Lake District National Park

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Report from the Head of Development Management to the Development Control Committee

Application number:	**7/2025/5354**
Application type:	S73 (Amend/Delete Condition)
Applicant:	Mr Kevin Kane, Kane Assets Ltd
Location:	Dale View Farm, Underbarrow, KENDAL, LA8 8HQ
Grid reference:	346738 492298
Proposal:	Variation of condition 2 (Occupancy) of planning permission 7/2022/5662. Amendment to conditions 1, 3, 5 on planning application 7/2022/5113 to use blue/grey slate on the roof for all three units originally permitted under application ref 7/2019/5785 - To bring in line with adopted Housing SPD and to enable sale and occupation of dwellings
Report prepared by:	Emma Kearsey, Planner
Report agreed by:	Kevin Richards, Planning Manager
Recommendation:	REFUSE

1 About this report

1.1 The case planner has prepared this report, assessment and recommendation taking into account our policies (known as the Development Plan), written representations we have received, and any other material considerations.

1.2 Material considerations are things that are relevant to our decision making and which we are able to take into account – for example site specific factors, or Government planning policy (the National Planning Policy Framework) and Government planning guidance (the National Planning Practice Guidance).

1.3 The Development Control Committee will determine the application at its meeting having regard to the provisions of the Development Plan, representations we have received, and all other material considerations, following a verbal and visual summary of the application by the case planner and, where applicable, after hearing any verbal representations made in accordance with our Policy for Public Speaking at Meetings.

1.4 Most applications are decided under powers delegated to the Head of Development Management. A small number of significant or more contentious applications are considered by our Development Control Committee as set out in our Scheme of Delegation.

2 Background and proposals

2.1 I am reporting this application to Committee because of representations received from Underbarrow and Bradleyfield Parish Council and because of the issues which the proposals raise for our housing policies and our approach to occupancy restrictions.

2.2 The application site comprises three new build dwellings on land formally part of Dale View Farm in Underbarrow.

2.3 Planning permission reference 7/2019/5785 was granted on 24 February 2020 for the change of use of land from agricultural to domestic residences, demolition of existing disused agricultural structures and the construction of three new dwellings. This was a resubmission of withdrawn application reference 7/2019/5572.

2.4 Subsequent planning applications were granted in 2022 for amendments to the design (7/2022/5113) and to use blue/grey slate on the roof for all three units (7/2022/5662).

2.5 The dwellings have been constructed and are being marketed.

2.6 The permission was subject to a local occupancy condition in accordance with the development plan in force at the time – the Core Strategy (2010) and the Housing Provision Supplementary Planning Document (SPD) (2014).

2.7 Planning permission is now sought to vary the local occupancy condition (condition 2) attached to permission reference 7/2022/5662 to:

1) bring it in line with the more recently defined ‘South Housing Market Area’ contained in the current 2023 Housing SPD;
2) include whole Parish areas, where bisected by the National Park boundary; and
3) to include people who work from home in the definition of “employed”.

2.8 The applicant states that the dwellings remain unoccupied despite ongoing marketing efforts to sell and wishes to relax the condition wording to broaden the available market.

3 Representations

3.1 Underbarrow and Bradleyfield Parish Council: Object. If granted, it sets a bad precedent for future developments to remove local occupancy and would make a mockery of local occupancy in a village/parish that severely lacks housing for local people.

3.2 Four letters of support have been received including one from the appointed agents for the sale of the three dwellings for the following reasons:

- The development has attracted a great deal of interest, including from people in the surrounding areas, however, they have been unable to proceed with any sales due to the restrictive eligibility criteria currently in place. They state that this has created a significant barrier, even for those with genuine ties to the area, and has ultimately prevented these homes from being lived in.
- The narrow definition of “local” does not reflect modern living, where people may work remotely, have strong family ties to the area, or be returning after years away.
- More flexibility is needed to allow local people to stay in the area long-term.
- The current restriction limits the potential buyers to a radius which has not yet proven successful as there are not many other villages within this distance.

4 Development plan policies and other relevant guidance

4.1 The relevant Development Plan comprises:

- The Lake District National Park Local Plan 2020-2035

4.2 The following Lake District National Park Local Plan policies are relevant to this application:

- Policy 15: Housing
- Housing Supplementary Planning Document

4.3 The National Planning Policy Framework (NPPF) sets out the Government’s planning policies for England and how these are expected to be applied. It is a material consideration in the determination of planning applications.

4.4 There is no community plan in this area.

5 Main issues and assessment

5.1 This application seeks to amend Condition 2 of the approved planning application 7/2022/5662, as described above. We cannot re-visit the whole planning application but need to only address the amendments sought. In

considering this application we need to re-impose any relevant/extant conditions on the original planning permission.

5.2 The main issue in this assessment is the acceptability of the proposed changes to the occupancy condition.

5.3 Since planning permission was originally granted in early 2020 a new development plan and Housing SPD have been adopted and the geographic locality over which local occupancy conditions apply has been expanded to include a greater number of parishes in the area. Bringing the occupancy condition in line with the current geography is acceptable and consistent with the current development plan and SPD approach. However, the application also proposes including areas of parishes outside of the National Park which are bisected by the boundary; Grayrigg; Helsington; Levens; Strickland Ketel; Strickland Roger; Selside and Fawcett Forest, and Whinfell.

5.4 The current Housing SPD states that our starting point will always be to restrict occupancy to these defined Localities, as we recognise that eligibility sometimes has to be restricted to a geography that reflects local circumstances. Where reasonable justification for amending these is provided, we will consider extending the Locality to include:

- Whole parish areas where the parish is bisected by the National Park boundary
- Parishes immediately adjacent to but outside the National Park, where the Parish looks towards the National Park to meet their housing needs rather than to settlements or areas outside the National Park
- A combination of parishes wholly within the National Park which do not relate to a single Distinctive Area as set out in the Localities defined

5.5 In terms of reasonable justification for these changes the applicant has presented evidence as part of their application. This can be summarised as follows:

- proximity of the development to Kendal, a local urban centre
- house price data and a marketing review
- concludes that the interplay between the value of the dwellings and the outdated local occupancy restriction is preventing the sale of the properties

5.6 The marketing review sets out that guide prices for the houses are between £895,000 and £950,000. It states that all interest and viewings of the properties have been by those outside of the area – who would not comply with the occupancy restriction. The marketing review concludes that: the local occupancy condition is a deterrent; the asking price is not a deterrent because of the interest there has been, albeit from those who do not comply with the condition.

5.7 The review fails to consider whether the guide price of the houses is a deterrent to those who comply with the occupancy condition. Nor does it explain how or if attempts have been made to address the lack of interest

from those who comply with the occupancy condition, by reducing the asking price, for example.

5.8 The review also refers to the high-quality specification, contemporary design and extremely impressive standard of workmanship.

5.9 The Housing SPD is clear that we will not relax occupancy restrictions in the event that an applicant / developer cannot sell or rent properties in the timeframes they require. Local need will inevitably fluctuate over time, and our approach is focused on the long-term benefits of this housing provision.

5.10 The onus is on the applicant / developer to satisfy themselves that there will be a sufficient market for the dwellings having regard to the occupancy restriction that will be placed upon them. Market research by the applicant is strongly advisable before proceeding with development. It is important to also have regard to the impact the occupancy restriction may have upon the end value of the property.

5.11 The relevance of the proximity of the development to Kendal ignores the aim of Policy 15 to meet local community need. The localities form individual housing markets areas which are informed by strategic level evidence undertaken by the Housing Authorities and reflect the local circumstances that make these areas distinct from the wider neighbouring authority area. The aims of Policy 15 and the Housing SPD are concerned with meeting the housing needs of the National Park in the first instance.

5.12 Extension of the locality in line with the current SPD locality is supported by development plan policy and represents a widening of the occupancy restriction which the applicant has not tested on the market. However, the applicant seeks a step further, to parts of parishes outside of the National Park and whilst the Housing SPD allows for such changes the evidence provided with the application does not, in my view, represent reasonable justification to do so.

5.13 The applicant has also sought an amendment to the text of the condition to extend the qualifying definition to include a person who “works from home”.

5.14 The NPPF sets out that planning conditions must pass six tests: necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, reasonable in all other respects.

5.15 There is a sufficient latitude in the current condition to allow for someone who is in continuous employment in the locality as a consequence of working from home to comply with the condition. Such a change is therefore not considered necessary. Furthermore, the addition of the phrase “working from home” or similar, although seemingly simple on its face, would introduce a degree of ambiguity to the condition which does not currently exist. Such a change is likely to fail the tests of precision and enforceability.

6 Conclusion

6.1 Policy 15 as implemented through the Housing Supplementary Planning Document seeks to increase the supply of new permanent homes to meet local community need. Whilst amendments to the existing occupancy condition to bring it in line with our current approach and geography as expressed in the Housing Supplementary Planning Document, the application seeks permission to extend the geography of the condition a step further, to parts of parishes outside the National Park. Whilst the Housing Supplementary Planning Document can allow for such amendments with reasonable justification, no such justification has been provided.

6.2 Requested amendments to incorporate “people who work from home”, “home working” or similar, are considered neither necessary, precise or enforceable.

6.4 Having regard to the provisions of the Development Plan, in particular Lake District National Park Local Plan Policy 15 as implemented through the Housing Supplementary Planning Document and other material considerations (including the provisions of the NPPF), the development is considered to be unacceptable.

RECOMMENDATION: REFUSE

Conditions/Reasons

1 Policy 15 as implemented through the Housing Supplementary Planning Document seeks to increase the supply of new permanent homes to meet local community need. The application seeks permission to extend the geography of the condition to parts of parishes outside the National Park. Whilst the Housing Supplementary Planning Document can allow for such amendments with reasonable justification, no such justification has been provided.

Requested amendments to incorporate “people who work from home”, “home working” or similar, are considered neither necessary, precise or enforceable.

Having regard to the provisions of the Development Plan, in particular Lake District National Park Local Plan Policy 15 as implemented through the Housing Supplementary Planning Document and other material considerations (including the provisions of the NPPF), the development is considered to be unacceptable.

NPPF decision notice requirements

Town and Country Planning (Development Management Procedure) (England) Order 2015 Article 35(2) statement.

The Local Planning Authority were unable to identify solutions to the problems arising in relation to dealing with the application.

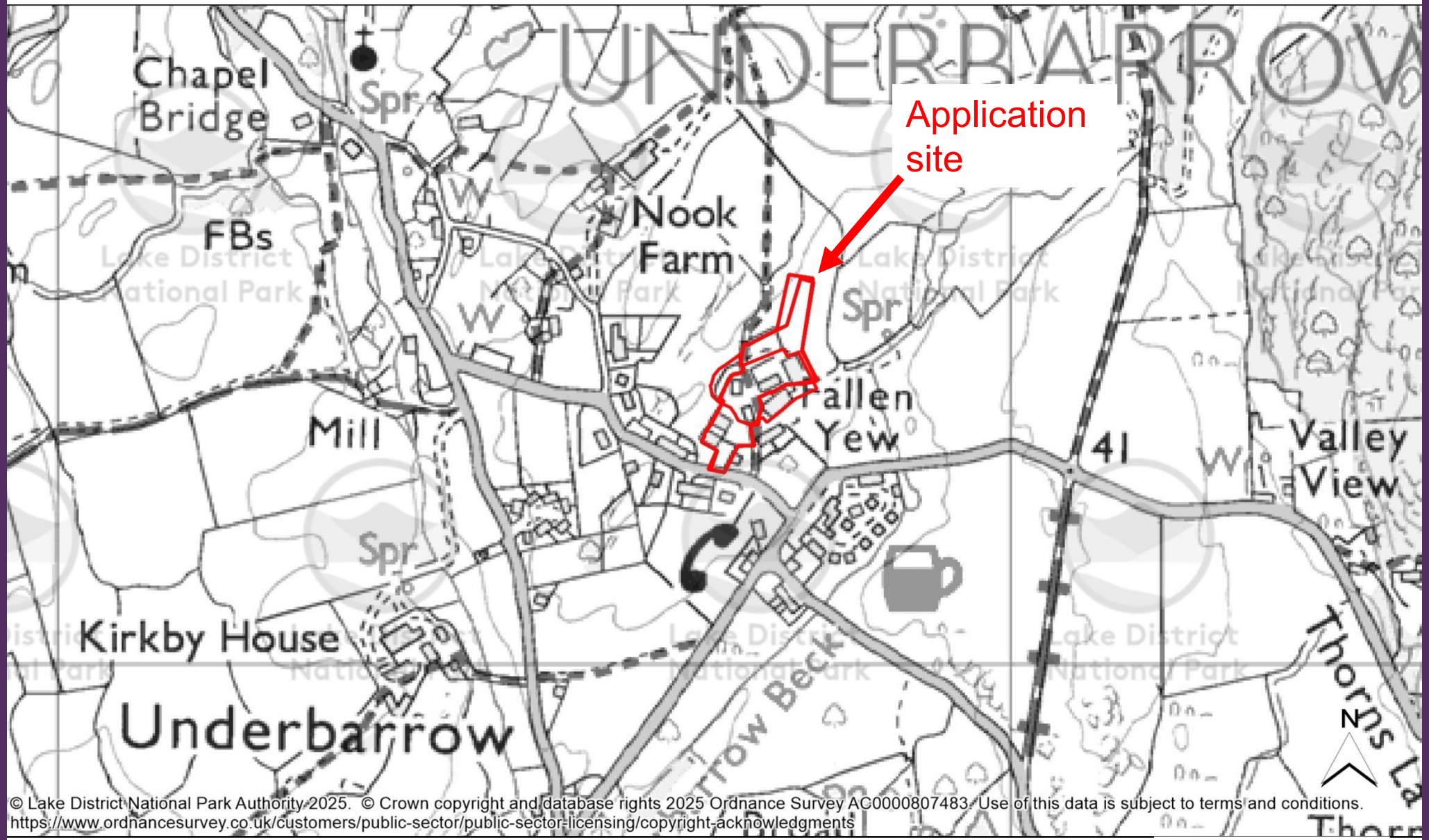
Background papers

Background papers are available for inspection on the planning application file unless otherwise specified on that file as confidential by reasons of financial/personal circumstances in accordance with the Local Government (Access to Information) Act 1985.

7/2025/5354

Dale View Farm, Underbarrow , Kendal, LA8 8HQ

Variation of occupancy condition to bring in line with adopted Housing SPD



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