

## SOUTH LAKELAND LOCAL AREA PLANNING COMMITTEE REPORT

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**Planning Application Reference No. SL/2023/0781**

**Proposal:** Outline Approval (some matters reserved) for the erection of 8 self-build dwellings (Resubmission of SL/2017/0575).

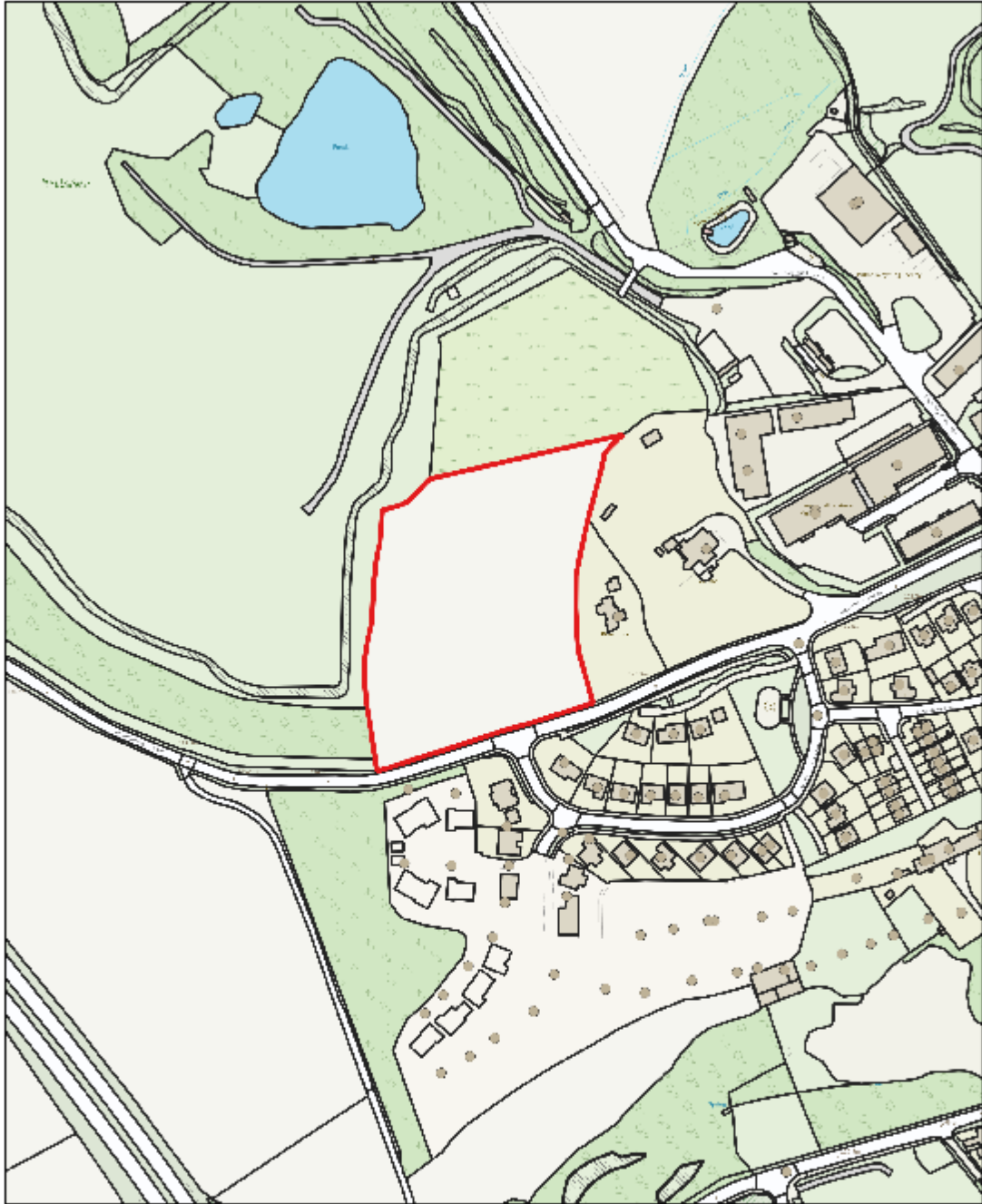
**Location:** Land North of Underbarrow Road, Kendal, LA9 5RS

**Applicant:** Mr F and M Pennington

**Committee Date:** 11<sup>th</sup> April 2024

**Reason for Committee Level Decision:** Councillor Thornton called the application in.

**Case Officer:** Charlotte Pinch



SL/2023/0781  
Land to north of Underbarrow Road,  
KENDAL LA9 5RS



Westmorland  
& Furness  
Council

Scale 1:2500

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## **1.0 SUMMARY**

- 1.1 Outline planning permission (with some matters reserved) is sought for the erection of 8 self-build dwellings at Land North of Underbarrow Road, Kendal.
- 1.2 The proposal would not be acceptable for 8 key reasons and as such is recommended for refusal.
- 1.3 The application is reported to Planning Committee, in accordance with the Council's Constitution and Scheme of Delegation, at the request of a Councillor due to the planning history of the site and the Council's wish for more self-build sites within the area.

## **2.0 RECOMMENDATION**

- 2.1 Planning permission be refused.

## **3.0 THE PROPOSAL**

- 3.1 Outline planning permission, including access, layout and scale, is sought for the erection of eight, self-build detached dwellings.

## **4.0 SITE DESCRIPTION**

- 4.1 The site is currently a grass field sited between a large existing detached two storey dwelling and a woodland beyond the western boundary which forms the boundary with the Lake District National Park and designated World Heritage Site. The site is bounded by natural stone walls, the front wall has currently been rebuilt and is set back with a central access being formed.
- 4.2 Opposite the site is a large new residential estate, by Oakmere Homes, which is nearly complete and occupied.
- 4.3 To the west of the site is Kendal Fell Quarry. Information available regarding the quarry is that it is still operational. It lies within the Lake District National Park and is subject to blasting and has the potential for noise, which is considered further in this report.
- 4.4 The application site is 1.3 hectares in total and is currently used a grazing land. The site is approximately 1km from Kendal Town Centre. The site is within the development boundary of Kendal, forming the boundary with the Open Countryside, LDNP and mineral safeguarding area to the north and west.

## **5.0 SITE PLANNING HISTORY**

- 5.1 SL/2017/0575 – Outline: Erection of 8 self-build dwellings with vehicular access. Refused. 2022.

- 5.2 The application was very similar to the current proposal, on the same site, access, number of units and scale, with a slightly amended layout. The application was held in abeyance for a number of years in order to fit with the timescales of the large scale residential development to the south of Underbarrow Road, primarily with regards to highways issues.
- 5.3 The application was refused under delegated powers, in November 2022, for 8 reasons, relating to;
1. Insufficient information to assess the visual impact of the proposal on the adjacent UNESCO World Heritage Site (LDNP).
  2. Insufficient information to assess the significance of heritage assets and the impact of the proposal on the adjacent UNESCO World Heritage Site (LDNP).
  3. Low density housing, without adequate justification, with no affordable housing.
  4. No up to date ecological survey, to assess impacts, or information to demonstrate biodiversity net gain.
  5. Insufficient information to demonstrate adequate on-site surface water and foul drainage details.
  6. Insufficient information to assess the potential for pollution (dust, noise and vibration) on the proposed dwellings.
  7. No accessible and adaptable homes statement.
  8. No broadband statement.

## 6.0 CONSULTATIONS AND REPRESENTATIONS

The following persons/organisations were consulted in relation to the development:

Consultee:	Nature of Response:
W&F (Highways and LLFA)	<p>Highways – There is a similar layout of the site as shown in the revised drawing to that of the previous application.</p> <p>I refer to our response under the previous application SL/2017/0575. It is now evident that a 30mph speed limit has since been physically implemented and signposted and this confirms that the splays showing 60m in both directions are acceptable.</p> <p>LLFA – Referring to the response under SL/2017/0575, in particular making reference to comments raised on 16<sup>th</sup> August 2019, the applicant proposed to discharge surface water run-off into a quarry pond which has no outlet, we had concerns over this. No SuDS has been provided for this method of surface water runoff.</p> <p>From looking at the revised drainage strategy, it makes reference to the previous applications, the method of discharging surface water run-off is to remain as into a quarry pond, which we recommend refusal.</p> <p>7/2/24 LLFA – Further consideration of Drainage Strategy and Flood Risk Assessment Ref: J1108 Rev2,</p>

	<p>we would be willing to approve this based on conditions outlined in LLFA response to SL/2017/0575 at reserved matters stage, in relation to this application.</p> <p>We would prefer the use of a different SuDS techniques such as geocellular soakaways but as the application is at outline stage, the geocellular calculations show that SuDS drainage is possible so we wouldn't have any objections to this.</p>
W&F Historic Environment Officer	<p>Records indicate that the site lies in an area of archaeological potential. A geophysical survey that was undertaken in advance of a residential development immediately to the south of the site revealed a number of features of potential archaeological interest including the remains of what appear to be a possible prehistoric burial site or a round-house. Furthermore, the course of a Roman road runs close to the site and Roman finds have been recovered during archaeological investigations on another housing scheme to the south. It is therefore considered that there is the potential for buried archaeological assets to survive on the application site and that they would be disturbed by the construction of the proposed development.</p> <p>If planning consent is granted, then a pre-commencement condition should be applied to require the archaeological investigation to be undertaken.</p>
W&F Public Protection	<p>No objection, although a condition relating to contamination investigations and remediation measures prior to the commencement of development would be required.</p>
United Utilities	<p>Following the review of the submitted drainage documents (Drainage Strategy Ref: J1108-FW-01 Dated 27/10/2023), the plans are not acceptable to United Utilities. This is because the plan provided shows a connection but the proposed connection does not appear to be to a public sewer as stated in the drainage strategy. We request the applicant confirms whether they believe the sewer in question is public or private.</p>
Kendal Town Council	<p>No material objections.</p> <p>The committee welcomed a development which enabled self-build opportunities into the housing mix. With the various improvements to the application, and appropriate conditions relating to the comments already made by statutory consultees, they commended the application.</p>

Kendal Swifts	<p>Require the installation of a minimum of four integral swift nest bricks per property, to be secured by condition.</p> <p>We feel it is important that any condition is for integral bricks which are easily and cheaply incorporated at the building stage, and are permanent. External boxes are not permanent and will require maintenance and eventual replacement.</p>
<b>Neighbour Responses:</b>	
<p>Three letters were received, two in support and one raising an objection.</p> <p>The two letters in support were received from local estate agent firms in the local area, their comments are summarised as follows:</p> <ul style="list-style-type: none"> <li>- There is a need for low density high quality development in the area.</li> <li>- Allocated employment land in the area which will bring business owners and entrepreneurs to the area, in need of larger houses.</li> <li>- Site not suitable for high density development, due to the skyline and viewpoints.</li> <li>- Larger plot sizes and accommodation is in demand.</li> <li>- High level of interest from people outside the area/southern England wanting larger properties, due to good transport connections in the area.</li> <li>- Lots of provision for smaller scale and affordable properties in the area.</li> </ul> <p>The one letter of objection received, their comments can be summarised as follows:</p> <ul style="list-style-type: none"> <li>- Road safety concerns with vehicles exceeding the 30mph speed limit.</li> <li>- Will impact outlook for existing newly built properties to the south of Underbarrow Road.</li> <li>- Loss of open green space and habitat for wildlife.</li> <li>- Existing road used as a rat run to the dual carriageway, by many cars and large lorries.</li> </ul>	

## 7.0 RELEVANT PLANNING POLICY

7.1 Section 38(6) of the Planning & Compulsory Purchase Act 2004 provides that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.

### Local Plans

#### South Lakeland

- *South Lakeland Core Strategy - adopted 20 October 2010*
- *South Lakeland Development Management Policies Development Plan Document - adopted 28 March 2019.*
- *South Lakeland Local Plan Land Allocations DPD*

## **Other Material Considerations**

### National Planning Policy Framework (NPPF) (2023)

- 7.2 The NPPF sets out the Government's planning policies for England and how these are expected to be applied. This is a material consideration in planning decisions.
- 7.3 At the heart of the NPPF is a presumption in favour of sustainable development (Paragraph 11). However, Paragraph 12 confirms that the presumption does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. In this case, the relevant sections of the NPPF are:
- 7.4 The following sections are considered relevant to this application:
- Section 2: Achieving sustainable development.
  - Section 4: Decision Making.
  - Section 5: Delivering a sufficient supply of homes.
  - Section 11: Making effective use of land.
  - Section 12: Achieving well-designed and beautiful places
  - Section 14: Meeting the challenge of climate change, flooding and coastal change
  - Section 16: Conserving and enhancing the historic environment
- 7.5 Cumbria County Council Minerals and Waste Development Scheme plan (adopted Sept 2017): Kendal Fell Quarry, in addition to being an active quarry, is identified as a possible Household Waste Site under policy SAP1, as site SL1B.

## **8.0 PLANNING ASSESSMENT**

### The presumption in favour of sustainable development

- 8.1 Paragraph 8 of the National Planning Policy Framework (NPPF) introduces the overarching economic, social and environmental objectives central to achieving sustainable development.
- 8.2 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.

### Main Planning Issues

8.3 The main planning issues for this planning application are as follows:

- Dwelling mix, density and affordable housing.
- Landscape Impact
- Heritage Impact
- Foul Drainage
- Pollution
- Contamination
- Ecology and Biodiversity
- Broadband

#### Principle of Development

8.4 The site is located within the development boundary of Kendal, forming the far western boundary, directly adjacent to the open countryside and LDNP.

8.5 In accordance with Policy LA1.1 of the Land Allocations DPD, development needs of settlements should be met within the defined development boundaries. Moreover, Policy CS1.2 of the Core Strategy states that development should be concentrated in the Principal Service Centres of Kendal and Ulverston.

8.6 As a result, given the application site's location within the development boundary of Kendal, the principle of residential development in this location is acceptable.

#### Self-Build Housing

8.7 The application is proposed to comprise of 8 self-build dwellings. Policy DM12 deals with self-build housing and states that the Council will actively support proposals for the sustainable development of self-build and custom build homes, in the following locations:

- Within Principal, Key or Local Service Centres
- Within or on the edge of small villages and hamlets in accordance with policy DM13 (Housing Development in Small Villages and Hamlets);
- On rural exception sites in accordance with policy DM14 (Rural Exception Sites)

8.8 The proposed development is within a Principal Service Centre and accordingly self-build plots are acceptable. It should be noted however, that self-build schemes do not override the acceptability of other planning policies.

#### Dwelling Mix, Density and Affordable Housing

8.9 Policy CS6.2 deals with the dwelling mix and type. The policy states that new development should offer a range of housing sizes and types, taking account of the housing requirement of different groups of society, including the need to deliver low cost market housing, as part of the overall housing mix.

8.10 Whilst it is acknowledged that the exact details of the size and type of the dwellings proposed on this site are not yet known, given it is an outline application, it is clear from the submitted site plan that it will comprise of 8 larger properties. I note the two letters of support from local estate agents in the area,



and appreciate that large executive houses are very appealing to certain purchasers; however, this is directly contrary to the evidenced housing need within the district.

- 8.11 A recent Rightmove search showed that within 5 miles of Kendal there was over 100 4+ bedroom properties for sale, with nearly 50 of those being 5+ bedrooms. Interestingly, a search in the same area for 2 and 3 bedroom properties identified 120 properties for sale, which is slightly more than the 4+ bedroom properties, but not significantly more to argue there is a need for more larger properties in the area.
- 8.12 The 2023 Westmorland and Furness Strategic Housing and Economic Needs Assessment (SHENA) states that within the South Lakeland area for market housing, the area is most in need of 2 bedroom properties (53%), followed by 3 bedroom properties (31%). There is only a 1% need for 4+ bedroom properties. As this proposal is for 8 large, detached, executive style properties, it does not meet the dwelling mix requirements of this area or take account of the housing requirement and therefore is contrary to Policy CS6.2.
- 8.13 Furthermore, Policy CS6.6 focuses on making effective and efficient use of land and buildings. Most importantly Point 4 of the Policy states meeting the target of an average density of at least 30 dwellings per hectare for all housing development. Higher densities will be sought on appropriate sites, particularly those:
- Close to transport hubs such as bus stations or main bus routes;
  - In or adjoining Kendal, Ulverston, Grange, Milnthorpe and Kirkby Lonsdale centres.
- 8.14 In some circumstances, a lower density below 30 dwellings per hectare will be supported if:
- There is proven need;
  - Environmental constraints mean that it is not suitable for high-density development.
- 8.15 In line with policy this application site, of 1.3 hectares, could accommodate 39 dwellings (30 dph). This proposal for 8 dwellings across the 1.3 hectare site, equates to just 6 dph, which is significantly lower than the 30 dph stated in policy.
- 8.16 It is acknowledged that the policy allows for a lower density in some circumstances, if there is a proven need or environmental constraints mean that it is not suitable for a high-density development.
- 8.17 Paragraph 1.3-1.8 of the submitted planning statement seeks to justify and address the reason for a lower density housing scheme. This focuses on a pre-application undertaken in 2014, with subsequent discussions undertaken with a previous employee of the LPA in 2015, prior to the submission of the previous application in 2017. Despite the fact this pre-application was undertaken 10 years ago, the area around the application site has changed significantly since then including the larger development to the south of Underbarrow Road and the LPA has adopted additional development plan documents since then, no evidential justification or clear points relating to proven need or environmental constraints to preclude a higher density development have been presented. Discussions

undertaken 10 years ago can be given very little factual weight in this assessment, especially against a significantly altered environment.

- 8.18 As such, insufficient justification has been provided and despite raising this with the applicant's agent during the application process, no further information has been provided.
- 8.19 Finally, Policy CS6.3 deals with the provision of affordable housing, stating that planning permission for the erection of new dwelling or conversion of existing buildings to dwellings will be permitted provided that the scheme provides local affordable housing in accordance with key criteria. Of relevance is the criteria which states; on all schemes of nine or more dwellings in the Principal/Key Service Centres, and three or more dwellings outside of these areas, no less than 35% of the total number of dwellings proposed are affordable.
- 8.20 It is important to make clear, as a result of the low density of housing proposed on this site the proposal does not trigger the threshold for affordable housing. One more dwelling on the site would trigger this need.
- 8.21 If, in accordance with Policy CS6.6, 39 dwellings were proposed in line with the 30 dph requirement, the site could provide up to 14 affordable dwellings if a full 35% provision was met. This would provide significant benefit to the evidenced unmet need for affordable housing within the district.
- 8.22 Therefore, this proposal is contrary to Policies CS6.2 and CS6.6.

#### Landscape Impact

- 8.23 This is a greenfield site rising above the adjacent allocated housing site, which is now almost at completion of development. The site lies on the boundary with the Lake District National Park, as designated UNESCO World Heritage Site. NPPF sets out the considerations that need to be applied to such areas, including consideration of cultural value.
- 8.24 In addition, The Cumbria Landscape Character Appraisal shows the site as being within Landscape Character type 3a Coastal Limestone – Open Farmland and pavements. The key characteristics of this area are:
- Steep scarp limestone slopes, limestone pavement or other rocky outcrops
  - Grazed land with stone wall field boundaries
  - Rough pasture as open common or fell in higher areas
  - Sporadic scrub and woodland on steep scarp slopes
  - Stately homes and parklands in lower areas
  - Extensive open and uninterrupted views from high ground
- 8.25 The perceptual quality section includes that: *“This is a rare and unusual landscape which is varied and interesting due to the range of limestone features and the strong sense of history derived from pre-historic features and medieval enclosure patterns”.*

8.26 Whilst the section on development describes:

*“Planned and incremental expansion of villages and towns could result in a loss of vernacular character, the small dispersed settlement pattern, and a proliferation of settlement fringe development. This could erode the distinctive character of the area”*

and sets out a number of guidelines such as, preserving distinct forms of settlement and intimate relationship to the scale and form of the landscape; and, ensure new developments respect the scale, traditional form and materials of villages and do not infill important open spaces such as orchards and gardens integral to their character.

- 8.27 The Cumbria Landscape Character Guidance also includes a toolkit. This explains the role and importance of landscape and provides advice in relation to site specific landscape character assessments.
- 8.28 The submitted site contours (plan 2015 by Spatial Data Ltd) shows contour levels of between 135.45m nearest to Underbarrow Road, rising to the 139.13m to the north west corner of the site. The gradient rises across and towards the centre of the site, slightly levels out to a small plateau in the centre of the site, before gently rising to the north west corner and across the site. Levels provided along Underbarrow Road are given around 134m. The drainage strategy (para 2.2) calculates the gradient across the site is 4%.
- 8.29 It is noted that there has been a history of LVIA submissions since 2017. A report, Appraisal of Landscape and Visual Effects by Westwood Landscape was submitted with the application, June 2017. 3D images, as well as wire frames of the predicted landscape changes were included. This report includes pre-application advice given from the LPA in 2014.
- 8.30 The LVIA identifies the LDNP and that this is a “statutorily designated landscape afforded the highest status of protection in relation to landscape and scenic beauty by National Planning Policy”. It also considers the Development Brief of the site for housing to the south.
- 8.31 However, the LVIA is based on the scheme as originally proposed, for ten dwellings and a site plan 9975/1, which is on a different layout/house type layouts. It also considers the landscape strategy devised (but is for the original layout and only included in the LVIA - further landscape concept plans were submitted some time later and on a different layout for 8 dwellings). It also states it is based on an outline application with all matters reserved apart from access (and not therefore in accordance with the application form submitted) and that is based upon parameters set out in the Design and Access Statement by Bywater and Tweddle (this has not been submitted to the LPA).
- 8.32 An independent review of the LVIA was undertaken on behalf of the applicants in response to requests for a revised LVIA following revisions and concerns raised over layout/scale/appearance), by Stephenson Halliday (May 2019). This clearly states it was on the basis of 8 dwellings (despite the LVIA being undertaken for 10 dwellings). This review is stated to take into account case officer comments, any learnings from appeal decision SL/2017/0575, Cumbria Landscape

Character Guidance and Toolkit and LVIA guidance (2013). It finds that the submitted LVIA is robust and appears in line with best practice, baseline conditions are identified and described appropriately, viewpoints selected are rational and appropriate. It states that in terms of landscape effects the submitted LVIA 'provides clear and transparent analysis on the susceptibility of the landscape to the proposed development and considers the sensitivity judgement is transparent and reasonable. The LDNP is rightly identified as a high sensitivity landscape.

- 8.33 It is considered that no weight should be given to the independent LVIA assessment as this clearly did not recognise the LVIA showed 10 dwellings, not the 8 dwellings they clearly state that they have considered – and being of a different layout would produce different visual effects/impact (due to different orientation of the plots) and also is not informed by a Heritage Statement.
- 8.34 A further LVIA Review was undertaken in October 2023 by Galpin Landscape Architecture, and submitted as part of this planning application. This review follows the methodology as set out in the initial 2017 appraisal. As discussed above, this was based on 10 dwellings which is not the case here. Whilst I do not dispute the overall conclusion of the LVIA Review, that given the changes in the landscape and the additional built form since 2017, this would result in a reduced visual and landscape impact of the proposed new development, over and above the 2017 LVIA, the review fails to include key pieces of information, evidence or considerations. It includes a listing of viewpoint numbers and descriptions, however no map or details to indicate the location of the viewpoints is included. In addition, no photos from the viewpoints to establish the new baseline view on which these assessments are being made are shown. Moreover, no reference or assessment is made to the visual or landscape impact on the LDNP or WHS, apart from one sentence; "4.12 There would be no direct effects on the Lake District National Park (LDNP) as intervisibility is restricted by woodlands on the west side of the site", which is a very vague and presumptuous statement.
- 8.35 In addition, the review also makes a number of misleading and conflicting statements. There is a consistent acknowledgement throughout the review that the Ghyll Manor development to the south of Underbarrow Road, in addition to the Brigsteer Rise development further afield, have changed the character of the landscape, are visible within many of the viewpoint assessments and have extended the appearance of built form from the towns development boundary. However then contradictorily concludes, in the visual assessment of viewpoints, that there is 'no' or 'low' change from the previous visual baselines. This follows, that by noting a change in the character of this area by virtue of additional residential built form, which would therefore reduce the visual impact of further built form, that a higher density of housing on this application site would therefore be acceptable and be more in keeping with this change in landscape character. However, the review continues to argue that a reduced density housing scheme would be better, with no reasoning or evidence of harm as to why a higher density would not be acceptable.
- 8.36 Finally, it is important to note the statement in Para 5.4 of the Review Assessment which states: *"the introduction of the Ghyll Manor housing development on the south side of Underbarrow Road has changed the landscape*

*character of the immediate surroundings. The proposed development would be in keeping with this changed landscape character.”* As discussed above, this would not provide evidence to fulfil the two exemptions to allow a lower density development, in accordance with Policy CS6.6.

- 8.37 Taking into account the significant change in the landscape character around the site since 2017 and 2019, the implementation of a large housing development immediately adjacent to the application site, and further afield at Brigsteer Rise and that over 7 years has passed since the substantive LVIA was carried out, a LVIA review assessment is not considered sufficient. A full revised LVIA should be undertaken and submitted.
- 8.38 In addition the submitted LVIA falls short as no up to date photos or evidence has been provided as part of the 2023 LVIA Review, despite these being requested from the applicant’s agent, which are fundamental to support and evidence the LVIA report given the significant change in the landscape since the previous assessment. Moreover, there still remains no assessment of landscape impact on the Lake District National Park as a heritage asset. Therefore, the information as submitted is not considered to be an adequate basis on which to assess the landscape and character impacts of the proposed development.

#### Heritage and Archaeology

- 8.39 Policies CS8.6, DM1 and DM3 require development proposals to protect and enhance the historic environment and to safeguard and, where appropriate, enhance all heritage assets and their settings in a manner that is appropriate to their significance and which can include the need to undertake prior evaluation to a decision being made. Policy CS2 states it is important to Kendal to ensure that greenfield development is sympathetic to the landscape (and historic) character of Kendal.
- 8.40 Whilst there are no nearby Listed Buildings or Conservation Area, the site lies immediately on the boundary to the UNESCO World Heritage Site/Lake District National Park, which legislation defines as a designated heritage asset. In accordance with policy CS8.6 and in particular policy DM3 and the requirements of the NPPF (paragraph 200) a Heritage Asset assessment/statement (Statement of Significance and Impact, in accordance with policy DM3) is required.
- 8.41 A section is included within the submitted planning statement, entitled Heritage Statement. This acknowledges the presence of the Lake District World Heritage Site and includes 3 paragraphs which seek to consider the current application against the heritage asset.
- 8.42 Para 3.9 focuses on the adjacent quarry site, its location within the WHS and its allocation within the Lake District Local Plan.
- 8.43 Para 3.10 focuses on the development on the land south of Underbarrow Road, for which a report was carried out by independent consultants to confirm no impact on the 10 attributes of the WHS. I am not in receipt of this report and therefore cannot comment on the accuracy of these claims.

- 8.44 The final paragraph, Para 3.11 concludes that given the development to the south of Underbarrow Road was acceptable, therefore this proposal would cause less than substantial harm.
- 8.45 No assessment has been undertaken of the application site, its relationship with the heritage asset, the value of the heritage asset and or how the proposal would impact the heritage asset. Each planning application and site must be assessed on its own merits, as such, relying on historic assessments and information for adjacent sites is not adequate to comply with policy requirements.
- 8.46 A further assessment has been requested from the applicant's agent during the application process; however, nothing further has been provided.
- 8.47 The significance of the heritage asset, including its cultural value, needs to be assessed together with any potential for impact on, or mitigation measures that could be taken to inform, or offset any harm, from the proposed development in respect of landscaping, layout, scale and appearance of the development, including proposed materials.
- 8.48 The W&F Historic Environment Officer has identified that the site could have archaeological interest, requiring a condition for archaeological evaluation and recording to be undertaken.
- 8.49 As a result, further to the reasons set out above, having regard to the absence of a suitable Heritage Assessment and having regard to the NPPF, the application as submitted fails to consider the impact of, and considerations of the adjacent Lake District National Park and UNESCO World Heritage Site as a heritage asset.

#### Highways and Access

- 8.50 Policy CS10.2 of the South Lakeland Core Strategy deals with the transport impact of new development. It requires that proposals should provide for safe and convenient access on foot, cycle, public and private transport, addressing the needs of all. In addition the proposal should be capable of being served by safe access to the highway network without detriment to the amenity or character of the locality.
- 8.51 Similarly the NPPF Para 114-117 seeks to ensure that safe and suitable access can be achieved for all users, with particular emphasis in Para 116 on giving first priority to pedestrian and cycle movements, whilst creating places that are safe, secure and attractive, to minimise the scope for conflicts between pedestrians, cyclists and vehicles.
- 8.52 Moreover, Policy DM9 requires that all development should have acceptable levels of parking and take into account a number of factors including type of development, location, public transport, visual impact, extent of on street parking and encouragement of low emission vehicles.
- 8.53 A site plan has been submitted as part of the application detailing the proposed vehicular access point into the site, set to the west of the existing vehicular access to the development south of Underbarrow Road. The plan shows 2.4m x 60m visibility splays in both directions, crossing land within the applicant's ownership, with the stone field wall set behind the visibility splay, allowing for a new footway.

- 8.54 Given the scale of the site and large plot sizes for each dwelling, there is ample space for sufficient parking provision on site.
- 8.55 Confirmation was received from the Highways Authority on 19<sup>th</sup> December 2023, stating that there is a similar layout of the site as shown in the revised drawing to that of the previous application on the site. It is noted that a 30mph speed limit has been implemented and signposted, this confirms that the visibility splays proposed of 60m in each direction are acceptable.

#### Drainage and Flooding

- 8.56 Policy DM6 states that surface water should be managed at source, with reduced transfer and discharge elsewhere, following the hierarchy of options. Proposed methods of surface water drainage should be based on evidence of an assessment of ground conditions and should reflect the non-statutory technical standards for sustainable drainage systems. Measures intended to assist with surface water management should be made clear as part of any submission.
- 8.57 A Drainage Strategy and Flood Risk Assessment Report (Ref: J1108 Rev2) has been submitted as part of the application. This proposes, following percolation testing on site, that surface water discharge to ground is possible. Investigations showed a good depth of soil, with some shallow areas of fractured limestone bed rock. All roof areas would drain to soakaways and permeable paving across drive ways, main access road and pavements.
- 8.58 Despite raising concerns in an initial consultation response, for which the most up to date drainage information had not been considered, W&F LLFA responded subsequently to confirm the updated details are acceptable for this outline application as the calculations provided show that SuDS drainage is possible. Further information would be required regarding the specific SuDS techniques proposed. As such, no objection is raised in this regard.
- 8.59 With regards to foul water drainage, Policy DM6 states that the first presumption will be for new development to drain to the public sewerage system, non-mains drainage would not be acceptable in sewered areas.
- 8.60 The submitted Drainage Strategy Report (Ref: J1108 Rev2) states that provision has been made within the existing development to the south of Underbarrow Road, for a new foul water connection. An application to United Utilities will be submitted for a new foul water connection to be established.
- 8.61 A consultation response from United Utilities was received during the course of the application process, to state that they have reviewed the submitted plan Drainage Strategy Ref: J1108-FW-01 Dated 27/10/2023. However, the plan is not acceptable. This is because the plan shows a connection but the proposed connection does not appear to be a public sewer as stated in the drainage strategy.
- 8.62 It was requested that the applicant confirms whether they believe the sewer in question is public or private. The agent responded to state that this is an 'administrative matter' as the sewer in question is awaiting formal adoption. They suggested that this be secured by means of a Grampian condition if the adoption has not been undertaken by the time this planning application is determined.
- 8.63 No further information has been provided or confirmation given when this sewer may be adopted. The sewer is located on third party land, not within the control of the applicant. Given the levels of uncertainty, a Grampian condition would not be

appropriate as the LPA do not have sufficient levels of certainty to ensure this is achievable.

#### Pollution, Contamination, Minerals and Waste

- 8.64 Policy DM7 which seeks to address pollution, contamination impact and water quality states that new development should be located in areas where there is no pollution or where exposure to pollution and contamination is adequately remediated or removed to acceptable levels.
- 8.65 Taking into account the location of the application site, there is potential for pollution, in the form of noise and vibration impacts from the nearby by-pass (A591) and blasting as part of the adjacent quarry operations. The submitted Planning Statement as part of this application states that the quarry is in the ownership of the applicants and two of the self-build plots are for occupation by them, which will help ensure the quarrying activities will not have significant adverse effects on the development of the site for residential purposes. The statement refers to conditions from a 1997 and 2016 planning permissions for the quarry to control noise levels from the quarry. It is stated the 55dB level was considered acceptable for the development to the south of Underbarrow Road. It further states that double glazing, sound attenuating trickle ventilators and traditional building envelope constructions will ensure sufficient sound insulation for habitable rooms, to protect future occupiers of dwellings from quarrying operations. No formal noise assessment has been submitted as part of the application.
- 8.66 This does not adequately address the issues that could be caused to the proposed residential properties in terms of their proximity to the authorised quarry activity which expires in 2042 (or future activities/indicated 'redevelopment' proposals) and/or the potential for any change of ownership of the quarry site or consideration of noise (including blasting), vibration impacts and air quality (e.g. dust) or the impact of new residential development in close proximity to the quarry activities. This application site is significantly closer to the quarry than the development to the south of Underbarrow Road. There are records of complaints regarding blasting noise and vibration from properties more distant than those proposed; there is a risk the proposed development could constrain the permitted quarry operations including those agreed by the existing planning permission.
- 8.67 In this respect, further information would be required by the applicant to demonstrate that any proposed dwellings would not be affected by, or can be adequately mitigated from, any quarrying or permitted quarrying operations, in addition to by-pass noise. In the absence of such information, this would be contrary to Policy DM7.
- 8.68 With regards to contamination on the land, Policy DM7 states the possibility of contamination should be considered when determining individual planning applications in relation to all land subject to or adjacent to previous industrial uses, and where uses are proposed that are particularly sensitive.
- 8.69 Given this sites location directly adjacent to an existing, operational quarry, as well as the proposal being for a sensitive use, housing, contamination is a key consideration.



- 8.70 Policy DM7 goes on and is explicitly clear that, where development is proposed on such land or includes such uses a land contamination assessment will be required to establish the nature and extent of the contamination. It is the developer's responsibility to secure safe development and provide the necessary information. The minimum information that should be provided by an applicant is the report of a Preliminary Investigation. The findings of this will determine if further investigation is needed.
- 8.71 A Phase 1 Desk Study Contamination Report was submitted with the application, however, this is dated December 2016, and as such is out of date. This has been confirmed by W&F Public Protection, as such their consultation response ask for full details to be submitted. This has been raised with the applicant's agent during the course of the application. However, no updated report has been forthcoming.
- 8.72 Based on the information provided in the outdated report, to which we can give very little weight, it confirms that the site is located adjacent to areas of known landfill but due to the historic nature of these and the need to install radon gas protection measures, these would mitigate for any potential for landfill gas being present on the site. Unexpected land contamination could be found and it is recommended that should significant quantities of made ground materials of visual or olfactory evidence of soil or groundwater contamination professional assistance should be sought. In the absence of an up to date contamination assessment, this would be contrary to Policy DM7.

#### Ecology, Biodiversity and Trees

- 8.73 Policy CS8.1 focuses on Green Infrastructure. This requires the protection of species, habitats and wildlife corridors where biodiversity conservation and enhancement is affected by development, as well as conserving and enhancing existing trees and woodlands. Further to this, Policy CS8.4 deals with biodiversity and geodiversity and echoes the requirements to enhance and restore the biodiversity value of land or buildings.
- 8.74 An Extended Phase 1 Habitat Survey Report, by SK Environmental Solutions Ltd., was submitted with the application. However, this was dated 18<sup>th</sup> June 2015. Therefore it is out of date and the findings cannot be relied upon. This was raised with the applicant's agent during the course of the application, however no further report was forthcoming.
- 8.75 Moreover, Policy DM4 of the Development Management DPD is clear in stating that all development proposals should, unless it can be demonstrated that it is not possible, result in environmental net gains for biodiversity. These gains should be quantitative and should be clearly demonstrated as a net gain as a result of development. These requirements are also confirmed by Para.180 of the NPPF.
- 8.76 No information has been provided as part of this application with regards to biodiversity net gain, or a biodiversity baseline calculation to establish whether biodiversity net gain can be achieved on or off site.
- 8.77 Overall is it considered that the submitted application does not meet the requirements of national and local planning policies and fails to adequately address ecological interest on site or put forward sufficient information on which to address biodiversity net gains.

### Accessible and Adaptable Homes

- 8.78 Policy CS6.2 requires that new developments will offer a range of housing size and types, and that all new housing should be easily adaptable for everyone. Policy DM11 requires that new homes are accessible and can be easily adapted to meet the changing need of their occupants over their lifetime. It is required that all new homes meet the optional Building Regulations Requirement M4(2): Category 2 – Accessible and Adaptable Dwellings.
- 8.79 An Accessible and Adaptable Homes Statement has been submitted as part of the application confirming that all 8 of the dwellings would comply with M4(2) requirements. As such, this would be acceptable.

### Broadband

- 8.80 Policy DM8 requires that all new development of two houses or more demonstrates how they will provide future occupiers with sufficient broadband connectivity. The policy clearly states the information which should be provided with development proposals, including a 'Broadband Statement', early engagement with providers and an assessment of feasibility of providing fibre to the premises infrastructure. The information provided should be proportionate to the scale of the development.
- 8.81 Paragraph 2.6 of the submitted Planning Statement states:  
“DM8 – *High Speed Broadband for new developments*. The surrounding properties can all receive super-fast broadband.”
- 8.82 The provision of broadband is considered an important element. The lack of information provided was brought to the agent’s attention during the application process, however, no further information was forthcoming. This one sentence in the planning statement is insufficient, it does not evidence any engagement with providers or an assessment of fibre infrastructure to the site. As a result, this does not fulfil the requirements of Policy DM8.

## **9.0 CONCLUSION**

- 9.1 In assessing the material issues, this proposal is not acceptable on 8 grounds. This includes; dwelling mix and density, landscape and character impacts, potential impacts on the UNESCO World Heritage Site of LDNP, suitable foul water connections, pollution impacts on residential amenity, insufficient information to assess the extent of land contamination, insufficient ecological assessment or evidence of biodiversity net gain and no evidence of achievable broadband connectivity. Therefore this application is recommended for refusal.
- 9.2 The Local Planning Authority has acted positively and proactively in determining this application within a timely manner. However the proposed development raises fundamental issues which are contrary to local and national planning policies and which are incapable of being addressed within this application.
- 9.3 Under Section 149 of the Equality Act 2010 Local Planning Authorities must have due regard to the following when making decisions (i) eliminating discrimination, (ii) advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and (iii) fostering good relations between persons who share a relevant protected characteristic and

persons who do not share it. The protected characteristics are age (normally young or older people) disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

9.4 In determining applications, the Council must ensure that all parties get a fair hearing in compliance with the provisions of Article 6 under the European Convention on Human Rights, as now embodied in UK law in the Human Rights Act 1998.

## **RECOMMENDATION**

a) It is recommended that planning permission be refused, for the following reasons:

1. The information submitted does not provide adequate justification for 8 detached dwellings on a 1.3ha site, which does not meet the dwelling mix requirements or housing need of the area, contrary to Policy CS6.2 of the South Lakeland Core Strategy; and does not provide adequate justification for a low density development, therefore not making effective and efficient use of the land, contrary to Policy CS6.6 of the South Lakeland Core Strategy.
2. The proposed development lies immediately adjacent to the UNESCO World Heritage Site Lake District National Park, in an elevated hillside position, surrounded by designated open countryside, for which the landscape and visual impact of new development is critical. The application presents conflicting and insufficient information to provide an adequate basis on which to assess the landscape and character impacts of the proposed development. As such, this is contrary to Policy CS1.1, CS2, CS8.1 and CS8.10 of the South Lakeland Core Strategy, and Policy DM1 and DM2 of the South Lakeland Development Management Policies Development Plan Document
3. The application does not provide an assessment of the significance of heritage assets, by virtue of the sites location immediately adjacent to the UNESCO World Heritage Site Lake District National Park, nor the potential impacts of the proposed development on the heritage asset. As such this is contrary to Policy CS8.6 of the South Lakeland Core Strategy, Policy DM1 and DM3 of the South Lakeland Development Management Policies Development Plan Document and Para. 200 of the National Planning Policy Framework (2023).
4. Inadequate information has been submitted to confirm, that connection to a public foul water sewer is achievable as part of the development. As such, this is contrary to Policy CS1.1 of the South Lakeland Core Strategy and Policy DM1 and DM6 of the South Lakeland Development Management Policies Development Plan Document.
5. Insufficient information has been submitted to adequately assess the potential for pollution (particularly dust, noise and vibration) impacts on residential amenity of the proposed dwellings and future occupiers from activities at the adjacent Kendal Fell Quarry and A591 By-Pass. As such this is contrary to Policy DM1 and DM7 of the South Lakeland Development Management Policies Development Plan Document and Para. 180(e) and 191 of the National Planning Policy Framework (2023).
6. Insufficient and outdated information has been submitted to adequately assess the nature and extent of land contamination present on the site, which has potential impacts

on the environment and safety of future occupiers. As such this is contrary to Policy DM1 and DM7 of the South Lakeland Development Management Policies Development Plan Document and Para. 180(e) and 191 of the National Planning Policy Framework (2023).

7. The application does not provide an up to date ecological survey of the site or relationships to adjacent areas, nor has a biodiversity baseline assessment been submitted to confirm whether a biodiversity net gain can be adequately achieved on the site. Consequently, the proposed development conflicts with Policy CS8.1 and CS8.4 of the South Lakeland Core Strategy, Policy DM4 of the South Lakeland Development Management Policies Development Plan Document and Paragraph 180 of the National Planning Policy Framework.

8. The application is not accompanied by a statement of information that demonstrates how the proposed dwellings will provide future occupiers with broadband connectivity and as such fails to accord with the requirements of Policy DM8 of the South Lakeland Development Management Policies Development Plan Document.

*The Local Planning Authority has acted positively and proactively in determining this application within a timely manner. However the proposed development raises fundamental issues which are contrary to local and national planning policies and which are incapable of being addressed within this application.*