

**North Yorkshire Council**

**Community Development Services**

**Skipton and Ripon Area Constituency Planning Committee**

**03 December 2024**

**2020/22109/FUL - CONSTRUCTION OF ELEVEN DWELLINGS WITH LANDSCAPING, INFRASTRUCTURE, ASSOCIATED WORKS AND OFF-STREET PARKING ON ALLOCATED SITE ON LAND AT RICHARD THORNTON'S SCHOOL, BURTON IN LONSDALE, ON BEHALF OF PERMAHOME LIMITED**

**Report of the Assistant Director Planning – Community Development Services**

**1.0 Purpose of the Report**

- 1.1. To determine a full planning application for the development set out above.
- 1.2. The application is brought back to planning committee because planning permission is sought in revised terms to those which members have previously resolved to grant, following the submission of a viability report and independent appraisal.

**2.0 EXECUTIVE SUMMARY**

**RECOMMENDATION: That planning permission be GRANTED subject to conditions and an s106 agreement, as listed below.**

- 2.1. Planning permission is sought for 11 two-storey dwellings on part of an allocated housing site previously in educational use at the former Richard Thornton's Primary School, west of Burton-in-Lonsdale, now in the ownership of the applicant. As an allocated housing site, the proposal accords with the spatial strategy for the area and is acceptable in principle.
- 2.2. The main issues are the effect of the proposal on the character and appearance of the area and designated heritage assets, highways considerations, the living conditions of existing and future occupants, the policy required obligations and viability.
- 2.3. The proposal would result in low-level less than substantial harm to designated heritage assets. As a result, there would be a degree of conflict with Local Plan Policy ENV2. However, in accordance with the policy and the National Planning Policy Framework, the public benefits of the scheme are considered to outweigh the harm. The proposal would be acceptable in all other regards.
- 2.4. Evidence of viability has been independently appraised on behalf of the Council, concluding that the scheme would not be viable with affordable housing or off-site public open space obligations. The necessary exceptional circumstance required under Local Plan Policy H2, and the affordable housing SPD are considered to have been demonstrated. Whilst there would be conflict with Local Plan Policy INF3 and the Green Infrastructure and Biodiversity SPD in the absence of offsite public open space contributions, in the overall planning balance, the benefits and material considerations indicate to officers that planning permission should nevertheless be granted, subject to an s106 viability review mechanism.



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### **3.0 Preliminary Matters**

3.1. Access to the case file on Public Access can be found at <https://publicaccess.cravenc.gov.uk/online-applications/>.

3.2. The following applications [adjacent to the site] are relevant.

2020/22036/LBC - Installation of traditional sash windows in the uncovered openings of the western elevation; blocking up of adjacent ground floor door. Replacement of skylight and ventilator with four conservation-style roof lights. Approved with conditions 7 January 2021.

2020/21669/CND - Application to discharge condition no. 3 (Tree Protection Measures) and no. 4 (Window and Door Details) of planning permission referenced 2019/20873/FUL granted 14 February 2020. Approved 10 July 2020.

2019/20873/FUL – Part demolition of school classrooms; change of use of school building to a residential care and educational facility; alterations to access. – Approved subject to conditions. Approved with conditions 14 February 2020.

2019/20874/LBC - Part demolition of school classrooms; change of use of school building to a residential care and educational facility; alterations to access. Approved with conditions 14 February 2020.

#### **4.0 Site and Surroundings**

- 4.1. The site measures approximately 0.43 hectares and comprises land formerly occupied by the now demolished modern extensions of Richard Thornton’s School (the school) and its playground. The brownfield site forms part of Local Plan housing allocation site reference BU012.
- 4.2. The site is located within the Burton-in-Lonsdale Conservation Area, with the setting of the Castle Hill scheduled monument, the listed school, and a number of other listed buildings.
- 4.3. Access would be from an unadopted lane leading from an adopted junction with the A687, along which a footpath links the site with the village and the local services and facilities which it contains.

#### **5.0 Description of Proposal**

- 5.1. Full planning permission is sought for eleven two-storey dwellings with landscaping, infrastructure, and associated works. The dwellings would be constructed in a mixture of stone and render forming a crescent around an area of onsite open space.

#### **6.0 Planning Policy and Guidance**

- 6.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning authorities must determine each application under the Planning Acts in accordance with Development Plan so far as material to the application unless material considerations indicate otherwise.

##### Adopted Development Plan

- 6.2. The Adopted Development Plan for this site is:
  - Craven Local Plan 2012 to 2032, adopted 12 November 2019
  - Minerals & Waste Joint Plan 2015 – 2030, adopted 2022

##### Emerging Development Plan – Material Consideration

- 6.3. The North Yorkshire Local Plan is the emerging development plan for the area. However, it is at an early stage of preparation and has not yet been consulted upon. Therefore, it attracts no weight in this case.

##### Guidance - Material Considerations

- 6.4. Relevant guidance for this application is:
  - National Planning Policy Framework (the Framework)
  - National Planning Practice Guidance (the PPG)
  - Burton-in-Lonsdale Conservation Area Appraisal (the BiLCA)
  - Craven Landscape Appraisal 2002 (the CLA)
  - Craven Good Design SPD 2022 (the Design SPD)
  - Craven Flood Risk and Water Management SPD 2022 (the FRWM SPD)

- Craven Affordable Housing SPD 2022 (the Affordable Housing SPD)
- Craven Green Infrastructure and Biodiversity SPD 2022 (the GIB SPD)

## **7.0 Consultation Responses**

- 7.1. The following consultation responses have been received and summarised below:
- 7.2. **Parish Council:** The matter was discussed at a Parish Council meeting and the Councillors agreed with what is proposed [in relation to the revised access arrangements it was resolved to approve at the 13 March 2023 meeting of the former Council's planning committee].
- 7.3. **Historic England:** No comment.
- 7.4. **Lead Local Flood Authority (LLFA):** The site has incorporated the use of SuDS. We confirm the proposal meets the minimum required operational standards and confirm that we have no objections on the hydraulic design of the system. We recommend that a pre-commencement condition is applied to any permission granted, requiring the details of maintenance to be submitted and approved. The applicant should be made aware of the risk if the requirements of the LLFA in relation to long term maintenance cannot be met at the discharge of condition stage.
- 7.5. **NYC Environmental Health:** There are no known contaminated land implications. Conditions recommended to cover hours of operation, control of dust, contaminant free importation of any topsoil, and to require electric vehicle charging points to each dwelling.
- 7.6. **NYC Highways:** [Former NYCC as Local Highway Authority] Following an onsite meeting and ongoing discussions, the County Council's development management highway engineer has confirmed that there are no objections to the proposed deletion of the junction widening works, subject to revised conditions to require a simple priority junction within the site and the completion of an s278 agreement to require improvements to the existing junction.
- 7.7. **NYC Public Rights of Way:** There is a Public Right of Way (PROW) adjoining the application site boundary. Advice given in relation to the need to keep the PROW free of obstruction and for a Temporary Closure Order if required.
- 7.8. **NYC Sports Development:** In accordance with Local Plan Policy INF3, the proposal for 11 dwellings calls for an offsite contribution of £39,006 towards projects identified in consultation with ward members and the Parish Council.
- 7.9. **NYC Housing:** The applicant has submitted a viability appraisal which shows no affordable homes are viable on this part of the allocated site. Strategic Housing accept these findings. However, we would like to see a mechanism included in any permission that will allow us to revisit the issue of viability at a later date. We can then re-evaluate the finances on the scheme, which may allow for affordable housing to be delivered on-site.
- 7.10. **United Utilities:** Outfalls of the cellular soakaway and treated foul water should be shown. The LLFA should be consulted, and maintenance and management of drainage should be required. Recommend conditions to require separate foul and surface water drainage systems in accordance with national standards.

### **Local Representations**

- 7.11. During consideration of the application, 14 local representations have been received in objection to the proposal. A summary of the comments is provided below. Please see the website for full comments.

### 7.12. Objections:

- Harm to highway safety, inadequate parking provision and congestion.
- Harm to nearby heritage assets.
- Harm to living conditions of neighbours.
- Harm to ecology.
- Lack of drainage details.
- Reduction in affordable housing units.

## 8.0 **Environment Impact Assessment (EIA)**

8.1. The development proposed does not fall within Schedule 1 of the Environmental Impact Assessment Regulations 2017 (as amended), but it falls within Schedule 2 Category 10(b) Urban Development Projects. However, it does not exceed applicable thresholds (ii) or (iii) because the proposal is for less than 150 dwellings and the site is less than 5 hectares, respectively. Therefore, no screening or Environmental Statement is required.

## 9.0 **Main Issues**

9.1 The main issues are:

- Principle of development
- Highways considerations
- Landscape and character and appearance
- Heritage considerations
- Living conditions of neighbours
- Planning obligations and viability
- S106 Agreement
- Other Matters

## 10.0 **ASSESSMENT**

### Principle of development

- 10.1. The proposal is for housing on a site allocated for housing (Local Plan Site Ref: BU012), under Local Plan Policies SP4 D) Spatial Strategy and Housing Growth and SP11 Strategy for Tier 4A and 4B Villages with Basic Services and Bisected Villages with Basic Services. The proposal is therefore acceptable in principle.
- 10.2. By way of background, the former Craven District Council (the former Council) resolved to grant planning permission on 25 October 2021, subject to conditions and an s106 legal agreement to address off-site highway mitigation works (junction improvements), affordable housing (2 units), and off-site public open space contributions (£39,005). However, due to land ownership uncertainties in relation to the junction improvements the legal agreement could not be completed, and the development therefore stalled.
- 10.3. Following negotiations to remove this blockage to delivery revised plans were submitted, deleting the junction improvements in lieu of amended access arrangements. The former Council again resolved to grant planning permission on 13 March 2023, subject to conditions and an s106 legal agreement (2 affordable units and £39,005 public open space contributions). The s106 agreement was drafted, but due to viability concerns was not signed.

### Highways considerations

- 10.4. Local Plan policies ENV3, ENV7, INF4, and INF7, together and amongst other things, require new development provides safe and convenient access for all and adequate parking provision. Framework Paragraph 115 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 10.5. Following discussions with the local highway authority (LHA) and the Parish Council, revised access arrangements were submitted deleting the offsite highway improvements works in lieu of a simple priority access from the unadopted lane. Officers acknowledge the concerns of objectors in relation to two-way passing of traffic on the unadopted lane. Nevertheless, widening of the junction would not have led to the dualling of the unadopted road which would remain single-track beyond the site entrance. Recommended conditions include that the existing School access from the unadopted lane should be gated. With this condition, vehicular movements on the vast majority of the unadopted lane would not be increased to any unacceptable degree. In determining whether the proposal is acceptable having regard to vehicular and pedestrian safety and the potential for queuing on the A687, there are a number of factors officers and the local Highway Authority have considered.
- 10.6. Firstly, the existing footway does not extend any further west along public right of way No 05.9/8/1 and there is therefore little to be gained by widening the junction in this regard, nor is it necessary to make the development acceptable in terms of accommodating pedestrian flows. Furthermore, widening the junction would increase the distance for pedestrians crossing to access the footway beyond at the front of the school.
- 10.7. Secondly, due to the curve of the A687 forward visibility in both directions is good and widening of the junction is not necessary to further improve it.
- 10.8. Thirdly, the junction is located within an existing 20mph restriction and so traffic speeds are low, and traffic flows are not significant.
- 10.9. Fourthly, some queuing distance is available for traffic entering the unadopted lane from the east and the A687 carriageway is wide, thus allowing for right turning traffic entering to wait off the live running eastbound lane.
- 10.10. Finally, the use of planning conditions could require a simple priority junction road lining scheme within the application site, so as to ensure that traffic exiting the development would give way to vehicles entering the site, thus reducing the potential for queuing.
- 10.11. Officers have met with the LHA's development management highways officers and have examined the existing junction, the site history, and the revised proposal, all in detail. The LHA confirms that having regard to the above considerations and circumstances there are no highway safety objections subject to the recommended planning conditions. In addition to a priority junction road lining scheme within the site, the LHA recommend the use of a Grampian condition to require a scheme for improvements to the existing junction (under an s278 agreement). Because these improvement works would be within the adopted highway, there is no foreseeable reason this would not be achievable. The LHA have advised that such the scheme should include resurfacing and relining of the junction, which is pitted and worn, and ensure adequate drainage. A condition is recommended to address maintenance and management of the proposed unadopted internal access road.
- 10.12. Taking all the above factors into account and having regard to the relatively small scale of the scheme and the former F1(a) lawful Education use, even during AM and PM peak flows from the development it is not considered that the proposal would result in queueing that would lead to severe residual cumulative impacts on the highway network. Having regard to the existing junction width, geometry, and forward visibility, the proposal would not result in unacceptable highway safety impacts. Parking provision would be satisfactory, and the

LHA have no objection in this regard. Officers therefore consider that the proposed junction widening works initially proposed are not necessary to make the development acceptable in planning terms, and that the proposal to improve the existing junction would not lead to conflict with the above policies or the Framework. The former Council accepted this position and resolved to grant planning permission for the amended access arrangements in 2023.

#### Landscape and character and appearance

- 10.13. Local Plan Policy ENV1 Countryside and Landscape expects new development proposals to respect, safeguard, and wherever possible, restore or enhance the landscape character of the area. Proposals should also have regard to the relevant Landscape Character Appraisal/Assessment, and specifically to the different landscape character types that are present in the plan area. According to the Craven Landscape Appraisal (the CLA), the main built-up area of Burton-in-Lonsdale is excluded. The site is located to the west of it, within the Rolling Drumlin Field Pasture Landscape Character type identified in the CLA.
- 10.14. The site is well visually contained with strong existing boundaries and landscaping defining the curtilage of the school. As such, the proposal would not be harmful in the wider landscape. The proposal is for two storey dwellings that would be appropriate to their context, reflecting the broad principles of Local Plan Policy ENV3 Good Design and the Design SPD. The precise details of all external materials and finishes are matters capable of being address by a suitably worded planning condition, to include roofing material and a sample panel of stonework. Conditions would also be capable of addressing tree protection, and to require a landscaping scheme.

#### Heritage considerations

- 10.15. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires when considering whether to grant planning permission for development which affects the setting of a listed building, that special regard be had to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses. Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas in the exercise of planning functions.
- 10.16. The site is located within the Burton-in-Lonsdale Conservation Area (the Conservation Area) and within the setting of the Grade II listed Richard Thorntons School (the school), to the northwest of the Castle Hill motte and bailey castle scheduled monument (the Castle). All of these heritage assets derive their significance, in part, from their countryside setting within which the development would be located.
- 10.17. In the local area opposite the Castle are the Grade II listed Thornton Cottage and Tranquil Vale, both two storey cottages, and the Grade II listed Barn to Castle Hill Farm (formerly listed as Barn and Stable to Hill House). Whilst there are also other listed buildings to the southeast, including the Grade II listed Hill House and the Grade II\* listed Church of All Saints, these listed buildings are some distance away from the site and/or on the opposite side of the site and castle. As a result, there is limited intervisibility between them. Therefore, it is not considered there would be any undue harm to their setting.
- 10.18. Having regard to the listing description, the significance of the school is derived from its architectural interest and historic importance, having been erected and endowed by Richard Thornton Esq. The list description for the Castle states that it is a fine example, originating from the 12<sup>th</sup> or 13<sup>th</sup> century, going out of use in the period 1322-1369. Therefore, its significance also derives from its historic importance. From the Conservation Appraisal, its significance derives from the village being a planned medieval settlement with a considerable number of surviving historic buildings and the Castle.

- 10.19. The site is visually contained and, as it is situated behind the school, the site is well screened in views from the A687. Modern later additions to the listed school have already been demolished under application references 2019/20873/FUL and 2019/20874/LBC, resulting in improvements to its immediate setting. The omission of road widening works as set out above would have the benefit of reducing the urbanising effect of the highway aspects of the proposal on of this part of the Conservation Area on approach to the village and prevent harm to mature trees at the junction which make a positive contribution.
- 10.20. Nine of the proposed dwellings would be sited in a crescent around a central green and two would be sited on the site of the former modern extensions, following the design principles of the site allocation. The proposal would not result in the loss of or substantial harm to any of designated heritage asset. However, the dwellings would be clearly visible from the adjacent unadopted lane and public right of way, and the addition of 11 dwellings in the curtilage of the school would inevitably have an urbanising effect. Furthermore, removal of a section of historic boundary walling to create the access would be required, albeit this would be limited in accordance with the site allocation design principles for the site. Together, this would result in harm to the significance of the school by way of harm to its setting and to the character and appearance of the Conservation Area. The proposal would also be visible in views from the Castle and its wider countryside setting, resulting in harm to its significance by way of harm to its setting. Both individually and cumulatively, this harm is considered to be at the lower end of the less than substantial scale.
- 10.21. Nevertheless, as Framework paragraph 205 makes clear when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance. A result, there would be degree of conflict with Local Plan Policy ENV2 and the Framework which, together and among other things, seeks to conserve the setting of heritage assets. Under paragraph b) of Policy ENV2 harm to designated heritage assets will only be permitted where this is outweighed by the public benefits of the proposal. This is returned to below under the planning balance.

#### Living conditions of neighbours

- 10.22. Local Plan Policy ENV3 e) and ENV3 f) require that development should protect the amenity of existing residents and create an acceptable level of amenity for future occupants. Framework paragraph 135 f) states that decisions should ensure development creates places with a high standard of amenity for existing and future users. All dwelling would have an acceptable level of private outdoor amenity space with front and rear gardens and enjoy satisfactory levels of natural light and daylight and have a good outlook. Whilst the concerns of neighbours in relation to the potential for overlooking, loss of privacy, and noise and disturbance during construction are recognised, it is not considered that the proposal would result in any unacceptable loss of privacy. The dwellings would not have an overbearing impact in view of the good degree of separation between them and the site boundary with neighbouring dwellings to the west.
- 10.23. Conditions to require prior approval of boundary treatment and landscaping would together satisfactorily serve to mitigate to an acceptable level the potential for loss of privacy. Disturbance is inevitable during construction of a housing scheme. However, the recommended condition to require a Construction Management Plan to include, among other things, hours of construction would be capable of ensuring that the proposal would not create unacceptable impacts during construction. Overall, the proposal would not unduly harm the living conditions of existing or future occupants, or therefore conflict with Local Plan Policy ENV3 or the Framework in this regard.



Planning obligations and viability

- 10.24. The former Council resolved to grant planning permission for the proposal on 13 March 2023, subject to conditions and an s106 legal agreement to address affordable housing (2 units) and off-site public open space (a contribution of £39,005) policy requirements. The s106 agreement was drafted but it was not signed due to viability concerns. Subsequently, the applicant submitted a viability report, asserting that the scheme would not be viable with these obligations.
- 10.25. Local Plan Policy H2 d) states that development proposals which seek to provide a lower level of affordable housing contributions, either on or off site, will not be acceptable *unless* it can be clearly demonstrated that exceptional circumstances exist which justify it. The Affordable Housing SPD reaffirms this approach.
- 10.26. Framework Paragraph 58 states [emphasis added]:
- “Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.”*
- 10.27. The PPG further advises (Paragraph: 007 Reference ID: 10-007-20190509):
- “Such circumstances could include, for example....where a recession or similar significant economic changes have occurred since the plan was brought into force.”*
- 10.28. Paragraph: 008 Reference ID: 10-008-20190509 includes:
- “Where a viability assessment is submitted to accompany a planning application this should be based upon and refer back to the viability assessment that informed the plan; and the applicant should provide evidence of what has changed since then....”*
- 10.29. The PPG further advises that complexity and variance is inherent in viability assessment. To improve clarity and accountability it is an expectation that any viability assessment is prepared with professional integrity by a suitably qualified practitioner and presented in accordance with national planning guidance.
- 10.30. The applicant’s evidence was prepared by an MRICS Senior Surveyor. In accordance with Policy H2 d) and the Affordable Housing SPD, the submitted report has been appraised on behalf of the Council by a Senior Associate Director of BNP Paribas Real Estate (BNPRE), who is also MRICS, and specialises in UK development viability and affordable housing.
- 10.31. The application was submitted and initially considered during the outbreak of the Novel Coronavirus (Covid-19) declared by the World Health Organisation as a “Global Pandemic” on 1 March 2020, and the emergence of new strains of the virus. More recently, war in Ukraine and the Middle East and global commodities inflation, interest rate rises, and supply chain issues may all have impacted on viability. The applicant and their Viability Assessment state that since submission, construction and labour costs have risen at a rate which ‘far exceeds any rise in Gross Development Value’ (GDV), and a costs plan is provided in support of this case (Appendix 2 of the Viability Assessment).

- 10.32. The Framework confirms the basic principle that in order to ensure viability and deliverability, it is necessary to ensure a competitive return to a willing developer and a willing landowner. The Council's independent BNPRE appraisal incorporates a costs review and confirms (within 0.1%) the figures within the applicant's costs plan. The appraisal finds that the proposed scheme would deliver a profit of circa 5.9% as a percentage of GDV. The normally accepted competitive return is at least a level 17.5%, which the proposal would deliver significantly below. Therefore, BNPRE conclude that the proposal would *not* be economically viable with any affordable housing or open space contributions. In the absence of evidence to the contrary, officers would advise that members should attach significant weight to these findings. As such, officers are of the view that in so doing, the exceptional circumstances required under Local Plan Policy H2 d) and the Affordable Housing SPD to justify a lower level of contributions have been demonstrated. The Council's Strategic Housing consultee agrees with these findings.
- 10.33. However, the proposal is for development of only part of the allocated housing site. Application reference 2019/20873/FUL (in the history above) for a residential care and education facility (Use Class C2) was approved on 14 February 2020 on the remainder of the allocated housing site. Details required under the sole pre-commencement condition were subsequently approved on 10 July 2020 (under 2020/21669/CND above - tree protection measures) and the modern part of the former school was demolished (under 2019/20874/LBC above). Therefore, the permission remains extant. If implemented, it would be likely to deliver a profit for the land promoter. Furthermore, the site is understood to be in the ownership of the applicant.
- 10.34. However, it would be wrong to conflate a proposal for development falling within Use Class C2 with the current proposal for housing (Use Class C3), in terms of affordable housing or public open space obligations. Moreover, planning permission 2019/20873/FUL for the residential care and education facility, on which any such obligations required ought to have fallen if applicable, was not subject to any s106 legal agreement.
- 10.35. Nevertheless, paragraph 2.5.23 of the Affordable Housing SPD states that the Council may consider, as a means of maximising affordable housing provision, whether overage mechanisms and/or phase-by-phase viability reviews would be warranted, as recommended by PPG Paragraph: 009 Reference ID: 10-009-20190509. The potential remains for the applicant to come forward with alternative proposals for housing on the balance of the allocated housing site. In that event, at a future point in time, the outcome of the viability appraisal might be different, and a larger housing development might become viable with some affordable housing and/or public open space contributions. The Council's Strategic Housing Consultee therefore asks for a review mechanism to be considered.
- 10.36. In view of the above, it would not be unreasonable to consider a requirement for a review mechanism. The applicant has agreed to the inclusion of a review mechanism and it is therefore recommended that a review mechanism be required by way of an s106 legal agreement to address any future phases of housing delivery.
- 10.37. Whilst the concerns of objectors in relation to affordable housing are recognised, for the above reasons it is considered that the proposal would not be economically viable with affordable housing and/or public open space obligations. The evidence of viability is a material consideration to which officers would advise members should give significant weight, in the absence of evidence to the contrary. Because exceptional circumstances have been demonstrated, and subject to a review mechanism, the proposal would not conflict with the requirements of Local Plan Policy HC2 or the Affordable Housing SPD.
- 10.38. Whilst there would be conflict with Local Plan Policy INF3 and the Green Infrastructure and Biodiversity SPD, the proposal would not be economically viable with off-site open space contributions. Attaching weight to the submitted evidence and viability appraisal, in the

opinion of officers such contributions should not therefore be required. The policy conflict with INF3 is returned to below under the planning balance.

S106 Legal Agreement

10.39. The following Heads of Terms have been agreed with the applicant for this application.

<b>Table 1</b>		
<b>Category/Type</b>	<b>Contribution</b>	<b>Amount &amp; Trigger</b>
Viability review mechanism in the event that housing is brought forward and delivered on the balance of the allocated housing site.	Affordable housing and/or off-site public open space contributions.	Subject to viability review.
Monitoring	S106 Monitoring	£500 index linked, prior to commencement of development, subject to viability review.

10.40. Other Matters

*Biodiversity*

10.41. The application is supported by a Preliminary Ecological Appraisal (PEA). Following ecological survey work and an impact assessment, the PEA found no conclusive evidence of protected species on or around the site that would be negatively affected by the proposal. Conditions are recommended in accordance with the mitigation measures set out in the PEA, including the provision of bird and bat roost features and tree protection measures. Although submission of the proposal predates implementation of the statutory framework requiring a 10% Biodiversity Net Gain (BNG) and is therefore exempt from mandatory BNG, subject to the recommended landscaping conditions the proposal would deliver a net gain in biodiversity and therefore meet the requirements of Local Plan Policy ENV4 and the Framework in this regard.

*Drainage*

10.42. Local Plan Policy ENV6 states that growth in the Craven area will help to avoid and alleviate flood risk by development taking place in areas of low flood risk, wherever possible with the lowest flood risk, taking account of the development's vulnerability to flooding and by applying the necessary sequential and exception tests. Amongst other things, the policy also requires that development incorporates sustainable drainage systems (SUDS) or other appropriate means of water management, and adequate provision for foul and surface water disposal.

10.43. The proposal is located in Flood Zone 1 with a low probability of flooding and so would not be at undue flood risk. The development would be served by private SUDS drainage systems and the Lead Local Flood Authority has no objection to the hydraulic design. The proposal would not unduly increase flood risk elsewhere. However, should planning permission be forthcoming, planning conditions would be required to require precise details, including management and maintenance measures.

*Sustainable design and construction*

- 10.44. In accordance with Local Plan Policy ENV3 t), the proposal would be capable of incorporating solar photovoltaic panels as a viable option, and the applicant is agreeable to a planning condition in this regard to agree their precise details. A condition previously resolved to be imposed requiring carbon emissions be below that set under Building Regulations Approved Document L would not be reasonable, in the absence of a specific policy basis.

*EV Charging and broadband infrastructure*

- 10.45. The Councils Environmental Health consultee recommends the use of planning conditions to require EV charging points for each dwelling. However, conditions of earlier resolutions to grant permission for the scheme requiring 2 EV charging points and super-fast broadband to all dwellings are no longer necessary. Building Regulations Approved Document S requires all dwellings with an allocated parking space to be equipped with EV charging points (not 2 as was previously resolved). Approved document R requires gigabit-ready/connected physical Infrastructure. Respectively, the regulations address these requirements.

**11.0 PLANNING BALANCE AND CONCLUSION**

- 11.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The proposal is for housing on an allocated site, in accordance with the spatial strategy for the area, as set out under Local Plan Policies SP4 and SP11. The proposal is therefore acceptable in principle.
- 11.2. However, the proposal would result in low-level less than substantial harm to the character and appearance of the Conservation Area, and the school and the Castle by way of harm to their setting. The proposal would therefore conflict with Local Plan Policy ENV2. In accordance with Framework paragraph 205, great weight should be given to the conservation of these assets irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to their significance. The Castle is a scheduled monument and therefore an asset of the highest national significance. In accordance with Framework Paragraph 205, greater weight should be given to its conservation.
- 11.3. Framework paragraph 208 requires that where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use. The proposal would deliver social and economic benefits by providing 11 new homes in an accessible location on the edge of Burton-in-Lonsdale. The development would make a modest contribution to meeting housing requirements and choice in the Craven area on an allocated site, whilst supporting local services and businesses. Furthermore, the allocation within the Local Plan weighs in favour of the proposal as it forms an integral part of the Council's housing supply for the Craven area. Further still, there would be environmental benefits through the redevelopment of a derelict brownfield site.
- 11.4. In terms of the heritage balance required by Framework paragraph 208, officers consider that considerable weight should be attached to these social, environmental, and economic benefits, such that the public benefits of the scheme should be considered to outweigh the less than substantial harm to the Conservation Area and the significance of designated heritage assets by way of harm to their setting.
- 11.5. In terms of the overall planning balance, the Council's independent appraisal of the submitted viability evidence concludes that the proposal would not be viable with affordable housing obligations. In the absence of evidence to the contrary, officers advise that

significant weight should be attached to these independent conclusions, with which the Council's housing consultee concurs.

- 11.6. If members were to agree and find that the required exceptional circumstances have been demonstrated, approval of the application without affordable housing contributions would not conflict with Local Plan Policy H2 d) or the Affordable Housing SPD. However, officers would advise that any approval should be subject to an s106 agreement to review viability, should housing proposals be brought forward on a phased basis on the remainder of the housing allocation at a future date.
- 11.7. There would be conflict with Local Plan Policy INF3 and the GIB SPD due to a lack of the policy required offsite public open space contributions towards improvements in the locality, there being no caveat for exceptional circumstances to be demonstrated within them. However, an area of onsite public open space would be provided and the site benefits from direct access to a public right of way. Together, in officers' opinion these factors reduce the weight that might be given to this policy conflict. Furthermore, the evidence of viability suggests that the proposal would not be economically viable with these contributions. Officers advise that in the absence of evidence to the contrary, significant weight should be given to the evidence of viability and the conclusions of the Council's independent appraisal in this regard, and that this obligation should not be sought.
- 11.8. The proposal would not result in unacceptable harm to the character and appearance of the area or landscape, highway or pedestrian safety, the living conditions of existing or future occupants, ecology or flood risk and drainage considerations, and it would deliver a net gain in biodiversity subject to the recommended conditions. Subject to conditions, the proposal would also make provision for sustainable construction. These are all ordinary planning requirements of development plan policy and the Framework and are therefore neutral factors in the planning balance.
- 11.9. As set out above, in its favour the proposal would deliver social, environmental, and economic benefits, in the delivery of housing on an allocated brownfield site which forms part of the Craven area's housing land supply. In the overall planning balance, these benefits are considered to clearly outweigh the weight attached to the identified conflict with Local Plan Policies ENV2 and INF3. The proposal complies with the development plan overall and the material considerations indicate that planning permission should be granted. Approval is therefore recommended subject to the conditions listed below and a review mechanism as set out above.

## **12.0 RECOMMENDATION**

- 12.1. That planning permission be GRANTED subject to the conditions listed below and completion of a S106 agreement with terms as detailed in Table 1.

### **Recommended conditions:**

#### **Time Condition**

1. The development to which this permission relates must be begun not later than the expiration of three years from the date of this permission.

Reason: In accordance with Section 91(1) of the Town and Country Planning Act 1990 as amended by the Planning Compulsory Purchase Act 2004.

#### **Approved Plan Condition**

2. This permission relates to the following plans and documents:

Location Plan, Drawing No 022004 05 Rev J  
 Site layout, Drawing No 02 Rev K  
 Elevations, Drawing No 03 Rev A  
 First Floor Plan, Drawing No 04 Rev A  
 Roof Plan  
 Design and Access Statement  
 Heritage Statement  
 Tree Report (except as it may relate to junction widening works)  
 Public Right of Way Statement

Except as provided for by other conditions to this permission, the development shall be carried out in complete accordance with the approved drawings.

Reason: For the avoidance of doubt and to ensure a satisfactory standard of development in accordance with the policies contained within the Craven District Local Plan 2012 - 2032 and the National Planning Policy Framework.

### **Pre-Commencement**

3. No development must commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Construction of the development hereby approved must be undertaken in accordance with the approved plan. The Plan must include, but not be limited, to arrangements for the following in respect of each phase of the works:
  - 1) details of any temporary construction access to the site including measures for removal/any reinstatement following completion of construction works;
  - 2) wheel washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
  - 3) the parking of contractors' site operatives and visitor's vehicles;
  - 4) areas for storage of plant and materials used in constructing the development clear of the highway;
  - 5) details of site working hours; and
  - 6) details of the measures to be taken for the protection of trees; and contact details for the responsible person (site manager/office) who can be contacted in the event of any issue.

Reason: In the interest of public safety and amenity.

4. Except for investigative works, no excavation or other groundworks or the depositing of material on site in connection with the construction of any road or any structure or apparatus which will lie beneath the road must take place on any phase of the road construction works, until full detailed engineering drawings of all aspects of roads and sewers for that phase, including any structures which affect or form part of the highway network, and a programme for delivery of such works have been submitted to and approved in writing by the Local Planning Authority. The development must only be carried out in compliance with the approved engineering drawings.

Reason: To secure an appropriate highway constructed to an adoptable standard in the interests of highway safety and the amenity and convenience of all highway users.

5. No development shall commence until a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The drainage scheme must include:

- i) An investigation of the hierarchy of drainage options in the National Planning Practice Guidance (or any subsequent amendment thereof). This investigation shall include evidence of an assessment of ground conditions and the potential for infiltration of surface water;
- ii) A restricted rate of discharge of surface water agreed with the local planning authority (if it is agreed that infiltration is discounted by the investigations); and
- iii) A timetable for its implementation.

The approved scheme shall also be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards. The development hereby permitted shall be carried out only in accordance with the approved drainage scheme.

Reason: To promote sustainable development, secure proper drainage and to manage the risk of flooding and pollution.

6. No development shall commence until a sustainable drainage management and maintenance plan for the lifetime of the development shall be submitted to the local planning authority and agreed in writing. The sustainable drainage management and maintenance plan shall include as a minimum:
- a) Arrangements for adoption by an appropriate public body or statutory undertaker, or management and maintenance by a resident's management company; and
  - b) Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system to secure the operation of the surface water drainage scheme throughout its lifetime.

The development shall subsequently be completed, maintained, and managed in accordance with the approved plan.

Reason: To ensure that management arrangements are in place for the sustainable drainage system in order to manage the risk of flooding and pollution during the lifetime of the development.

#### **During Building Works Conditions**

7. No development above ground level shall take place until details of existing and finished site levels, including the finished floor and ridge levels of the buildings to be erected, and finished external site surface levels have been submitted to and approved in writing by the Local Planning Authority.

Reason: The proposed levels of the development are required prior to commencement of above ground works for the avoidance of doubt and in order to ensure that any works in connection with the development hereby permitted respect the height of adjacent properties.

8. No development above ground level shall take place until full details of the materials to be used on the external surfaces of the following elements of the development have been submitted to and approved in writing by the Local Planning Authority:
- a) A sample panel (measuring no less than 1 metre x 1 metre) of the stonework to be used on the external surfaces of the buildings. The sample panel shall demonstrate the type, texture, size, colour, bond, and method of pointing for the stonework.

- b) The type, texture, size, and colour of the slates to be used on the external surfaces of the building's roof.
- c) The type, texture, finish, colour treatment and extent of the external rendering of the approved houses.
- d) Details of all windows casements and external doors including materials and colouring.

The development shall thereafter be implemented in accordance with the duly approved materials.

Reason: To ensure use of appropriate materials which are sympathetic to the character of surrounding buildings and the street scene in the interests of visual amenity in accordance with the requirements of policy ENV3 of the Craven District Local Plan 2012 to 2032 and the National Planning Policy Framework.

### **Pre-Occupation Conditions**

9. Prior to occupation of any dwelling hereby approved details of all materials to be used for hard surfaced areas within the site including roads, driveways and car parking area shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details so approved.

Reason: To ensure use of appropriate materials which are sympathetic to the character of surrounding buildings and the street scene in the interests of visual amenity in accordance with the requirements of policy ENV3 of the Craven District Local Plan 2012 to 2032 and the National Planning Policy Framework.

10. Prior to occupation of any dwelling hereby approved, a scheme for the improvement of the existing junction with the A687 shall have first been submitted to and approved in writing by the Local Planning Authority. The scheme shall include resurfacing and re-lining works, and measures to ensure that the junction is adequately drained. Thereafter, the scheme shall have been implemented prior to first occupation.

Reason: In the interests of highway safety, in accordance with Policy INF7 and the National Planning Policy Framework.

11. Prior to occupation of any dwelling hereby approved, a scheme for the provision of a simple priority junction within the housing site where it meets the unadopted lane shall first have been submitted to and approved in writing by the local planning authority. Thereafter, the scheme shall have been completed prior to first occupation.

Reason: In the interests of highway safety, in accordance with Policy INF7 and the National Planning Policy Framework.

12. Prior to occupation of any dwelling hereby approved, the existing school access shall be gated in accordance with details which shall first have been agreed in writing by the Local Planning Authority. Thereafter, the gate shall be kept locked at all times, other than when required to provide emergency access to the site.

Reason: In order to ensure that the access is not used other than for emergencies in the interests of highway safety.

13. Prior to occupation of any dwelling hereby approved, the access, parking, manoeuvring, and turning areas for all users at Land at Richard Thornton's School, Burton In Lonsdale, Carnforth, Lancaster, LA6 3JZ shall have been constructed in accordance with details which shall have been approved in writing by the Local Planning Authority. Once created these



areas must be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason: To provide for appropriate on-site vehicle facilities in the interests of highway safety and the general amenity of the development.

14. Prior to occupation of any dwelling hereby approved, whichever is the sooner; details of treatment of all parts on the site not covered by buildings shall be submitted to and approved in writing by the Local Planning Authority. The site shall be landscaped strictly in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner. Details shall include:
- 1) a scaled plan showing all existing vegetation and landscape features to be retained and trees and plants to be planted;
  - 2) location, type, and materials to be used for hard landscaping including specifications, where applicable for:
    - a) permeable paving
    - b) tree pit design
    - c) underground modular systems
    - d) Sustainable urban drainage integration
    - e) use within tree Root Protection Areas (RPAs)
  - 3) a schedule detailing sizes and numbers/densities of all proposed trees/plants;
  - 4) specifications for operations associated with plant establishment and maintenance that are compliant with best practise; and
  - 5) types and dimensions of all boundary treatments
  - 6) the provision for bird and bat nesting boxes that accord with the advice set out in "Biodiversity for Low and Zero Carbon Buildings: A Technical Guide for New Build" (Published by RIBA, March 2010) or similar advice from the RSPB and the Bat Conservation Trust.

There shall be no excavation or raising or lowering of levels within the prescribed root protection area of retained trees unless agreed in writing by the Local Planning Authority.

Unless required by a separate landscape management condition, all soft landscaping shall have a written five-year maintenance programme following planting. Any new tree(s) that die(s), are/is removed, or become(s) severely damaged or diseased shall be replaced and any new planting (other than trees) which dies, is removed, becomes severely damaged or diseased within five years of planting shall be replaced. Unless further specific permission has been given by the Local Planning Authority, replacement planting shall be in accordance with the approved details.

Reason: Required to safeguard and enhance the character and amenity of the area, to provide ecological, environmental and biodiversity benefits and to enhance its setting within the immediate locality in accordance with Section 197 of the Town and Country Planning Act 1990 (as amended) and policies ENV3, ENV4 and ENV5 of the Craven District Local Plan 2012 to 2032.

15. Prior to completion or first occupation of the development hereby approved, whichever is the sooner; details of any remedial works to trees that are to be retained on site, including tree protection measures, shall be submitted to, and approved in writing by the Local

Planning Authority. The development shall be carried out in accordance with the approved details of any remedial works.

Reason: Required to safeguard and enhance the character and amenity of the area, to provide ecological, environmental and biodiversity benefits and to enhance its setting within the immediate locality in accordance with Section 197 of the Town and Country Planning Act 1990 (as amended) and policies ENV3, ENV4 and ENV5 of the Craven District Local Plan 2012 to 2032.

16. Prior to occupation of any dwelling hereby approved, a site plan showing the proposed locations of Solar PV Panels and samples of the materials to be used in the construction of the solar panel array shall be submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved samples and retained as such thereafter.

Reason: To promote sustainability through renewable energy in accordance with policy ENV9 of the Craven Local Plan 2012 to 2032.

17. No part of the development to which this permission relates must be brought into use until the carriageway and any footway or footpath from which it gains access is constructed to binder course macadam level or block paved (as approved) and kerbed and connected to the existing highway network with any street lighting, details of which shall first have been agreed in writing by the Local Planning Authority, installed and in operation.

The completion of all road works, including any phasing, must be in accordance with a programme submitted to and approved in writing with the Local Planning Authority before any part of the development is brought into use.

Reason: To ensure safe and appropriate access and egress to the premises, in the interests of highway safety and the convenience of all prospective highway users.

18. None of the dwellings hereby permitted shall be occupied until works for the treatment and disposal of sewage have been provided to serve the development hereby permitted, in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority. The details shall include full management and maintenance arrangements which shall thereafter be adhered to for the lifetime of the development.

In order to prevent pollution and protect the water environment in accordance with Local Plan Policy ENV8.

19. None of the dwellings hereby permitted shall be occupied until details for the management and maintenance of the internal access road have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the management and maintenance arrangements shall be adhered to for the lifetime of the development.

In the interests of highway safety, in accordance with Local Plan Policy INF7.

### **Ongoing Conditions**

20. In the event of the solar PV equipment hereby approved or as may be approved under the above conditions ceasing to produce electricity, they shall be permanently removed from the relevant building within 3 months of the date they become redundant, and the roof covering shall be restored to match the remainder of the roof.

Reason: In the interest of the visual amenity in accordance with Policy ENV3 and ENV9 of the Craven Local Plan and the National Planning Policy Framework.

21. Foul and surface water shall be drained on separate systems.

Reason: To ensures satisfactory drainage in the interests of protecting the water environment and to manage the risk of flooding and pollution.

**Target Determination Date:** 08.11.2024

**Case Officer:** Daniel Child, [daniel.child@northyorks.gov.uk](mailto:daniel.child@northyorks.gov.uk)