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## Appeal Decision

Inquiry held on 27, 28 and 29 February and 1, 5 and 8 March 2024

Site visit made on 27 February 2024

**by Katie McDonald MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 3 May 2024**

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**Appeal Ref: APP/A2335/W/23/3326187**

**Land west of Highland Brow, Galgate, Lancaster LA2 0NF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Wainhomes (North West) Limited against the decision of Lancaster City Council.
  - The application Ref is 22/01494/OUT.
  - The development proposed is a residential development for up to 108 dwellings with access considered.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The proposal is for outline planning permission with access. An illustrative masterplan has been submitted and I have had regard to this so far as relevant.
3. The Council refused planning permission for several reasons. However, as set out in the Ecology<sup>1</sup>, Planning<sup>2</sup> and Highways<sup>3</sup> Statements of Common Ground (SoCG), those relating to the road network and highway safety, biodiversity, surface water flooding and infrastructure are now agreed between the Council and appellant. Therefore, the Council did not defend these reasons for refusal at the inquiry. Additional evidence<sup>4</sup> was also submitted prior to the inquiry that confirmed that the land within the site was not best and most versatile agricultural land. This is agreed between the main parties.

### Main Issues

4. The main issues are:
  - a) Whether the site is suitable for the proposed development, having regard to the Council's spatial strategy.
  - b) Whether the proposed development would be in a suitable location with regard to local and national policies relating to flood risk.
  - c) The effect of the proposal on the character and appearance of the area.

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<sup>1</sup> Core Document (CD) 15.5

<sup>2</sup> CD15.1

<sup>3</sup> CD15.3 and CD15.4

<sup>4</sup> CD7.12

- d) Whether the proposal could satisfactorily accommodate the quantum of development proposed, having regard to the effect on the living conditions of existing residents.
- e) The effect of the proposal on the strategic road network.
- f) Whether the proposal would support active and sustainable modes of travel.

## **Reasons**

### ***Site and proposal***

- 5. Located to the west of Highland Brow, at the northern settlement edge of Galgate, the site is around 4.8 hectares, comprising 2 rectilinear arable fields that are partially enclosed by hedgerow, trees and stone walling. To the west of the site is Lancaster Canal, with the boundary comprising a linear belt of mature trees and woodland understorey vegetation. The northern boundary adjoins further agricultural fields. The rear garden boundaries of residential properties along Meadow Park form the southern boundary.
- 6. Levels across the western field are relatively flat, rising abruptly in the eastern field to a drumlin feature at the north eastern corner, adjacent to Highland Brow. This continues to rise to its summit north of the site. The proposal is for a residential housing scheme, for up to 108 dwellings. The indicative plans show most of the dwellings located on the western part of the site, with the north eastern elevated drumlin feature used for public open space. Access would be taken from Highland Brow, on the south eastern corner.

### ***Whether the location of the proposal is suitable***

#### *Planning policy*

- 7. The development plan comprises the Local Plan for Lancaster District 2011-2031 Part One: Strategic Policies and Land Allocations DPD (July 2020) (LP1) and the Local Plan for Lancaster District 2011-2031 Part Two: Review of the Development Management DPD (July 2020) (LP2).
- 8. Policy SP2 of LP1 supports proposals for development, provided that they are of a nature and scale that is proportionate to the role and function of that settlement or where they have been specifically identified in LP1 to meet the strategic growth needs of the district. Galgate is identified as a "sustainable rural settlement", where sustainable levels of rural growth are supported.
- 9. The development strategy, contained in Policy SP3 of LP1, aims to meet the development needs of the district by promoting an urban-focused approach to development. However, the policy also details that development will be supported in sustainable settlements, such as Galgate. Policy DM4 provides support for residential development outside of the main urban areas of the district where they reflect sustainable patterns of development and accord with the Council's settlement hierarchy. Given the proposals location on the edge of Galgate, in principle, the location of development receives policy support from Policies SP2, SP3 and DM4.
- 10. Nonetheless, the site is also located in the Lancaster South Broad Location for Growth (BLfG), under Policy SG1 of LP1. This anticipates a major mixed-use development providing at least 3,500 new houses, of which 1,205 would be

provided during the plan period. Much of housing would be provided in the new 'Bailrigg Garden Village'. The Lancaster South Area Action Plan (AAP) was set to be produced, supporting the delivery of growth in this area, in particular the garden village.

11. However, the infrastructure, namely the South Lancaster to M6 transport project, required to enable the BLfG to take place has not been forthcoming. This is because the funding that had been secured would not cover the costs of developing the new road, and it was returned to central government.
12. Consequently, the Council took the decision to cease work on the AAP and commence a full local plan review<sup>5</sup>. This is hoped to be submitted for examination by June 2025, but the Council acknowledge that this is a very challenging timescale. The Council gave moderate weight to Policy SG1 owing to these circumstances.
13. Policy SG1 does enable development to come forward in the BLfG in advance of the AAP, subject to meeting 3 criteria. These are:
  - i) There would be no prejudice to the delivery of the wider Bailrigg Garden Village (including its infrastructure requirements) and would not undermine the integrated and co-ordinated approach to the wider Bailrigg Garden Village development; and
  - ii) That the development would conform with and further the Key Growth Principles (KGP) described in Policy SG1; and
  - iii) That the opportunities for sustainable transport modes have been fully considered and that the residual impacts upon the transport network will not be severe.
14. Firstly, the AAP is not going to come forward. I do not even know if this area will remain to be an area for growth in the local plan review, and there are no proposals in the pipeline for any garden villages. Therefore, this proposal could not conceivably prejudice the delivery of the wider garden village when it is unknown if there will ever be a garden village at this time.
15. Secondly, KGP include 15 measures. There relate to a range of principles, and were to be explored in more detail in the AAP. Some of these relate to matters which will form other parts of this decision and a conclusion on this will follow. Others relate to the delivery of the garden village and have no real bearing or relevance to this proposal.
16. KGP1 relates to community consultation. The appellant conducted no direct community consultation, but instead relied upon the existing consultation that had taken place to shape the future AAP. Whilst they may have been actively involved in this process, local communities were not involved in pro-active consultation about the creation of this specific development. Thus, there has been a technical failure to comply with KGP1.
17. In relation to other disputed KGPs not addressed below, KGP11 relates to climate change and KGP14 relates to innovative design. The proposal is outline, and the reserved matters would seek to ensure the design would minimise its contribution to, and the impacts of, climate change and be of innovative design. A condition requiring the use of local construction workers would satisfy KGP13 given the size of the proposal. Opportunities for sustainable transport

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<sup>5</sup> CD13.1

modes and the residual impacts upon the transport network are also considered below.

### ***Flood risk and sequential test***

*Does the proposal require a sequential test?*

18. The National Planning Policy Framework (the Framework) sets out that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. This is referred to as the sequential test.
19. Planning Practice Guidance (PPG) details<sup>6</sup> that the aim of the sequential approach includes application of the sequential test, which is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding including areas at risk of surface water flooding. The strategic flood risk assessment (SFRA) shows all sources of flood risk, now and in the future, and should be used to apply the sequential test.
20. The most up to date SFRA is dated November 2021<sup>7</sup>. However, the appellant referred to the 2017 SFRA in their evidence, stating that the site was classed as Recommendation C, which was to review site layout and design rather than undertake any sequential testing. Conversely, the commentary states "*consider site layout and design around the identified flood risk if site passes Sequential Test; Avoid FZ3*"<sup>8</sup>. Furthermore, its designation as Recommendation C is assessing Flood Zones only and is clear that it does not take account of local circumstances. Moreover, PPG guidance has changed since publication of the SFRA on the application of the sequential test.
21. The site is at risk of flooding from 3 sources. This is detailed in the appellant's Flood Risk Assessment<sup>9</sup> (FRA). Part of the site lies within Flood Zones (FZ) 2 and 3. It is also at risk of surface water and groundwater flooding. Whilst the appellant sought to downplay the risk of these through evidence, and development would not take place in FZ2 and 3, the appellant's own FRA identifies there to be a moderate risk of surface water flooding and a potential for groundwater flooding to occur at surface (FRA appendix J and the Phase 1 Geo-Environmental Desk Study<sup>10</sup>), which is akin to a high - moderate risk.
22. Moreover, the appellant's argument that the ground water flood risk in the SFRA should not be relied on, or that the Environment Agency map should not be used for assessing surface water risk is misconstrued. The Framework is clear the SFRA will provide the basis for applying this test. Site investigations may reduce or increase the risk level, but this would be at the exception test.
23. The Council did not raise the issue of a sequential test until its Statement of Case. Whilst much was made of this by the appellant, the matter was ultimately raised and needs to be addressed. The appellant's witness also

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<sup>6</sup> Paragraph: 023 Reference ID: 7-023-20220825 Revision date: 25 08 2022

<sup>7</sup> CD11.9

<sup>8</sup> CD7.18 page 6

<sup>9</sup> CD1.14

<sup>10</sup> CD1.7

- accepted<sup>11</sup> that owing to part of the site being in FZ 2 and 3, the need for a sequential test would be engaged.
24. Nevertheless, the appellant has strongly contested that a sequential test is not required, and the evidence submitted, including case law<sup>12</sup>, contends there are clear reasons why a sequential test is not necessary. I disagree.
25. The judgements relied upon by the appellant were made on previous iterations of the PPG. Whilst no changes to the Framework have taken place, the updated PPG is now explicit that the sequential test applies to all sources of flooding including areas at risk of surface water flooding. The sequential approach, the aim of which is set out, includes application of the sequential test, and specifically that other forms of flooding need to be treated consistently with river and tidal flooding so that the sequential approach can be applied across all areas of flood risk.
26. The PPG is government guidance, and based on the most recent judgement<sup>13</sup>, should be treated as a statement of planning policy intended to support the Framework. Where a policy in the Framework is expressed in very broad or open terms, more detailed guidance in the underlying PPG may be rather more focused as to the approach to be taken. The appellant refers to the Uckfield decision<sup>14</sup> and the Council's approach, yet this decision aligns with the PPG on flood risk matters.
27. Thus, it is clear to me that when a site is at risk of flooding from any source, it would need to first satisfy a sequential test. Given there are 3 flooding sources across the site, a sequential test would be necessary.

*Whether the sequential test is satisfied*

28. Despite their protests, the appellant subsequently provided a sequential test and claim that there are no other sequentially preferable sites. The PPG provides guidance on how the sequential test should be applied. Firstly, the area of search should be agreed. This will be defined by local circumstances relating to the catchment area for the type of development proposed. The local planning authority will need to determine an appropriate area of search, based on the development type proposed and relevant spatial policies.
29. No consultation took place with the Council to determine the area of search. The appellant argued that because the proposal would provide open space and measures to address surface water flooding, the assessment area should be the site itself, as this was the only site that could provide this betterment. This approach is inappropriate and does not properly address the sequential test.
30. The appellant then also looked to sites adjacent to Lancaster, Morecambe and Heysham, Carnforth and the sustainable rural settlements outside of Areas of Outstanding Natural Beauty. This approach was suggested by the Council as an appropriate area of search.
31. The appellant sought to look at various sources to ascertain if there were any sequentially preferable sites, but in applying the Council's Planning Advisory

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<sup>11</sup> During XX

<sup>12</sup> CD10.1 and CD10.2 Wathen-Fayed v SSLUHC [2023] EWHC 92 (Admin) and Substation Action Save East Suffolk Ltd v SSESNZ [2024] EWCA Civ 12

<sup>13</sup> CD10.3 Mead Realisations Limited and Redrow Homes Limited v SSLUHC [2024] EWHC 279 (Admin)

<sup>14</sup> CD9.2

Note 6 (Application of the Flood Risk Sequential Test and Exception Test)<sup>15</sup>, they looked to sites that were + / - 10% the size of this site. The guidance has since been replaced<sup>16</sup>, but the + / - 10% approach is not in accordance with the PPG, which details that 'reasonably available' sites could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development<sup>17</sup>. Furthermore, when seeking the view of a local agent<sup>18</sup> on available sites, this asked for sites of a similar scale, and not a larger site or series of smaller sites that could accommodate the number of dwellings. There are several sites within the assessment which are discounted for this + / - 10% criterion, and these could have been sequentially preferable, even despite the appellant's witness arguing that this would be unrealistic.

32. Moreover, when considering larger sites, which the development could form part of, no consideration was given as to whether the development could be accommodated in an area that was not subject to any flood risk. It was simply said to not be at a lower risk than the appeal site when considering the whole larger site. The PPG sets out that the sequential test should consider the spatial variation of risk within medium and then high flood risk areas to identify the lowest risk sites in these areas, ignoring the presence of flood risk management infrastructure.
33. Additionally, the appellant looked to compare flood risk, but did not compare the extent of flood risk on the other sites, such that whilst both sites could have the same flood risk, one site may be subject to a lesser area of flood risk and thus it could be sequentially preferable. Indeed, they considered that the site was at a low risk of groundwater flooding because site investigations had been carried out. However, no other comparative sites were considered on this basis, and a comparison on the site's risk level from the SFRA should have been applied.
34. The appellant claimed that many of the larger sites would not have a reasonable prospect of being available to be developed at the point in time envisaged for this development. This is because they intend to build out the houses within the next 5 years. Whilst assembly of part of a larger site may take time, and would not be as quick as this site could be developed, given the advanced stage at appeal, there is little evidence to suggest that the appellant contacted any site owners or promoters directly to enquire about the availability of other sites. Therefore, I simply do not know if these sites would be reasonably available. The list of sites from Rightmove<sup>19</sup> provided minimal information about how they were or were not sequentially preferable and added very little to the sequential test.
35. In terms of specific sites, application 19/01135/OUT does not consider the comparative flood risks or whether the development could be accommodated within areas of lower flood risk. It discounts the site on the + / - 10% criterion. No contact was made with the owners as to availability. Whilst the permission may have been refused, there is not sufficient information to demonstrate that it would not be sequentially preferable or reasonably available.

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<sup>15</sup> CD5.2

<sup>16</sup> Inquiry Document (ID) 8

<sup>17</sup> Paragraph: 028 Reference ID: 7-028-20220825 Revision date: 25 08 2022

<sup>18</sup> CD7.18 Appendix SH4

<sup>19</sup> CD7.18 Appendix SH5A and 5B



36. Land East and West of Grab Lane – the site is allocated for development, but the appellant discounts it on the + / - 10% criterion. They also do not compare comparative flood risk, or that the site could be accommodated in areas of lower or no risk of flooding, given it is a larger site. Although the site is being actively pursued by a housebuilder, and may not be available, no contact was made to investigate this. Therefore, there is not sufficient information to demonstrate that it would not be sequentially preferable or reasonably available.
37. Land North and South of Ridge Lane – The site is part of a strategic housing allocation, and the appellant discounts it simply based on the + / - 10% criterion and that the site is not at a lower risk of flooding. However, again, no comparative flood risk is undertaken, or investigations if the site could be accommodated in areas of lower or no risk of flooding, given it is a larger site. No contact is made with the landowner either, and there is not sufficient information to demonstrate that it would not be sequentially preferable or reasonably available.
38. There are other sites which the Council raise concerns about. However, it is not necessary to examine these further given my findings above.
39. Overall, I have several concerns about the application of the sequential test. I understand that much of the district is subject to some form of flood risk, and this site could be sequentially preferable. However, the sequential test before me is simply not robust nor a thorough comparison of reasonably available sites to form a satisfactory conclusion. For this reason, the application of the sequential test fails. The exception test cannot be applied.
40. The failure to satisfy the sequential test means the proposal cannot demonstrate if there are other sites that would be sequentially preferable at a lower risk of flooding. The proposal is thus contrary to Policy SP8 of LP1 and Policy DM33 of LP2, which seek to ensure proposals minimise the risk of flooding to people and property by taking a sequential approach which directs development to the areas at the lowest risk of flooding. There would also be conflict with the Framework and the PPG.
41. Whilst part of the exception test, it must be noted that the Local Lead Flood Authority (LLFA) and Environment Agency (EA) raise no concerns in relation to fluvial or surface water flooding. Additionally, from site investigations, ground water flood risk would also appear to be managed effectively by the proposals. This would ensure compliance with KGP12 of Policy SG1 of LP1 and Policy DM34 of the LP2, which seek to ensure surface water run-off is managed to safeguard development, to reduce flood risk downstream.

### ***Character and appearance***

#### *Landscape*

42. The Landscape Strategy for Lancashire: Landscape Character Assessment (2000)<sup>20</sup> locates the site within Landscape Character Type (LCT) 12: Low Coastal Drumlins and LCT 12a Carnforth-Galgate-Cockerham. Key characteristics of LCT 12 include areas of low, whaleback hills around 40m high, with broad rounded tops, known as drumlins. Trees and shrubs are limited, although small copses occur on the tops and sides of the drumlins.

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<sup>20</sup> CD11.2

Minor roads and the canal wind around the drumlins while overhead powerlines and major transport routes typically cut across these areas, paying no attention to the natural landform. The LCT 12a supports an extremely high proportion of built development including the large settlements of Lancaster and Morecambe and recent built development along the A6.

43. The site is generally consistent with key characteristics of LCT12 and LCT12a, featuring the rounded drumlin on the north eastern part of the site, which continues to rise beyond the site to the north. The site is on the edge of the village of Galgate, which transitions to open countryside to the north and west. Although, Lancaster University campus and Bailrigg lie to the north, around 800m away. Additionally, the West Coast Main Line railway, M6 and A6 run north south to the east of the site and the Lancaster canal on the west. The character of the site is influenced by these urbanising features, and the abrupt edges of the boundary treatments on Meadow Park forms a blunt edge to Galgate, such that the character of the site and surrounding area is semi-rural.
44. It is common ground that the site does not form part of a valued landscape for the purposes of the Framework. The Landscape and Visual Appraisal<sup>21</sup> (LVA) sets out that the site is of a low – medium sensitivity. The Council claims a medium sensitivity. I disagree. Given the above urbanising features and its location on the edge of the village, the landscape sensitivity is low to moderate. This is also supported by the findings in the independent Landscape Sensitivity Assessment<sup>22</sup> (LSA) commissioned by the Council to inform the AAP. This details that *“lying within close proximity to the settlement edge of Galgate, the southern extent of the landscape parcel is of reduced sensitivity to development”*, with the overall parcel detailed as low-moderate landscape sensitivity to residential development.
45. The LSA also states that *“the existing residential edge of Galgate is relatively stark in appearance due to the uniformity of the housing style and lack of intervening vegetation on the settlement boundary. Development at the southern extent of the landscape parcel would therefore have a good relationship with the existing settlement pattern, and could provide the opportunity to improve an existing residential edge”*. The LSA notes that the drumlin summits are of increased sensitivity due to their localised visual prominence within the landscape.
46. The LVA concludes that the development would generate a minor adverse landscape effect in the short term, but minor beneficial residual effect at year 15. The Council contend the effect would be adverse but failed to adequately set out how they had reached this conclusion. I agree with the conclusions in the LVA. The scale of the development site is moderate and proportionate to the village. The proximity to the existing village and other urbanising features, coupled with the comprehensive landscaping and public open space on the drumlin mean a housing scheme would be assimilated well over time. It would also ensure that the area of greater sensitivity remains undeveloped.
47. I accept that there would be a small degree of landscape harm arising from the change that would occur when developing a field to a housing estate. Yet this is an inevitable consequence of any extension to an existing settlement. Furthermore, the proposal would include a 15m extensive landscape buffer to

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<sup>21</sup> CD1.17

<sup>22</sup> CD11.3



the northern boundary, which provides an opportunity to improve the settlement edge. It was agreed with the Council that this would be a benefit of the proposal. Owing to this, the northern and eastern edges of the site would provide a transitional, softer edge to the village.

### *Visual*

48. The site has very few long or medium range viewpoints due to screening vegetation, built form and localised undulations in the topography. Additionally, views from the canal towpath are limited by screening vegetation, which even in winter, has no clear view of the site. The proposals would locate the attenuation basin adjacent to the canal, with additional landscaping, such that this would optimise views to and from the waterway.
49. The LVA anticipates the highest level of adverse visual effect at year one to be Minor/ Moderate for receptor group RG2 (towpath and canal boat users on the Lancaster Canal). By year 15, all short term adverse visual effects are expected to be reduced to negligible or low levels of beneficial visual effect.
50. I also agree with the LVA. The site is well contained, and any visual effects would be extremely localised given the indicative layout avoiding the higher ground. Additionally, with the establishment of landscaping over time, this would create a softer edge to the village and minimise visual harm. Whilst the access arrangements would remove part of the hedgerow, much of this would be replaced. The view from the access would be a row of dwellings, not dissimilar to the existing row along Highland Brow, or the rear of Meadow Park. This would not be alien or adverse.
51. The Council belatedly argued that the appellant had failed to take account of residential private views, namely those on Meadow Park. However, the appellant had taken account of these in the LVA, and this was adequately explained. Even so, the proposal would result in harm to private residential views. This would be obviously adverse and unavoidable for those residents, given the change from a field to a housing estate. However, these are private views from residential dwellings on an edge of village location. The harm arising could not conceivably restrict development for this reason, particularly when the Council would impose separation distances to ensure satisfactory amenity for all occupiers.

### *Other matters*

52. The Council maintain the proposal would not create a sufficient gap between Galgate and the potential garden village. I disagree. At its shortest distance, there would be over 425m between the site and any development to the north. Moreover, the intervening drumlin, and existing and proposed vegetation to the north of the site would ensure that a distinct gap would be maintained between any potential garden village.

### *Conclusion*

53. Consequently, the effect of the proposal on the character and appearance of the area would be acceptable. There would be compliance with KGP6 of Policy SG1 and Policy T3 of LP1, and DM46 of LP2. These seek to ensure proposals make a positive contribution to the surrounding landscape and townscape, supporting development that is in scale and keeping with the landscape

character. There would also be compliance with the Framework, which seeks to recognise the intrinsic character and beauty of the countryside.

### **Quantum of development and living conditions**

54. The proposal is for up to 108 dwellings and it is envisaged that around this number would be proposed at reserved matters, if the appeal were allowed. Most of the development would take place on the west of the site, avoiding the drumlin elevated form. In the central section, the Illustrative Masterplan<sup>23</sup> demonstrates a relatively dense amount of development, with blocks of housing, likely resulting in swathes of frontage parking. The Landscape Layout<sup>24</sup>, whilst only illustrative, also shows there to be very few trees planted within the street itself, and those indicated are mostly in front gardens. The Council also latterly raised concerns that the proposals had not sought to avoid areas of flood risk on site, having regard to Framework paragraph 173a.
55. The appellant contended that there would be scope to extend development to the lower parts of the drumlin, which would avoid the upper, more visible section and provide more space within the site itself. I agree that lower parts of the drumlin could be sensitively developed without any significant adverse effect on the character and appearance of the area, given the summit lies outside the site.
56. However, development on areas which are currently indicated as POS could impact upon the amount required to mitigate the likely significant effects upon the National Sites Network. This is because there is agreement with both the Council and Natural England<sup>25</sup> that the provision of POS within the development, as set out within the Illustrative Masterplan, would be necessary as mitigation. The creation of a footpath network within the eastern area of the development, linking to the existing Public Rights of Way and footpath network east of the development, is also regarded as necessary mitigation.
57. Nonetheless, the Illustrative Masterplan is only indicative and would not be subject to any approval, were the appeal to be allowed. Changes to the layout could be proposed at reserved matters which provided sufficient POS to mitigate the likely significant effects, even if this was in a different form. This would be subject to additional consultation with Natural England.
58. Additionally, whilst the central section does appear slightly cramped, housing types are not agreed. Therefore, a greater number of semi-detached houses instead of detached houses on outer parts could enable reduced density in the central area. This could still achieve the quantum of development, particularly considering the Framework's requirement that planning decisions should ensure developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as *increased densities*) (my emphasis).
59. Landscaping, including street trees, would form part of the reserved matters. Whilst the landscaping layout does not indicate them to be in the street, the appellant was confident that street trees would form part of the final design.

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<sup>23</sup> CD1.3

<sup>24</sup> Contained in CD7.8

<sup>25</sup> CD14.25

60. In relation to avoiding areas of flooding, the scheme would result in there being no development in FZ 2 and 3, and a betterment to surface water flooding. Yet, no attempt has been made to locate the development in areas of lowest flood risk. Even so, there is a chronic shortage of housing, so it would be important to make good use of the site; and considering the lack of objection from the LLFA and EA, and the surface water betterment, these could provide overriding reasons at reserved matters.
61. Lastly, even accounting for level changes, the appellant was confident that separation distances between existing and future properties could be satisfied. Given the indicative details show these to be relatively close to the standards, I am also satisfied that tweaks to the layout at reserved matters could ensure that this was the case. Although the Council's evidence claimed that residential amenity was to be harmed, if separation distances are achieved, then I see no reason why the proposal would fail to provide satisfactory conditions.
62. Ultimately, however, the Council could refuse permission if it were not persuaded that the appearance, landscaping, layout and scale was acceptable at reserved matters. Additionally, whilst there appears to be scope to achieve the quantum of development proposed based on the evidence before me, the proposal is for 'up to' 108 dwellings. Thus, if there were competing constraints at reserved matters, a lower number of dwellings could be proposed.
63. Consequently, I am satisfied that the quantum of development proposed could be provided, and this would have an acceptable effect upon the living conditions of existing residents. This would be compliant with KGP 2 and 8 of Policy SG1 of LP1 and Policies DM27, DM29, DM30, DM46 and DM57 of LP2. These seek to ensure sustainable developments contribute positively to the identity and character of the area through good design, having regard to local distinctiveness, appropriate siting, layout, separation distances, orientation and scale. They also seek the provision of open space and recreation and to protect the natural environment. There would also be compliance with the Framework.

## **Strategic Road Network**

### *Background*

64. As detailed above, the application was originally refused for matters relating to there being a severe impact on the local highway network. This was because of increased traffic flows on the A6, principally at the Galgate crossroads. This is an area that currently experiences capacity issues, high levels of congestion, and is also constrained by on street parking. This junction experiences queues of slow-moving traffic, both north and south of the junction on the A6 before and after the peak hour. These regularly extend for 1km+ in either direction depending on the time of day and year, and have been doing so for many years.
65. Following the Council's decision, the appellant engaged with Lancashire County Council Highways (LCCH). Off site highway works were agreed that mitigated the effect of the development at both the crossroads and in other areas, such as on-street parking. The SoCG<sup>26</sup> sets out that the appellant and LCCH agree that all the measures combined will have a positive impact to the south of Galgate in the direction of M6 Junction 33.

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<sup>26</sup> CD15.3

### *National Highways' position*

66. National Highways' (NH) position evolved before the inquiry. Firstly<sup>27</sup>, they formally recommended that planning permission not be granted until at least 22 March 2023, because there was insufficient information to enable them to form a final view on the proposal. This information relates to a request for the appellant to provide micro simulation traffic modelling, amongst other things. NH's concerns relate to queuing at the Galgate junction.
67. NH's appeal consultation response set out that their position remained the same as the original response, but that they were in the process of creating their own micro simulation modelling which would allow them to form their own evidenced view on the proposal. They intended to provide a copy to the main parties and myself. This was never received, but they later<sup>28</sup> claimed it was subject to several limitations and was not intended to replace the requirement for the appellant to provide their own micro simulation modelling.
68. The appellant initially agreed to provide the modelling, but NH did not agree to the timing as Lancaster University would not be open to a full body of students. NH required the modelling to be carried out in October, which would not have provided sufficient time prior to the original inquiry dates<sup>29</sup>. The appellant also maintains that the micro simulation modelling is not necessary for a proposal of this size, and considering the mitigation that has been agreed with LCCH.
69. In October, NH wrote again<sup>30</sup> outlining they had completed their study. They updated their position that any planning permission granted must be subject to 2 suggested conditions. These required the micro simulation study to be carried out, and the imposition of a condition for an 'acceptable dwelling limit', which would effectively have stopped development on site until replacement mitigation for the previous South Lancaster to M6 Link Road was brought into use. I raised concerns about these suggested conditions, and both the appellant and Council raised similar concerns.
70. NH provided a response<sup>31</sup>, which again requested that micro-simulation traffic modelling is the required operational assessment technique. It is considered necessary because it provides a sound replication of current network performance conditions (when models are built with current traffic data). They claim this gives a greater level of confidence in the forecasted impacts of traffic generated by development along with the performance of any associated mitigation measures being proposed. They did not recommend that the appeal be dismissed, but instead sought to amend the suggested conditions to achieve the same purpose.
71. I do not consider that the conditions suggested in CD14.35 would meet the tests for conditions. This is because the developer would have no certainty or control over the level of development that could come forward prior to replacement mitigation being delivered and brought into use. The conditions would therefore also be unreasonable.

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<sup>27</sup> CD14.11

<sup>28</sup> CD14.36

<sup>29</sup> The inquiry was due to open in November 2024 but was postponed the week before due to unforeseen circumstances.

<sup>30</sup> CD14.35

<sup>31</sup> CD14.36

72. Following a second Case Management Conference in December, I suggested that the Council, appellant and NH met to attempt to find a resolution. The meeting took place, but no resolution was reached<sup>32</sup>. An updated position<sup>33</sup> from NH was then submitted the week before the inquiry opened. This now recommended the appeal should be dismissed<sup>34</sup> because the safety impacts on the strategic road network (SRN) (i.e. the M6 and slip roads) are unable to be determined owing to there being incomplete information. However, NH also suggested another condition. This again required the micro-simulation modelling, along with other off-site highway works to be fully implemented prior to occupation of any dwellings. This condition would also be unreasonable, because, amongst other things, it requires the implementation of a 'red route' which has not been subject to any consultation and requires additional funding from other developments.
73. NH attended the inquiry and provided evidence during a round table session. Whilst this clarified their position in relation to the micro simulation modelling, it remains the case that NH do not consider there to be sufficient information on which to determine the effects of the proposal on the SRN.
74. The appellant has produced a Transport Assessment<sup>35</sup>. The findings of this have not been disputed by the Council or LCCH. This sets out that the M6 Junction 33 is a free-flow junction with approximately 1,680m of queuing capacity on the southbound off-slip, for circa 292 vehicles, and approximately 565m of queuing capacity on the northbound off-slip for circa 98 vehicles. When considering the recorded queues / existing operation of the Hampson Green Roundabout, the impact of the additional 3-7 vehicle movements generated by the development on the M6 approach to the roundabout in the peak hours would, it claims, be barely perceptible. The traffic impact of the proposed development on the SRN is considered acceptable by the TA and would not result in any safety or operational concerns. The appellant's witness also detailed in his evidence that the additional traffic flows would be negligible, and indeed claims that there would be a betterment. This is because the principle of reducing the queue length by 50 vehicles as a result of proposed mitigation, and adding back significantly less traffic related to the development, can only result in betterment.
75. Despite this, NH claim that the level of accuracy in the Transport Assessment is not sufficient for assessing the effect upon the SRN when the network is so finely balanced. There are several issues at the Galgate crossroads that impact its operation. These relate to lost 'green time' because of the bus stop location and on street parking on Salford Road that results in vehicles unable to proceed forwards. They also consider that the micro simulation would account for cumulative effects and the dynamic phenomena, such as bus dwell times, HGVs, and Microprocessor Optimised Vehicle Actuation (MOVA) at the traffic lights. The micro simulation can accurately test the mitigation and account for the position of traffic today.
76. However, the issues raised by NH about the junction operation, and how these result in lost 'green time' are being mitigated by the appellant. The road would be widened at the bus stop, such that there would be space for vehicles to pass

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<sup>32</sup> CD13.13

<sup>33</sup> CD14.37

<sup>34</sup> CD14.37

<sup>35</sup> CD1.19

around stationary buses. Additionally, a system of priority working along Salford Road is proposed, along with enhanced parking restrictions to dissuade drivers from parking illegally at peak times and causing delays that have been observed to interfere with traffic flows along the A6. The appellant has agreed to financial contributions, by way of a planning obligation, towards a Red Route, that would maximise link capacity by restricting vehicles stopping in inappropriate locations and enabling enforcement against this. Lastly, upgrades to the MOVA would optimise the traffic signal operation and junction efficiency.

77. NH argue that cumulative impacts of development have not been considered, yet the additional sites provided by NH have either been refused planning permission or are resubmission schemes for previously approved developments. The TA considers other sites and their effects, and LCCH raised no concerns in relation to the cumulative effects.

78. Therefore, the concerns raised by NH about the queuing of this junction, and its resultant impact on potential queuing on the SRN, would be mitigated by the off site highway works. I do not understand what the micro simulation study would show by way of additional mitigation when the proposals would provide a betterment that has been agreed with the local highways network operator.

79. As such, for these reasons, it would not be reasonable to require the appellant to provide additional studies as the development, and any cumulative effects, are highly unlikely to have a severe impact upon the SRN. This would be compliant with KGP15 of Policy SG1 of LP1 and the Framework which seeks to ensure that the residual cumulative impacts on the road network are not severe.

### ***Active and sustainable modes of travel***

80. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Galgate is described in the LP as a sustainable settlement and this proposal would be on its edge.

81. A footway is shown on the indicative plans linking through to Meadow Park and footpath links would run through the POS to the public right of way on the eastern side of Highland Brow. Additionally, there is a footway from the site into Galgate centre. This would provide suitable pedestrian links.

82. A travel plan could be required by condition, and this would require sustainable transport methods to be promoted to new residents, such as a 3-month season ticket for bus services. Whilst the bus stops are on the A6, there is a footway to them with crossing points. Additionally, the footway would be widened on this route into the centre, encouraging walking.

83. Each dwelling would be provided with cycle storage. This would encourage cycle ownership and promote cycle use. Whilst there are no direct connections to existing segregated cycle routes, the local roads could be used for cycling if residents had a propensity to do so.

84. Thus, future residents would have a choice of walking, cycling or using buses as sustainable methods of transport. That said, even with all these measures, the location of development is still likely to result in future residents relying on a private car for some journeys. Yet, Building Regulations now requires dwellings to be fitted with electrical vehicle charging points. This means that



future owners would be encouraged to own ultra low and zero emission vehicles, which also represents a sustainable transport mode in the Framework. It must also be noted that the private car is by far the most utilised form of transport in this country and given the location on the edge of a sustainable village, the proposal would go as far as necessary to seek a modal shift.

85. Therefore, given the measures set out above, the proposal would support active and sustainable modes of travel. This would be compliant with SP10 and KGP3 of SG1 of LP1 and Policies DM57, DM60, DM61 and DM63 of LP2. These seek to ensure a modal shift in local transport movements by improving transport connectivity, locating developments where sustainable transport patterns can be achieved, promoting walking, cycling, health and wellbeing.

### **Other matters**

#### ***Planning obligation***

86. The planning obligation seeks to secure 30% on site affordable housing, off site outdoor sports provision, upgrades to existing young person's provision, education, highways infrastructure, a travel plan, biodiversity net gain and management plans. As the appeal is being dismissed, it has not been necessary to examine the planning obligation any further.

#### ***Local residents***

87. Many objections were raised by residents. Whilst most of these are addressed in the decision, it has not been necessary to examine the other objections any further as the appeal is being dismissed.

### **Planning balance**

88. I ascribe weight on a rising scale from neutral, limited, moderate, significant to substantial. The Council's housing land supply stands at 2.4 years. This is an agreed position. There has been a failure to deliver housing, and since 2011 there is an overall shortfall of 468 dwellings against the housing requirement. Perhaps, more alarmingly, of the 6,013 dwellings allocated, just 158 dwellings are expected to be delivered in the next 5 years.
89. Additionally, the supply of affordable housing is also underdelivering, at a chronic rate, with there being a shortfall of 1,854 affordable homes against a requirement of 2,256 from 2017. This means only 402 homes have been delivered in the past 6 years. Going forward, the picture gets no better, when combined with the shortage of market housing, the total estimated number of affordable homes to be delivered in the next 5 years is only 252.
90. I also note that a key element of the delivery of housing in the borough was the Bailrigg Garden Village. Given the lack of infrastructure to support this, the delivery of this strategic housing site is unlikely to come forward anytime soon. This places additional constraints on the Council's ability to deliver housing.
91. Therefore, both the supply of market and affordable housing is of substantial weight in favour of allowing the appeal. It would also comply with KGP4 of Policy SG1 of LP1.
92. The proposed off site highway works would be of a betterment to the existing situation and, based on the evidence before me, would reduce queuing at the

Galgate crossroads. Given this has been an issue for several years, it would be a benefit to many road users and is of significant weight.

93. Whilst the proposal would fail the sequential test, the drainage scheme proposed would provide a betterment to the existing surface water flood risk. This is agreed with the LLFA and Council. However, the Framework seeks, where possible, a reduction in flood risk, and to direct sites to areas at the lowest risk of flooding. Given the failure of the sequential test, any on site mitigation or betterment would be of limited weight at most.
94. There would be no significant adverse effect upon the character and appearance of the area by developing the site for housing, and indeed the proposal would provide an improved settlement edge. This is of limited weight in favour. There would also be a range of social and economic benefits, including construction jobs and increased spending for local services and facilities. This is also of limited weight. The quantum of development proposed could be provided, and this would have an acceptable effect upon the living conditions of existing residents. This is of neutral weight.
95. Overall, the proposal would be a suitable extension to the existing settlement and would not prejudice the delivery of the Bailrigg Garden Village, especially in the light of the chronic and acute shortage of housing in the area.
96. There is a minor conflict with Policy SG1 of LP1 by the failure to pro-actively consult. However, this is of limited weight given the compliance with Policy SG1 on all other matters, and the moderate weight to be attached to the policy.
97. Critically, however, there is a failure to satisfy the sequential test. This means that the tilted balance in paragraph 11 d) of the Framework, engaged by the lack of a 5 year housing land supply, is disengaged by footnote 7 and 11 d) i. of the Framework. The failure to satisfy the sequential test is also considered to be a clear reason for refusing the development, both by the conflict with Policies DM33 of LP2 and SP8 of LP1, and the Framework and PPG.
98. This matter is of overriding substantial weight, given that there could be other sites that are sequentially preferable to develop that would avoid flood risk. The Framework is clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. This is sufficient to outweigh the totality of matters weighing in favour of this proposal.

### **Conclusion**

99. For the reasons given above, I conclude that the appeal is dismissed.

*Katie McDonald*

INSPECTOR

**APPEARANCES**

<b>For the Local Planning Authority:</b>	
Killian Garvey, Counsel	Instructed by Lancaster City Council
He called	
Eleanor Fawcett BA (Joint Hons) MSc MRTPI	Principal Planning Officer, Lancaster City Council
Anthony Lyons BA (Hons) BPI DipLa MRTPI	Landscape witness
Ben Fox BSc (Hons) MCIWEM C.WEM CEnv	Associate, PFA Consulting Ltd
<b>For the appellant:</b>	
Vincent Fraser, KC	Instructed by Stephen Harris, Emery Planning Partnership
He called	
Stephen Harris BSc (Hons) MRTPI	Managing Director, Emery Planning Partnership
Nicholas Folland BA (Hons) DIP LA CMLI	Director, Barnes Walker Limited
Simon Gough BSc CEng MICE	Chartered Engineer, Ironside Farrar Limited
David Roberts IEng FIHE FCIHT	Managing Director, SCP
<b>Interested parties:</b>	
Cllr Sally Maddox	Ward Member for Ellel
Barbara Walker	Local resident
Jane Hodgson	Local resident
Trevor Dibben	Local resident
George Newsham	Local resident
Nick Moule	Local resident
Warren Hilton	National Highways
Neville McKenzie	National Highways
Donald Mason	Local resident

**Inquiry Documents**

ID1	Appellant's opening submissions
ID2	Council's opening submissions
ID3	Ms Walker's statement
ID4	Mr Moule's statement
ID5	LPA consideration of additional sites identified in the appellant's flood risk sequential assessment
ID6	Council's legal submissions concerning flood risk
ID7	Committee report for application 23/00398/FUL - Site of Former

	Pontins Holiday Camp, Natterjack Lane, Middleton
ID8	Flood Risk - Sequential and Exception Test Planning Advice Note January 2024
ID9	National Highways note on outstanding matters from their original consultation response dated 22 December 2022
ID10	Appellant's Technical Note in response to National Highways Statement
ID11	Council's Closing Submissions
ID12	Appellant's Closing Submissions
ID13	Completed planning obligation