface water validation report has been submitted to, and approved in writing by, the local planning authority. The purpose of the validation report is to demonstrate that the surface water drainage scheme and exceedance routes serving that building have all been constructed and installed in accordance with the details approved in accordance with the relevant conditions in this permission and are operational.

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.

## THE DEVELOPMENT AS A WHOLE

### Highways

Condition (35): No other development shall commence until the estate road connecting the new roundabout on the A6 with the north-west boundary of the site (shown within the extent of the Full Application on approved drawing HT1324.1.101 P01, Revision E) has been completed and made operational in accordance with a specification that shall first have been submitted to, and approved in writing by, the local planning authority. The specification should meet the standards for adoption set out in Cumbria Development Design Guide and must make specific provision for: (1) use by public transport; (2) cycle and pedestrian links to the A6; (3) ramps on each side of every junction to enable wheelchairs, pushchairs etc. to be safely manoeuvred at kerb lines; (4) the accommodation of all services necessary to support the development as a whole (including the development approved by the Outline Permission); and (5) a timetable for completion. None of the uses approved by this permission shall commence until: (a) construction of the estate road has progressed to the point where it has been defined by kerbs and sub base construction; and (b) the individual access(es) serving that building from the estate road have been completed to a specification that shall also have been submitted to, and approved in writing by, the local planning authority. Thereafter, the estate road shall be completed to the agreed timetable.

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) policy DM1 (General Requirements for all development) of the South Lakeland Development Management Policies Development Plan Document.

Condition (36): None of the uses approved by this permission shall commence until a new shared footway/cycleway along the A6 has been constructed and made available for use in accordance with a specification that shall first have been submitted to, and approved in writing by, the local planning authority. The new shared footway/cycleway shall connect the entrance of the application site to the existing shared footway/cycleway that currently terminates on the east side of the A6 at the entrance of Kendal Rugby Club and shall include a crossing of the A6 meeting the necessary safety standards.

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) policy DM1 (General Requirements for all development) of the South Lakeland Development Management Policies Development Plan Document.

Condition (37): Access gates, if provided, shall be hung to open inwards only away from the adopted highway, and be recessed no less than 4.5m as measured from the carriageway edge of the adjacent highway and shall incorporate 45 degree splays to each side.

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) policy DM1 (General Requirements for all development) of the South Lakeland Development Management Policies Development Plan Document.

## Foul drainage

Condition (38): All foul water from the buildings hereby approved shall be disposed of via a public sewer. None of the individual buildings hereby approved shall be first occupied until it has been operationally connected to a public foul sewer.

Reason: To safeguard the amenity of the area in accordance with policy DM7 (Addressing Pollution, Contamination Impact, and Water Quality) of the South Lakeland Development Management Policies Development Plan Document.

## Construction Environment Management Plan

Condition (39): No development shall commence until a Construction Environment Management Plan (CEMP) has been submitted to, and approved in writing by, the local planning authority. The CEMP shall provide for:

- details of the proposed crossings of the highway verge;
- defined areas for the parking of vehicles of site operatives and visitors;
- defined areas for loading and unloading of plant and materials;
- defined areas for storage of plant and materials;
- measures to control the emission of dust and dirt during construction, incorporating the recommendations for site-specific mitigation in section 5.1.14 of the Air Quality Assessment prepared by Wardell Armstrong (March 2020) submitted in support of this planning application ;
- no burning of waste material to take place;
- measures to: (a) avoid excess dirt on the public highway including wheel washing facilities; and (b) clean the public highway as necessary
- the sheeting of all HGVs taking spoil to/from the site to prevent spillage or deposit of any materials on the highway;
- the management of junctions to and crossings of the public highway and other public rights of way/footway;
- a scheme for recycling / disposing of waste resulting from excavations;
- measures to control noise and vibration from plant, equipment and procedures – this to include any rock pecking and excavations;
- construction site lighting designed to negate light spillage from the site boundary.

Thereafter, development shall proceed in accordance with the agreed CEMP.

Reason: To safeguard the amenity of the area in accordance with policy DM7 (Addressing Pollution, Contamination Impact, and Water Quality) of the South Lakeland Development Management Policies Development Plan Document.

## Construction management (Ecology)

Condition (40): In order to mitigate the potential impacts on protected species that might enter the application site during the construction stage of the development, the following working practices must be adhered to:

- The storage of all loose materials must be palletised or similar so they are off the ground whenever possible.
- Should any trenches and excavations be required, an escape route for animals that enter the trench must be provided, especially if left open overnight. Ramps should be no greater than of 45 degrees in angle. Ideally, any holes should be securely covered. This will ensure amphibians are not trapped during work.
- All excavations left open overnight or longer should be checked for animals prior to the continuation of works or infilling. Back filling should be completed immediately after any excavations, ideally back filling as an on-going process to the work in hand.
- Any vegetation to be trimmed or cleared should be checked for nesting birds before it is removed. Ideally this should occur outside the bird nesting period March-September. If vegetation clearance is to occur in the March-September period a check for nesting birds should be conducted first by a suitably qualified individual.

Reason: To mitigate the potential impacts on protected species in accordance with policy CS8.4 (Biodiversity and geodiversity) of the South Lakeland Core Strategy.

## Broadband

Condition (41): None of the units hereby approved shall be first occupied until connected to high speed broadband.

Reason: To meet the expectations of policy DM8 (High Speed Broadband for New Developments) of the South Lakeland Development Management Policies Development Plan Document.

## BREEAM

Condition (42): The showroom subject to the Full Permission (PROPOSED KIA SHOWROOM, drawing no. HT1324.1.102 P01, Revision F) and any building constructed pursuant to the Outline Permission which has a gross internal floor area greater than 1,000 sq. m. must achieve the BREEAM 'excellent' standard.

Reason: To meet the expectations of policy CS8.7 (Sustainable construction, energy efficiency and renewable energy) of the South Lakeland Core Strategy.

## Land contamination

Condition (43): If during the course of development any unexpected contamination is found to be present, development shall immediately cease. Thereafter, development shall only recommence in accordance with a method statement detailing the nature and degree of the contamination and the techniques proposed to remove it. The method statement must be prepared by a suitably qualified independent consultant and must first have been submitted to, and approved in writing by the local planning authority.

Reason: To safeguard the amenity of the area in accordance with policy DM7 (Addressing Pollution, Contamination Impact, and Water Quality) of the South Lakeland Development Management Policies Development Plan Document.

## Construction hours

Condition (44) Construction work shall be limited to and never on Bank Holidays nor otherwise outside the hours of 0800 – 1800 Monday to Friday or 0900 – 1300 on Saturdays.

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

## Topsoil disposal

Condition (45): The area of the application site north of the existing private road to Gilthwaiterigg shall only be used for the disposal of topsoil generated by the construction phase of the development hereby approved and for any associated proposals for landscape mitigation and/or biodiversity net gain. Topsoil disposal shall proceed in accordance with a specification that shall first have been submitted to, and approved in writing by, the local planning authority. The specification shall define the physical extent and overall profile of disposal.

No use approved by either the Full Permission or the Outline Permission shall commence until any associated landscape mitigation and/or biodiversity net gain provisions proposed within the area of topsoil disposal have been completed in accordance with the details approved in compliance with conditions 7, 8 and 26 as appropriate. Thereafter, any completed landscape mitigation and/or biodiversity net gain provisions shall be safeguarded from further phases of topsoil disposal by the implementation of protection measures in accordance with details that shall first have been submitted to, and approved in writing by, the local planning authority.

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

- 8.2. That Committee authorises: (1) the making of the order necessary under section 257 of the Town and Country Planning Act to permit the consequential diversions of footpaths no. 536002 and 570013 shown on drawing no. HT1324.1.REV C and; (2) confirmation of such an order subject to no unresolved objections.