

Planning and Highways Committee

Thursday, 19 April 2018

18:00

Conference Room 1, Blackburn Town Hall,

AGENDA

PART I: ITEMS FOR CONSIDERATION IN PUBLIC

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PART 2: ITEMS FOR CONSIDERATION IN PRIVATE

Date Published: Wednesday, 11 April 2018
Harry Catherall, Chief Executive

PLANNING AND HIGHWAYS COMMITTEE
15th MARCH 2018

PRESENT – Councillors; Dave Smith (in the Chair), Ali, Brookfield, Groves, Hussain I, Jan-Virmani, Khan Z, Khonat, Liddle (substitute for Casey), Murray, Nuttall, Oates, Pearson (substitute for Hardman), Riley, and Slater Ja.

OFFICERS – Ian Richardson (Director of Growth and Development), Gavin Prescott (Development Manager), Martin Kenny (Principal Planner), Safina Alam (Highways Development Control Engineer), Michael Green (Legal) and Wendy Bridson (Democratic Services).

RESOLUTIONS

56 Welcome and Apologies

The Chair welcomed everyone to the meeting. Apologies were received from Cllr Casey and Cllr Hardman.

57 Minutes of the last Meeting held on 15th February 2018

RESOLVED – That the minutes of the last meeting held on 15th February 2018 were confirmed and signed as a correct record.

58 Declarations of Interest

Cllrs Murray, Pearson and Slater all declared an interest in Item 4.1 – Planning Application 10/17/1173 (Prayer Facility at 55 Beardwood Brow), in that a prospective Conservative Candidate in the forthcoming elections was related to the applicant.

Cllr Pearson also declared an interest in Item 4.2 – Planning Application 10/17/1278 (Cherry Tree Cricket Club) having previously declared in interest as a Trustee of Feniscowles and Pleasington War Memorial Trust Recreation Ground which was a charitable organisation that provided similar facilities in the neighbourhood.

Gavin Prescott declared an interest relating to Planning Application 10/17/1278 (Cherry Tree Cricket Club), being a member of the club.

59 Planning Applications

The Committee considered reports of the Director of Growth and Development detailing the planning applications listed overleaf.

In considering the applications, the Committee took into account representations or submissions provided by individuals with the officers answering points raised during discussion thereon.

RESOLVED – (1) That the following decisions be made on the applications set out overleaf:

<u>Applicati on No.</u>	<u>Applicant</u>	<u>Location and Description</u>	<u>Decision under Town and Country Planning Acts and Regulations</u>
10-17-1173	Beardwood Muslim Worship Group	55 Beardwood Brow, Blackburn, BB2 7AT Full Planning Application for the change of use from dwelling to local prayer facility (Class D1) and self-contained flat (Class C3) with associated alterations to form doors, creation of car parking provision and an additional access	Approved subject to the conditions outlined in the Director's Report and Update Report with the removal of the condition relating to the temporary consent of two years for the monitoring of the proposal on both the impact on local residents and the character of the area.
At this point Gavin Prescott left the room due to the declaration of interest made in relation to 10-17-1278			
10-17-1278	Mr Dave Wallacy - Cherry Tree Cricket Club	Cherry Tree Cricket Club, 459 Preston Old Road, Blackburn, BB2 5ND Full Planning Application for Proposed new first floor with rear balcony and access steps to create a community room and changing rooms, improvements to car parking and new ramped access	Approved subject to the conditions outlined in the Director's Report and Update Report.
At this point Gavin Prescott was invited to re-join the Committee			
10-17-1037	Gleeson Regeneration Limited	Former Hollins Paper Mill, Hollins Grove Street, Darwen Full planning application for the erection of 152 dwelling houses and access and associated infrastructure	Refused as per the reasons outlined in the Director's Report and Update Report.
10-17-1428	Mr Christopher Gore	Park Lodge West Pennine Remembrance Park Entwistle Hall Lane, Edgworth, Bolton, BL7 0LR Full Planning Application: Retrospective application for additional use of part of Woodland Cemetery for keeping / breeding of dogs. Retention of 3 no. related kennel buildings together with erection of 2 no. additional kennel buildings	Approved subject to the conditions outlined in the Director's Report, with a number of conditions imposed to be monitored over a 12 month period by both Planning Enforcement and Public Protection officers. It was further agreed that the monitoring of noise would include the nearest residential properties arising from the application site during this temporary approved period.
10-17-1419	Michael Leary	Chapel View, Station Road, Edgworth, BL7 0LE	Approved subject to the conditions outlined in the

		Full Planning Application for Proposed 1 no. new dwelling at Plot 8, Chapel View	Director's Report and an additional condition in the Update Report.
10-17-1516	Blackburn with Darwen Borough Council	Higher House Farm, Blackamoor Road, Lower Darwen, Blackburn, BB1 2LG Prior Approval for demolition of Higher House Farm, outbuildings and adjacent garden sheds, comprising 1no. main building two storey structure and approximately 26 outbuilding/garage/shed type structures.	Prior Approval granted subject to the development being carried out in accordance with submitted documents and drawings as outlined in the Director's Report.
10-18-0131	Blackburn with Darwen Council	Darwen Six Day Market, Croft Street, Darwen BB3 1BH Full Planning Application for proposed entrance works to Darwen Market Hall / annex building.	Approved subject to the conditions outlined in the Director's Report.
10-18-0169	Blackburn with Darwen Borough Council	Land at Brown Street / Penny Street Blackburn Full Planning Application for development of land at Brown Street / Penny Street to provide a temporary area of hardstanding for events and overspill car parking. Works to include site clearance, earthworks surfacing and footpath improvements.	Approved subject to the conditions outlined in the Director's Report.
10-18-0077	Blackburn with Darwen Borough Council	Former Waves Water Fun Centre, Nab Lane, Blackburn, BB2 1LN Redevelopment of the former Waves Leisure Centre site to include an 8 screen cinema, two A3 units (restaurants and cafes) together with under-croft car parking and associated landscaping.	Approved subject to the conditions outlined in the Director's Report and Update Report.

60 Petition Report – Full Planning Application 10/18/0075 for 45 dwellings with associated new access, landscaping and parking, on land at School Lane, Guide, Blackburn

Members were informed of the receipt of a petition on 6th February 2018 containing 30 signatories objecting to planning application 10/18/0075 for 45 dwellings with associated new access, landscaping and parking, on land at School Lane, Guide, Blackburn. The grounds for objection to the application were outlined in the report.

It was reported that public consultation letters regarding the application had been issued on 18th January and that 9 objections had been received so far.

Members were informed that the planning application was still under consideration.

RESOLVED – That the Committee note the petition and that the lead petitioner be kept informed of the recommendation once made and the formal decision relating to the notification application.

Signed:

Date:

Chair of the meeting
at which the minutes were confirmed

**DECLARATIONS OF INTEREST IN
ITEMS ON THIS AGENDA**

Members attending a Council, Committee, Board or other meeting with a personal interest in a matter on the Agenda must disclose the existence and nature of the interest and, if it is a Disclosable Pecuniary Interest or an Other Interest under paragraph 16.1 of the Code of Conduct, should leave the meeting during discussion and voting on the item.

Members declaring an interest(s) should complete this form and hand it to the Democratic Services Officer at the commencement of the meeting and declare such an interest at the appropriate point on the agenda.

MEETING: **PLANNING AND HIGHWAYS COMMITTEE**

DATE:

AGENDA ITEM NO.:

DESCRIPTION (BRIEF):

NATURE OF INTEREST:

DISCLOSABLE PECUNIARY/OTHER (delete as appropriate)

SIGNED :

PRINT NAME:

(Paragraphs 8 to 17 of the Code of Conduct for Members of the Council refer)

Material Consideration

“Material Considerations” are not limited to matters relating to amenity and can cover a range of considerations, in regard to public or private interests, provided that there is some relationship to the use and development of land.

Where it is decided that a consideration is material to the determination of a planning application the courts have held that the assessment of weight is a matter for planning judgement by the planning authority, rather than the court. Materiality is a matter of law for the Court, weight is for the decision maker. Accordingly it is for the Committee to assess the weight to be attached to each material consideration, but if a Council does not take account of a material consideration or takes account of an immaterial consideration then the decision is vulnerable to challenge in the courts.

By section 38(6) of the Planning & Compensation Act 2004 Act every planning decision must be taken in accordance with the development plan (taken as a whole) **unless material considerations indicate otherwise**. The policies and guidance contained in the hierarchy of planning documents are important material considerations and the starting point for the Committee in its assessment of development proposals and most decisions are usually taken in line with them.

However, the Committee is legally obliged to consider all material matters in determining a planning application and this means that some decisions will not follow published policy or guidance. In other words, the Committee may occasionally depart from published policy when it considers this is outweighed by other factors and can be justified in the circumstances of the particular case. Similarly, in making a decision where there are competing priorities and policies the Committee must exercise its judgement in determining the balance of considerations

The following provides a broad guide of what may and may not be material, though as with any broad guidance there will on occasions be exceptions

<u>MATERIAL:</u>	<u>NOT MATERIAL:</u>
Policy (national, regional & local)	The identity of the applicant
development plans in course of preparation	Superceded development plans and withdrawn guidance
Views of consultees	Land ownership
Design	Private Rights (e.g. access)
Visual impact	Restrictive covenants
Privacy/overbearing/amenity impacts	Property value
Daylight/sunlight	Competition (save where it promotes a vital and viable town centre)
Noise, smell, pollution	Loss of a private view
Access/traffic/accessibility	“moral issues”
Health and safety	“Better” site or use”
Ecology, landscape	Change from previous scheme
Fear of Crime	Enforcement issues
Economic impact & general economic conditions	The need for the development (in most circumstances)
Planning history/related decisions	

Cumulative impact	
Need (in some circumstances – e.g. green belt)	
Impacts upon and provision of open/amenity space	
existing use/permitted development rights/fall back	
retention of existing use/heritage issues	
fear of setting a precedent	
composite or related developments	
Off-site benefits which are related to or are connected with the development	
In exceptional circumstances the availability of alternative sites	
Human Rights Act 1998 & Equality	

Before deciding a planning application members need to carefully consider an application against the provisions of the Human Rights Act 1998.

Protocol 1 of Article 1, and Article 8 confer(s) a right of respect for a person's private and family life, their possessions, home, other land; and business assets.

Article 6, the applicants (and those third parties, including local residents, who have made representations) have the right to a fair hearing and to this end the Committee must give full consideration to their representation, and comments,

In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Head of Planning and Transport has concluded that some rights conferred by these Articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that interference is proportionate, in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. Furthermore he believes that any restriction on these rights posed by the approval of an application is proportionate to the wider benefits of approval and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Other duties have to be taken into account in determining planning applications for example the promotion of measures to reduce crime, the obligation not to act in a discriminatory manner and promote equality etc.

NB: Members should also be aware that each proposal is treated on its own merits!

Reasons for Decision

If members decide to go against officer recommendations then it is their responsibility to clearly set out their reasons for doing so, otherwise members should ask for the application to be deferred in order that a further report is presented setting out the background to the report, clarifying the reasons put forward in the debate for overriding the officer recommendation; the implications of the decision and the effect on policy; what conditions or agreements may be needed; or just to seek further information.

If Members move a motion contrary to the recommendations then members must give reasons before voting upon the motion. Alternatively members may seek to defer the application for a further report. However, if Members move a motion to follow the recommendation but the motion is lost. In these circumstances then members should be asked to state clearly their reasons for not following the recommendations or ask that a further report be presented to the next meeting

REPORT OF THE DIRECTOR OF GROWTH & DEVELOPMENT

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

BACKGROUND PAPERS

There is a file for each planning application containing Application Forms, consultations, representations, Case Officer notes and other supporting information.

Gavin Prescott, Development Manager – Ext 5694

NEIGHBOUR NOTIFICATION: The extent of neighbour notification is shown on the location plans which accompany each report. Where neighbours are notified by individual letter, their properties are marked with a dot. Where a site notice has been posted, its position is shown with a cross.

PLANNING APPLICATIONS FOR DETERMINATION Date: 19/04/2018

Application No Applicant Application Type	Site Address	Ward
10/18/0132		
Mr M Hales The Butlers Arms Victoria Road Pleasington BB2 5JH	The Butlers Arms Victoria Road Pleasington BB2 5JH	Livesey with Pleasington
Variation of Condition No.3 pursuant to planning application 10/17/0620; to allow for timber pergola and extension of decking to outside seating area.		
RECOMMENDATION: Permits		
10/17/1435		
IGP Investment Ltd	Former Pioneer Mill Site New Wellington Street Blackburn BB2 4PG	Mill Hill
Erection of building for the purposes of food retail (A1 Use) with associated car parking.		
RECOMMENDATION: Permits		

Proposed development: Variation of condition for minor material amendment: Variation of Condition No.3 pursuant to planning application 10/17/0620; to allow for timber pergola and extension of decking to outside seating area.

Site address:
The Butlers Arms
Victoria Road
Pleasington
BB2 5JH

Applicant: Mr M Hales

Ward: Livesey with Pleasington

Councillor John Pearson
Councillor Derek Hardman
Councillor Paul Marrow



1.0 SUMMARY OF RECOMMENDATION

Item 4.1

- 1.1 The planning application is **recommended to be approved** planning permission, subject to application of the conditions as stated in paragraph 4.1.

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

- 2.1 The planning application, submitted under Section 73 of the Town and Country Planning Act 1990, is presented to Committee, as a proposed amendment to a development previously approved by Committee in September 2017 under the Chair Referral Process; in accordance with the Scheme of Delegation.
- 2.2 The amendment considers the inclusion of a circa 7.5m extension of the decking to its southerly edge and a reduction to the easterly edge of circa 1.3m; resulting in an overall addition of circa 35 square metres of decking, together with the erection of a pergola around its perimeter.
- 2.3 The key issues to be addressed are as follows:
- Impact of the development upon neighbouring residential amenity
 - Highways and transportation impact
 - Design
- 2.4 Careful consideration has been applied towards the impact of the amendment against neighbouring residential amenity, adequacy of on-site parking provision and the proposed design principles.
- 2.5 It is acknowledged that unauthorised works have been undertaken, prior to the determination of this application. Works have since ceased pending its outcome.

3.0 RATIONALE

3.1 Site and Surroundings

- 3.1.1 The application site is the Butler's Arms Public House, located to the west of Pleasington Lane, within the village envelope of Pleasington, Blackburn. The Public House is a traditional style detached venue, typical within a village setting, serving food and drink to the local community and beyond. To the rear of the building lies an existing outdoor seating area and bowling green, which plays host to the Public House's crown green bowling team.
- 3.1.2 In addition to the Public House, Pleasington Lane is generally straddled by residential properties to the east and west, beyond which lies the Green Belt.

3.2 Proposed Development

- 3.2.1 An amendment is sought to planning permission previously granted for timber decking to the existing outdoor area, to the rear of the public house. The amendment proposes an extension to the southern edge of the decking; a reduction to the easterly edge and erection of a timber pergola; as set out in the submitted drawings.

3.3 Development Plan

- 3.3.1 In accordance with s.38 (6) Planning and Compulsory Purchase Act (2004), the application is to be determined in accordance with the development plan, unless material considerations indicate otherwise.

- 3.3.2 The Development Plan comprises the Core Strategy and the adopted Local Plan Part 2 – Site Allocations and Development Management Policies. In determining the current proposal the following are considered to be the most relevant policies:

3.3.3 Core Strategy

- CS1 – A Targeted Growth Strategy
- CS11 – Facilities and Services
- CS16 – Form and Design of New Development

3.3.4 Local Plan Part 2

- Policy 6 – Village Boundaries
- Policy 7 – Sustainable and Viable Development
- Policy 8 – Development and People
- Policy 10 – Accessibility and Transport
- Policy 11 – Design
- Policy 35 – Protection of Local Facilities
- Policy 39 – Heritage

3.4 Other Material Planning Considerations

3.4.1 National Planning Policy Framework (The Framework).

At the heart of the NPPF is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking. For decision making, this means approving development proposals that accord with the development plan without delay (paragraph14)

3.5 Assessment

3.5.1 Principle

The principle of the original proposal is established, having had due regard to the status of the application site as an 'Asset' of Community Value; registered as such 12th December 2016. The additional decking is recognised as

encroaching onto the bowling green along the previously approved horizontal plane by a distance of circa 7.5m to the west. Encroachment to the east is reduced by circa 1.3m. This additional encroachment is not considered to unduly compromise the dynamics of the bowling green, ensuring its continued functionality. The principle of the amendment is, therefore, compliant with The Framework (para 70), which emphasises the need to plan positively for the provision of community facilities, and Policies CS1 and C11 of the Core Strategy which encourage new development and a range of quality public facilities, central to the Council's vision of an 'improved offer', to attract people to move or to remain in Blackburn and Darwen.

3.5.2 Impact upon residential amenity

Local Plan Part 2 Policy 8 requires development to contribute positively to the overall physical, social, environmental and economic character of the area and secure satisfactory levels of amenity for surrounding uses, with reference to noise and privacy

3.5.3 The additional decking proposed will continue the westerly edge of the approved decking by circa 7.5m, towards the residential property known as Bucklow House. As with the original assessment, the proposed amendment should be viewed in the context of the pre-existing outdoor area, rather than the introduction of an additional outdoor area into the confines of the Public House.

3.5.4 Whilst it is accepted that the amendment will introduce a larger seating area, it is not considered that the area will result in a significant degree of additional noise from patrons, beyond that of the approved decking or indeed noise capable of being generated from the long established outdoor area, prior to its enhancement.

3.5.5 The proposed pergola is typically open sided - save for the elevation facing the car park - and open topped. The decked area, therefore, remains open to the elements as originally intended and its use will continue to be largely dictated by the weather. Concern has been expressed about the possibility of planting being provided that may establish to the extent that it climbs the pergola frame, resulting in a covered and somewhat weatherproofed area. Planting, however, falls outside of the scope of development and is not, therefore, controllable under the planning process. The assessment is based on the submitted details alone, which are not considered to present any amenity threat beyond the original approval.

3.5.6 Public Protection colleagues offer no objection to the amendment. However, in acknowledgment of the potential for noise impact, particularly during the evenings, the availability of Public Protection powers to address the issue should be reinforced in this assessment by reiterating that sensible noise conditions will be secured through a variation of the premises license agreement and that general noise nuisance complaints can be investigated by Public Protection colleagues, under provisions of the Environmental Protection Act 1990.

3.5.7 It is, therefore, considered that the amended proposal will not excessively erode residential amenity; in compliance with Local Plan Part 2, Policy 48

3.5.8 Accessibility and Transport

Local Plan Part 2 Policy 10 requires that road safety and the safe and efficient and convenient movement of all highway users is not prejudiced and that appropriate provision is made for vehicular access, off-street servicing and parking.

3.5.9 The amendment will provide additional outdoor seating for drinking and dining, as demonstrated by the indicative covers shown on the submitted drawing. No additional off street parking is proposed. It is again important to recognise that use of decking will largely be dictated by the seasons and weather conditions and that an extension to the public house is not proposed. Highway impact is, therefore, assessed in the context of the pre-existing capacity of the Public House and associated outdoor area. Consequently, off street parking arrangements are considered adequate; as recognised by the absence of an objection from Highway's colleagues.

3.5.10 Accordingly, it is considered that the development provides sufficient off street parking and will not prejudice highway users; in compliance with Local Plan Part 2, Policy 10.

3.5.11 Design / Character and Appearance / Heritage

Local Plan Part 2 Policy 11 requires development design to be of a good standard and demonstrate an understanding of the wider context and make a positive contribution to the area.

3.5.12 The amendment is considered to further enhance the outdoor space. The overall scheme, including introduction of the pergola, is considered to positively contrast with the traditional form of the host building rather than detract from it. The enclosed rear section of the pergola, consisting of cedar panelling, although visible from the street scene is not overly prominent and is considered appropriate to the setting.

3.5.13 Whilst the age of the building and its heritage value is recognised, as a non-designated asset that is neither listed nor located within a Conservation Area, limited weight can be attached to the impact of the proposal. The original features of the buildings are unaffected. Moreover, as an enhancement to the existing outdoor space, the proposal is considered to assist in sustaining the long term viability of the public house.

3.5.14 The amendment is, therefore, considered compliant with Local Plan Part 2 Policies 11 and 39.

4 RECOMMENDATION

4.1 **APPROVE** subject to the following conditions:

- Development to be commenced within 3 years of approval.

- Materials to be submitted prior to commencement for approval.
- Development to be carried out in accordance with approved drawings: ^{Item 4.1}

5 PLANNING HISTORY

- 5.1.1 10/00/0634 - rear single storey extension;
10/07/1132 - rear single storey extension;
10/17/0620 - rear decking

6 CONSULTATIONS

- 6.1.1 18 neighbouring properties were consulted by letter and a site notice was displayed. 4 letters of objection have been received. The material issues raised have been considered in this assessment and are summarised as follows:

- An increase in patrons resulting in noise, behaviour and parking issues in the context of the proximity to residential properties.
- Design / character and appearance of the pergola and decking and impact on the heritage value of the building.

- 6.1.2 Whilst the loss of a corner of the bowling green is acknowledged as having the potential to alter the dynamic of the game, the bowling club are fully supportive of the proposal and are satisfied that the bowling green will still comfortably comply with the minimum size standard and that the development will not prejudice the ability to host competitive matches. Regardless, the absence of a relevant policy to consider this element of the proposal dictates that it is not material to the overall assessment.

- 6.1.3 The marriage license application is not material to this assessment and is instead controlled under the separate licensing regime.

- 6.1.3 Highways Officer – no objection

- 6.1.4 Public Protection Officer – no objection

7 CONTACT OFFICER: Nick Blackledge, Planner.

8 DATE PREPARED: 29th March 2018.

9.0 SUMMARY OF REPRESENTATIONS

Item 4.1

Objection John. C. Pearson, 1 Priory Close, Pleasington, Blackburn

Dear Nick,

Re Butler's Arms, Pleasington – Planning Application 10/18/0132

Thank you for your letter of consultation dated 8th February 2018 to me as an immediate neighbour to the proposed development at the Butler's Arms. So as to be clear and in the light of my public office, I am writing here in my private capacity as an ordinary citizen to object to this application.

Background

The Applicant had a preceding scheme ref. 10/17/0620 approved by The Planning & Highways Committee in July 2017. I wrote to you at the time and whilst broadly supporting that scheme is the interests of sustainability of our Village I wanted to see restrictions to safeguard against bad behaviour, excess and obtrusive noise together with considerate parking from the likely increased patronage. No such restrictions were imposed on the Planning Consent that was granted.

The Application

Given that this Application significantly extends the size and area of the decking approved last time and it also introduces an element of overhead cover and vertical cladding, I believe the likely patronage will be considerably increased over that envisaged previously. This will be both in volume because of the larger extent of the decking and seating facilities but also in time due to the addition of cover and cladding, which, with inevitable planting, will allow usage during periods of variable weather. This latter aspect was not the case before.

I understand that the Applicant has made a parallel application under The Marriages (Approved Premises) Regulation 1995 reg. 4, for the solemnisation of Marriages and Registration of Civil Partnerships, on the premises. Whilst this may not be directly relevant to the Planning process, but if approved, indicates a further likelihood of increased patronage with consequent issues for Behaviour, Traffic, Parking and Noise nuisances.

My concerns about nuisance to Residents and the Community arising from increased road traffic, car parking, noise and bad behaviour are therefore significantly greater than last time. In addition, it seems to me that the Council should consider aspects of this development under their published policies as follows:

Butler's Planning Application 28-02-18.docx

Policy 8 – Development & People

Item 4.1

This development is in the historic village of Pleasington and therefore the question should be asked “Does this development contribute positively to the overall physical, social, environmental and economic character of the area in which the development is sited”?

Policy 9 – Development & the Environment

This development restricts the use the long-standing village Bowling Green and therefore the following question applies “Does the development involve the partial loss of any unidentified area of open space, including playing fields, or affect its function”?

Policy 39 – Heritage

Given that Butler Bowden’s Arms was shown as one of the very few buildings in Pleasington in the 1845-7 Map Survey does the proposed development satisfy the policy requirement “Does the development, by reference to its setting, sustain or enhance the significance of the Asset”?

The Applicant’s Approach

On my return from holiday on 13th February I noticed that works had commenced at the site and was told by others that these works were being constructed to the newly proposed plan and not the approved plan. I called to site and was allowed to measure the work. At that time, the area of decking, for which foundation had been constructed, at 19 metres long, was at least 3 metres greater than the approved plan and was relocated by a further 2 metres in a southerly direction. In other words, the works were being constructed not the approved plan but to the proposed and unapproved plans. I believe Council Officers advised the Applicant to cease these unapproved works. In addition to this issue, the Contractor was disposing of waste material each day by means of a bonfire on the site. I understand that, again, Council Officers advised the Applicant and his Contractor that such activities must cease.

This approach taken by the Applicant and his agents, in my mind at least, militate with his publicly announced desire to consult and co-operate with the local community so as to proceed in developing his business in harmony with Residents. This may be indicative of future lack of concern for the Community in driving his business forward as he sees it.

According, I wish to make my objection to this Application absolutely clear and request the Council does not approve the Application.

Dear Sirs

RE: 11/18/0132 – Variation of condition 3. Pursuant to planning application 10/17/0620 to allow for timber pergola frame to be constructed on outside seating area

As owners of the adjacent property Bucklow house, we wish to object to the above application for reasons as set out below.

Condition 3 wording;

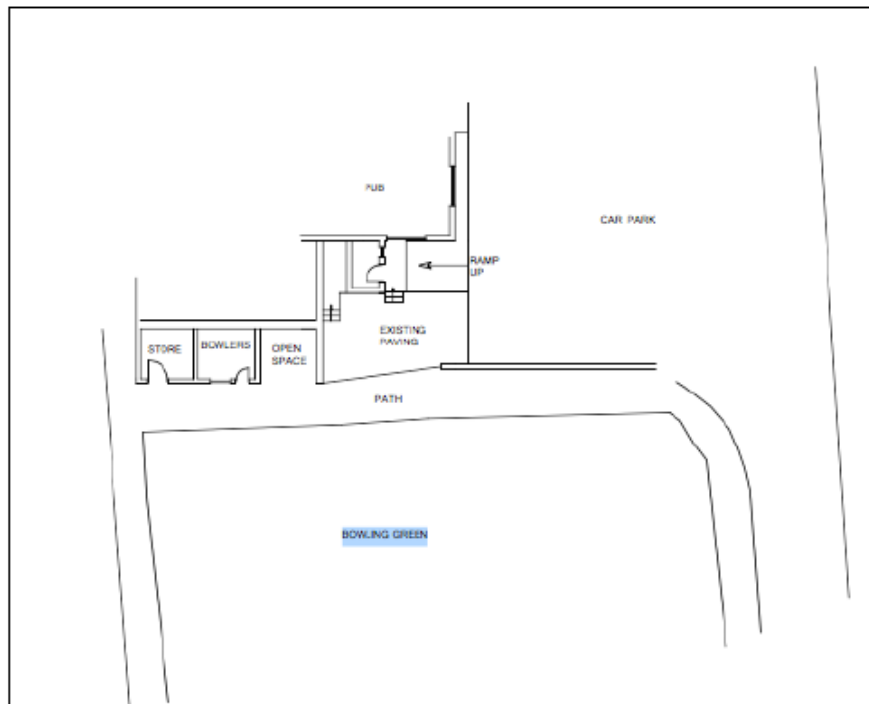
' This consent relates to the submitted details marked received on 15th May 2017 and amended plans received on the 10th August 2017; and any subsequent amendments approved in writing by the Local Planning Authority.'

We acknowledge that this is variation of a condition (as above) to a planning application that has already been approved, and that the principle of development has been established as part of the consent for 10/17/0620.

Our main concern is the potential increase in noise and disturbance as part of this new application which seeks consent to extend the size of the outdoor seating area, by approximately 33sqm. This additional area will be positioned closer to our property, and whilst there is an established tree lined boundary, it is not unreasonable to have concerns about the potential noise increase. We appreciate that the application makes reference to adding screens to help reduce the noise, but question how this will have any considerable impact. For example last year there was a function held at the pub in an external marquee on the car park near to where the proposed additional seating is, the noise from this event was significantly loud enough to be intelligible inside our property.

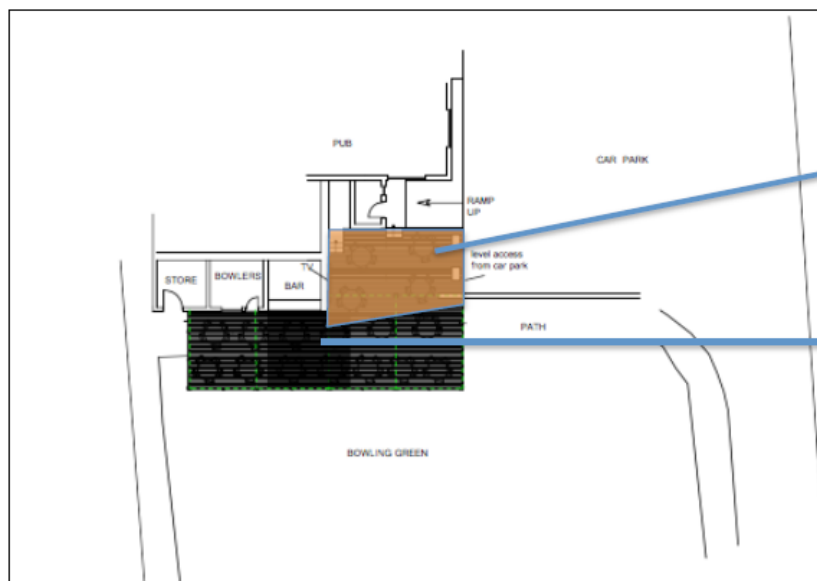
As the following map extract shows, the approved seating area is already substantial in size. The concern is the cumulative increase of useable outdoor space for the PH and the potential impacts on the amenity of surrounding properties.

Existing Site Plan (extract from application 10/17/0620)



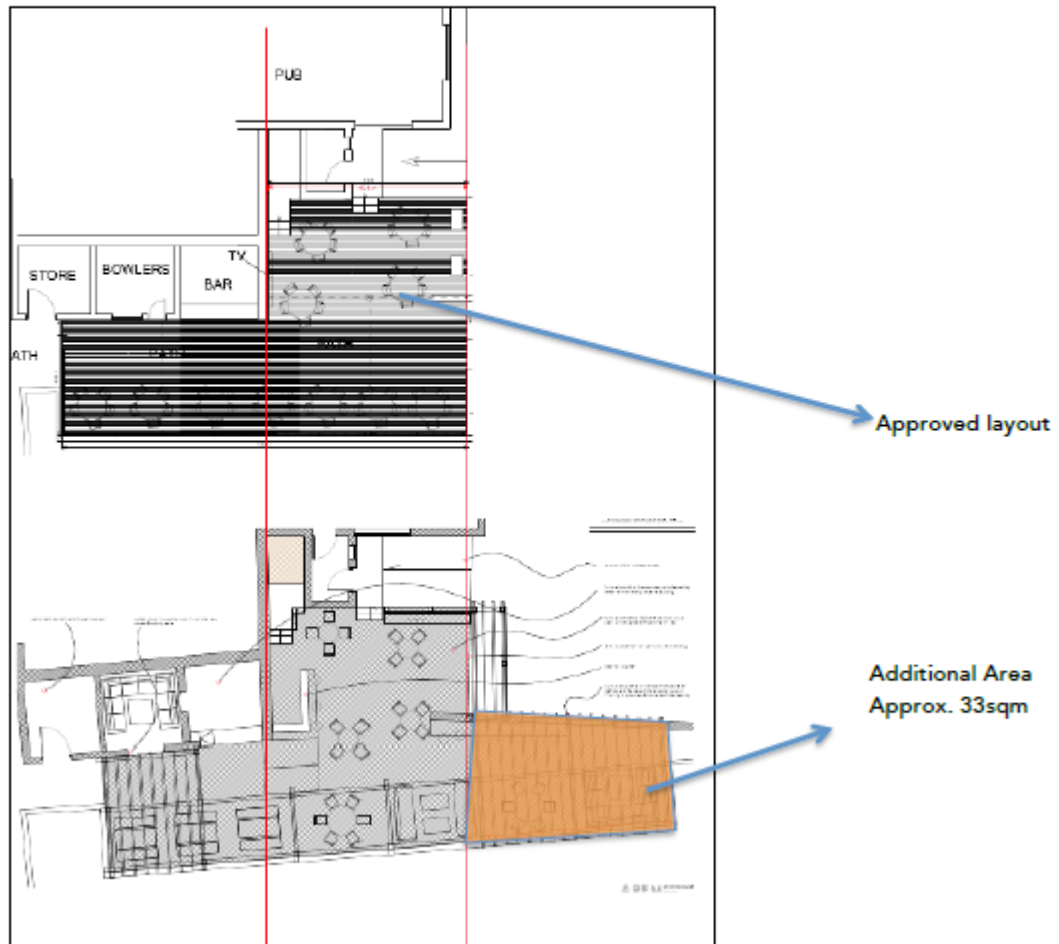
Item 4.1

Proposed Site Plan (as approved 10/17/0620)



Re-use of existing seating area

Area in black the new space which represents almost 100% increase from what exists



The noise associated with outdoor dining, drinking, music and TV has the potential for nearby properties especially later in the evening when we may be sleeping or reasonably expect a greater degree of quiet. It should be noted that currently there are no loudspeakers for background music on the outside of the pub at all, so a reasonable request would be for it be considered as a condition that no form of additional music systems be installed.

In the case officers report for 10/17/0620 it is noted that the Public Protection Officer commented; 'acknowledge the potential for noise impact particularly during the evening'. Item 4.1

If there was concern in the original consent, then surely the increase in seating area will only increase this concern.

NPPF, mainly paragraphs 122 and 123, advises that decisions should aim to mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.

It is not uncommon for conditions to be placed which help to mitigate the level of noise, one such condition can relate to restriction on the opening of doors and windows, as the example is set out:

'That the ground floor doors and any opening windows shall remain closed between the hours of 2100 hours and 0700 hours on every day of the week, except when in use to enter/exit the building.'

We understand that the hours of operation and issues around noise are already conditioned through the premises license agreement. For the benefit of ourselves and other nearby residents could the hours of operation and noise conditions be shared so we know the detail.

Objection Pleasington Parish Council

Re : Planning Application 10/18/1032
Butlers Arms, Pleasington

Pleasington Parish Council have considered this application and wish to object for the following reasons :

1. We consider this to be more than a minor amendment, the floor area increasing by more than 30% from the original application.
2. The requested amendment takes over more of the bowling green than in the original application. The bowling green is a community asset and erosion in small tranches seeks to circumvent this listing.
3. The pergola would look unsightly, would create a barrier to the bowling green and would be of no more benefit to the seating area than temporary/moveable parasols. It would also open the possibility of a future application to develop it into a more substantial structure.

Eileen Smith, Clerk to Pleasington Parish Council.

To The Attention of Mr. N. Blackledge

Re: The Butlers Arms, Pleasington

I write with reference to my phone conversation of today's date.

My main concern is traffic and parking problems. The Butlers Arms has a small car park and with the enhancement of the area traffic problems will follow.

Weddings are now listed on the board outside The Butlers. Therefore late night trade would be a nuisance creating noise from cars and people returning home.

Proposed development: Full Planning Application for Erection of building for the purposes of food retail (A1 Use) with associated car parking

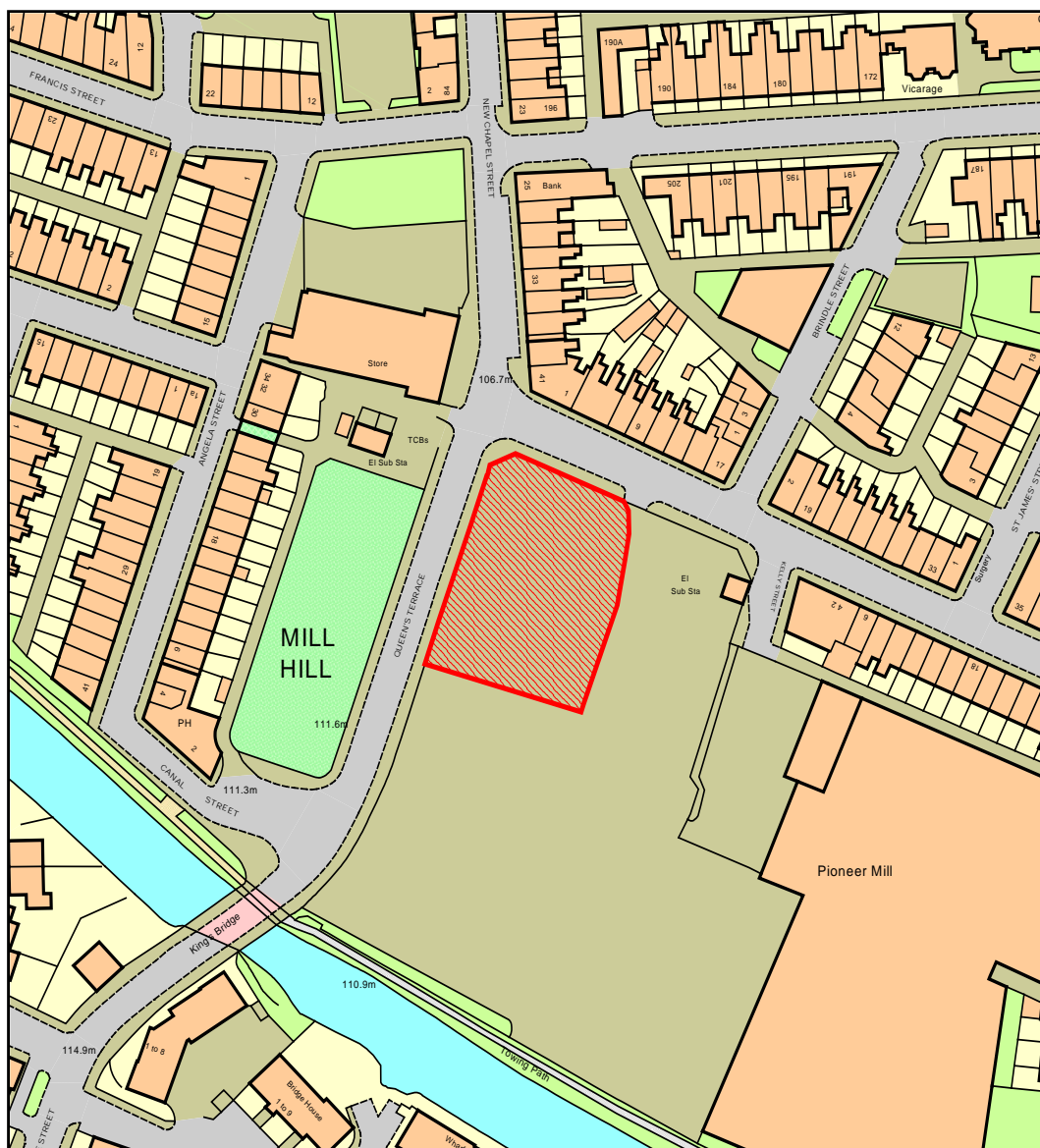
Site address:

Former Pioneer Mill Site,
New Wellington Street,
Blackburn
BB2 4PG

Applicant: IGP Investment Ltd

Ward: Mill Hill

Councillor Carl Nuttall
Councillor Jim Smith
Councillor Damian Talbot



1.0 SUMMARY OF RECOMMENDATION

Item 4.2

1.1 APPROVE – subject to conditions

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

- 2.1 The proposal provides for a new retail food store adjacent to the Mill Hill District Centre. The proposal is satisfactory from a technical point of view, with all issues having been addressed through the planning application. The application will not result in a significant adverse impact on the district centre but provide a competitive offer in line with the objectives of the Council's Development Plan and the NPPF. Revisions to the existing vehicular access from New Wellington Street will provide for a two-way route to/from a dedicated car park, which conforms to the Council's adopted parking standards. The proposed development has been designed to be in keeping the surrounding area. Subject to appropriate planning controls, the proposal is not considered to be injurious to the amenity of neighbouring residents or nearby uses.

3.0 RATIONALE

3.1 Site and Surroundings

The application site is a cleared industrial parcel of land located within the Mill Hill Ward in the Inner Urban Boundary of Blackburn. Access is taken from New Wellington Street set back from the junction with Queen's Terrace. The site is currently free from buildings but retains the hardstanding from the previously demolished building. Surrounding land uses are comprised of industrial, commercial and residential with the Leeds and Liverpool Canal to the south. The closest residential properties are located approximately 35m from the building to the North and West on New Wellington Street and Angela Street. Industrial premises adjoin the site to the west with commercial retail business to the North West.

3.2 Proposed Development

- 3.2.1 The proposal seeks full planning approval for the construction of a new retail building with an approx. footprint of 22.3m x 18.4m to give a total floor area of 410sq.m. Internally, the building will provide 370sq.m with 280sq.m of retail floor space, with the remaining 90sq.m reserved for stock storage and staff areas. The proposed design of the building is consistent with modern retail units, incorporating a mix of materials with a low mono pitch roof, wall cladding panels and facing brick piers, plinth course and a predominantly glazed aluminium frontage. The proposed building has an approx. height of 5.47m to the north east elevation which falls towards the south west elevation, to a height of approximately 4.05m.
- 3.2.2 The application will also see the development of an associated car park with 27 spaces, cycle storage, landscaping and alterations to the existing site access with internal access/egress taken from New Wellington Street.

3.3 Development Plan

Item 4.2

3.3.1 In accordance with s.38 (6) Planning and Compulsory Purchase Act (2004), the application is to be determined in accordance with the development plan, unless material considerations indicate otherwise.

3.3.2 The Development Plan comprises the Core Strategy and adopted Local Plan Part 2 – Site Allocations and Development Management Policies. In determining the current proposal, the following are considered to be the most relevant policies:

3.3.3 Core Strategy:

- CS1 – A Targeted Growth Strategy
- CS16 – Form and Design of New Development

3.3.4 Local Plan Part 2 (LPP2)

- Policy 1 – The Urban Boundary
- Policy 8 – Development and People
- Policy 9 – Development and the Environment
- Policy 10 – Accessibility and Transport
- Policy 11 – Design
- Policy 27 – District Centres: a Framework for their Development
- Policy 29 – Assessing Applications for Main Town Centre Uses

3.4 Other Material Planning Considerations

3.4.1 National Planning Policy Framework (The Framework).

At the heart of the NPPF is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking. For decision taking, this means approving development proposals that accord with the development plan without delay (paragraph14).

- 1: Building a strong, competitive economy
- 2: Ensuring the vitality of town centres
- 4: Promoting sustainable transport
- 7: Requiring good design
- 8: Promoting healthy communities

3.5 Assessment

3.5.1 Principle of the development

The application site relates to a former employment site designated within the inner urban area of the Local Plan Part 2, with no other particular designation. Retail development outside of the Town Centre is permitted by the Core Strategy where the unit is located within a Neighbourhood (or District) Centre

(Policy CS12). Mill Hill was added as a District Centre by the Site Allocations and Development Management Policies encapsulated in Local Plan Part 2 (LLP2) in December 2015.

- 3.5.2 LPP2 Policy 27 (District Centres) supports development within and adjacent to the district centres where it encourages mixed uses, and where it responds to the scale and function of the centre in question. Policy 27 goes on to state:
- 3.5.3 Proposals which fulfil these requirements and which comply with other relevant policies, will be permitted in the following circumstances:
- I. New build proposals should be proportionate to the scale and function of the centre. New retail, leisure, office and service use developments should demonstrate that they cater for local needs, and should be accompanied by an impact assessment if they involve the creation of new floorspace above the thresholds set out in Policy 29. The assessment should consider the impact of the proposal on existing, committed and planned public and private investment in the centre and other nearby centres.
- 3.5.4 The defined Mill Hill District Centre lies directly adjacent to the proposed development which is considered to be proportionate in scale and function to the Mill Hill District Centre in accordance with the provisions of Policy 27. This stance is reiterated and evidenced within the supporting Retail Impact Assessment and subsequent addendum update provided by the applicant.
- 3.5.5 LPP2 Policy 29 needs to be read in conjunction with Policy 27 as it details how the Council will refer to all available evidence in making an assessment, including the maximum indicative threshold for permitting retail development with District Centres, which is set at 500sqm. In reviewing the accompanying information the Officers have no evidence before them to refute the general findings of the Retail Impact Assessment or the addendum update. This approach is considered to comply with the provisions of the NPPF in that it is not likely to have a significant adverse impact on the factors identified with section 2 (Ensuring the Vitality of town centres) of the framework.
- 3.5.6 Given, the detailed objection received on the potential impact on the vitality and viability of the Mill Hill district centre, an independent retail review was also commissioned to ensure Officers make a justified recommendation and, where necessary, robustly justify the granting of permission.
- 3.5.7 The findings of the independent review of support the conclusions Officers in that the principle of development is acceptable and are summarised as follows:
- 3.5.8 *The application is supported by the necessary supporting retail information which covers the sequential approach to development and the impact of the proposal. The application site is immediately to the south of the defined District Centre at Mill Hill. In terms of the sequential approach to development the assessment focuses on the closest centre at Mill Hill; however there are no suitable or available sites to accommodate the application proposals. In*

terms of impact, the results of the shopper survey which underpins the Retail Study shows that the majority of convenience trade is being drawn from this area, mainly to larger surrounding foodstores. This proposal will claw back some of this lost trade. There will also be some more localised trade drawn from surrounding convenience stores including the Aldi at Ewood, Tesco express at Livesey branch Road and Sainsburys at Preston Old Road. Some trade will also be drawn from within Mill Hill District Centre itself from the existing Spar. This store is not identified within the Retail Study as a location where significant amounts of trade is drawn, but there will be some diversion as there will inevitably be an overlap in terms of convenience goods being sold, although there will be some differences given the different operators.

3.5.9 Overall the trade drawn from the Spar will be located to an edge of centre site, but coupled with the level of trade clawed back to the centre should overall be seen as positive for Mill Hill District Centre. As such it would at least maintain the vitality and viability of the centre, but there may be some improvements to the vitality and viability of the centre overall through additional choice and competition and additional shoppers which can benefit other occupiers. The overall impact of the proposal could not be considered 'significantly adverse' and as such the proposal would comply with the retail policies of the Local Plan and the NPPF.

3.5.10 On balance, the provision of a new retail premises adjacent to the Mill Hill District Centre with a retail floor area of 280sq.m of retail floor space, with the remaining 90sq.m reserved for stock storage and staff areas is considered to be consistent and in accordance with policies 27 and 29 of the adopted Local Plan Part Two, the Core Strategy and the NPPF.

3.6.1 Design and Layout:

3.6.2 Policy 11 of the Local Plan requires development to present a good standard of design, demonstrating an understanding of the wider context and make a positive contribution to the local area. The policy sets out a list of detailed design requirements relating to character, townscape, public realm, movement, sustainability, diversity, materials, colour and viability. This underpins the main principles of sustainable development contained in the NPPF which seeks to secure high quality design.

3.6.3 The external design of the building will have a brick plinth course from ground level to cill level. Facing brickwork will continue via masonry piers, in red brick, along with wall cladding panels in Goosewing Grey. The proposed roofing materials will be insulated/composite roofing sheets in Goosewing Grey with contrasting external soffit, fascia, gutter and rainwater pipes to be in a slate grey. All windows and external doors are proposed to be of aluminium construction. The shop front doors will incorporate double glazed units, the rear goods entrance doors will be solid panelled in slate grey.

3.6.4 The general design of the building is consistent with modern retail units with consideration having been given to wider area ensuring the development is not an alien or incongruous feature to street scene given the sites prominent setting adjacent the Mill Hill district centre.

- 3.6.5 The proposed materials, Goosewing Grey cladding and red brick are broadly consistent with those on the adjacent commercial/residential buildings, however a samples conditions is still considered necessary given the prominent location.
- 3.6.6 Landscaping and proposed boundary treatments are also consistent with modern small scale retail development, providing visually enchasing planting/landscaping along the frontage of the building along New Wellington Street and Queen's Terrace.
- 3.6.7 Thus, subject to appropriate conditions relating to submission of materials, the proposal is considered to meet the requirements of Policy 11 of the LPP2

3.7 Highways

- 3.7.1 Local Plan Part 2, Policy 10 sets out that development will be permitted provided it has been demonstrated that road safety and the safe, efficient and convenient movement of all highway users is not prejudiced; that appropriate provision is made for vehicular access, off street servicing and parking, in accordance with the Council's adopted standards and that the needs of disabled people should be fully provided for, including those reliant on community transport services.
- 3.7.2 The proposal seeks to reuse the original access arrangement by widening the access point off New Wellington Street to enable two way movements. The internal arrangements are broadly similar with parking provided toward the junction with Queen's Terrace modified via a revised car park layout to provide 48 parking spaces.
- 3.7.3 The proposal warrants a parking requirement of 23 spaces when applying the Council's adopted parking standards for A1 uses of this size. Consequently the proposed 27 space car park represents an over-provision. Generally the layout of the car park is satisfactory, with adequate manoeuvring areas and disabled parking provision in accordance with the Council's adopted standards. Cycle stand facilities are also provided within the car park.
- 3.7.4 The Council's Highway team raised no objection to the scheme following submission of revised plans but requested additional information on the access and egress road width, vehicular tracking and the pedestrian routes. Consequently the applicant has provided the requested drawings showing a reduction in road width and vehicular tracking to the satisfaction of officers. The applicant has also provided a detailed response on pedestrian movements in the site to show no conflict with vehicles should occur.
- 3.7.5 Subject to conditions requiring the car park layout being implemented prior to first use of the building, the proposal is consistent with Policy 10 of the LPP2

3.8 Amenity:

- 3.8.1 Policy 8 sets out that development will be permitted where it can be demonstrated that it would secure a satisfactory level of amenity and safety

for surrounding uses and for occupants or users of the development itself, with reference to noise, vibration, odour, light, dust, other pollution or nuisance, privacy / overlooking, and the relationship between buildings.

- 3.8.2 The Council does not have any prescribed minimum separation distances between dwellings and commercial buildings, such as a retail premises. However, minimum distances of 21m between habitable room windows or 13.5 m between windows and two storey blank gables are identified within the Residential Design Guide SPD. Those figures that can be revised upwards by 3m if there is a substantial difference between building heights or levels.
- 3.8.3 Premises within close proximity of the development are a mix of residential, industrial and commercial uses. Given, the building's siting and scale there are not considered to be unacceptable impacts on any sensitive receptors through loss of light, over-shadowing or other overlooking impacts.
- 3.8.4 The Council's Public Protection have reviewed the application and requested conditions relating to hours of operation (including deliveries), vehicular charging point's external lighting and contaminated land are also recommend.
- 3.8.5 Subject to the recommended conditions, the proposal is considered to accord with the requirements of LPP2 Policy 8, and would not unacceptably affect the amenity of surrounding uses.

4.0 RECOMMENDATION

4.1 **APPROVE** subject to the following conditions;

- Commence development within 3 years
- Materials to be submitted and agreed
- External lighting luminance levels
- Car park layout to be implemented and available for use prior to first use
- Landscaping
- Contamination and remediation
- Foul and surface water to be drained separately
- Surface water drainage scheme
- Culvert remediation strategy
- Operating hours of, Monday to Saturday: 08:00 to 20:00, Sundays: 09:00 to 17:00, including deliveries.
- Limitation of construction site works to: 08:00 to 18:00 Mondays to Fridays 08:00 to 13:00 Saturdays Not at all on Sundays and Bank Holidays

5.0 PLANNING HISTORY

The following planning applications relate to the application site:

10/17/1084 - Installation of a new secure compound to support electricity generation units inside a new building together with grid connection infrastructure and other ancillary development.

6.0 CONSULTATIONS

Item 4.2

Arboricultural Officer:

No objection.

Canal & River Trust:

No comment.

Highways:

No objection in principle following receipt of amended plans. Car parking amounts to an over-provision, though acknowledged that this is not detrimental to the safe and efficient use of the surrounding highway network. Additional information requested on the access and egress road width, vehicular tracking and the pedestrian routes which the applicant has supplied to the satisfaction of officers. A condition on the car park being layout and completed prior to first use has been recommended.

Public Protection:

No objection has been raised to subject to conditions in relation to the following matters; Operating hours of, Monday to Saturday: 08:00 to 20:00, Sundays: 09:00 to 17:00, including deliveries. Introduction of vehicular charging point to ensure Air Quality mitigation is appropriate. Luminance levels of external lighting are restricted to prevent light nuisance to neighbouring uses. Conditions have also been requested in relation to contamination to ensure the safety of end uses and surrounding sensitive receptors.

Local Authority Drainage:

No objection, subject to conditions on foul and surface water drainage scheme to be submitted and agreed and culvert remediation works.

United Utilities:

No objection, subject to conditions on foul and surface water and submission of a surface water drainage scheme to be agreed.

Public Consultation:

28 neighbouring properties have been individually consulted by letter and two site notices displayed. Following the receipt of amended details 21st February 2018 a further round of consultation has been undertaken. Two letters of objection have been received from the same objector. The objections can be summarised as;

- Discrepancies in the submitted information
- The proposed development will fundamentally undermine the vitality and viability of the objectors store and the Mill Hill District Centre.

7.0 CONTACT OFFICER: Alec Hickey, Senior Planner

8.0 DATE PREPARED: 4th April 2018

Objection on Behalf of Bridge Stores Ltd.

Dear Sir

**ERECTION OF BUILDING FOR THE PURPOSES OF FOOD RETAIL (A1 USE)
FORMER PIONEER MILL SITE, NEW WELLINGTON STREET, BLACKBURN**

We are writing on behalf of Bridge Stores Ltd, the proprietor of the Spar convenience store at 1a New Chapel Street, Mill Hill, to object to the above planning application. The proposed development will fundamentally undermine the vitality and viability of our client's store and the Mill Hill District Centre.

Planning application

Before setting out the detail of our objection, we have noted a number of inconsistencies in the application documentation that should be clarified. These are;

- i) The Planning Statement has been produced to support a full planning application by Heron Foods Ltd whereas the named applicant on the application form is IGP Investment Ltd;
- ii) The Planning Statement identifies Heron Foods as the occupier of the proposed store and the sequential and retail impact assessments have been carried out exclusively on that basis. The application is speculative however, as the description of development on the application form is 'erection of retail unit' with no specified occupier, and no opening hours are provided;
- iii) The Planning Statement describes the store as being 369 sqm (280 sqm net sales) and refers to pre-application advice provided to Heron Foods, whereas the application form confirms the net tradeable area is 370 sqm and indicates that pre-application advice was not obtained;
- iv) The Planning Statement incorrectly states that Mill Hill is the only defined shopping centre within the store catchment area, and paragraph 5.19 implies that Ewood District Centre has also been assessed, although no commentary is provided. This is presumably an error.

choice, and serves all of the needs of the local community. The existing private in-centre investment has been made in the knowledge that the store is located within the Mill Hill District Centre and is therefore afforded 'in-principle' protection by national retail policy at paragraph 26 (first bullet) of the Framework and local policy in the Blackburn with Darwen Local Plan. **Item 4.2**

Our client's longstanding knowledge of his customer base confirms that in common with same format convenience stores providing a local neighbourhood shopping function, the Mill Hill Spar store serves a localised catchment that is typically concentrated on a 500 m radius walking distance, and which contains a number of highly deprived neighbourhoods.

The most recent English Indices of Deprivation² published by the DCLG on the 30th September 2015, confirm that Mill Hill ward, within which the majority of the 500 m walking catchment is located, is ranked 163rd of 7,632 wards; placing it in the bottom 3% of the most deprived wards nationally. The balance of the catchment area lies in Ewood ward which is ranked 346th (bottom 5% nationally) and Meadowhead ward which is ranked 912th (bottom 15%) nationally. At neighbourhood level, the two Lower-layer Super Output Areas within the part of the catchment in Mill Hill ward (LSOAs 009E and 009F) are ranked 5,937th and 2,531st respectively out of 32,844 in England, which are amongst the 20% and 10% most deprived neighbourhoods.³ The rate of average car ownership is also noticeably low in Mill Hill ward at 0.72 vehicles per household, compared with the Blackburn with Darwen average of 1.02 vehicles and a national average of 1.16 vehicles.⁴

Retail and socio-economic context

Our client has operated the Spar store in Mill Hill district centre for over 30 years. During that time, he has made significant, continual investment in the store premises and retail business, to ensure it provides a high-quality convenience shopping experience, maintains an up-to-date offer and wide

choice, and serves all of the needs of the local community. The existing private in-centre investment has been made in the knowledge that the store is located within the Mill Hill District Centre and is therefore afforded 'in-principle' protection by national retail policy at paragraph 26 (first bullet) of the Framework and local policy in the Blackburn with Darwen Local Plan.

Our client's longstanding knowledge of his customer base confirms that in common with same format convenience stores providing a local neighbourhood shopping function, the Mill Hill Spar store serves a localised catchment that is typically concentrated on a 500 m radius walking distance, and which contains a number of highly deprived neighbourhoods.

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Our client's Spar store, and the turnover of the majority of shops⁵ within the Mill Hill District Centre, is therefore dependent on a localised customer base, broadly contained within a 500 m walking distance catchment and characterised by households with low levels of disposal income and limited access to private transport / shopping mobility. There is also no likelihood that the available expenditure within the catchment area will increase in the foreseeable future as there are no housing allocations in the Part II Local Plan and there are few opportunities for meaningful windfall new housing development.

Objections

In this context, assuming that the occupier of the proposed store is Heron Foods, the degree of direct competition with our client's Spar store, and thereby the likely scale of resulting trade diversion and reduced turnover, will be substantially greater than that predicted in the retail impact assessment prepared by the applicant. The retail impact assessment is fundamentally flawed on this basis for the following reasons;

1) Heron Foods store format and target market

The retail case presented in support of the application relies entirely on the assertion that the proposed Heron store will provide a substantially different retail offer to our client's Spar store. No compelling evidence is put forward by the applicant to substantiate this claim however.

¹ Turnover is derived from a 280 sqm net sales area

² Lancashire County Council Neighbourhood JSNA and Mapping Tools - www.lancashire.gov.uk/lancashire-insight/deprivation/deprivation-dashboard.aspx and www.lancashire.gov.uk/lancashire-insight/deprivation/indices-of-deprivation-2015.aspx

³ Figure 6.2 'Index of Multiple Deprivation Rankings' of the Blackburn with Darwen Retail Capacity Study 2011

⁴ 2011 Blackburn with Darwen Council - Mill Hill Ward Profile 2011 Census : www.blackburn.gov.uk/Census%20Ward%20Profiles/MillHill.pdf

⁵ Excluding a very small number of specialist shops and services such as Mill Hill Pets

Moreover, the supporting evidence that is put forward in the Planning Statement (impact assessment) and the Design & Access Statement, is contradictory. This is demonstrated by the following excerpts;

Paragraphs 5.1 and 7.4 of the Design and Access Statement state that;

'Heron Foods primary sales are frozen and chilled foods, with some dry / packaged foods and other non-food products', and that, 'due to the nature of the proposed store and the products it will sell, the impact will be minimal to competitors.'

This is in contrast to paragraph 3.5 of the Planning Statement which confirms that;

'Heron Foods is a food retailer which sells a range of chilled and grocery goods. Heron started out as a frozen goods retailer but now sells everyday goods which will meet the day to day needs of local residents. It is distinguished from other convenience retailers in that it carries a much more restricted range of goods; commonly 1,250 lines as opposed to 3,500 - 5,000 lines. The store would not sell cigarettes, magazines, alcohol or newspapers.' [our emphasis]

Paragraph 3.6 of the Planning Statement also makes the following comment which would not apply if the primary sales of the proposed Heron store are frozen and chilled goods;

'Heron is a discount retailer; it buys in bulk which allows it to pass savings onto customers. Many of its products have a shorter than normal shelf life and specific products often only appear for a short time. In this respect it acts as a complementary facility to the larger main food stores and larger discounters.'

These statements therefore confirm that the proposed Heron store will not be a frozen food specialist and its primary sales will not be frozen and chilled product lines. It will be a local convenience store of the same size and format, and providing the majority of the same range of goods and number of product lines, as our client's Spar store.⁶

Further confirmation of this is provided by media reports published at the time of the sale of Heron Foods to B&M Bargains in August 2017. An article from The Telegraph⁷ reports that Heron Foods high street shops *'have evolved from the freezer centres that were popular two decades ago'*, and the company's stock market announcement and a BBC article⁸ confirm the acquisition of the Heron chain of stores will enable B&M Bargains to *'develop and roll out a complementary, proven and profitable discount convenience grocery brand'*.

It is clear from the above that no weight should therefore be placed on the claimed differential between the proposed Heron store retail offer and our client's Spar store, based exclusively on the provision and proportion of turnover derived from frozen food product lines.

⁶ Common product lines currently include grocery, bread, cakes, milk, dairy, sandwiches, confectionary, crisps, frozen, stationery and sundries

⁷ *B&M Bargains moves into convenience retailing with £152m swoop on Heron Foods* - Daily Telegraph, 2nd August 2017 : www.telegraph.co.uk/business/2017/08/02/bm-bargains-moves-convenience-retailing-152m-swoop-heron-foods

⁸ *Family-run Heron Foods taken over by B&M in £152m deal* - BBC, 2nd August 2017 : www.bbc.co.uk/news/uk-england-humber-40805474

The Telegraph article referred to above, also contains the following statements from B&M Bargains;

'...the acquisition (of Heron Foods) will mean that B&M Bargains could offer discount groceries from convenience shops and undercut the higher prices that supermarkets offer at their smaller stores. The price war from the 'big four' (supermarkets) has been focusing on the big family shop. We (B&M Bargains) won't be getting involved in the weekly shop battle'. B&M said it 'saw the growth opportunity for low-cost convenience retailing as the price war between the major supermarkets had focused on their larger stores, whereas items in Sainsbury Local and Tesco Express were often more expensive.'

This confirms and compounds the degree of direct competition with our client's store, as Spar is not one of the local convenience format stores operated by the 'big four' supermarkets which B&M Bargains is seeking to target. Spar operates in the same sector of the local convenience market as Heron, serving the same customer base in more deprived and lower-value areas, from the same format stores and offering the same value for money.

Therefore whilst the proposed Heron store is pitched at offering goods at lower prices than the convenience format stores operated by the 'big four' supermarkets, it will not compete with those retailers as they do not have any stores within the very localised catchment area (see below) centred on Mill Hill. The only larger-format local convenience store within a 500m radius of the proposed Heron store is our client's Spar store, followed by the Co-op Food store at Livesey Branch Road just beyond 500m. The degree of competition is therefore direct and substantial, and the only differential is that Heron Foods does not (currently) sell alcohol, cigarettes and newspapers and magazines. B&M Bargains sells alcohol in its non-food stores however and cigarettes, newspapers and magazine sales are only a small percentage of our client's turnover. Heron stores also offer the National Lottery, PayPoint and other complementary facilities.

2) The suggested primary catchment area of the proposed Heron store

Paragraph 5.1 of the applicant's Design and Access Statement and paragraphs 3.5 and 5.4 of the Planning Statement make the following statements;

- *'The proposed (Heron) store will be used by the general public from the local area, with shoppers likely to travel on foot from within the Mill Hill area.'*
- *'The (Heron) store will serve a foot borne, very local trade.'* [our emphasis]
- *'The proposed (Heron) store will have a very localised catchment area, predominantly made up of walk-in trade serving the local population of Mill Hill. This is recognised by the requirements of Policy 29 (of the Local Plan Part II) which only requires an assessment of impact on centres within 500m. It is also common experience of Heron Foods Ltd in terms of its customer base.'* [our emphasis]

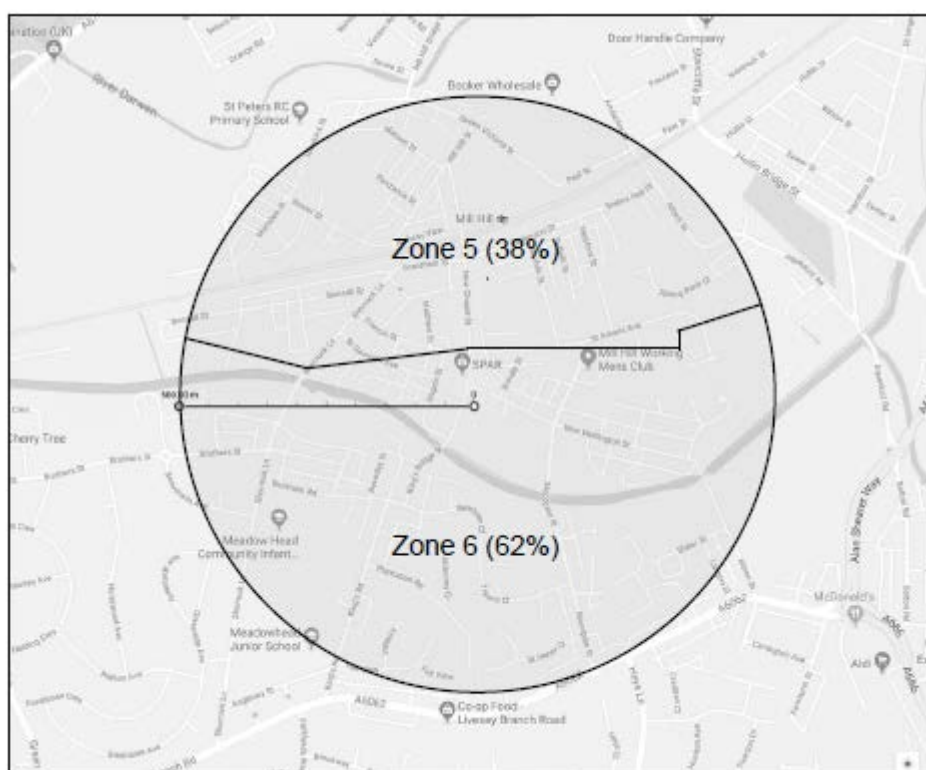
The Planning Statement also confirms that the localised catchment of the proposed store is supported by the Blackburn with Darwen Retail Capacity Study 2011, which confirms that most convenience shopping in Blackburn is undertaken on a highly localised basis and especially in deprived areas.

The Planning Statement also confirms that the localised catchment of the proposed store is supported by the Blackburn with Darwen Retail Capacity Study 2011, which confirms that most convenience shopping in Blackburn is undertaken on a highly localised basis and especially in deprived areas.

Despite this, a much enlarged zone is put forward in the Planning Statement as the primary catchment area from which the proposed store will draw the majority of its trade. At its greatest extent (to the west at Feniscowles) the claimed catchment extends to 2.46 km from the application site.

The extended area is not justified by evidence however, and we reject the assertion made in paragraph 5.4 of the Planning Statement, that incorporating the unsubstantiated potential for car-based shopping trips to be made to the proposed store from outlying areas, will add 'robustness' to the impact assessment. In reality, relying upon an unsubstantiated catchment area and speculated trade diversion is conjecture, and reduces the robustness and level of confidence that can be placed on the impact assessment for the purposes of accurately determining the planning application.

For the reasons explained earlier in this letter and the above extracts reproduced from the planning application, we consider that the proposed Heron store will share a primary catchment area that largely coincides with our client's Spar store, based broadly on a 500m walking radius. The general extent is shown (simplified) on the map below;



3) Trade diversion to the proposed Heron store

The applicant's impact assessment relies on the findings of the Blackburn with Darwen Retail Capacity Study of 2011 for evidence of local convenience spending patterns and store turnover data. The above map shows that approximately 40% of the proposed Heron store catchment area lies within Zone 5 and 60% lies in Zone 6 of the 10 no. study zones used in the Study.⁹

⁹ The spreadsheets in Volume 2 of the Study record our client's Spar store as located in Zone 5 but it lies in Zone 6 (BB2 4 postcode) as confirmed by paragraph 4.55 of Volume 1 and Spreadsheet 10a of Volume 2.

We consider that a degree of caution should be placed on the findings of the 2011 Study for the purposes of assessing the proposed Heron store due to its age and the absence of more refined evidence and household survey data collected at a neighbourhood level. This is particularly relevant in respect of the localised convenience goods retention rate of 20.1% in Zone 6, as this pre-dates the significant change in the sector (from 2014 onwards) as national consumer habits have moved away from the 'big four' supermarkets in favour of discount chains and local shopping. It is therefore likely that significantly fewer households in Zone 6 will currently travel as frequently to supermarkets and larger food stores in adjacent zones than they did in 2011.

Paragraph 7.14 of the Study also cautions against its unreserved use and advises that whilst it provides a very useful starting point for the assessment of individual planning applications, *'it will be necessary to carefully consider the merits of individual proposals, taking account of factors including the specific operator, likely sales densities, local 'need' factors, the scale of the proposal and so on.'*

In addition to these reservations, it should be noted that the applicant has overlooked a number of the Study's key findings and conclusions, and these must be read alongside the selected shopping pattern statistics that are reproduced at paragraph 5.25 of the impact assessment. These are;

- Paragraph 4.45 of the Study confirms that the level of convenience spending per capita is below the national average in all ten catchment zones apart from Zone 1; [our emphasis]
- Paragraphs 4.58 and 6.57 confirm it is evident from the household survey and analysis of shopping patterns, that there are no zones with an acute localised deficiency in convenience retail provision; [our emphasis]
- Paragraph 5.58 confirms that due to the high overall retention rate, there is no quantitative capacity for additional convenience floorspace in Blackburn with Darwen before 2021, and;
- Paragraphs 6.40 to 6.45 confirm there is no qualitative requirement for additional convenience floorspace as gap area analysis, taking account of local catchments and levels of accessibility to existing provision, revealed the only localised need is (was) in Zone 2. It is also confirmed that multiple deprivation is highest in the central, south and east wards of Blackburn, where it is most important to remedy any gaps in local provision due to low car ownership and limited accessibility, however most of these areas are comparatively well served by existing stores.

We therefore have fundamental reservations over the rationality and validity of the pattern and magnitude of the anticipated trade diversion to the proposed Heron store, set out in the applicant's impact assessment, in respect of stores beyond and within the suggested primary catchment area.

1. Trade diversion from stores outside the suggested primary catchment area

The applicant estimates that 30% of trade will be drawn from supermarkets (Asda and Morrison's) and destination food stores outside the catchment area. This is based on the account in paragraphs 5.29 and 5.30 of the Planning Statement, that the proposed Heron store will focus 'primarily on frozen foods' and this will enable it to compete against supermarkets with a significant frozen food offer. We have demonstrated earlier in this letter, that this statement is contradicted by other paragraphs in the Planning Statement and the comments made by the owner of Heron Foods in respect of its intention to develop the chain into a 'discount convenience grocery brand', targeted at the local convenience format stores operated by the 'big four' supermarkets.

The proposed store is also a local convenience format (restricted to a 280 sqm net sales area) which will not carry the number of product lines needed to draw a significant volume of trade from item 4.2 supermarkets, and nor is it easily accessible by car from the wider Zone 5 and 6 areas as it lies in a dense neighbourhood of terraced streets and is not located on a main road. The Planning Statement also confirms the proposed store will serve a 'very localised, walk-in trade catchment area' competing for the top-up / local convenience market (i.e. not main food shopping), and paragraph 5.22 notes *'the application proposals are for a small food store that provides a predominantly localised function.'*

Therefore, in the event there is still the same level of expenditure leakage from Zone 5 and especially Zone 6, as there was in 2011, it is highly unlikely that the proposed Heron store will draw (claw-back) 30% of its trade from stores outside the primary catchment area, as it will not compete on a like-for-like basis with those stores and is not well-located to capture remote trade. In addition, the low mobility of households within Mill Hill and surrounding wards, is such that any leakage is likely to have arisen elsewhere in the Zone 5 and 6 areas, and households in Mill Hill are likely to have always shopped locally. This is confirmed by our client's experience and understanding of his customer base, having served the local community from his store in Mill Hill for over 30 years.

There is also no evidence to assume that households within the Mill Hill area currently travel to the Heron Foods store at Rothesay Road in Shadsworth. As there may be a degree of (unproven) brand loyalty however, the anticipated diversion is not contested.

2. Trade diversion from stores within the suggested primary catchment area

It is noted that the applicant refers to the guiding principle set out in the Planning Practice Guidance that retail stores tend to compete with the most comparable competitive facilities on a 'like-for-like' basis. Our assessment of the applicant's estimated trade diversion is therefore as follows;

a) Tesco Express at Livesey Branch Road and Sainsbury's Local store at Preston Old Road

Paragraph 5.35 of the impact assessment assumes the proposed Heron store 'will draw a relatively large proportion of its trade' (12% and 10% respectively) from these two 280 sqm (net sales) local convenience stores, located 1.2 km and 1.6 km to the west at Cherry Tree and Feniscowles respectively, because they have a 'wider frozen food offer that overlaps with the proposed development's product offer.'

This is not correct. The frozen offer available in both of these stores, comprises a series 5 to 6 no. upright freezer cabinets that is of identical size and range of product lines, to the frozen offer available in our client's Spar store and at the Co-op Food store on Livesey Branch Road in Zone 6, which is described as a 'limited frozen offer' in paragraph 5.37 of the impact assessment.

In the absence of a 'wider frozen food offer' there is no reason to conclude that the proposed Heron store will therefore draw car-based trade away from either of these stores. This is consistent with the estimation that 0% trade will be drawn from other convenience stores within Zone 4, including the Spar local convenience store at Three Arches, Feniscowles.

b) Aldi and Iceland stores, Bolton Road

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In the event the proposed Heron store is exclusively a specialist frozen food offer, it is considered unlikely that a 280 sqm format store in a hard-to-access location, will divert a significant level of car-based trade from Aldi and Iceland as destination food stores, offering a much wider range of goods and far greater accessibility. This is broadly the same argument the applicant uses to justify drawing trade from larger supermarkets outside the suggested primary catchment area, and is unfounded in our opinion.

c) Other stores in Zone 6

The applicant anticipates a 6% trade draw from the Co-op Food store on Livesey Branch Road. On the basis this store provides the same frozen food offer as the Sainsbury Local store at Cherry Tree and the Tesco Express at Feniscowles (see (a) above), from which 10% and 12% car-based trade draw is anticipated, and the fact it is much closer and lies only just beyond 500m walking distance from the proposed Heron store, it is reasonable to assume that the trade diversion will be greater and largely pedestrian based.

On the basis of the above assessment, we consider that the adjusted trade diversion should therefore be as shown in the table below. It shows our 'best case' estimation which assumes that notwithstanding the identified flaws in the applicant's impact assessment, there will be a nominal 3% (car-based) trade draw from the Tesco Express and Sainsbury Local stores, and up to 10% (initially) from store/s outside the suggested primary catchment area. Estimated trade draw from Aldi and Iceland is also not adjusted downwards in this scenario. A 'worst case' estimation could occur in reality however, and should be considered in the absence of up to date, neighbourhood level household survey evidence and uncertainty / contradiction over the proposed Heron store offer. This would reduce the assumed car-based trade draw from the Aldi and Iceland stores, and stores outside Zones 5 and 6.

Store	Applicant estimated trade diversion	Our estimated trade diversion (best case)	Our estimated trade diversion (worst case)
Tesco Express, Livesey Branch Road	12%	3%	0%
Other stores Zone 4	0%	0%	0%
Sainsbury Local, Preston Old Road	10%	3%	0%
Other stores Zone 5	3%	3%	3%
Aldi, Bolton Road	17%	17%	10%
Iceland, Bolton Road	14%	14%	8%
Other stores Zone 6	6%	10%	10%
Heron Foods, Rothesay Road	5%	5%	5%
Other stores outside the primary catchment	30%	10%	5%
Spar, Mill Hill District Centre	3%	35%	59%

The impact of the proposed Heron store on our client's business

In light of the above analysis and the inconsistencies in the applicant's impact assessment, we consider that there is no logical and reasonable basis to support the view that the proposed Heron store will only draw 3% of trade from our client's Spar store in the Mill Hill district centre. Our assessment concludes that the extent of trade draw will be substantially greater, within a range of 35% (best case) to at least 59% (worst case).

The applicant's assessment of 3% trade draw is not supported by credible evidence, and the available evidence points to a very different pattern and severity of impact. With only limited ability to claw-back leakage from outside the suggested primary catchment area, and over-estimated levels of car-based trade diversion from other stores within the catchment area, the proposed Heron store will not complement our client's Spar store as implied, and will instead compete directly for the same customers and local convenience / discount market share, within a largely coinciding 500m local walk-in catchment area.

As Mill Hill and surrounding wards are some of the most deprived in Blackburn with Darwen and nationally, there is plainly insufficient capacity within the catchment area to support two local convenience stores providing largely the same offer. Our client's business does not generate a sufficient profit margin to be able to withstand direct competition from a rival convenience store of the same size and offer in immediate proximity, and it is also evident that our client's store does not overtrade. It is noted that the availability of surplus expenditure is not part of the applicant's case.

Item 4.2

It is also very unlikely that there would be any potential for linked-trips between our client's Spar store and the proposed Heron store, in the event it was focused on primarily on frozen foods, as the store would carry the same range of chilled and grocery product lines as the Spar store in addition to frozen lines. Customers are unlikely to be influenced by brand loyalty in this sector of the local convenience market such that they will not visit more than one store if they can purchase all of their goods in a single location. The potential for linked trips is therefore not a plausible argument.

Consequently, the impact of the direct competition and expected amount of trade draw from our client's business is acute. The development of the proposed Heron store will result in the reduction of our client's turnover to the point where it will no longer be possible to operate a viable business and the Spar store that has operated in Mill Hill for over 30 years, would inevitably close.

4) The impact of the proposed Heron store on the vitality and viability of Mill Hill District Centre

The Planning Statement claims that the proposed Heron store will have a number of positive impacts on the vitality and viability of the Mill Hill District Centre. It states that the development will;

- allow a currently vacant site to be brought back into use along with the introduction of one new national operator into the area;
- enable the site to be brought into viable use rather than remaining vacant, delivering significant visual benefits and physically regenerating this vacant site;
- further improve consumer choice and trade with the Mill Hill area, and;
- provide new job opportunities which will have a positive impact.

We strongly disagree with these statements and demonstrate below, that the proposed Heron store will instead cause substantial long-term harm to the vitality and viability of the Mill Hill District Centre, in direct conflict with the policy objectives of the Framework and Local Plan;

- 1) Regeneration benefits are not unique to the proposed development as the application site can be redeveloped and re-used for a range of viable uses including housing, employment, leisure and non-food retail. Each of these uses would produce the same physical and visual improvement as the proposed Heron store;
- 2) The physical and visual improvement of the application site resulting from the proposed development will be outweighed by the closure of our client's Spar business, as a large, empty retail unit within the Mill Hill District Centre will be more damaging to footfall, perception and the appearance and turnover of the centre, than vacant land on its edge. There is also little prospect of finding another tenant for our client's premises, as demonstrated by other long term vacancies in Mill Hill, which will have a negative visual impact and will blight the centre, as well as fragmenting the retail offer. Overall there will be a negative impact on the vitality and viability of the District Centre, and the loss of our client's Spar store would contribute to its long term decline and the increasing number of empty shop units;

- 3) As there is insufficient capacity to support more than one local convenience store in Mill Hill, the benefit of introducing a new national operator to the area, is negated by the loss of our client's business as a nationally-branded Spar store. There is consequently no net retail benefit as the closure of our client's store and its replacement with the proposed development of a store of the same local convenience format and offering the same range of goods, will not improve consumer choice and/or trade within the District Centre;
- 4) Our client's Spar store draws trade to the District Centre throughout the day and week, and is the main purpose for many shoppers to visit Mill Hill. The loss of this anchor store will result in less passing trade, less visitor footfall and fewer linked trips to other stores. As Mill Hill is a highly deprived area and the centre contains no other anchor stores, and offers a limited range of shops and services with a large number of hot food takeaways and an increasing vacancy rate, the loss of the Spar store will undoubtedly result in less footfall, fewer linked trips and reduced turnover, and will adversely impact the vitality and viability of the District Centre;
- 5) The proposed Heron would employ 14 no. staff in full and part time positions, whereas the closure of our client's Spar store would result in the loss of 6 no. full time jobs and 22 no. part time local jobs. The proposed development will therefore result in a net loss of jobs and will not have a positive impact on the vitality and viability of the District Centre, which serves some of the most deprived neighbourhoods in Blackburn with Darwen.

Summary

We strongly object to the proposed convenience store development. The proposal is contrary to national and local planning policy and will fundamentally undermine our client's Spar store business and the vitality and viability of the Mill Hill District Centre. Moreover, there are several flaws and inconsistencies in the application which must be addressed before the Council can make a robust decision.

In particular, no compelling evidence has been provided to substantiate the suggested primary catchment area for the proposed store, and the applicant's analysis of the estimated trade diversion from existing stores is not credible. The proposed store will compete directly and like-for-like with our client's Spar store located within the Mill Hill District Centre and there is insufficient capacity available within the highly-deprived local area to support two local convenience stores.

We therefore request that the application is refused.

**ERECTION OF BUILDING FOR THE PURPOSES OF FOOD RETAIL (A1 USE)
FORMER PIONEER MILL SITE, NEW WELLINGTON STREET, BLACKBURN**

On behalf of our client, Bridge Stores Ltd, we write to reaffirm our objection to the above planning application.

Whilst the applicant has provided a supplementary letter in response to our objection of the 29th November 2017, this does not resolve the key and material concerns we have raised. There remains insufficient information to allow robust consideration of the application and an informed decision, and it is requested that the Council seeks specialist independent retail advice.

Approach to decision-making

The National Planning Policy Framework emphasizes the 'town centre first' approach and advises local planning authorities to pursue policies to support their vitality and viability. It sets out the sequential test to be applied to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan, and it requires impact assessments for out of centre developments which are not in accordance with an up-to-date Local Plan and over a proportionate, locally-set floorspace threshold. It is clear that proposals which fail the sequential test and/or would be likely to have significant adverse impacts on existing, committed and planned public and private investment in a centre, or on its vitality and viability, should be refused.

An applicant must demonstrate compliance with the impact test, and as a guiding principle, impact should be assessed on the basis that 'like affects like', as retail uses tend to compete with their most comparable competitive facilities.¹ Judgement as to whether likely adverse impacts are significant can only be reached in light of local circumstances, where even very modest trade diversion to a new development may lead to a significant adverse impact on a centre.²

Policy 29 of the Part 2 Local Plan reflects the above thrust of the Framework, and is up to date and must be given full weight.

¹ Planning Practice Guidance - Paragraph: 016 ID: 2b-016-20140306

² Planning Practice Guidance - Paragraph: 017 ID: 2b-017-20140306

Further objections

Item 4.2

Our response to the comments made in the applicant's supplementary letter, which in part contradicts its original Planning Statement, is as follows;

1. The applicant's case is founded on two points;
 - i) the assertion that a large number of people within Mill Hill shop at supermarkets outside the area and do not shop locally, and;
 - ii) that whilst not providing a main-food shopping offer, people will nevertheless use the proposed Heron store to purchase mainly frozen food items which they would otherwise buy from larger supermarkets or express/local equivalents with a significant frozen food offer.

In this regard, the applicant's original submission explained that the proposed store will 'principally compete against other supermarkets which have a frozen food offer and other frozen food specialist retailers.'

In its supplementary letter, the applicant acknowledges that the proposed Heron store will 'not serve a substantially different retail offer to our client's Spar store', and the predicted trade diversion is 'not predicated on the frozen food offer and the fact that Heron does not sell tobacco, alcohol, magazines or newspapers is more relevant.'

2. On this basis, we maintain our view that trade diversion is unlikely to occur from main supermarkets irrespective of whether it is reasonable to rely upon headline shopping patterns taken from the 2011 Retail Capacity Study, which may not be representative of localised shopping patterns given the socio-economic profile of Mill Hill. The supplementary information also confirms our view that there is no evidence to support trade diversion from the Tesco Express store on Livesey Branch Road and the Sainsburys Local store on Preston Old Road, as we demonstrated in our original objection based on visits to these stores and confirmation that they do not have a significant frozen food offer.
3. The applicant has already confirmed that the proposed store has a 'very localised catchment area, predominantly made up of walk-in trade serving the local population of Mill Hill.' The supplementary letter confirms this is 'slightly larger than 500m'. There are two convenience stores within this area which are comparable on a like-for-like basis with the proposed Heron store. One is our client's Spar store located within the Mill Hill District Centre, and the other is the out of centre Co-op Food store at Livesey Branch Road on the edge of the catchment.

The proposed Heron store will directly compete with our client's Spar store on several common product lines from which the majority of its turnover is derived, including groceries, milk and dairy, frozen, bread, cakes, sandwiches and confectionary. As there is insufficient headroom expenditure within the catchment, the proposed store will draw a substantial proportion of its trade (and significantly much greater than 3%) from our client's Spar store within the Mill Hill District Centre. This will result in a significant reduction in our client's turnover which the business cannot sustain. The store could certainly not survive on sales of tobacco, alcohol, magazines and newspapers alone, and thereby making it irrelevant whether the proposed Heron store will sell these items or not.

As our client's Spar store anchors the Mill Hill District Centre, its resulting closure is a highly important and material planning policy consideration, which does not relate to protection from commercial competition, but rather goes to the heart of national planning policy and the 'town centre first' approach, which seeks to protect the vitality and viability of existing centres.

The clear conclusion therefore, is that no matter how the question of trade draw and impact assessment is approached, common sense application of the 'like-affects-like' principle demonstrates that the impact of the proposed Heron store will result in the closure of our client's Spar business. By definition, the loss of the in-centre Spar store is a significant adverse effect that will unquestionably harm the vitality and viability of the Mill Hill District Centre as a whole. The proposed development is therefore clearly contrary to the objectives of the Framework and the Development Plan on this basis.

Added value

The applicant's supplementary letter does not alter our view that, on the basis the proposed edge of centre Heron store will result in the closure of our client's in-centre Spar store as they cannot co-exist, the application will not add quantitative or qualitative value to the Mill Hill District Centre and its convenience retail offer. In our opinion;

- a) Whilst the proposal will help to regenerate the application site, the applicant acknowledges this is not unique to a retail scheme;
- b) Regeneration of a vacant edge-of-centre site will be at the cost of creating an in-centre vacant and blighted site, comprising a large store building and the adjacent car park;
- c) It is speculation to assume, and highly unlikely, that our client would be able to let (or sell) his property based on its size and limited market interest, evidenced by the number of empty and available shop units, and;
- d) The proposed store will not widen choice and introduce a new national operator into the area, but will narrow the range of convenience goods presently available within the Mill Hill District Centre and replace one national operator with another.

Conclusion

Item 4.2

We strongly maintain our objection to the proposed Heron store development. The application as currently submitted contains gaps and inconsistencies, and if approved, could be subject to challenge in failing to address the full impact of the proposed development on the viability and vitality of the Mill Hill District Centre in a robust and credible manner.

We consider our client's objection has not been fully considered and request that the Council appoints an independent consultant to review the application and ensure correct application of the relevant policy tests within the Framework and the Development Plan. It is clear that the applicant's consultant has applied a set of assumptions to support the desired outcome in favour of the proposal and furthermore, has sought to modify that approach in light of our objection. An independent assessment is clearly needed.

Additionally, as our client has continuously operated and continually improved and invested in an independent family-run business that has anchored the viability and vitality of the Mill Hill District Centre for over 30 years, we consider that the Heron planning application should be given full and proper consideration by members of the Planning and Highways Committee.

We therefore request that the application is not determined under delegated authority and a decision is not taken until further details are requested from the applicant and/or an independent review of the submitted retail assessment and supplementary information has been undertaken.



Item 5

REPORT OF: THE DIRECTOR OF GROWTH & DEVELOPMENT

TO: PLANNING AND HIGHWAYS COMMITTEE

ON: 19th APRIL 2018

ORIGINATING SECTION: DEVELOPMENT MANAGEMENT SERVICE

WARDS AFFECTED: ALL

COUNCILLORS: ALL

TITLE OF REPORT:

**Letter to Secretary of State for Housing, Communities & Local Government
regarding fees relating to retrospective planning applications**

1. PURPOSE OF THE REPORT

- 1.1 To inform Members of the response received from the Minister for Housing, Communities and Local Government to the letter sent by the Council dated 19th February 2018

2. BACKGROUND

- 2.1 Members will recall at the meeting on the 15th February 2018, that approval was granted for a letter to be sent to the Secretary of State for Housing, Communities and Local Government to look at increasing the planning fees to take into account retrospective planning applications. A copy of the letter sent on the 19th February is attached to this report.

3. RATIONALE

- 3.1 A response was received on the 9th March from the Ministry of Housing, Communities and Local Government, welcoming the views made by the Council. However, they state that a higher fee is not charged for retrospective planning applications as the costs to process these applications is not considered to significantly differ to justify a higher charge. A copy of the full response is attached to this report.

4. POLICY IMPLICATIONS

Item 5

4.1 None

5. FINANCIAL IMPLICATIONS

5.1 None

6. LEGAL IMPLICATIONS

6.1 None

7. RESOURCE IMPLICATIONS

7.1 None

8. EQUALITY IMPLICATIONS

8.1 An Equality Impact Assessment is not required.

9. CONSULTATIONS

9.1. None

10. RECOMMENDATION

10.1.1 (i) That the Committee note the content of the letter from the Ministry of Housing, Communities and Local Government

Contact Officer: Gavin Prescott, Development Manager

Date: 6th April 2018

Background Papers: none



Secretary of State for Housing, Communities
& Local Government
Rt Hon Sajid Javid MP
Department for Housing, Communities &
Local Government
2 Marsham Street
London
SW1P 4DF

Date: 19th February 2018
My Ref: G&D/DM/GJP/CLG/retrospecti
ve

Your reference:

Please Ask For: Gavin Prescott

Direct Dial: 01254 585694

Email: planning@blackburn.gov.uk

Dear Secretary of State,

RETROSPECTIVE PLANNING APPLICATIONS:

Blackburn With Darwen Borough Council previously wrote to you on the 17th April 2015, regarding the concerns of the Council's Planning & Highways Committee over the number of retrospective planning applications being submitted. At their meeting on the 15th February 2018, the Committee approved the recommendation to write to you again about the issue.

The increase to the national planning application fees by 20% which came into force on the 17th January 2018 under The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017, is welcomed. It is noted that a new Regulation 5(2) omits regulation 5 of the previous 2012 Regulations. This means that a planning application fee may be charged by local planning authorities where they have made a direction withdrawing permitted development rights under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596 "the General Permitted Development Order 2015") or where permitted development rights have been withdrawn by a condition imposed on a planning permission. However, it is with disappointment that a new regulation was also not introduced that applied a higher fee for retrospective planning applications to the relevant fee in the 2017 Regulations.

The Council has recently restructured its Growth & Development Department and Development Management Service with a key focus on delivering the Council's Growth Agenda. As part of this restructure the Development Management Team has a more lean focussed approach that maintains growth whilst at the same time maintains high performing efficient service. The Council consider retrospective planning applications in terms of how they are processed should be reviewed, in order to try and eliminate abortive work and enforcement costs.

The Council supported the Government's intention in 2010 to introduce Local Fee Setting, to allow planning services to recover their costs to sustain an efficient planning service. One of the proposals at that time was to introduce additional costs for retrospective planning applications. This received unanimous support at Blackburn With Darwen Borough Council. Disappointingly the local fee setting never materialised, and the Council wrote to you in April 2015, asking you to reconsider the approach towards retrospective applications. I was disappointed to note we never received a response from you and this was reported to my Committee. Again I wish to express the reasons why we consider such an approach is necessary to help sustain efficient planning services.

In setting fees for retrospective planning applications, the Council wish to highlight to the Secretary of State, they must be able to recoup any enforcement costs of facilitating the submission of retrospective applications as well as the costs of determining the application. In the current economic climate, where the planning fee income is required to sustain providing an effective and efficient service, the inability to recoup such costs could impact on the Council continuing to provide an efficient enforcement service.

It is possible that higher fees for retrospective applications could deter homeowners/developers from submitting such applications. Consideration should, therefore, also be given to increasing fees for enforcement appeals to match the increased retrospective applications fees, and to imposing a fee for dealing with the appeal itself in addition to the retrospective application fee. Consideration should also be given to penalising those who undertake development requiring planning permission but refuse to submit a retrospective application. The Local Planning Authority can decide to take no further action against unauthorised development if it is considered to be not expedient. However, the assessment of such cases are resource intensive. In such

cases, developers, by complying with the terms of the enforcement notice, obtain a deemed planning permission at no cost to themselves, but at substantial cost to the Local Planning Authority. The Council consider one way of alleviating this problem would be for the Local Planning Authority to register a charge on the property which would have to be paid to the Local Authority when the property is sold.

If the Secretary of State considers that higher fees should be introduced for retrospective planning applications, the Council consider it will be necessary for the following to be clarified:

- (i) A definition of when development is deemed to have commenced and therefore when the higher fee for a retrospective application is required. The definition should indicate not only the works required for the development to be considered to have begun, but also whether a higher fee is required if works start after an application has been submitted, but before it is made valid or determined.
- (ii) A deterrent for those prepared to carry out works without planning permission would be to allow local authorities to increase the business rates or Council Tax of the property by 25% for every year the breach remains without retrospective consent being sought and obtained.

As some retrospective planning applications are submitted without the need for any enforcement action by the authority, the charging arrangements should allow some flexibility to permit Local Planning Authorities the opportunity not to impose higher fees for retrospective applications in appropriate cases.

I would ask that you consider all the points raised in the above proposal, and acknowledge receipt of this letter. I look forward to hearing from you with your comments to the issues and points raised in this letter.

Yours sincerely,



Ian Richardson,
Director of Growth & Development



**Ministry of Housing,
Communities &
Local Government**

**Ministry of Housing, Communities & Local
Government**

2 Marsham Street
London
SWP 4DF

Ian Richardson
Blackburn With Darwen Borough Council
Town Hall
King William Street
Blackburn
Lancashire
BB17DY

Tel: 0303 444 0000
Fax: 020 7035 0018
Email: muraad.chaudhry@communities.gsi.gov.uk

www.gov.uk/mhclg

Our Ref: 3679132
Your Ref:

Date: 9 March 2018

Dear Mr Richardson,

Thank you for your letter of 19 February to the Secretary of State for Housing, Communities and Local Government, regarding the planning application fee increase. Your letter has been passed to this Division as it has responsibility for planning fee policy, and I have been asked to reply.

We welcome your views on planning applications and the proposal set out for the inclusion of retrospective planning applications in the planning application fee increase

I am pleased to read that Blackburn with Darwen Borough Council has welcomed the increase to the national planning application fees by 20%, but understand that you feel that the fee increase should also apply to retrospective planning applications.

Planning fees relate to the cost for a local planning authority to process a planning application. A higher fee is not charged for retrospective planning applications as the cost to process these applications is not considered to significantly differ to justify a higher charge.

Although I cannot reply in any further detail to the points you have raised I would like to assure you that they have been noted. It is views like this that help to shape the way future government policy is developed.

Thank you for taking the time to contact the Department.

Yours Sincerely,

Muraad Chaudhry