

Planning Appeal Statement of Case

**The Representations
of
Lancaster City Council**

Town and Country Planning Act 1990

In respect of:

Appeal by Gladman Developments Ltd

**Site at Land North East Of Bailrigg Lane, Lancaster,
Lancashire**

**PINS Appeal Refs:
APP/A2335/W/24/3345416 & APP/A2335/W/24/3345417**

**Local Planning Authority Planning Refs:
19/01135/OUT & 19/01137/FUL**

**Local Planning Authority Appeal Refs:
24/00019/REF & 24/00020/REF**

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1. INTRODUCTION

1.1. The Council's case is largely set out in the officer's committee report. The report details the application site and setting; the proposed development; a summary of the Environmental Statement's contents; the site history; the consultation responses; and the Council's assessment of the proposals. A copy of the committee report was sent with the questionnaire.

1.2. A detailed description of the site and its surroundings is provided in the Statement of Common Ground.

Reasons for refusal

1.3. This appeal relates to two associated planning applications as follows:

19/01135/OUT	Outline planning application for the demolition of Low Hill House and the erection of up to 644 dwellings (Use Class C3), a local centre (Use Class E) of no more than 280sq m internal floorspace, a community hall (Use Class F2) of no more than 150sq m internal floorspace, public open spaces including equipped children's play areas, land re-grading, recreational routes, landscaping and sustainable urban drainage systems and creation of vehicular access from Bailrigg Lane and Hala Hill to the North
19/01137/FUL	Construction of an access link road between Bailrigg Lane and the Health Innovation Campus Road

1.4. The outline planning application was refused for the following 4 reasons:

- 1. The site is located within the Broad Area of Growth within the Local Plan in relation to the Garden Village. The proposal would undermine the integrated and co-ordinated approach in providing the infrastructure requirement to support the level of development proposed. Given it is important that necessary infrastructure which is both local and strategic in nature is delivered in the right place, at the right time, there is no certainty that the*

transport infrastructure would come forward to support the level of housing sought, and currently based on the full quantum of development this would create a safety concern on the Strategic Road Network. The imposition of planning conditions to secure such improvements or establish the level of development that can come forward without infrastructure upgrades are not considered appropriate, and as such the application would fail to comply with the relevant Growth Principles in SG1. The proposal therefore fails to satisfy the criteria which allows for development to be brought forward at this time and thereby would be contrary to the aims and objectives of the National Planning Policy Framework, in particular Section 8 and 9, Policies SP9, SP10, SG1 and SG3 of the Strategic Policies and Land Allocations Development Plan Document and Policies, DM57, DM58, DM60, DM61 and DM63 of the Review of the Development Management Development Plan Document.

- 2. The purpose of policy SG1 is to deliver housing in the Broad Location for Growth, which focuses on high quality development that carefully balances housing and employment requirements, whilst maintaining strong and embedded environmental and high-quality design objectives. This is an outline application, which only seeks full permission for the access and not the layout, scale or appearance of the development. However, it is difficult to categorically conclude that that the number of dwellings proposed and the constraints within the site would allow for a high-quality design and overall sense of place to be created. The unique topographical features of the site are the key drivers in dictating how a site would be laid out, the future orientation of buildings and routes, drive sustainable water management and help establish a planting and an energy and noise mitigation strategy. The application does not talk of the distinctiveness and innovation which does not give confidence that the high bar of design of SG1 would be achieved. Whilst there are factors that weigh in favour of the development, they do not outweigh the failure to meet the Key Growth Principles in SG1 to secure high-quality urban design. As a result, the proposed development would be contrary to Lancaster Strategic Policies and Land Allocations DPD Policy SG1, Lancaster Review of the Development Management DPD Policy 29,*

aims and objectives of the NPPF in particular Section 12.

3. *The southeast area of the application site is within 700 metres of a commercial wind turbine. The proposal would introduce a form of residential development within the area which is identified to being the most likely affected by shadow flicker. The Shadow Flicker Technical Note (SFTN) and Shadow Flicker Impact Assessment (SFIA) accompanying the application identifies that the turbine has the option of being turned off and advocates that layout design, installation of window blinds and planting of additional trees and bushes are the main safeguarding measures to protect the amenity of future occupiers. This is considered to be inadequate to demonstrate that the safeguarding measures would be sufficient to protect future occupiers in the southeast parcel of land taking into account position and casting shadows. Furthermore, the SFTN and SFIA does not take into account the future operation of the turbine and how it might be affected by the intermittent switching off to address any future complaints which may arise. There is insufficient information to demonstrate the turbine will be able to operate during the majority of optimum times given the frequency of periods of inactivity to overcome any potential future complaints. Given the turbine's purpose contributes to a lower carbon environment the effect on the operation would at times be at odds with the principles of the Council's Climate Emergency. As such, the proposal is contrary to Policy SG1 of the Strategic Policies and Land Allocations Development Plan Document and Policy DM29 of the Review of the Development Management Development Plan Document the aims and objectives of the National Planning Policy Framework, in particular Section 15.*
4. *The application site is within Flood zones 1, 2 and 3. The applicant has submitted a Flood Risk Assessment which identifies that the site is subject to other forms of flood risk, namely fluvial, ground water, surface water, from sewer/mains and infrastructure failure. The applicant has failed to demonstrate within the application that there to be sequentially acceptable sites which are not subject to a risk of flooding to enable the Local Planning Authority to reach a view if there are no areas with the lowest risk of flooding*

in which to steer new development towards. As such the proposed development would be contrary to the National Planning Policy Framework, Development Management (DM) DPD Policy DM33 and Strategic Policies and Land Allocations (SPLA) DPD Policy SG1.

1.5. The full planning application was refused for the following reason:

1. *This application is for enabling purposes to form a link between the existing Health Innovation Campus Road (Sir John Fisher Drive) and the proposed residential development to the north which would result in a continuous means of connectivity from the A6 to Hala Hill in the Broad Location for Growth designation supported by the strategic Local Plan Policy SG1. In the absence of a favourable decision for the proposed residential development north of Bailrigg Lane, the proposed link road in isolation, would result in a significant adverse impact on highway safety and no justification and mitigation measures to compensate for the loss of the Bailrigg Lane hedgerow. The development is therefore contrary to A Local Plan for Lancaster District 2011-2031 Part Two: Review of the Development Management DPD DM29: Key Design Principles and DM45: Protection of Trees, Hedgerows and Woodland.*

Structure of this report

1.6. This statement firstly outlines the planning policy framework against which the appeal should be determined and makes a comment on the weight to be afforded to policies in the Local Plan. It also sets out other material planning considerations. It then addresses the appellant's statement of case in relation to the outline application, which is centred around the 4 reasons for refusal, summarised as follows:

- Reason for refusal 1 – Principle of development
- Reason for refusal 2 – Design

- Reason for refusal 3 – Shadow flicker
- Reason for refusal 4 – Flood risk and the sequential test

1.7. The statement will then comment on the appellant's statement of case in relation to the associated full planning application (new access link road) before setting out the planning balance and providing a conclusion in relation to both applications.

Drawings for approval (clarification)

1.8. The appellant's Statement of Case states at paragraph 1.5.2 that the outline application was accompanied by a Development Framework Plan, a Parameters Plan and Finished Floor Levels Plan.

1.9. The initial Statement of Common Ground (prepared by the appellant and to be agreed with the Council) suggests that the drawings for which planning permission is sought include the Location Plan and the two proposed access arrangement plans (Hala Hill and Bailrigg Lane). It then lists the Parameters Plan and Finished Floor Levels Parameters Plan.

1.10. Agreement will be reached within the final Statement of Common Ground as to which drawings should be considered for approval by the Inspector. However, it is worth highlighting the fact that neither the Development Framework Plan (Option 1), the Parameters Plan or the Finished Floor Levels Parameters Plan are labelled or annotated as being "indicative" or "illustrative". Only the internal road layout / bus route is labelled as "indicative" on the two Parameters Plans. National Planning Practice Guidance (Making an application) guides that that unless the applicant has indicated that details are submitted "for illustrative purposes only" (or has otherwise indicated that they are not formally part of the application), the local planning authority must treat them as part of the development in respect of which the application is being made; the local planning authority cannot reserve that matter by condition for subsequent approval.

2. PLANNING POLICY FRAMEWORK AND OTHER MATERIAL CONSIDERATIONS

National Planning Policy Framework (NPPF) 2023

2.1. The National Planning Policy Framework (NPPF), which was first published in 2012, was most recently updated in December 2023. The NPPF provides a national planning policy framework against which all planning applications and decisions must be made. It sets out the government's planning policies for England and how these are expected to be applied.

2.2. Sections 2, 4, 5, 6, 8, 9, 11, 12, 14 and 15 are most relevant to the determination of the appeal.

Development Plan

2.3. Lancaster City Council has an up-to-date Local Plan, adopted in July 2020, which is split into two parts. Part one includes strategic policies and land allocations. Part two provides topic-specific policies. The following policies are most relevant to the determination of the appeal:

A Local Plan for Lancaster District 2011-2031 – Part One: Strategic Policies and Land Allocations DPD Adoption Version July 2020

SP1: Presumption in Favour of Sustainable Development
SP2: Lancaster District Settlement Hierarchy
SP3: Development Strategy for Lancaster District
SP6: The Delivery of New Homes
SP7: Maintaining Lancaster District's Unique Heritage
SP8: Protecting the Natural Environment
SP10: Improving Transport Connectivity
SG1: Lancaster South Broad Location for Growth (including Bailrigg Garden Village)
SG3: Infrastructure Delivery for Growth in South Lancaster
EN2: Areas of Outstanding Natural Beauty
EN3: The Open Countryside
EN4: The North Lancashire Green Belt
EN5: Local Landscape Designations
EN6: Areas of Separation
EN7: Environmentally Important Areas
EN9: Air Quality Management Areas
T2: Cycling and Walking Network
T4: Public Transport Corridor

LPRM1: Local Plan Review Mechanism¹

A Local Plan for Lancaster District 2011-2031 – Part Two: Review of the Development Management DPD Adoption Version July 2020

DM1: New Residential Development and Meeting Housing Needs
DM2: Housing Standards
DM3: The Delivery of Affordable Housing
DM4: Residential Development Outside Main Urban Areas
DM26: Public Realm and Civic Space
DM27: Open Space, Sports and Recreational Facilities
DM28: Employment and Skills Plans
DM29: Key Design Principles
DM30: Sustainable Design
DM 31: Air Quality Management and Pollution
DM32: Contaminated Land
DM33: Development and Flood Risk
DM34: Surface Water Run-off and Sustainable Drainage
DM35: Water Supply and Waste Water
DM36: Protecting Water Resources and Infrastructure
DM37: Development Affecting Listed Buildings
DM39: The Setting of Designated Heritage Assets
DM42: Archaeology
DM43: Green Infrastructure
DM44: The Protection and Enhancement of Biodiversity
DM45: Protection of Trees, Hedgerows and Woodland
DM46: Development and Landscape Impact
DM53: Renewable and Low Carbon Energy Generation
DM57: Health and Well-Being
DM58: Infrastructure Delivery and Funding
DM60: Enhancing Accessibility and Transport Linkages
DM61: Walking and Cycling
DM62: Vehicle Parking Provision,
DM63: Transport Efficiency and Travel Plans
DM64: Lancaster District Highways and Transport Masterplan

2.4. The Joint Lancashire Minerals and Waste Local Plan – Site Allocation and Development Management Policies – Part One, was adopted in September 2013. The main policy which is relevant to the determination of the appeal is Policy M2 (Safeguarding Minerals).

¹ This policy was not sent to the Planning Inspectorate with the questionnaire, in error, and is instead appended to this statement (Appendix 1).

National Planning Practice Guidance (NPPG)

2.5. The National Planning Practice Guidance (NPPG) provides Government guidance on a number of subjects related to planning. Topics of relevance to this appeal include: Appeals; Climate change; Design: process and tools; Determining a planning application; Effective use of land; Environmental Impact Assessment; Flood risk and coastal change; Housing supply and delivery; Natural Environment; Noise; Open space, sports and recreation facilities, public rights of way and local green space; Planning obligations; Renewable and low carbon energy; Transport evidence bases in plan making and decision taking; Travel Plans, Transport Assessments and Statements; Use of planning conditions.

National design guidance

National Design Guide and National Model Design Code

2.6. The National Design Guide and the National Model Design Code and Guidance Notes for Design Codes illustrate how well-designed places that are beautiful, healthy, greener, enduring and successful can be achieved in practice.

2.7. The National Design Code introduces 10 characteristics of well-designed places. The National Model Design Code provides detailed guidance on the production of design codes, guides and policies to promote successful design and expands on the 10 characteristics of well-designed places set out in the National Design Guide.

Housing Land Monitoring Report (HLMR) 1st April 2023 to 31st March 2024 (published July 2024)

2.8. The Housing Land Monitoring Report (HLMR) (Appendix 2) reports housing completions within the district over a specified 12-month period and new housing approvals over the same 12-month period. The report confirms 214 net dwelling completions for the monitoring period, 44% of the annual housing requirement. Throughout the monitoring period the Council has also granted approval for 123 new dwellings.

Housing Land Supply Statement – Supply position as of 1 April 2023 (published September 2023)

2.9. The Housing Land Supply Statement (Appendix 3) accompanies the 2023 HLMR and describes the Council's five-year housing land supply position as of 1st April 2023. The five-year housing land supply figure is 2.4 years' worth of supply.

Lancaster Level 1 Strategic Flood Risk Assessment (SFRA) Update Final Report November 2021

2.10. The Level 1 Strategic Flood Risk Assessment (SFRA) update was prepared to inform the Climate Emergency Local Plan Review and updates the previous 2017 Level 1 SFRA.

Weight to be afforded to the Development Plan

2.11. In section 2 of their Statement of Case, the appellant argues that the proposed development accords with the Development Plan when read as a whole, and therefore planning permission should be granted without delay, in accordance with paragraph 11 (c) of the NPPF. They further argue that, even if this were not the case, the presumption in favour of granting permission for sustainable development should apply, as per paragraph 11 (d) of the NPPF, because the Council cannot demonstrate a five-year housing land supply, which makes the most important policies for determining the application "out-of-date", as per footnote 8. However, the Council disagrees with this position. The proposed development does not accord with the Development Plan when read as a whole (as will be demonstrated throughout this statement) and the "*tilted balance*" to which the appellant refers does not apply in this case because the flood risk policies in the NPPF provide a clear reason for refusing the development proposed, as per footnote 7 (see section 6 of this statement).

3. THE COUNCIL'S CASE – REASON FOR REFUSAL 1 – PRINCIPLE OF DEVELOPMENT

- 3.1. The appeal site is within the Lancaster South Broad Location for Growth (including Bailrigg Garden Village), as defined by the adopted Local Plan (Policies SG1 and SG3). The site is not specifically allocated for housing (or any other specific land use); instead, Policy SG1 sets out the Council's commitment to prepare the Lancaster South Area Action Plan (AAP) Development Plan Document (DPD), and it is this particular document that would provide specific site allocations and detailed policies against which to assess future planning applications in the area.
- 3.2. Following the adoption of the Local Plan in 2020, the Council had commenced work on the Lancaster South AAP (a Spatial Masterplan Framework had been prepared by Council-appointed consultants, which was to form the basis for planning the garden village); however, on 12th September 2023, Cabinet resolved that the Council cease work on the Lancaster South AAP and commence a full review of the Local Plan for Lancaster District instead. Policy LPRM1 of the Local Plan (Appendix 1) states that the Council is obliged to review the Local Plan within 5 years of the date of adoption; or there may be an earlier review if there is a significant change in circumstances which substantially alters key aspects of the Plan, such as the delivery of anticipated infrastructure which underpins the Local Plan; or if the rate of delivery, or the overall capacity, of Bailrigg Garden Village is well below that which is anticipated at the time of Local Plan adoption.
- 3.3. Initially, progress towards delivering development in the broad location for growth was enabled by two distinct, but interdependent, government funding initiatives: the 'Garden Village programme' and the 'Housing Infrastructure Fund' (HIF). The HIF was aimed at unlocking large strategic housing growth opportunities and it was intended that funding (£140 million) would be provided to reconfigure junction 33 of the M6 motorway and provide a new link road between the M6 and the planned garden village, and also to provide a new park and ride facility on Hazelrigg Lane. However, on 15th June 2023, Lancashire County Council announced its decision to suspend further work on the proposed South Lancaster to M6 transport project and to return the funding to central government, due to rising costs. It is this significant change in circumstances surrounding the proposed garden village that triggered

the full review of the Local Plan.

3.4. Notwithstanding the fact that work has ceased on the Lancaster South AAP, Policy SG1 does still allow for development within the broad location for growth in advance of the AAP, subject to certain criteria being met, namely:

1. 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

2. That the development would conform with and further the Key Growth Principles described in Policy SG1; and

3. That the opportunities for sustainable transport modes have been fully considered and that the residual impacts upon the transport network will not be severe.

3.5. The Council acknowledges the fact that the AAP referred to in Policy SG1 is no longer forthcoming, and therefore criterion 1 above is not entirely relevant insofar as there are no current plans for the garden village. However, there is, arguably, still a need for an integrated and co-ordinated approach to development in the Broad Location for Growth; there is still conflict with a number of the Key Growth Principles described in Policy SG1 (criterion 2) and the Council considers that there would be detrimental impacts on the strategic road network as a result of the proposed development (criterion 3). It is for these reasons that the principle of development is not considered to be acceptable, and why planning permission was refused.

3.6. Turning first to the Key Growth Principles, the Council considers there to be conflict with Principles 2, 3, 5, 6, 8, 11, 14 and 15. Key Growth Principles 2, 6, 8 and 14 relate to urban design / public open space and the desire to secure high-quality, innovative design which promotes healthy and cohesive communities, sustainable, attractive places to live and a sense of place and community for new residents. Key Growth Principle 11 relates to the need to design new development to minimise its

contribution to, and the impacts of, climate change and to ensure that new development is resilient and adaptable to the effects of climate change. The Council does not consider that the appellant has satisfactorily demonstrated that the number of dwellings proposed and the constraints within the site would allow for a high-quality design and an overall sense of place to be created. Neither has the appellant demonstrated innovation, or an appropriate response to climate change, in their approach to the proposed development (see also next section of this report in relation to reason for refusal number 2).

3.7. Key Growth Principles 3, 5 and 15 relate to infrastructure requirements and the need for the necessary infrastructure to be delivered in the right place at the right time in order to address strategic constraints to the delivery of future growth in South Lancaster, and the desire to seek a modal shift in local transport movements. Principle 15 specifically refers to transport infrastructure and impacts on the local and strategic road network and makes reference to the proposed reconfiguration of junction 33 to afford direct motorway access into the South Lancaster area and remove traffic from Galgate which is currently designated as an Air Quality Management Area (AQMA)². These principles relate closely to the third criterion outlined above (paragraph 3.4), i.e. the need to ensure that opportunities for sustainable transport modes have been fully considered and that the residual impacts upon the transport network will not be severe. The Council is not satisfied that the required level of transport infrastructure would come forward to support the level of housing proposed and this would lead to safety concerns on the strategic road network (i.e. as a result of additional traffic backing up on to the motorway).

3.8. The Council acknowledges that the County Council Highways team did not object to the proposed development (subject to planning conditions and obligations). Similarly, National Highways raised no objection, subject to suggested conditions. However, the key issue is whether National Highways' suggested conditions would meet the relevant statutory tests for conditions.

3.9. In their consultation response (Core Document 4.93) (which is dated 5th April 2023,

² On 25/07/2024 the Council announced that Galgate no longer needs to be designated as an Air Quality Management Area (AQMA).

i.e. before the County Council's decision to cease work on the South Lancaster transport proposals referenced above), National Highways raise concern about the predicted traffic backing up from Galgate towards junction 33 of the M6 and onto the motorway sliproad because this has safety implications as a result of vehicles having less space to decelerate on the sliproad and therefore using lane 1 of the motorway instead, which can lead to shunt-type incidents. They specifically state: *"the creation of that level of queuing on a motorway sliproad (with the associated safety implications) is not something that we wish to accept"* (emphasis added) (page 13).

3.10. They go on to state: *"At this point, it is relevant to note that the South Lancaster to M6 Link Road scheme is being developed to address this wider congestion problem caused as a result of the limitations of the existing network at the Galgate crossroads, take account of Local Plan growth and support development of sites in south Lancaster, including this one. It is also a condition of government funding for that project that the associated modelling of the traffic impact upon the SRN be agreed with National Highways. Therefore, the only solution currently envisaged that is intended address the concerns that the modelling has highlighted would be the Link Road scheme, although as indicated above, this project has no certainty of delivery at this time but does have certainty of funding through the government's Housing Infrastructure Fund (HIF)"* (emphasis added) (page 13).

3.11. National Highways suggest a planning condition to secure the submission and approval of, amongst other things: *"A report based on the modelling work setting out the number of dwellings that can be constructed in advance of The South Lancaster to M6 Link Road (i.e. full scheme to M6 Junction 33) opening for public use. This will be known as 'The Acceptable Dwelling Limit'. The Acceptable Dwelling Limit will be agreed with the Local Highway Authority and National Highways."* A second condition is suggested to ensure that no more dwellings than 'The Acceptable Dwelling Limit' referred to in the first condition can be occupied in advance of the South Lancaster to M6 link road being constructed and made available for public use.

3.12. As noted in the Council's committee report, such conditions would fail the test

of reasonableness as they could effectively significantly change the development being permitted [i.e. if 'The Acceptable Dwelling Limit' is significantly below the proposed number of dwellings (644)].

3.13. National Highways has commented on the current appeal. In a statement dated 12th July 2024 (Appendix 4) they note that, following the discussions that were held in relation to the appeal at Land West of Highland Brow³ (i.e. relating to the acceptability, or otherwise, of their suggested conditions), they could foresee similar issues arising if this appeal were to be lodged and therefore took the decision to commission an updated M6 junction 33 (including Galgate) Vissim model, which will be available for use by developers from 19th July 2024 onwards. The statement notes that National Highways have offered to make the model available to the appellant (at their cost) but at the time of writing, no agreement is in place and therefore they maintain their previous position and reserve judgement in terms of making further representations until the assessment work or equivalent analysis is undertaken. The appellant states in paragraph 3.2.4 of their Statement of Case that they will provide evidence to demonstrate that no severe highways impacts will arise as a result of the proposed development and that they envisage reaching common ground with the Council (and Lancashire County Council and National Highways) on this matter; however, until the appellant utilises National Highways' model, or undertakes some form of equivalent analysis to the satisfaction of the relevant authorities, the Council cannot see how agreement will be reached on this matter.

3.14. The appellant's Statement of Case also makes the suggestion that, due to the fact the Council cannot demonstrate a five-year housing land supply, this renders the most important policies for determining the appeal out of date. However, as outlined in the previous section of this report, the Council does not consider this to be the case because the flood risk policies in the NPPF provide a clear reason for refusing the development proposed and the tilted balance is therefore disengaged (see sections 2 and 6 of this statement).

³ Outline application for up to 108 dwellings. Appeal decision is at Appendix 5.

- 3.15. To conclude this section, the Council acknowledges that the Lancaster South AAP is no longer forthcoming and that Policy SG1 allows for development within the Broad Location for Growth in advance of the AAP; however, the proposed development does not accord with Policy SG1 insofar as there is conflict with a number of the Key Growth Principles and there would be detrimental impacts on the strategic road network, which cannot be overcome by the imposition of planning conditions and / or obligations. The Inspector is respectfully requested to dismiss the appeal on this basis.

4. THE COUNCIL'S CASE – REASON FOR REFUSAL 2 – DESIGN

4.1. As already highlighted in the previous section of this statement, Policy SG1 of the Local Plan sets out Key Growth Principles for development in the Lancaster South Broad Location for Growth. Key Growth Principles 2 and 14 relate to urban design and the desire to secure high-quality, innovative design which promotes sustainable, attractive places to live and a sense of place and community for new residents. Key Growth Principles 6 and 8 relate to the creation of high-quality open spaces to provide a distinct sense of place, deliver a network of green corridors and walking and cycling routes and create healthy and cohesive communities. Key Growth Principle 11 relates to the need to design new development to minimise its contribution to, and the impacts of, climate change and to ensure that new development is resilient and adaptable to the effects of climate change.

4.2. The Key Growth Principles reflect the guidance in the NPPF, which promotes the creation of well-designed and beautiful places and access to high-quality open spaces; and taking a proactive approach to mitigating and adapting to climate change. The first paragraph of chapter 12 (Achieving well-designed and beautiful places) states: *“The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this...”* (paragraph 131).

4.3. The National Design Guide outlines that good design involves careful attention to not only the design of buildings, but also the other components of places, which include the context for places and buildings; hard and soft landscaping; technical infrastructure (transport, utilities, services such as drainage) and social infrastructure (social, commercial, leisure uses and activities) (paragraph 20). It goes on to state that: *“A well-designed place is unlikely to be achieved by focusing only on the appearance, materials and detailing of buildings. It comes about through making the right choices at all levels, including: the layout (or masterplan); the form and scale of buildings; their appearance; landscape; materials; and their detailing.”* (paragraph 21).

- 4.4. The National Model Design Code provides detailed guidance on the production of design codes, guides and policies to promote successful design, as the NPPF makes it clear that all local planning authorities should prepare design guides or codes consistent with the principles set out in the National Design Guide and National Model Design Code, which reflect local character and design preferences (paragraph 133). The Council has not prepared a design guide or code for development in the district. Had work not ceased on the preparation of the Lancaster South AAP, that document would have provided additional detail and guidance on how to deliver new development in the area in accordance with the Key Growth Principles. This links back to the point made above about the need for an integrated and co-ordinated approach to new development in the Broad Location for Growth.
- 4.5. The Council acknowledges that the main application to which this appeal relates was in outline, with all matters reserved except access, and that detailed design matters relating to appearance, landscaping, layout and scale would be dealt with at the reserved matters stage(s). Nevertheless, reserved matters applications must be in line with the outline approval, and before granting outline permission the Council must be satisfied that the final development would, or could, be capable of meeting all the relevant policy aims. In this case, the Council was not satisfied that the final development would, or could, accord with the Key Growth Principles set out in Policy SG1.
- 4.6. As outlined in the Council's committee report, there are a number of features of the appeal site which impact on the proposed design, including the adjacent existing residential development, existing transport corridors, the local topography (drumlins), existing watercourses, wooded areas and electricity pylons. During the course of the application, the appellant presented their scheme to the 'Places Matter' Design Review Panel (DRP), as encouraged by Policy DM29 of the Local Plan and paragraph 138 of the NPPF. The DRP report (dated 06/03/2022) (Core Document 2.23), which still assumes that the proposed garden village will be forthcoming at a later time, highlights the importance of the quality of design given that the development would set a precedent for development in the garden village. The report raises concern that the proposed development would not meet the

requirements of Policy SG1 in terms of design. It suggests: *“there is no evidence of a single clear idea of what this new place is seeking to be, just a quantum of development and the technical means by which to achieve it.”* (page 3).

4.7. The DRP report states that the Design Principles document (submitted with the application) (Core Document 2.5⁴) has too many words and not enough sketches and ideas, and that the document should not just be about precedents but should provide a clear vision of what the place will look like, expressed in sketches and hand-drawn thoughts. The report states that the proposals fail to respond to the local topography and changing levels; the movement strategy lacks a legible street hierarchy and the plan form is anything but organic and lacks permeability. The report criticizes the fact that everything looks “too traditional” rather than focusing on more modern precedents, and urges the developer to develop character areas, into which greater detail can emerge later. The report also suggests that the block structure needs to be clearer and the document should include more innovative typologies, particularly in the southern area. The report raises concern about the local shop / village hub in terms of its location, orientation and the level of public space directly associated with these facilities. The report also directs the developer towards existing guidance on overhead pylons and how to orientate dwellings and deal with noise issues. Finally, the report advises that a Design Code will be needed to help determine how everything will be achieved, and this should be visual as well as numerical.

4.8. In response to the comments from the DRP, the appellant submitted a Design Code to support the planning application but did not present the Design Code or any revised proposals to the DRP, despite the DRP’s earlier suggestion that they do so. The introductory text in the Design Code notes that it is intended to be a material consideration in all future (reserved matters) applications at the site (albeit no details of phasing for the overall site have been provided) and that all future applications should adhere to the Design Code, thereby ensuring co-ordinated, high-quality design at the site.

⁴ It is noted that the appellant’s Core Documents List includes two separate Design Principles Documents, one dated May 2021 and the other dated February 2022. The Council assessed the May 2021 version.

- 4.9. As already outlined in the Council’s committee report (paragraphs 6.7.6 to 6.7.11), the Council does not consider that the Design Code successfully responds to the comments made by the DRP. At paragraph 1.2 it states: *“The Design Code has been carefully constructed to be concise and accessible, and easy to use by those involved in formulating and assessing planning applications on the Site. The information contained within the Design Code is, therefore, specifically focused on providing a clear set of design rules.”* However, the Council disagrees that the document is successful in this respect. It is neither concise or accessible and it is hard to navigate as it is extremely wordy and text-driven. It doesn’t contain many sketches or new ideas, but instead presents a series of precedent images (some of which are not considered to be particularly useful or inspiring), and it fails to provide a clear vision for what the place would look and feel like.
- 4.10. Chapter 2 of the Design Code sets out the masterplan vision and Key Design Principles. It is noted that new development should respect the site’s topography; however, the diagrams mostly show long streets following the existing contours, rather than any streets perpendicular to the contours (which is likely to result in monotony and demonstrates a lack of innovation) and none of the precedent images in this chapter of the Design Code show hilly or sloping sites. The precedent image provided in relation to landscape (on page 8) clearly relates to a wide, open, flat site, which is not likely to be typical of this site given the existing topography.
- 4.11. Another of the Key Design Principles in chapter 2 relates to active travel and sustainable modes of transport. However, the active travel diagram (Fig 2.4) fails to show pedestrian and cycle connections to outside of the site, other than the existing footpath which is to be retained.
- 4.12. Chapter 3 talks about the movement framework and street design. The chapter is particularly wordy and, again, the diagrams fail to illustrate good pedestrian/cycle connections to outside of the site. The existing footpath through the site is to be retained in its current position, but it is questioned whether an opportunity exists to alter the footpath route as part of the proposals, if this would help in the creation of a sense of place (i.e. rather than it cutting through the site in such a straight line).

- 4.13. A Street Coding Matrix is provided at section 3.5, but the table is particularly wordy and, on closer inspection, there is not actually much differentiation made between the different street types. For example, the same, vague, non-specific advice is given for all street types in terms of traffic calming techniques; all streets will allow direct access to individual properties; all streets will incorporate parallel parking; the carriageway width is not dramatically different for street types; the minimum and maximum gradients are the same for all street types; the same street lighting height and spacing is proposed for all street types; and the proposed materials are all the same or similar. This begs the question whether such a matrix is even necessary if it does not make any real distinction between the different street types.
- 4.14. The street hierarchy precedent images at section 3.6 all relate to flat sites and the images do not seem to properly reflect the associated text. For example, it is noted that secondary streets will be subservient to the main streets and will generally comprise 2 storey homes, with a limited number of 2.5 storey homes; however, the houses in the image are 3 full storeys tall and do not appear subservient to the houses shown in the image above relating to primary streets.
- 4.15. Section 3.7 of the Design Code makes reference again to topographical considerations and it is noted that: *"The topography of the Site is complex in areas. This creates limitations on street design. The masterplan layout established by the outline planning application was carefully designed to technically work, whereby the design and layout works with the topographical grain of the Site, allowing the building profiles to be sensitively located on the slopes, with all streets having a maximum gradient of 1:12"* (emphasis added). As highlighted by the DRP, there is still the sense that there is no clear idea of what the site is seeking to be, just the technical means by which to achieve a certain quantum of development. The Council welcomes the fact that work has been undertaken to make sure the proposals are feasible in terms of the challenging topography. However, the proposals are not considered to be innovative in their design, as required by Key Growth Principle 14 of Policy SG1; instead there is the sense that the appellant is mostly focussed on trying to make the development work in practical and numerical terms.

- 4.16. Chapter 4 of the Design Code introduces the concept of “*Neighbourhood Quarters to create a legible development with a strong sense of place*” (page 21). Three neighbourhood quarters are proposed: Drumlin, Ou Beck and Beechwoods. The ‘Drumlin’ Neighbourhood Quarter would be located in the north-western part of the site, straddling the central footpath along the crest of the drumlin, and is envisaged to be contemporary in nature with key green spaces and the community hub. The ‘Ou Beck’ Neighbourhood Quarter would be located in the north-eastern part of the site and would enjoy impressive, elevated views. It is envisaged to be more suburban and traditional in character with garden city influences. The ‘Beechwoods’ Neighbourhood Quarter would be located in the south-eastern part of the site and is envisaged to have a more rural character with strong vernacular influences. Key principles relating to architectural character, materials, plot width, rooflines, boundaries and trees and hedgerows in each Neighbourhood Quarter are set out in tables; however, on closer examination, the guidance doesn’t really provide a clear sense of how each neighbourhood quarter is intended to look and feel.
- 4.17. The precedent images are not considered to be helpful or inspiring either, particularly given that most appear to relate to flat sites. In the ‘Drumlin’ area, the Design Code notes that the community hub (which might be accommodated in a single building) should be “architecturally prominent... in order to create a distinctive new local landmark building that is instantly recognisable as a key community focal point and hub of activity” (emphasis added) (page 24). However, in contrast, the 2 precedent images illustrate very ordinary, run-of-the mill retail units that could not be argued to be of any architectural merit. The images also give the impression of car-dominance, which contradicts the aims to reduce car usage and increase active travel at the site. In the ‘Ou Beck’ area, the precedent images all appear to relate to much older housing (i.e. original garden cities) and show mature trees and landscaping, whereas it would be helpful to see contemporary precedents (or sketches) to understand how the garden city principles could be interpreted in a modern-day context. As already noted in the Council’s committee report, it is difficult to see how the Neighbourhood Quarters have been developed as the boundaries between them seem arbitrary. It is also difficult to see how they would contribute to an overarching sense of place at the site.

- 4.18. Chapter 5 of the Design Code sets out key urban design principles, such as buildings terminating views, ensuring pedestrian priority, and ensuring tenure blindness. However, none of the principles are novel or specifically related to this site; instead they are standard, conventional examples of best-practise urban design principles that would be expected to be applied at any new development site even without a design code. The same can be said of chapter 9, which discusses designing out crime measures.
- 4.19. Chapter 6 discusses legibility and key views. Reference is made to the community hub building and the need for it to be a focal point (see earlier comments in paragraph 4.17) and the diagram on page 34 illustrates key views and vistas within the site (albeit there is a disclaimer to say the precise alignment and location of views is indicative only at this stage) but fails to show how the proposed design would capitalise on views to outside of the site. The topography of the site, as well as presenting a challenge, presents an opportunity to create long-range views outwards from the site, but this doesn't seem to be reflected in the Design Code.
- 4.20. Chapter 7 discusses building heights. New buildings will generally be 2 or 2.5 storeys tall. There is no sense of an innovative response to the local topography or other features on the site in this regard. For example, there is no mention of split-level units.
- 4.21. Chapter 8 relates to car and cycle parking. The guidance is vague, at best, and there is an overwhelming sense that this would be a car-centric development. For example, the first paragraph states: *"An appropriate mix of parking arrangements should be provided to provide flexibility and convenience..."* (emphasis added) (page 37); 4-bed houses are expected to provide a minimum of 3 car-parking spaces (whereas Appendix E of the Local Plan, suggests that a 4-bed house should have a maximum of 3 spaces); and dedicated cycle parking would not be provided for individual dwellings with garages or space in the garden for a shed. This is all at odds with Key Growth Principle 3 in Policy SG1 which seeks a modal shift in local transport movements. It is also at odds with Key Growth Principle 11 which relates to the need to tackle climate change and the creation of a modal shift (see also later comments in this section regarding climate change).

- 4.22. Overall, the Design Code fails to address or overcome the issues raised by the Places Matter DRP and it does not give the Council the confidence that the site has been properly understood by the appellant or that it could be developed successfully in accordance with the Key Growth Principles outlined in Policy SG1, in particular the requirement to secure high-quality urban design which promotes sustainable, attractive places to live, defining a sense of place and creating a sense of community for its new residents (Key Growth Principle 2); the requirement to create sufficient areas of high quality open spaces to provide a distinct sense of place and deliver a network of green corridors and walking and cycling routes, whilst providing distinct areas of separation between the new development and surrounding development (Key Growth Principle 6); the requirement to create healthy and cohesive communities through the delivery of high quality development and the correct levels of services, open space and infrastructure which is provided in safe and accessible locations (Key Growth Principle 8); and the requirement to ensure innovative urban design both in terms of the layout and density of new development and the specific design of new buildings (Key Growth Principle 14).
- 4.23. It is also worth reiterating the point made in the committee report (paragraph 6.7.12) that the revisions to the proposals introduced an acoustic fence along the M6 and this was not something that was discussed with the DRP or officers beforehand. Neither is any reference to an acoustic fence made in the Design Code. An acoustic fence along the boundary of the site with the M6 does not represent good design and would have significant adverse urban design implications insofar as it would not aid in creating a sense of place at the site. Instead it would form a hostile barrier to the development.
- 4.24. Turning now to Key Growth Principle 11 of Policy SG1, namely the need for new development in the Broad Location for Growth to minimise its contribution to, and the impacts of, climate change and to ensure that new development is resilient and adaptable to the effects of climate change. The Council also considers that the development fails in this respect.
- 4.25. Lancaster City Council declared a Climate Emergency in January 2019 and is committed to tackling climate change. In terms of its planning function, the Council is in the process of partially reviewing its Local Plan, looking at what

additional policies it may need to address climate change (it is also undertaking a full Local Plan review – see section 2 of this statement); however, in advance of a new Local Plan being adopted, and in addition to the requirements of Key Growth Principle 11 of Policy SG1, Policies DM29 (Key design principles), DM30 (Sustainable design) and DM53 (Renewable and low carbon energy generation) already seek to reduce energy consumption and carbon emissions and ensure that new development is resilient and adaptable to the effects of climate change. The NPPF is also clear in its climate change aims, stating that: *“The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure”* (paragraph 157).

4.26. Despite the issue of climate change and its damaging effects being so high on the agenda in recent years, the appellant has failed to demonstrate how the proposed development would minimise its contribution to climate change (over and above any basic legal requirements), or how it would be resilient and adaptable to the effects of climate change. The abovementioned Design Code does not refer to climate change at all. Similarly, the Design & Access Statement only makes very brief reference to the SUDS features needing to account for 1 in 100 year events, plus climate change; and it later states that: *“At the Reserved Matters stage, new homes will meet national standards in respect of reducing energy demand, carbon emissions and energy efficiency”* (section 5.12). The appellant is not looking to go beyond the minimum requirements in terms of reducing emissions and there is no evidence in the appellant’s submission of how the proposed development would be resilient and adaptable to the effects of climate change in the future. On this basis, the proposal fails to accord with the aims of Key Growth Principle 11 of Policy SG1, and also Principle 14 insofar as there is a lack of innovation.

4.27. To conclude this section, the Council does not consider that the appellant has satisfactorily demonstrated that the number of dwellings proposed and the constraints within the site would allow for a high-quality design and an overall sense

of place to be created. Neither has the appellant demonstrated innovation, or an appropriate response to climate change, in their approach to the proposed development.

4.28. Section 12 of the PINS procedural guide states the following: “*A full statement of case contains all the details and arguments (as well as supporting documents and evidence) which a person will put forward to make their case in the appeal. In general, appeals are determined on the same basis as the original application. Therefore, the appellant’s submissions, including the statement of case, should not normally include new evidence or additional technical data not previously seen by the LPA and interested parties at the application stage, such as biodiversity report, highways statement or landscape and visual impact assessments.*” (emphasis added) (para 12.1.1.). To this end, the Council does not regard the submission of a revised Design Code to be a permissible option during the lifetime of this appeal. Indeed, the guide is clear that even through a Statement of Case, it is impermissible to submit new evidence or additional technical data. Thus, the proper approach would be to submit a fresh application, as opposed seeking to use the appeal to introduce a fresh Design Code.

4.29. The Inspector is respectfully requested to dismiss the appeal on this basis.

5. THE COUNCIL'S CASE – REASON FOR REFUSAL 3 - SHADOW FLICKER

- 5.1. The Council's third reason for refusal relates to the impacts of shadow flicker from the nearby wind turbine, both in terms of whether sufficient mitigation measures are proposed to protect future residents on the site, and in terms of the turbine's ability to continue contributing to the fight against climate change if it needs to be shut down more frequently, to alleviate complaints about shadow flicker.
- 5.2. The report "Update of UK Shadow Flicker Evidence Base" (Appendix 6), published by the Department of Energy and Climate Change in 2011, explains that the term "shadow flicker" refers to the flickering effect caused when rotating wind turbine blades periodically cast a shadow through constrained openings such as windows. The report quotes "*Planning for Renewable Energy – A Companion Guide to PPS22*" (now revoked), which states that shadow flicker only occurs inside buildings where the flicker appears through a narrow window opening; only properties within 130 degrees either side of north of the turbines can be affected at UK latitudes; and the effect can only be experienced within 10 rotor diameters of the turbine.
- 5.3. The wind turbine of relevance to the appeal is located on the eastern side of the M6 motorway, approximately 347 metres away from the south-eastern edge of the application site and is operated by Lancaster University. The turbine is an Enercon E-70 with a rotor diameter of 71 metres. It was granted planning permission on 11th August 2011, pursuant to planning permission reference 10/01061/FUL (the decision notice can be found at Appendix 7). Condition 19 of the permission states:

Prior to the operation of the wind turbine hereby approved, a scheme for the avoidance of shadowflicker for legally occupied buildings (dwellings and places of work) within 10 rotor diameters of the occupied buildings, which shall include a computerised control system designed to shut down the turbines at those times when, as determined by sensors mounted on the turbine and in accordance with an agreed methodology, the incidence of shadowing of properties would occur and cause harm, shall be submitted to and agreed in writing with the local planning authority. The development shall be carried out and operated in accordance with the approved scheme.

Reason: In the interests of the amenities of nearby residential properties.

5.4. The condition was discharged on 8th November 2012, pursuant to application reference 12/00088/DIS.

5.5. A Shadow Flicker Technical Note (SFTN) (dated February 2022) was submitted in March 2022 to support the application (Core Document 2.7). The purpose of the SFTN was to review the potential for shadow flicker from the Lancaster University wind turbine on properties at the appeal site. The report reviews documentation associated with the Lancaster University wind turbine, including documents associated with the discharge of condition 19, and looks at the proposals for the appeal site to make its assessment.

5.6. The SFTN sets out that the impacts of shadow flicker are affected by a number of factors, as follows:

- Screening (e.g. vegetation, terrain, buildings);
- The orientation of the property (e.g. windows that face the turbine);
- Distance (the impact diminishes further away from the turbine. The industry standard is that 10x the rotor diameter is the maximum limit within which shadow flicker effects can occur);
- Direct sunlight (e.g. no clouds and the turbine blades must be located in the direct path between the sun and the property);
- Time of year / day (e.g. where the sun is casting its shadow, which changes);
- Wind speed (e.g. the turbine is rotating);
- Wind direction [e.g. whether the turbine is directly facing towards a property (worst case scenario) or perpendicular (minimum impact)];
- The presence of people (if the property is empty there is no nuisance).

5.7. The SFTN summarises the document entitled “Planning Condition 19 - Shadow Flicker – Scheme for Avoidance” (SF-SfA) (Appendix 8) (submitted as part of the

discharge of condition 19). The SF-SfA refers to the Environmental Statement submitted with the original wind turbine application and thus identifies a total of 21 properties that could theoretically be impacted by shadow flicker (i.e. legally occupied buildings within 10 rotor diameters but taking no account of other factors such as vegetation masking the effect). Of the 21, 5 receptors are then identified as being potentially above the maximum threshold figure used in the assessment (1 is within the University's ownership and is known to be screened by vegetation so is discounted), but none are expected to experience "*large amounts of shadow flicker*" (it is also possible that shadow flicker will not be experienced at all as buildings and vegetation have not been modelled).

5.8. The SF-SfA states in section 2 that the 4 receptors identified above will be safeguarded [two of these (H – Bailrigg Farm Residences Facing South; I – Bailrigg Farm Residences Facing East) are located adjacent to the appeal site], and then in section 3, the SF-SfA identifies 8 additional potential receptors on Bailrigg Chase and Bailrigg Lane and notes that only 1 is not heavily screened by trees (and therefore doesn't require safeguarding). The SF-SfA states: "*At Bailrigg Chase, although many of the properties lie out with the 10 rotor diameter (700m⁵) distance to the turbine, considering their elevation it is considered prudent to safeguard these properties also, and it should be noted that in safeguarding these properties, those to the north west will also become safeguarded. These properties replace properties H & I referenced in the ES assessment*" (page 4).

5.9. Section 4 of the SF-SfA provides a table (see Fig. 1 below) which identifies all the properties that will be safeguarded (8 in total). A complaints procedure is then outlined in section 5.

⁵ This should in fact be 710 metres as the rotor diameter is 71 metres.

Reference	Easting	Northing	Name
E	349409	457767	Andalucía (Farm Buildings near met. Station)
F	349570	458211	The residences at Blea Tam Farm (Blea Tam Farm)
BRL1	348558	458043	Property on Bailrigg Lane
BR1	348537	458165	Property at Bailrigg Chase
BR2	348580	458252	Property at Bailrigg Chase
BR3	348597	458180	Property at Bailrigg Chase
BR4	348587	458235	Property at Bailrigg Chase
BR5	348616	458209	Property at Bailrigg Chase

Fig. 1. Properties to be safeguarded [Source: Planning Condition 19 - Shadow Flicker – Scheme for Avoidance]

5.10. The SFTN makes reference to the 2 Bailrigg Farm properties to be safeguarded (H – Bailrigg Farm Residences Facing South; I – Bailrigg Farm Residences Facing East), even though the SF-SfA actually identifies 8 individual receptors, 6 of which are located in and around the Bailrigg Farm site. The SFTN states: *“In safeguarding these properties, other properties to the north west would also become safeguarded. This would also be true of the area of the ‘the site’ to the south and east of these properties”* (paragraph 4.3). It then states: *“the vast majority of the properties within ‘the site’ lie outside the prescribed 10 rotor diameter [700m] distance to the turbine. Regardless, they would be safeguarded by the same mitigation employed by the turbine developer for Bailrigg Farm 1 [property I in the ES] identified in the assessment.”* (paragraph 4.4)

5.11. As already highlighted in the Council’s committee report (paragraph 6.14.58), the SFTN does not correctly identify the properties which have been safeguarded (although looking at the individual eastings and northings, the 6 properties on Bailrigg Lane and Bailrigg Chase are all located in an around the Bailrigg Farm site). Furthermore, and importantly, it also fails to explain how buildings which are not aligned with the properties which already benefit from safeguarding would be protected.

5.12. The SFTN does acknowledge that properties in the south-east corner of the site have the potential to be affected by shadow flicker, and it states that in addition to the safeguarding measures implemented for property H in the ES (Bailrigg Farm Residences Facing South), and the retention of existing vegetation, the provision

of new landscaping and new built-form in the development site should provide mitigation against shadow flicker by providing necessary screening. The SFTN ends by setting out further proposed mitigation measures, which include an option to turn off the turbine when the sun is shining and positioned in the sky such as to cast a shadow on identified properties (which is the mitigation already in place for the safeguarded properties); the installation of window blinds; and the planting of additional trees and bushes.

5.13. To further support their case, the appellant later submitted a Shadow Flicker Impact Assessment (SFIA) to the Council in October 2023 (Core Document 2.21). The report models the shadow flicker effects at proposed residential dwelling locations (supplied by the developer) to assess the potential impact. All assessed receptors are within 820 metres of the wind turbine (even though 10 rotor diameters would be 710 metres) and standard assumptions are made about window sizes and the sun elevation. As there is no standard guidance on acceptable levels of shadow flicker in the UK, the typical limit in Northern Ireland, Germany and Belgium is used for reference, which is 30 hours per year with a maximum of 30 minutes per any one day.

5.14. The report identifies 33 dwelling receptors for the purpose of the assessment and the model considers terrain, the relative geometry of the turbine to the receptor, the dimensions of the wind turbine⁶ and the path of the sun across the sky throughout a single year. All results are analysed with respect to the reference limits of 30 minutes per day and/or 30 hours per year. The results show that 30 dwellings would exceed the reference limits, based on bare earth terrain; however, the M6 motorway and retained vegetation is likely to provide screening to 4 of those (shown in the blue area on the image below), thereby preventing shadow flicker effects at those properties.

⁶ The report assumes a rotor diameter of 82 metres, whereas it is actually 71 metres.



Fig. 2. Area where no further shadow flicker consideration is required [Source: Shadow Flicker Impact Assessment, October 2023]

- 5.15. With regards to the remaining 26 dwellings (shown in the pink area on the image below), the SFIA acknowledges that views of the turbine cannot be ruled out despite screening. Shadow flicker effects may be experienced at these dwellings from windows, particularly above the ground floor, that are orientated towards the turbine.



Fig. 3. Area where existing and proposed design measures will mitigate effects [Source: Shadow Flicker Impact Assessment, October 2023]

- 5.16. The SFIA then outlines commitments that have been made by the developer, which include the provision of a 3.5 metre acoustic fence along the M6 to obstruct views of the turbine from ground floor windows; reinforcing the existing vegetation along the M6 to provide further screening; and installing blinds on any remaining windows that have visibility of the turbine following construction of the development, if requested by residents.
- 5.17. The Council has serious concerns about the proposed mitigation measures. Firstly, it is recognised that safeguarding measures are already in place in relation to identified properties, and that this may inadvertently also provide protection for new dwellings on the same alignment to the turbine; however, no evidence has been provided to suggest that the wind turbine operator (Lancaster University) would be willing to turn off the turbine more frequently if more properties become affected (i.e. those not aligned with the safeguarded properties in the south-eastern corner of the site). The NPPF is clear that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established and that the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development is completed (paragraph 193). Condition 19 (which requires the submission of a scheme for the avoidance of shadow flicker for legally occupied buildings within 10 rotor diameters) only relates to buildings affected at the time of the submission of details to discharge the condition, there should be no requirement for the wind turbine operator to protect dwellings which are constructed later.
- 5.18. Secondly, the potential need to turn off the wind turbine more frequently also has climate change mitigation implications insofar as the turbine’s main purpose is to provide renewable energy and reduce carbon emissions. As stated above, the Council has declared a Climate Emergency and Policy DM53 of the Local Plan seeks to maximise the renewable and low carbon energy generated in the district. The new Labour government has also indicated a strong commitment to onshore wind projects and renewable / low energy projects.
- 5.19. Thirdly, the provision of acoustic fencing along the M6 is not considered to represent a suitable form of mitigation due to its harmful urban design impacts (discussed in the previous section of this statement) and the likely harmful impacts

to residential amenity by way of overbearing impact / impact on outlook. If the fence is necessary to screen views of the turbine from ground floor windows, there is concern at how close to individual properties the fence would need to be sited.

5.20. Finally, the installation of windows blinds is also considered to be unsuitable. Not only would this be difficult to orchestrate (the appellant suggests that blinds would be installed “if requested” by future occupiers but how long would they have to make this decision and what would happen at the point of a change in ownership), but it is not considered reasonable that future occupiers would need to close their blinds in order to avoid the effects of shadow flicker.

5.21. To conclude this section, the Council does not consider that suitable mitigation measures are proposed to protect future occupiers from the effects of shadow flicker and the appellant has also failed to demonstrate that there would not be a detrimental impact on the wind turbine’s ability to generate energy at optimum capacity. It is quite clear that a significant part of the site would be impacted by shadow flicker, and whilst the Council accepts that the proposal is in outline, it is considered that designing out shadow flicker would result in a utilitarian and contrived form of development which would be alien to the surrounding landscape (i.e. no windows on elevations subject to shadow flicker etc.) The Inspector is respectfully requested to dismiss the appeal on this basis.

6. THE COUNCIL'S CASE – REASON FOR REFUSAL 4 - FLOOD RISK AND THE SEQUENTIAL TEST

- 6.1. The Council's Strategic Flood Risk Assessment (SFRA) maps (Appendices 9 and 10) indicate that the appeal site is in Flood Zone 1 with Flood Zone 3b following the course of Ou Beck (a predominantly dry watercourse) in a north-south direction through the site (Flood Zones 2 and 3 border the appeal site, along Burrow Beck, to the north-west of the appeal site). The SFRA maps also indicate that the appeal site is susceptible to groundwater flooding (low, medium and high potential) and that parts of the site are at low, medium and high risk of surface water flooding.
- 6.2. Policy DM33 of the Local Plan requires proposals to 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 and the policy notes that consideration should be given to all sources of flood risk. The policy specifically states: *"New development will need to satisfy the requirements of the sequential test and exception test where necessary in accordance with the requirements of national planning policy and any other relevant guidance. Where proposals fail to satisfy the requirement of these tests they will be refused."* (emphasis added).
- 6.3. Paragraph 168 of the NPPF states: *"The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. 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. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding."* (emphasis added).
- 6.4. The Council acknowledges that no request for a sequential test was made by officers to the appellant during the course of the planning application, which is regrettable. This is partly because the Council's overall understanding of the government's flood risk policies and guidance evolved and improved as a result of the aforementioned Land West of Highland Brow planning appeal⁷ (in that case, it became clear during preparation for the appeal that a sequential test in relation to

⁷ Outline application for up to 108 dwellings. Appeal decision is at Appendix 5.

flood risk should have been provided during the course of the application). Nevertheless, the lack of a request for a sequential test during the course of the application does not alter the fact that a sequential test should have been provided. Indeed, the appellant ought to have undertaken one of their own volition at the application stage. In the absence of such a test, it cannot be concluded that there are no other sites available for the proposed development which are at lower risk of flooding. Policy DM33 and the NPPF are clear that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

6.5. Furthermore, as alluded to previously in this statement, the fact that the appeal proposal is unacceptable in flood risk terms also disengages the tilted balance outlined at paragraph 11 (d) of the NPPF.

6.6. The appellant's Statement of Case suggests that common ground will be reached between the appellant and the Council on this matter as they will demonstrate that the proposals could be appropriately developed in respect of flood risk and would not lead to an increased risk of flooding on-site or elsewhere. However, this represents an improper attempt to rely on the exception test set out in the NPPF.

6.7. Paragraph 169 of the NPPF is clear that, only if the sequential test is passed (i.e. it is demonstrated that it is not possible for the development to be located elsewhere at a lower risk of flooding), should the exception test then be applied and any site-specific flood risk assessment be taken into consideration. The NPPF is clear that the exception test comes after the application of the sequential test. Paragraph 169 states: *"If it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied."*

6.8. The NPPG makes the point more forcefully. Paragraph 032 of the 'Flood Risk and Coastal Change' section states: *"The Exception Test should only be applied as set out in Table 2 and only if the Sequential Test has shown that there are no reasonably available, lower-risk sites, suitable for the proposed development, to which the development could be steered."* (emphasis added)

6.9. Given that the sequential test is not passed, it would be improper to consider

matters pertinent to the exception test (i.e. whether the scheme would provide wider sustainability benefits to the community that outweigh flood risk; and whether the development could be made safe for its lifetime, without increasing flood risk elsewhere). This is consistent with paragraph 031 of the NPPG, which states: “*The Exception Test is not a tool to justify development in flood risk areas when the Sequential Test has already shown that there are reasonably available, lower risk sites, appropriate for the proposed development. It would only be appropriate to move onto the Exception Test in these cases where, accounting for wider sustainable development objectives, application of relevant local and national policies would provide a clear reason for refusing development in any alternative locations identified.*” Essentially, the NPPG guides that, not only must the exception test come after the sequential test, but that it is inappropriate to even consider the exception test at all if the sequential test is not passed.

6.10. Moreover, seeking to rely on the scheme being safe as an argument for overcoming the sequential test not being passed would run contrary to paragraph 023 of the NPPG, which states: “*Avoiding flood risk through the sequential test is the most effective way of addressing flood risk because it places the least reliance on measures like flood defences, flood warnings and property level resilience features. Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied.*” (emphasis added). Thus, the appellant’s argument that the scheme would be safe ignores the point that failing the sequential test is inherently harmful, as this is the first line of defence against flood risk. Government policy is not aimed at making schemes safe, rather it is aimed at avoiding sites such as the appeal site altogether if there are sequentially preferable sites available.

6.11. It is also worth noting that paragraph 171 of the NPPF states: “*Both elements of the exception test should be satisfied for development to be allocated or permitted.*” The NPPF is clear that a failure to pass the sequential test ought to result in a refusal of an application.

6.12. Furthermore, paragraph 029 of the NPPG is clear that the planning authority should determine an appropriate area of search for the sequential test, based on the development type proposed and relevant spatial policies. Given that the

appellant has not discussed the scope of a potential sequential test with Council officers, the Council cannot see how agreement will be reached on this matter. As stated above, the PINS procedural guide is clear that the Statement of Case cannot be used to introduce new evidence or technical data. As such, the appeal should not be used as an opportunity to seek to submit a sequential test. The proper course of action would be the submission of a new planning application with an accompanying sequential test (the scope of which would have been agreed beforehand with the Council).

- 6.13. To conclude this section, the appeal site is at risk of various forms of flooding. Policy DM33 of the Local Plan and the NPPF are clear that new development should be steered towards areas with the lowest risk of flooding from any source and, in the absence of a sequential test in relation to flood risk, it cannot be concluded that there are no other sites available for the proposed development which are at lower risk of flooding. The Inspector is respectfully requested to dismiss the appeal on this basis.

7. THE COUNCIL'S CASE – ACCESS LINK ROAD APPLICATION

7.1. The associated full planning application related to the creation of a new access link road between Bailrigg Lane and the Health Innovation Campus road (Sir John Fisher Drive), to allow for continuous means of connectivity from Scotforth Road (the A6) to Hala Hill through the site. The application was intrinsically linked to the outline application for new housing, hence why the two applications were presented to Planning Regulatory Committee at the same meeting, and why both were simultaneously refused.

7.2. The Council's reason for refusal of the full application centred around highway safety concerns and the loss of a 30 metre section of hedge along Bailrigg Lane, which would not be justified, or mitigated against, if the outline permission were not to be granted (i.e. if the access road did not provide access to the new homes and associated development). The Council agrees with the appellant's assertion in their own statement that, should the Inspector be minded to approve the outline application for the new dwellings (and associated development), it is logical that planning permission should also be granted for the full planning application for the new access link road.

8. CONCLUSION AND PLANNING BALANCE

8.1. Lancaster City Council is unable to demonstrate a five-year housing land supply (the current figure is 2.4 years' worth of supply), which may, in some cases, trigger the presumption in favour of granting permission for sustainable development, as outlined at paragraph 11 (d) of the NPPF. The so-called "tilted balance" "tilts" the balance in favour of approving an application. However, paragraph 11 (d) (i) sets out that the tilted balance should not apply if there are policies in the NPPF that provide a clear reason for refusal and footnote 7 states that this includes policies relating to areas at risk of flooding. The appeal site is susceptible to groundwater flooding (low, medium and high potential) and parts of the site are at low, medium and high risk of surface water flooding. The NPPF (paragraph 168) requires a sequential test to be undertaken to establish whether there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding, and states that development should not be permitted if there are other sites reasonably available. In the absence of such a sequential test, it cannot be concluded that there are no other sites available for the proposed development which are at lower risk of flooding and this in itself represents a clear reason to dismiss the appeal (and to disengage the tilted balance).

8.2. The Council's committee report (paragraphs 7.0.10 to 7.0.34) sets out the planning balance that was undertaken in the assessment of the outline planning application. The appellant sets out a range of benefits of the scheme at paragraph 5.2.3 of their Statement of Case, which includes the provision of up to 644 new dwellings; up to 30% affordable housing (up to 193 affordable dwellings); new areas of public open space and green infrastructure; and the provision of a local centre and community hall. The Council does not dispute these benefits, and indeed, they were identified as weighing in favour of the proposed development at the time of the assessment of the application. However, even if a tilted balance were to be applied (i.e. as a result of flood risk matters being satisfactorily resolved, which the Council considers unlikely given that the appellant has not approached officers to discuss the scope of a sequential test), the Council considers that the adverse impacts of approving the development would still outweigh the benefits, even taking into account the Council's shortfall in housing land supply.

- 8.3. In addition to the flood risk reason for refusal, the proposed development does not accord with Policy SG1 of the Local Plan insofar as there is conflict with a number of the Key Growth Principles and there would be detrimental impacts on the strategic road network, which cannot be overcome by the imposition of planning conditions and / or obligations; the appellant has failed to satisfactorily demonstrate that the number of dwellings proposed and the constraints within the site would allow for a high-quality design and an overall sense of place to be created and they have failed to demonstrate innovation, or an appropriate response to climate change in this regard; and a number of the proposed new dwellings may experience unacceptable levels of shadow flicker without sufficient mitigation, combined with the fact the appellant has also failed to demonstrate that there would not be a detrimental impact on the wind turbine's ability to generate energy at optimum capacity.
- 8.4. The proposal is thereby contrary to chapters 2, 8, 9, 12, 14 and 15 of the NPPF and Policies SP9, SP10, SG1 SG3, DM29, DM33, DM53, DM57, DM58, DM60, DM61 and DM63 of the Local Plan.
- 8.5. The information submitted by the appellant in support of the appeal does not overcome or address the Council's concerns and the Inspector is respectfully requested to dismiss the appeal on this basis.