

**Date of Committee:** 18 November 2021

**Planning Application No:** 21/0204      **Date Received:** 2 March 2021

**OS Grid Ref:** NY 361641, 537364      **Expiry Date:** 27 April 2021

**Parish:** Melmerby      **Ward:** Hartside

**Application Type:** Planning Permission

**Proposal:** Erection of 4 local occupancy dwellings, re-submission of 19/0159

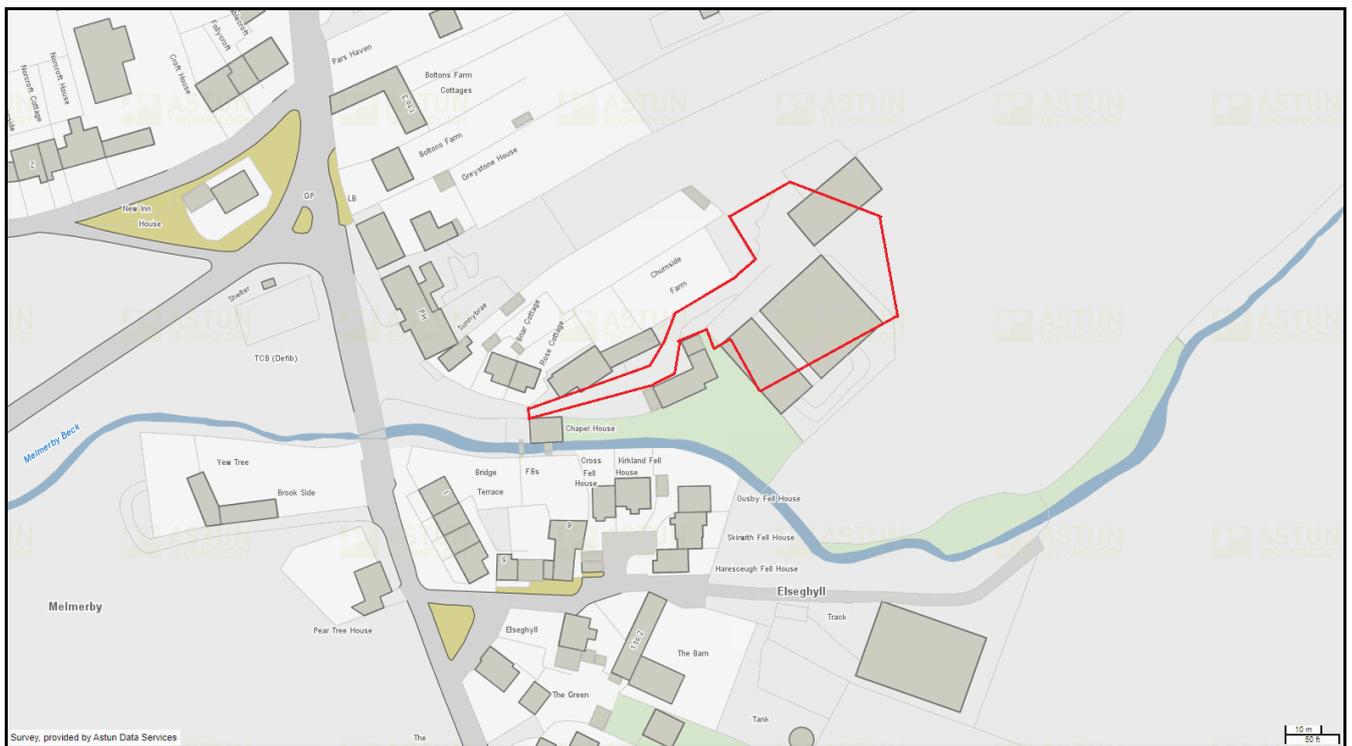
**Location:** Churnside Farm Sheds, Melmerby, Penrith

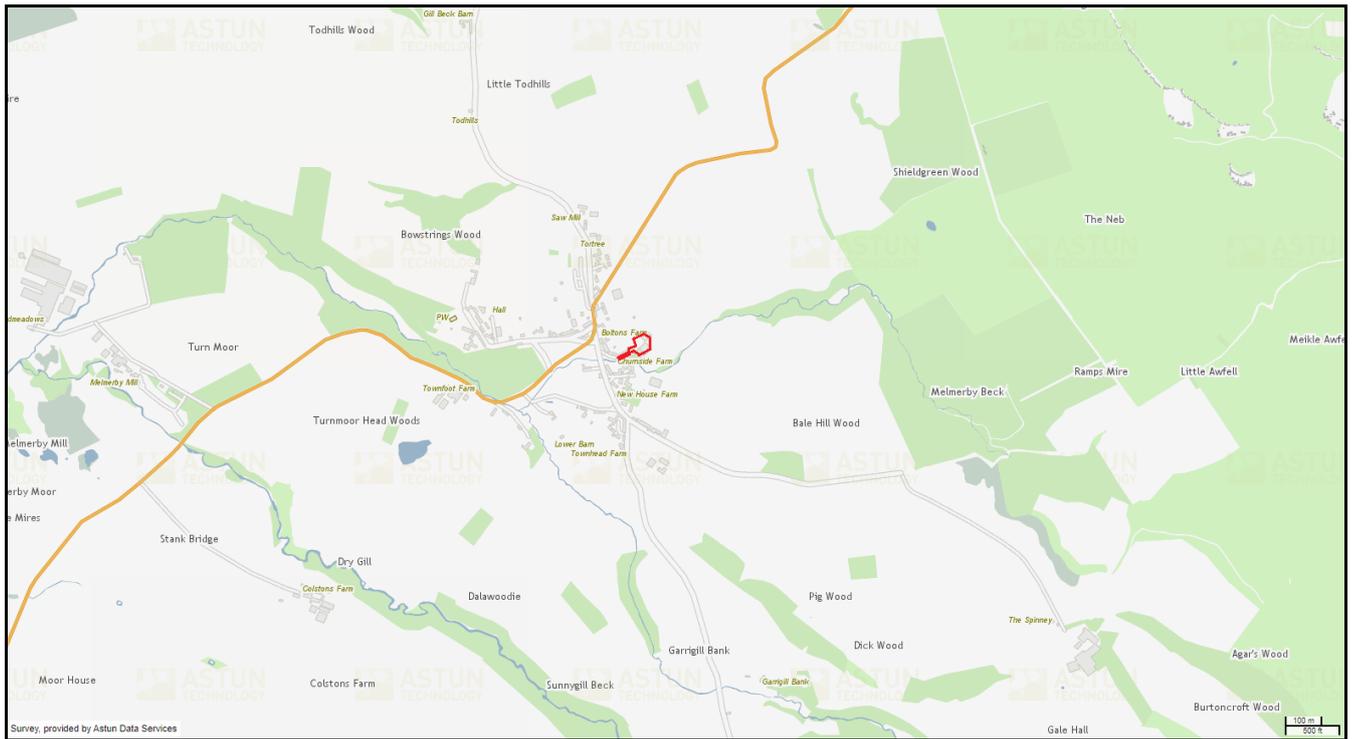
**Applicant:** Messrs Awde

**Agent:** Andrew Willison-Holt

**Case Officer:** Nick Atkinson

**Reason for Referral:** Proposal has been called in on material planning grounds by the support of the Parish Council.





## 1. Recommendation

It is recommended that planning permission be **REFUSED** for the following reasons:

1. The application site is within a smaller village/hamlet, but the proposal fails to meet any of the exemptions for dwellinghouses in such locations, which is restricted to infill sites, rounding sites, or re-use of existing traditional buildings. The proposal is contrary to the spatial strategy of the local plan, which details where the Council expects the focus for residential, employment and commercial provision. The proposal fails to accord with Policies LS1 and HS1 of the Eden Local Plan 2014-32.
2. One of the proposed dwellings seeks consent for an upper floor west facing window directly opposing windows in an adjacent residential barn conversion within 11 metres of this proposed window opening. This sought window would offer an elevated viewpoint through opposing neighbouring windows into habitable rooms, causing unacceptable harm to privacy and residential amenity standards of both the proposed dwelling and occupants of the adjacent barn conversion dwellinghouse. As such, the proposal is contrary to Policy DEV5 of the Eden Local Plan 2014-32, which stipulates that development should avoid such overlooking.

## 2. Proposal and Site Description

### 2.1 Proposal

2.1.1 This application seeks planning permission for the demolition of three agricultural buildings to facilitate the development of four dwellinghouses, all two storeys tall. These proposed dwellinghouses comprise of a detached 4-bed dwelling, a pair of *semi*-detached 3-bed dwellings, and a similar 3-bed dwelling link-attached to the semi-detached properties through a carport roof, with a detached double garages and carports also forming part of the development proposal. The proposed dwellinghouses present a utilitarian vernacular of gable end roofs, finished in pink/grey/buff sandstone under natural blue/grey slate roofs. The proposed plans are identical to those amended and considered through application 19/0159, which was refused by planning committee determination just over a year ago on 21 May 2020, resubmitted under the exemption to an additional planning application fee received within 12 months of the determination of the original application. The planning agent is contesting the policy position and reason for refusal of the original through this resubmitted application, with the period to appeal the original refusal having expired.

2.1.2 This application was initially put before the Members of the Planning Committee for determination at the meeting on the 20 May 2021. The application was deferred by the Planning Committee for the following reason:

*'Resolved that the application be deferred to enable ecological surveys to be obtained'.*

2.1.3 Following the deferral of this application by the Planning Committee, the applicant has commissioned and submitted the following information:

- Bat, Barn Owl and Breeding Birds Supplementary Report;
- Bat Mitigation Plan – Roof Access Details;
- Bat Mitigation Plan – ‘Bat Barn’ Details;
- Bat Mitigation Measures – Site Layout Plan.

- 2.1.4 This additional information has been published on the Council's online planning register and also considered by Officers to assess whether or not this alters the previous recommendation to Members and the previous recommended reasons for refusal.
- 2.1.5 As noted in the report put before the Members of the Planning Committee on the 20 May 2021, at the time of the determination of planning application 19/0159, the following reason for its refusal was given by the members of the Planning Committee:
- *'The proposed development does not constitute an infill or rounding off development and therefore does not comply with Local Development Plan Policies LS1 and HS2. The scheme is also considered to be contrary to Policies DEV2 in that it has not been demonstrated how the proposal would achieve an appropriate drainage scheme and Policy DEV5 due to being an underdevelopment of the site and being out of character by developing a site that was beyond modest in scale in a designated smaller village and hamlet'.*
- 2.1.6 The proposed detached dwellinghouse measures 11.95 metres wide by 8.5 metres long, with an additional front porch feature, under a gable end roof measuring 8 metres to the ridge with a 5.2 metre eaves height and two end integral chimney features. The associated proposed detached double garage measures 7 by 7 metres and up to 5 metres tall, of similar design and external materials, with one wide double garage door. The three 3-bed proposed properties are longer at 14.1 metres, but measure 7.1 metres long, with a maximum ridge height of 7.2 metres and eaves measuring 4.8 metres tall. The additional covered carports, canopies and connections between these three proposed properties cumulatively results in a building block measuring a maximum of 39 metres long by a maximum of 20.4 metres wide, in addition to an detached carport measuring 6.5 by 6.5 metres and up to 5.4 metres above ground level.

## **2.2 Site Description**

- 2.2.1 The site that forms the subject of this application is an agricultural building group and land to the eastern side of Melmerby village, accessed adjacent to the Grade II Listed Building public house of Shepherd's Inn to the north, with Melmerby Beck flowing to the south. The access to the site is heavily sloping, elevated above the majority of the village, with the associated agricultural land continuing to rise to the east up to Melmerby Fell and Knapside Hill, which forms an impressive backdrop to the village. These are prominent features within the North Pennines Area of Outstanding Natural Beauty, and this European designated landscape also encompasses the application site and the entirety of Melmerby village, which provides a positive gateway into this landscape of international importance.
- 2.2.2 The existing site comprises of three moderate scale agricultural buildings around a terraced and hardsurfaced concrete hardstanding area. The two southern buildings house cattle, and are finished in weathered natural timber walls under a dark grey aluminium roof, of subservient scale and cut into the surrounding land to the south and east, and whilst these are still in use they appear poorly maintained. The first of these buildings was developed through consent 82/0022.
- 2.2.3 The slightly taller building to the east is of more modern construction, finished in a juniper green clad upper walls and roof. Two traditional barns at Churnside Farm, within the applicant's ownership, are currently undergoing conversion to two dwellinghouses through permission 19/0121, in close proximity to the original farmhouse Churnside House, also within the applicant's ownership. The whole site is

within a groundwater flood map area where groundwater levels are either at or very near (within 0.025m of) the ground surface.

### 3. Consultees

#### 3.1 Statutory Consultees

Consultee	Response
Highway Authority	Refers to the response to the previous application at this site, which stipulates that 60 metres visibility splays from the site access would be required at 2.4 metre setback from the highway boundary, and that 2.5 parking spaces should be provided for each of the dwellinghouses.
Lead Local Flood Authority	The use of soakaways, in principle, would be supported, however the LLFA would still need to see detailed evaluation to show how the development will deal with surface water, which could be achieved through a suitably worded pre-commencement planning condition.

#### 3.2 Discretionary Consultees

Consultee	Response
United Utilities	No objection subject to surface water drainage strategy according with the hierarchy of drainage options.
Housing	The decision on whether the location would be regarded as being in Melmerby, and whether it is infill or rounding off, would be better made by a planning officer.
Planning Policy	No observation received.

### 4. Parish/Town Council Response

Parish Council	Please Tick as Appropriate			
	Object	Support	No Response	No View Expressed
Melmerby		✓		

4.1 A response was received on the 24 March 2021 advising that Melmerby Parish Council wish to **SUPPORT** the application.

### 5. Representations

5.1 Letters of consultation were sent to nearby neighbours and a site notice was posted on 16 March 2021.

<b>No of Neighbours Consulted</b>	9	<b>No of letters of support</b>	0
<b>No of Representations Received</b>	0	<b>No of neutral representations</b>	0
<b>No of objection letters</b>	0		

## 6. Relevant Planning History

Application No	Description	Outcome
19/0159	Erection of 4 local occupancy dwellings	<b>REFUSED</b> by Planning Committee 22 May 2020
19/0121	Conversion of redundant barn to provide two dwellings plus additional parking serving Churnside House	Approved 10 April 2019
89/1094	Underground slurry transfer channel agricultural use	Approved 19 January 1990
82/0022	Erection of a timber framed farm building to house cows/young stock	Approved 12 February 1982

## 7. Policy Context

### 7.1 Development Plan

#### Eden Local Plan (2014-32)

- LS1 – Locational Strategy
- LS2 – Housing Targets and Distribution
- DEV1 – General Approach to New Development
- DEV2 – Water Management and Flood Risk
- DEV3 – Transport, Accessibility and Rights of Way
- DEV5 – Design of New Development
- HS2 – Housing in Smaller Villages and Hamlets
- HS4 – Housing Type and Mix
- ENV1 – Protection and Enhancement of the Natural Environment, Biodiversity and Geodiversity
- ENV2 – Protection and Enhancements of Landscapes and Trees
- ENV3 – The North Pennines Area of Outstanding Natural Beauty
- ENV8 – Land Contamination
- ENV10 – The Historic Environment
- Appendix 6: Policy HS2 – Local Connection Criteria – Housing in the Smaller Villages and Hamlets listed in Policy LS1

### 7.2 Supplementary Planning Documents:

- Housing (2010 and 2020)

### 7.3 Other Material Considerations

#### National Planning Policy Framework (2021):

- Chapter 2: Achieving Sustainable Development
- Chapter 4: Decision making
- Chapter 5: Delivering a sufficient supply of homes
- Chapter 6: Building a strong, competitive economy
- Chapter 11: Making efficient use of land
- Chapter 12: Achieving well-designed places

- Chapter 14: Meeting the challenge of climate change, flooding and coastal change
- Chapter 15: Conserving and enhancing the natural environment
- Chapter 16: Conserving and enhancing the historic environment
- Annex 2: Glossary

#### 7.4 **National Planning Practice Guidance (NPPG)**

#### 7.5 **National Design Guide (2019)**

#### 7.6 **The North Pennines AONB Building Design Guide**

#### 7.7 **The Conservation of Habitats and Species Regulations 2010**

7.8 The policies and guidance detailed above are the most relevant policies relating to this application.

## **8. Planning Assessment**

### **8.1 Key/Main Planning Issues**

- Principle
- Scale and Design
- Landscape, Heritage and Visual Impacts
- Residential Amenity
- Trees and Ecology
- Highways and Parking
- Drainage, Infrastructure and Contamination

### **8.2 Principle**

- 8.2.1 Whilst the applicant has undertaken and submitted the ecological information requested by the members of the Planning Committee, this information does not relate to or have any bearing on the considerations/assessment of the acceptability of the principle of the proposed development. As such, the views and recommendation of officers remains the same as the previous committee report, which are again discussed and included below for the purpose of completeness and ease of reference
- 8.2.2 Within the Eden Local Plan, Policy LS1 sets out the hierarchy of settlements where development should be focused in the most sustainable locations, principally being the Market Towns and Key Hubs, where the Council expects the focus for residential, employment and commercial provision. Within smaller villages and hamlets, development is restricted to infill and modest rounding sites, which fill a modest gap between existing buildings within the settlement to form a continuous frontage, or a modest extension beyond the limit of the settlement to a logical, defensible boundary. To be considered as "rounding-off", a site must be enclosed by existing built development and a strong physical feature. Beyond all these recognised settlements, in 'Other Rural Areas', development is restricted to the re-use of traditional buildings, and affordable housing only as an exception to policy where this within a coherent group of three or more existing dwellings in a location suitable for affordable housing development.
- 8.2.3 Within the Eden Local Plan, Policy LS2 sets out future development rates in town and villages to achieve the overall annual housing target.
- 8.2.4 Within the Eden Local Plan, Policy HS2 aims to encourage people to meet their own modest housing needs locally in smaller villages and hamlets where development infills or rounds off the current settlement pattern, and occupants must have a strong local connection when developed on greenfield sites. The policy aims to encourage people to meet their own housing need locally, particularly through self-build. However, it does

not want to see unfettered market development that would not support local housing aspirations, but provide a 'middle way' for those with strong local connections who either cannot afford or find an open market house in their own locality.

- 8.2.5 Within the Eden Local Plan, Policy DEV1 advises that the Council will always work proactively with applicants to find solutions which mean the proposals can be approved wherever possible, and to secure developments that improves economic, social and environmental conditions in the area.
- 8.2.6 The application site sought for development is a group of three agricultural buildings, of more modern construction than the traditional barn buildings previously converted through an earlier consent at the Churnside Farm site. The associated agricultural land continued to the east to higher topography land leading to the foothills of Melmerby Fell and Knapside Hill, with the agricultural field boundary wall circa 200 metres east of the existing agricultural building group. Churnside Farm is in the eastern part of the village of Melmerby, with the access to the site passing the public house and dwellinghouses before reaching the traditional farmstead, with the more contemporary buildings constructed since the 1980's to the east of this. It is this more modern eastern part of the farm that forms the subject of this proposal.
- 8.2.7 The site is considered to be within Melmerby, which is a designated small village/hamlet. Policy LS1 states that in such locations, *'All development must be of a high quality design and will be **restricted** to infill sites, which fill a modest gap between existing buildings within the settlement; rounding off, which provides a modest extension beyond the limit of the settlement to a logical, defensible boundary; and the reuse of traditional rural buildings and structures, subject to the criteria set out in Policy RUR3.'* Modest infill and modest rounding-off sites are even more clearly described in the Housing 2020 Supplementary Planning Document (SPD).
- 8.2.8 Modest infill is considered to be development that would fill a gap in an otherwise continuous built frontage of not more than two dwellings, or backland development for up to two dwellings where this already exists within the settlement. Modest rounding off development is a modest extension beyond the limit of the settlement to a logical, defensible boundary, substantially enclosed and the boundary clearly defined by a strong physical feature, which is a long standing and enclosing landscape or topographical feature such as, a road, wood, river, or a railway line, which would prevent the further extension of development. This policy position has been successfully defended through dismissed planning appeals at a site south of Nab Barn, South Dykes, Great Salkeld (APP/H0928/W/18/3194233) and at Old Pond Cottage, Little Musgrave, Kirkby Stephen (APP/H0928/W/18/3214337), amongst others.
- 8.2.9 The current proposal is an identical resubmission to the amended proposal considered and refused by members less than 12 months ago, albeit with an additional statement contesting Local Plan policies, the interpretation of these and reasons for refusal of the previous planning application. Members determined that the proposed development as currently sought had failed to comply with the locational strategy for development and housing provision without the Local Plan, and failed to sufficiently demonstrate accordance with other policies within the Local Plan. Whilst the planning agent for this application understandably takes a different opinion and interpretation in representing this case through this resubmission, it should be noted that the proposal, and the policy position and environment within which this should be determined, remains unchanged. Therefore, there are no alterations within the proposed plans or within relevant planning considerations to differentiate the determination of this application from the original, other than that some of the originally submitted reports and documentation are

now multiple years old, calling into question the validity of some of the submitted surveys.

- 8.2.10 The development of the application site does not represent infill, as it is surrounded by open agricultural fields to the north and east, with Melmerby Beck and agricultural land to the south, and the proposal seeks double the maximum of two dwellings suitable for infill plots. The application site does not represent a rounding off site for the same reason, the surrounding open agricultural land does not present any defensible boundary, with Melmerby Beck over 25 metres to the south. The application site is clearly neither infill nor rounding as described in detail in planning policy and the Housing SPD, and the demolition of modern farm buildings to facilitate re-use would not represent a re-use of traditional rural buildings, as application 19/0121 at this site benefitted from. The reason for refusing the previous submission of this application through 19/0159 in terms of conflict with the Local Plan locations strategy for development contrary to Policies LS1 and HS2 remains valid, and there has been no change in planning policy in the interim to determine otherwise.
- 8.2.11 The proposed development is inapplicable to the three types of sites which Policies LS1 and HS2 stipulate that development is restricted to in smaller villages/hamlets such as Melmerby. The planning agent has intimated that this is an oversight of the policy to exclude proposals such as the one brought forward through this application. However, this is considered not to be the case, and these policies and the Local Plan as a whole are adopted and determined to be sound by the planning inspectorate, and these positions have been successfully defended at planning appeal of applications subsequently. Whilst Policy HS2 provides a relaxation from the local occupancy restriction requirement where sites develop previously developed land, this does not overrule the infill, rounding or reuse requirements where development is restricted to such locations. Whilst the planning agent feels that replacing buildings on a site within a smaller village/hamlet should comply, this is evidently not the case, nor how the policy is written or interpreted.
- 8.2.12 Furthermore, the site is not previously developed land, which is clearly defined in the National Planning Policy Framework (NPPF), and specifically excludes agricultural buildings from being considered previously developed land, amongst other stipulated buildings/uses. Whilst it is considered that these are deliberate omissions, particularly given the development pressure this would place under less economically valuable, but highly important uses such as agricultural land, to more profitable schemes, whether these omissions are deliberate or not is irrelevant. The proposed development is contrary to the locational strategy and housing planning policies relevant to this application, and a plan-led approach is taken to the lawful determination of planning applications, with NPPF paragraph 15 stating that *'The planning system should be genuinely plan-led'*. The Town and Country Planning Act 1990 and NPPF are both clear in that planning applications should be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 8.2.13 The Eden Local Plan directs such housing development to towns and key hubs in the first instance, with smaller villages/hamlets restricted to local occupancy dwellinghouses of restricted floorspace through Policies LS1 and HS2. In such smaller village/hamlet locations, Policy LS2 identifies that housing in such locations has a negative residual requirement, as the number of permitted or under construction properties exceeded the identified target figure, despite a small site permission discounted to 75% to allow for non-implementation. Furthermore, the district has a sufficient housing land supply, with a demonstrated 7.33 year housing land supply against the Local Plan housing requirement, and other residential developments may be constructed locally. The delivery of housing is still attributed positive weight in a

planning balance due to economic and social benefits. However, there is no additional weight through a tilted balance due to sufficient supply of housing within the district, and particularly within smaller villages/hamlet such as Melmerby.

- 8.2.14 Whilst it is appreciated that Melmerby Parish Council supports the proposal for new housing within the parish, such development should be directed to infill and rounding off sites within the villages/hamlets, or alternatively the Parish may wish to progress a Neighbourhood Plan identifying sites suitable for local connection occupancy housing in Melmerby. However, the provision of local occupancy housing, which is a minimum policy requirement for this settlement, does not represent an additional benefit of the scheme which would outweigh fundamental spatial planning policies directing where the Council will accept residential development, particularly given the identified provision of permitted and under construction sites in smaller villages/hamlets identified in Policy LS2 and sufficient 7.33 year housing land supply.
- 8.2.15 Although the applicant does not agree with the Council's policy interpretation in regards to this site and the proposal, it is again noted that the current submission has not altered to an extent that would alter the unacceptable nature of the principle of the development as previously determined by the Planning Committee in the refusal of planning application 19/0159 at the meeting on the 21 May 2020.
- 8.2.16 In addition, there have been no subsequent appeal decisions issued by the Planning Inspectorate which would bring this matter into question, or determine that the Council's interpretation of policy in this regard was incorrect or requires re-consideration.
- 8.2.17 Finally, the ecological information provided by the applicant since this matter was deferred by the Planning Committee at the meeting on the 20 May 2021 does not bring into question, affect or alter any considerations on the principle of the development.
- 8.2.18 Therefore, officers remain of the view that due to the application site being for more than two dwellings, not constituting a modest infill site, modest rounding to a defensible boundary nor re-use of existing traditional built form, the proposal is inapplicable to the sites considered suitable for development as restricted by the policy requirements of Policies LS1 and HS2 of the Local Plan. The proposal does not 'recycle' an 'already built' site, as suggesting in the supporting statement to this application, but seeks the demolition of existing actively used agricultural buildings to facilitate the development of a housing scheme for 4 new dwellings, albeit for properties that would require a local connection occupancy criteria due to the greenfield nature of the site, which is not brownfield or previously developed land.
- 8.2.19 As such, it is considered that the proposal is considered to be contrary to these policies and the locational strategy for development within the Local Plan, and therefore the principle of development of four dwellinghouses in this location is considered to be unacceptable. No reasons or justification have been provided in this submission or the additional ecological information requested which warrants the Planning Committee arriving at a different judgement/consideration on this matter from its previous decision.

### **8.3 Scale and Design**

- 8.3.1 Whilst the applicant has undertaken and submitted the ecological information requested by the members of the Planning Committee, this information does not relate to or have any bearing on the considerations/assessment of the acceptability of the scale and design of the proposed development. As such, the views of officers remains the same as the previous committee report, which are again discussed and discussed below for the purpose of completeness and ease of reference.

- 8.3.2 Within the Eden Local Plan, Policy DEV5 requires that proposed development demonstrates that it shows clear understanding of the form and character of the District's built environment, complementing and enhancing the existing area.
- 8.3.3 The sought design and layout seeks to reflect a new farmhouse and adjacent converted agricultural barns. Whilst this would appear unusual adjacent and in close proximity to the original Churnside farmhouse and associated converted traditional barns, the proposal is congruent to the existing built form within the village of Melmerby, and is considered to be a proportionate development in physical terms. All of the proposed properties offer marginally under 150sq.m gross internal floorspace as required through Policy HS2 of the Eden Local Plan, if porches and staircases are omitted from this calculation.
- 8.3.4 The plans submitted by the applicant refer to multiple colours of natural external finishes, included red sandstone and grey slate, which would be characteristic of the area, but amongst others that would be less sympathetic to the site and surroundings. However, the precise external materials and potentially samples of these could be controlled through planning condition to ensure acceptability of design and external materials. Subject to such details being secured, the proposal could reasonably be considered to propose a suitable design and scale for the site, compatible with Policy DEV5 of the Eden Local Plan.

#### **8.4 Landscape, Heritage and Visual Impacts**

- 8.4.1 Whilst the applicant has undertaken and submitted the ecological information requested by the members of the Planning Committee, this information does not relate to or have any bearing on the considerations/assessment of the acceptability of the landscape, heritage and Visual Impacts of the proposed development. As such, the views of officers remains the same as the previous committee report, which are again discussed and included below for the purpose of completeness and ease of reference.
- 8.4.2 Within the Eden Local Plan, Policy DEV5 of the Eden Local Plan requires that proposed development demonstrates that it shows clear understanding of the form and character of the District's built environment, complementing and enhancing the existing area, whilst ensuring that all new development 'protects and where possible enhances the district's distinctive rural landscape'.
- 8.4.3 Within the Eden Local Plan, Policy ENV2 requires proposals to take account of and complement natural elements, such as hedgerows, woodland and local topography and the tranquillity of the open countryside, and take account of and complement anthropogenic landscape elements, including settlement form, local architectural styles and building materials, and visually sensitive skylines, in accordance with the Cumbrian Landscape Assessment Toolkit.
- 8.4.4 Within the Eden Local Plan Policy ENV3 seeks to conserve and enhance the largest area of outstanding natural beauty in England, affording the European designated landscape the highest degree of protection.
- 8.4.5 Within the Eden Local Plan Policy ENV10 attaches great weight to the conservation and enhancement of the historic environment, heritage assets and their setting, requiring all proposals for development to conserve or enhance the significance of heritage assets and their setting.
- 8.4.6 In the case of the current application, the site is to the rear of the pattern and form of development in this particular part of the village. Whilst large portions of the village follow a linear pattern along Church Road and Gate House, predominantly facing towards these roads and focussed around the village green, there are existing short

stretches of properties deviating away from this through existing backland locations, such as to the south-west of the site on the opposite side of Melmerby Beck. In such a setting, the proposal would be coherent with the existing form and character of the village. Whilst the site is elevated above the majority of the village, this is predominantly concealed and screened by surrounding built form and trees, limiting the visual and landscape impacts of the existing site.

- 8.4.7 The existing site has very limited visual impact, particularly as the agricultural buildings are congruent to this rural village, demonstrating not just the history of the settlement but also visual similar to existing agricultural built form within the vicinity. Whilst such agricultural buildings are unlikely to constitute the highest quality of design, they are characteristic of the rural area and congruent to the wider countryside landscape. Therefore, whilst the site contains existing agricultural buildings, this site is considered to be unharmed to the protected Area of Outstanding Natural Beauty landscape and visual amenity through congruent agricultural built form. Furthermore, these existing buildings are no way equitable to previously develop or brownfield land, and this is in fact deliberately excluded from being defined as such in national policy, and the general acceptability of such buildings with protected landscapes such as Green Belts.
- 8.4.8 Whilst it is considered that the existing site has a minor positive landscape and visual impact upon the protected landscape, given the visual containment of the site, design of the proposal and ability to control the acceptability of external materials through planning condition, the proposal is considered to be neutral with regarding to landscape impact. The domestication of agricultural land and the rural landscape can cause harm to landscapes in some instances, however given the visual containment of the site, proportionate domestic garden areas and viewed in the context of the residential properties already within the village of Melmerby, it is considered that this domestication would not result in landscape harm in through this proposal, subject to control of suitable sympathetic boundary treatments, such as drystone walls. In consideration of the visual screening of the site restricting public viewpoints to distant views, the proposal is considered to have a neutral landscape and visual impact. Whilst the existing agricultural buildings and proposed dwellinghouses differ in design, scale and materials, these are similarly congruent and inconspicuous at the application site, with no positive or undue negative impacts of the proposal in this regard.
- 8.4.9 Subject to the external materials being natural materials sympathetic to the character of the area, and considering the visual containment and screening of the site by existing built form and trees, the proposal is considered to cause no undue harm to visual amenity of landscape impact upon the North Pennines Area of Outstanding Natural Beauty, thereby conserving this protected landscape through a neutral impact. The proposal is considered to be compatible with Policies DEV5, ENV2 and ENV3.
- 8.4.10 Whilst the existing access to the site passes to the south of the Grade II Listed Building of Shepherd's Inn, the proposed development is circa 80 metres west of this national heritage asset, and given the intervening built form and trees, the proposal is considered to cause no undue harm to the listed building, and is therefore neutral from a heritage impact perspective, in accordance with Policy ENV10.

## **8.5 Residential Amenity**

- 8.5.1 Whilst the applicant has undertaken and submitted the ecological information requested by the members of the Planning Committee, this information does not relate to or have any bearing on the considerations/assessment of the acceptability of the impacts of the proposed development upon residential amenity. As such, the views of officers remains the same as the previous committee report, which are again discussed and included below for the purpose of completeness and ease of reference.

- 8.5.2 Within the Eden Local Plan, Policy DEV5, in part, seeks to ensure that all new development '*protects the amenity of existing residents and business occupiers*'.
- 8.5.3 The nearest residential dwellinghouse to the proposed development is the barn currently being converted at the Churnside Farm site, which is just 10.8 metres west of the sought dwellinghouse block, and 3.8 metres from the nearest proposed carport. However, these neighbouring windows look upon the existing agricultural built form at similar distances, and the proposal would not exacerbate existing overbearing or overshadowing impacts.
- 8.5.4 The west facing upper floor gable end of the proposed building block contains a tall window opening to an upper floor bedroom, almost directly opposing the primary upper floor living/dining/kitchen space to the nearest barn conversion, and windows to a bedroom and study beneath this. This would present elevated viewpoints from the proposal down into these habitable rooms at under 11 metres separation distance, whereas the 2010 Housing SPD stipulates that elevations containing opposing windows should be at least 21 metres separated to maintain satisfactory privacy standards. Furthermore, future occupants of this permitted barn conversion would have views into the upper floor bedroom of the proposed opposing window to this west facing elevation.
- 8.5.5 As such, it is considered that the proposed development would harm the residential amenity of future occupants of the permitted adjacent barn conversions currently under construction, and offer unsatisfactory amenity standards to the western end proposed dwelling, to an unacceptable degree contrary to Policy DEV5 and the 2010 Housing SPD. The harm in this regard is not considered to be outweighed or justified by the ecological information that the applicant has subsequently submitted, when considered in the planning balance.

## **8.6 Trees and Ecology**

- 8.6.1 Following the deferral of this application at the Planning Committee meeting on the 20 May 2021, the applicant has provided further ecological information to address the previous concerns and one reason for the refusal of this application.
- 8.6.2 In regards to protected species, the applicant has provided a supplementary bat, barn owl and breeding bird assessment, to support a previous assessment undertaken in at the site in 2018. The assessment assesses the application site, the existing barns and structures to be demolished, and confirmed that there is potential for bats to roost in difficult areas to access to assess, under roof slates, on roof edge and gables, in cracks and cavities in walls and behind timbers and loose wall finishes.
- 8.6.3 The report sets out a number of mitigation measures for the works which include:
- Formation of five bat lofts in the new north house;
  - Formation of a bat loft above the new garages and car ports with ridge and eaves access and roosting boards;
  - Form a single storey Bat Barn (2.5m x 2.5m) with pitched roof and wooden wall lathe construction in the south corner next to the wooded gill;
  - Bat lofts in garages and bat barn to be created 2 months prior to the start of any demolition and be confirmed by an ecologist;
  - Bat Habitat enhancement to be created by retaining and planting trees and shrubs.
- 8.6.4 Overall the assessment provided the following summary of the development and mitigation requirements:

*'The bat mitigation requirements of the previous report have not been carried out, recommendations included four wall roosts to barn A now a house and four bat boxes placed on central and south tree areas.*

*To make up for the future loss of bat roosting and light sampling areas, five bat lofts and a bat barn are proposed, work on the garages and barn must be completed two months before any demolitions and signed off by ecologist.*

*The barn reduction demolitions should be carried out at the best time of the year for bats (see Bat Year). Extreme care must be taken carrying out work. Crevices should be checked with a torch or endoscope prior to demolitions and pointing to ensure no bats are killed or entombed, if pointing needs to be done then bats should be allowed to egress through built in pvc sloping tubes and allowed to re-access by sloping mortar tubes. Bats can be encouraged on site by allowing them access to the new buildings post-works.*

*If all the elements of the report are adhered to a European Protected Species Licence should not be necessary.*

*If at any point during the works bats are seen or suspected within the building, work must stop and further advice sought'.*

- 8.6.5 Within the Eden Local Plan Policy ENV1, requires new development to avoid loss or deliver net gain in levels biodiversity and geodiversity, affording significant weight and the highest levels of protection to local, national and internationally important designated environmental sites.
- 8.6.6 There are a number of mature trees in and around the application site, however the existing terracing and hardsurfacing of the site would restrict root growth towards the existing agricultural site, and the proposed developments are considered to be sufficiently separated from these trees to cause no direct harm to them through this proposal.
- 8.6.7 The further ecological assessment undertaken by the applicant is considered to have reasonably demonstrated that whilst the buildings have the potential for bat roosts, mitigation measures are possible to ensure that there would be no harm caused to these important protected species.
- 8.6.8 Whilst insufficient information was previously provided to demonstrate that there would be no adverse harm to protected species, the additional information supplied by the agent has now subsequently addressed this matter. In light of this information it is considered reasonable to conclude that the proposed development would not result in or have a material adverse effect on protected species. As such, the applicant has now demonstrated that the scheme can accord with the requirements of Policy EC1 of the Eden Local Plan, and the overriding Regulation 9 of 'The Conservation of Habitats and Species Regulations 2010'. This regulation states that the "*competent authority must exercise their functions which are relevant to nature conservation... so as to secure compliance with the requirements of the [Habitats] Directive*". Accordingly, competent authorities must consider the Directives in making decisions relating to any of their planning functions, including the determination of planning applications.
- 8.6.9 Therefore, this matter no longer forms a reason for the refusal of this application.

## **8.7 Highways and Parking**

- 8.7.1 Whilst the applicant has undertaken and submitted the ecological information requested by the members of the Planning Committee, this information does not relate to or have any bearing on the considerations/assessment of the acceptability of the Highway and Parking Impacts of the proposed development. As such, the views of

officers remains the same as the previous committee report, which are again discussed and included below for the purpose of completeness and ease of reference.

- 8.7.2 Within the Eden Local Plan, Policy DEV3 seeks to direct development to locations accessible by public transport, to ensure that provide safe and convenient access for pedestrians, cyclists and disabled people, whilst preventing development that would result in a severe impact in terms of road safety and increased traffic congestion. This position is supported by Paragraph 111 of the NPPF which confirms 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'*.
- 8.7.3 The Highway Authority consultation response refers to the response to the previously refused application at this site, in which the Highway Authority sought plans to demonstrate visibility splays. This was not provided as part of the previously refused application nor as part of this current resubmission proposal. However, the access is existing, as used by multiple existing dwellinghouses adjacent to the public house carpark, and as used by the active agricultural use of the site by agricultural vehicles.
- 8.7.4 The proposal would increase the number of vehicle movements using this access associated with the provision of four dwellinghouses, and whilst provision of visibility splays would be useful for assessment, the north splay is across the open public house carpark, whilst the southern splay is restricted by the bridge across Melmerby Beck and vegetation on the banks. However, neither of these are within the direct control of the applicant, and therefore no improvement in splays would be deliverable through this application.
- 8.7.5 Whilst the proposal would increase the quantum of vehicle movements using this access point, the existing access is used by 5 separate dwellings, with two further within the previously approved barn conversions at the site, in addition to vehicle movements of the associated carpark to the north. Given the existing use, it is considered that the replacement of existing agricultural movements with additional domestic vehicle movements associated with the development of four further dwellinghouses would not likely exacerbate the existing highway conditions nor result in any harm or material effect to the highway network.
- 8.7.6 It is reasonably considered that the proposal includes ample off-street parking provision for the proposed development, and as such the proposal would have no material effect on the existing highway network in regards to highways safety, capacity and parking. Therefore, it is considered that the proposed development accords with the requirements of Policy DEV3 of the Eden Local Plan and the NPPF.

## **8.8 Drainage, Infrastructure and Contamination**

- 8.8.1 Whilst the applicant has undertaken and submitted the ecological information requested by the members of the Planning Committee, this information does not relate to or have any bearing on the considerations/assessment of the acceptability of the drainage, infrastructure or contamination impacts of the proposed development. As such, the views of officers remains the same as the previous committee report, which are again discussed and included below for the purpose of completeness and ease of reference.
- 8.8.2 Within the Eden Local Plan, Policy DEV2 requires proposals to meet the sequential approach to development in flood risk areas, preventing inappropriate development areas at risk of flooding, whilst adhering to the hierarchy of surface water management.

- 8.8.3 Within the Eden Local Plan, Policy ENV8 requires adequate assessment and mitigation of suspected contaminated land to ensure unacceptable risks to human health and/or the environment are avoided, or remediated where necessary to ensure safe development.
- 8.8.4 In the case of the current application, the site is physically related to the village of Melmerby, there are dwellinghouses nearby. No information has been submitted regarding access to mains electricity, water or gas, however given the proximity to the existing properties it is considered likely these could be provided. The application form states that foul drainage is to be directed to the mains sewerage system, which is sequentially the preferable approach for this infrastructure.
- 8.8.5 No information has been received regarding surface water drainage, other than the application form detailing this is to be a soakaway. Whilst no information has been provided to evidence the feasibility of such a soakaway, or the suitability of the site for this given the known groundwater being close to the surface in this area due to local authority information rather than that evidenced through this application, it is highly likely a suitable scheme could be engineered. Therefore, this could be controlled through planning condition, as advised in both the United Utilities and Lead Local Flood Authority consultation responses. Despite the omission of information for consideration with this application, it is considered that these matters could be satisfactorily controlled, subject to the drainage scheme meeting the sequential options for such drainage and being fully evidenced prior to commencement of development, controlled through planning condition. Subject to such a planning condition, and satisfactorily discharging such a condition prior to the commencement of development, the proposal is considered to comply with Policy DEV2 of the Eden Local Plan.
- 8.8.6 Whilst agricultural land can become contaminated through agricultural activities and practices, and domestic use introduces sensitive receptors to this, such matters could be investigated and mitigated through the use of planning conditions, as long as assessment and any necessary mitigation is undertaken prior to any works or developments taking place on site. In the absence of any known sources of contamination affecting the application site, it is considered reasonable to conclude that the scheme could be considered to be in-accordance with the requirements of Policy ENV8 of the Eden Local Plan, subject to the imposition of appropriate conditions.

## **9. New Homes Bonus**

- 9.1 The prospect of receiving a Bonus is, in principle, capable of being taken into account as a 'material consideration' in determining a planning application. Whether potential Bonus payments are in fact a material consideration in relation to a particular application will depend on whether those payments would be used in a way which is connected to the application and to the use and development of land. For example, potential Bonus payments could be a material consideration if they were to be used to mitigate impacts resulting from development. But if the use to which the payments are to be put is unclear or is for purposes unrelated to the development concerned a decision maker would not be entitled to take them into account when making a decision on a planning application. In this particular case, there are no plans to use the New Homes Bonus arising from this application in connection with this development.

## **10. Implications**

### **10.1 Legal Implications**

- 10.1.1 The following matters have been considered but no issues are judged to arise.

## **10.2 Equality and Diversity**

10.2.1 The Council must have regard to the elimination of unlawful discrimination and harassment, and the promotion of equality under the Equality Act 2010.

## **10.3 Environment**

10.3.1 The Council must have due regard to conserving bio-diversity under the Natural Environment and Rural Communities Act 2006.

## **10.4 Crime and Disorder**

10.4.1 Under the Crime and Disorder Act 1998, the Council must have regard to the need to reduce crime and disorder in exercising any of its functions.

## **10.5 Children**

10.5.1 Under the Children Act 2004, the Council has a duty to safeguard and promote the welfare of children in the exercise of any of its functions.

## **10.6 Human Rights**

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

## **10.7 Economic Impact**

10.7.1 The Corporate Plan promotes the well-being of future generations, and the post pandemic recovery of our communities. There are no specific or wider economic impacts arising from this development beyond those set out within Section 8 of this report.

## **11. Conclusion**

11.1 This application was put before the members of the Planning Committee at the meeting on the 20 May 2021 at which time it was subsequently deferred pending the submission of additional ecological information. This information has now been provided and as such the application is now being brought back to Planning Committee for determination.

11.2 Officers have considered this additional information, and can confirm that this has addressed previous concerns regarding the ecological impacts of the development, which now no longer form a reason for the refusal of the application.

11.3 However, this ecological information does not overcome officers fundamental concerns with relation to the lack of acceptability of the proposal in regards to the principle of the development and the adverse impacts that would result to neighbouring amenity were the scheme to be approved. The acceptability of the ecological information should not be considered as a benefit to the scheme which warrants a departure from the Local Plan, nor outweigh the harm that would be caused when considered in the planning balance. A lack of ecological harm should be considered a minimum requirement of any development and not afforded enhanced weight in the planning balance. As such, officers remain of the view that the proposal is considered to be contrary to the Development Plan for the following reasons which are not outweighed by material considerations.

11.4 The proposed development is contrary to the local plans locational strategy for development. Notwithstanding the unacceptable principle of the proposal, the application has failed to demonstrate that the proposed development would not adversely harm the residential amenity of an adjacent barn conversion dwellinghouse,

and one of the sought dwellinghouses would offer unsatisfactory standards of privacy to future occupants.

- 11.5 Whilst the provision of dwellinghouses would deliver economic and social benefits of housing provision and development, these would be modest for a relatively small housing scheme, and there would be economic and social impacts through the demolition of 3 actively used agricultural buildings, and the wider agricultural land associated with the site. The extent of any benefits that may arise falls substantially short of outweighing the identified harm in the aforementioned three reasons for refusal, and the conflict with multiple planning policies and the aims of the Local Plan as a whole.
- 11.6 Planning law requires that applications for planning permission be determined in accordance with the local development plan, unless material considerations indicate otherwise. Whilst the development of local occupancy housing would deliver modest economic and social benefits, delivery of such housing (which is already a minimum requirement of Policy HS2 for such locations) does not justify deviating from the locational strategy for housing delivery within the Local Plan.
- 11.7 The proposed would conflict with policies in the local plan taken as a whole, and significant weight is given to the conflicts with the development plan policies in relation to the overall strategy for housing development and delivery. The modest weight given to the benefits of the proposal would not justify a decision other than in accordance with the Local Plan, notwithstanding the residential amenity harm and potential harm to protected species through inadequate information through this proposal, which constitute reasons for refusal in their own right.
- 11.8 Therefore, for the reasons detailed above, the application is recommended for refusal.

Fergus McMorrow  
Assistant Director Development

Checked by or on behalf of the Monitoring Officer	28.10.2021
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**Background Papers:** Planning File 21/0204