

Public Document Pack

Planning and Highways Committee

Thursday, 15th November, 2018

6.30 pm

Meeting Room A, Blackburn Town Hall

AGENDA

1. Welcome and Apologies
2. Minutes of the Previous Meeting
Minutes of the Meeting held on 18th October 2018 3 - 6
3. Declaration of Interest
Declaration of Interest Form 7

PLANNING MATTERS

- Material Considerations 8 - 9
4. Planning Applications for Determination
Planning Application Summary 10 - 11
 - 4.1 Planning Application 10-18-0154
Higher Whittaker House, Longworth Road North,
Belmont 12 - 32
 - 4.2 Planning Application 10-18-0290
Former Sappi Paper Mill, Livesey Branch Road,
Blackburn 33 - 50
 - 4.3 Planning Application 10-18-0317
Former Sappi Paper Mill, Livesey Branch Road,
Blackburn 51 - 64
 - 4.4 Planning Application 10-18-0740
Sappi Paper Mill, Livesey Branch Road, Blackburn 65 - 70

4.5	Planning Application 10-18-0963	
	Witton Country Park, Preston Old Road, Blackburn	71 - 78

HIGHWAYS MATTERS

5.	Diversion of Public Footpath	
	209 Jacks Key, Darwen	79 - 84
6.	Diversion of Public Footpath	
	1 Livesey, Blackburn	85 - 90
7.	Petition	
	Brookfield Street One-Way Report	91 - 92
8.	Objection Report	
	Proposed Raised Speed Tables, Gib Lane, Blackburn	93 - 96

PART II - THE PRESS AND PUBLIC MAY BE EXCLUDED DURING CONSIDERATION OF THE FOLLOWING ITEMS

9.	Enforcement Report	
	PART 2 - Land at Europa Business Site	97 - 102
	PART 2 - Land at Europa Business Site - Location Plan	
	PART 2 - Land at Europa Business Site - Image 1	
	PART 2 - Land at Europa Business Site - Image 2	
	PART 2 - Land at Europa Business Site - Image 3	

Date Published: Wednesday, 07 November 2018
Harry Catherall, Chief Executive

PLANNING AND HIGHWAYS COMMITTEE

Thursday, 18 October 2018

PRESENT – Councillors: Smith (in the Chair), Akhtar, Davies, Groves (substitute for Casey), Hardman, Jan-Virmani, Khan, Khonat, Oates, Richards, Riley, and Marrow (substitute for Daley).

OFFICERS - Gavin Prescott (Development Manager) and Sian Roxborough (Council Solicitor), Wendy Bridson (Democratic Services).

RESOLUTIONS

29 Welcome and Apologies

The Chair welcomed everyone to the meeting. Apologies were received from Councillors Casey, Daley and Slater.

30 Minutes of the Previous Meeting

RESOLVED – That the minutes of the last meeting held on 20th September 2018 be confirmed and signed as a correct record.

31 Declaration of Interest

There were no Declarations of Interest received.

32 Planning Application Summary

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

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 – That the following decisions be made on the applications:

32.1 Planning Application 10-18-0075 School Lane, Guide

Applicant – Wainhomes (North West) Ltd & Bowsall Ltd

Proposed Development – Full Planning Application for Full application for 45 dwellings with associated new access, landscaping and parking and associated works.

Decision under Town and Country Planning Acts and Regulations –

Approved subject to delegated authority being given to the Head of Service for Planning to approve planning permission subject to an agreement under Section 106 of the Town and Country Planning Act 1990, relating to the payment of financial contributions which relate to matters highlighted in the Director’s Report.

Should the s106 agreement not be completed within 6 months of the date of this resolution, the Head of Service for Planning will have delegated powers to refuse the application.

With conditions as detailed in the original Director's Report including two revised conditions as detailed in the Director's Report. The Committee was advised that the revised conditions had been agreed in writing by the applicant in accordance with the Town & Country Planning (Pre-commencement conditions) Regulations 2018, which came into force on the 1st October 2018.

32.2 Planning Application 10-18-0230 Old School Grounds, Edgworth

Applicant – Mr Shaun Readey

Proposed Development – Full Planning Application for Erection of a single dwellinghouse (C3 Use Class) with associated access, parking and landscaping (resubmission of 10/17/0278)

Decision under Town and Country Planning Acts and Regulations – Approved subject to the conditions highlighted in the Director's Report. The Committee was advised that the conditions had been agreed in writing by the applicant in accordance with the Town & Country Planning (Pre-commencement conditions) Regulations 2018, which came into force on the 1st October 2018.

32.3 Planning Application 10-18-0764 Ashleigh Primary School

Applicant – Mr Ian Matthews

Proposed Development – Full Planning Application (Regulation 4) for Replacement of windows to main school hall of primary school

Decision under Town and Country Planning Acts and Regulations – Approved subject to the conditions highlighted in the Director's Report.

33 Appeals Monitoring Report

Members were presented with an update of recently decided appeals within the last twelve calendar months. The report showed that 18 appeals in total were determined during the period 5th October 2017 to 5th October 2018, with 12 appeals that had been dismissed, 5 appeals allowed and one appeal with a split decision.

The update was also presented to the Cross Party Working Member Group on 16th October 2018.

RESOLVED – That the report be noted.

34 National Planning Performance Tables Report

Further to a report that was submitted to the August 2018 meeting of the Committee which informed Members of the Planning Service's current performance in processing planning applications, Members were presented

with an update on the recently published National Planning Performance Tables.

The latest national planning performance statistics (from July 2016 to June 2016) showed how far Blackburn with Darwen Borough Council had progressed since the Planning Services had introduced the Improvement Plan in the autumn of 2015.

On behalf of the Committee, the Chair expressed thanks to Officers for their hard work and efforts.

RESOLVED – That the Committee note the content of the report.

35 Response to MHCLG Consultation to Introduce Permitted Development Rights of Shale Gas Exploration

Members were informed of the Council's response and views on the Government's proposal to amend the Town & Country Planning Order to extend the permitted development rights to cover non-hydraulic fracturing shale gas exploration sites, together with amending the 2008 Planning Act for NSIP to deal with all major shale gas production projects.

The Planning Manager informed the Committee that the proposals set out by the Government would potentially reduce the Council's involvement in determining applications for shale gas production and that the Council would lose the fee income that would normally be received for such planning applications however would still have a significant workload in terms of responding to the Nationally Significant Infrastructure Projects application.

The Committee was reminded that the consultation exercise that was undertaken at the start of Summer 2018 was due to expire on the 25th October 2018 and that any response should be submitted prior to the consultation expiring.

Members were asked to authorise the Planning Manager to submit a response on behalf of the Council to the Government consultation setting out the concerns outlined in the report. Members of the Committee shared the same views as outlined in report.

The Chair asked for the Council's response to be circulated to Members of the Committee once it had been submitted.

RESOLVED –

- (i) That Members of the Committee note the issues outlined in the report; and
- (ii) That the Committee endorse and recommend that Officers be instructed to respond to the consultation as set out in the report before the consultation expiry date of the 25th October 2018.

36 Exclusion of the Press and Public

RESOLVED – That the press and public be excluded from the meeting during consideration of the following item in view of the fact that the business to be transacted is exempt by virtue of paragraph 5 of Schedule 12A to the Local Government Act 1972.

37 Enforcement Update Report

A report was presented to Members with an overview on Planning Enforcement matters. The list of cases included in the report was in the main, a list of cases where formal enforcement action was being taken and was not a list of every case, complaint or enquiry being dealt with.

RESOLVED – That the Committee note the report.

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



BwD Council - Development Control

General Reporting

REPORT NAME: *Committee Agenda.*

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: 15/11/2018

Application No	Applicant	Site Address	Ward
10/18/0154	Mr Matthew Garnett Higher Whittaker House Longworth Road North Belmont BOLTON BL7 8BH	Higher Whittaker House Longworth Road North Belmont BOLTON BL7 8BH	North Turton With Tockholes
Full Planning Application for Construction of a stable block for up to 6 horses with storage and tack room. Menage area and timber boundary fence (resubmission of 10/15/0912)			

RECOMMENDATION: Permits

10/18/0290	Blackburn Waterside Regeneration Ltd Blackburn Waterside Regeneration Ltd Mr John Gladwyn 4th Floor, Queen Victoria House 41-43 Victoria Street Douglas Isle of Man IM1 2LF United Kingdom	Former Sappi Paper Mill Livesey Branch Road Lancashire Feniscowles BB2 5HX	Livesey With Pleasington
Reserved Matters Application for Reserved Matters application (access within the site, landscape, layout, appearance, scale) pursuant to outline application 10/15/0496 for Phase 1a comprising of 95 dwellings and associated infrastructure			

RECOMMENDATION: Permits

Application No	Applicant	Site Address	Ward
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10/18/0317

Blackburn Waterside Regeneration Ltd Mr John Gladwyn Blackburn Waterside Regeneration Ltd 4th Floor, Queen Victoria House 41-43 Victoria Street Douglas Isle of Man IM1 2LF	Former Sappi Paper Mill Livesey Branch Road Feniscowles Lancashire BB2 5HX	Livesey With Pleasington
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Variation/Removal of Condition/Minor Material Amendment for Variation of conditions 2, 6, 14, 15, 16, 18, 19, 22, 29, 32, 33, 36, 37, 38, 40, 41, 43 and 44 pursuant to planning application 10/15/0496 relating to outline planning permission with all matters reserved save for access for a mixed use development of a maximum of the following: 500 dwellings, 3,224m2 of B1a employment use, 9,192m2 of B1c employment use, 333m2 of A1 commercial use, 1,110m2 community building, structural planting and landscaping, informal open space and associated ancillary works, to facilitate a phased development

RECOMMENDATION: Permits

10/18/0740

Blackburn Waterside Regeneration 4th Floor Queen Victoria House 41-43 Victoria Street Douglas Isle of Man IM1 2LF	Sappi Paper Mill Livesey Branch Road Feniscowles BB2 5HX	Livesey With Pleasington
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Variation of Legal Agreement/S106 for Variation to Section 106 Planning Obligation for planning Application 10/15/0496

RECOMMENDATION: Permits

10/18/0963

Blackburn With Darwen Borough Council Graham Harris Room 419 Town Hall Blackburn BB2 7NY	Witton Country Park Preston Old Road Blackburn BB2 2TP	Livesey With Pleasington
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Full Planning Application (Regulation 4) for Refurbishment of two existing AGPs (Artificial Grass Pitches) with replacement artificial grass pitch surfaces, floodlights, ball stop fencing and hard standing areas

RECOMMENDATION: Permits

REPORT OF THE DIRECTOR

Plan No: 10/18/0154

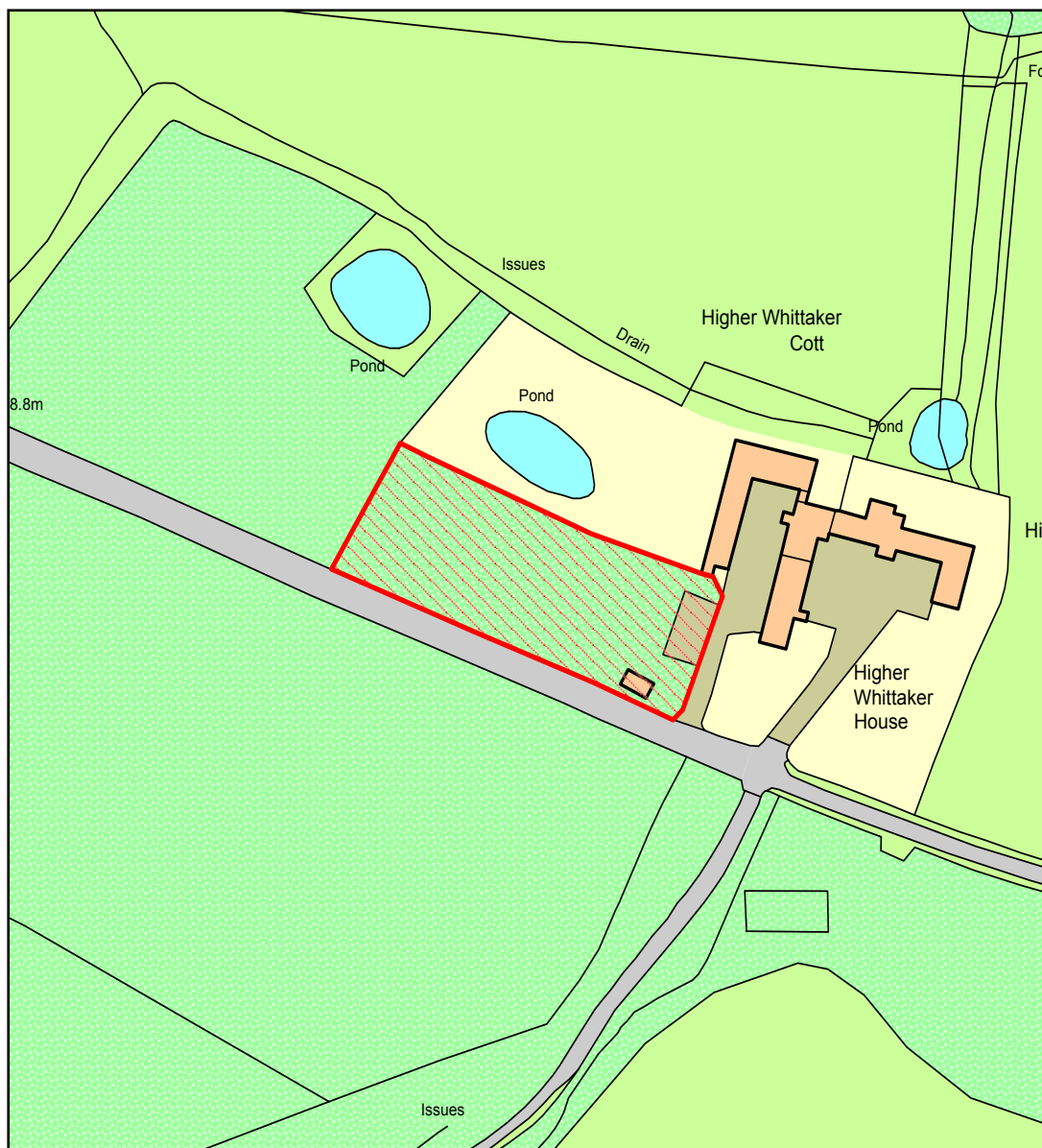
Proposed development: Full Planning Application for construction of a stable block for up to 6 horses with storage and tack room. Menage area and timber boundary fence (resubmission of 10/15/0912)

Site address: Higher Whittaker House, Longworth Road North, Belmont, BL7 8BH

Applicant: Mr Matthew Garnett

Ward: West Pennine

**Councillor Colin Rigby
Councillor Jean Rigby
Councillor Julie Slater**



1.0 SUMMARY OF RECOMMENDATION

1.1 APPROVE – subject to conditions

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

- 2.1 This application is before the committee for consideration as part of the development is retrospective, and the Chair has agreed for the application to be determined by the Committee through the Chair Referral process. The proposal provides for a new stable block, ménage and timber boundary fence on a parcel of previously undeveloped land, positioned to the north of Longworth Road North. The site is situated within open countryside and includes a county biological heritage site. The site lies in close proximity to the West Pennine Moors SSSI
- 2.2 The proposal relates to equestrian development and is identified as an appropriate use within the countryside setting given the access to suitable riding routes in the locality. The proposed stable block is not considered to be harmful to the openness and character of the setting due to a combination of the area's topography, the relationship with the existing group of buildings, its design. Consideration of the most appropriate facing materials is a matter than can be controlled via planning condition. The proposal is otherwise satisfactory from a technical point of view, subject to conditions.
- 2.3 The most contentious element of the application is the impact of the development upon ecological interests as the development will, in part, overlap with a county biological heritage site and is close proximity to the West Pennine Moors SSSI. The land has been previously affected by works related to planning application 10/15/0912, which stripped much of the site and partly remodelled land levels; that application was subsequently refused due to the damage to habitats and an absence of appropriate mitigation, compensation or other justification for the works. However, the current proposal is supported by both Capita Ecology and Natural England, subject to planning conditions. Central to that position is the submission of an ecological management plan, which the consultees indicate would, if strictly adhered to, eventually restore and retain the features for which the biological heritage site was designated; as well as safeguarding the sensitivities of the SSSI.

3.0 RATIONALE

3.1 Site and Surroundings

- 3.1.1 The application site comprises approximately 8,200m² of previously undeveloped land within the West Pennine Moors. The land is identified as a County Biological Heritage Site (BHS); Higher Whittaker Pasture (ref: 61NE10). The BHS designation dates back to 1993 (boundary modified in 1999) and was related to the presence of rare species rich grassland. The site also forms part of the 'West Pennine Moors' SSSI, which was formally designated on the 17th November 2016.

3.1.2 The site is currently used for the grazing of horses. It is bounded by Longworth Road North on its southern edge, with the land rising and undulating as it moves north. On the northern edge is a small ornamental pond (added in 1999 and the basis for the modification of the BHS boundary in the same year). A small cluster of domestic properties, including the applicant's own, lay in close proximity to the eastern edge of the site.

3.2 Proposed Development

3.2.1 The proposed stable block is to be sited in the south west corner of the site adjacent to Longworth Road North. The stable measures 10m x 15.6m and 4.8m to ridge; it comprises 6 stalls, a tack room and storage area. The stable block is to be constructed with rendered walling and slate roofing. The ménage measures 37m x 18m and is to be positioned in close proximity to the stable block. The site boundary and ménage are to be enclosed by a timber post and rail fence

3.2.2 The proposed development is, in part, retrospective. Ground works to strip the site and alter the land levels were undertaken prior to the submission of planning application 10/15/0912, though the site has now returned to a semi-natural state. The post and rail fencing has also been erected to the site boundary. A stable block has been erected in the south east corner since the application was lodged, though its form and size are not consistent with the proposed details provided with the application and the applicant has advised that this is a temporary measure necessary for animal welfare.

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 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:

- CS13: Environmental Strategy
- CS15: Protection and Enhancement of Ecological Assets

3.3.4 Local Plan Part 2 (LPP2)

- Policy 5: Countryside Areas
- Policy 8: Development and the Environment
- Policy 11: Design
- Policy 41: Landscape
- Policy 42: Equestrian Development

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 (paragraph11). The following sections are of particular relevance to the assessment of this application

- 12. Achieving well designed places
- 15. Conserving and enhancing the natural environment

3.5 Assessment

3.5.1 The key issues in relation to this application are:

- Whether the proposal harms biodiversity interests
- Whether any identified harm can be adequately compensated and/or mitigated
- Whether the development will harm landscape character/ visual amenity interests
- The impact of the development upon residential amenity

3.5.2 Paragraph 175 of the NPPF advises that LPA's should aim to conserve and enhance biodiversity by applying a set of principles, which include;

“if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”;

“development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest”

3.5.3 This stance is respected within the Borough Local Plan, with Core Strategy Policy CS13 indicating development will only be permitted where it creates no unacceptable environmental impact. 7 examples are detailed of which Part (v) is of particular relevance;

“Development which results in the loss of or unacceptable damage to environmental resources including habitats and networks of habitats, landscapes and built heritage”.

Local Plan Part 2 policy 9, parts 6 to 9, advise;

“Development likely to damage or destroy habitats or harm species of international or national importance will not be permitted”.

“Development likely to damage or destroy habitats or species of principal importance, Biological heritage Sites, or habitats or species listed in the Lancashire Biodiversity Action Plan will not be permitted unless the harm caused is significantly and demonstrably outweighed by other planning considerations and an appropriate mitigation strategy secured”.

“Damage likely to damage or destroy habitats or species of local importance will not be permitted unless the harm caused is outweighed by other planning considerations and an appropriate mitigation strategy can be secured”.

Development that will result in the further fragmentation of, or compromises the function of, Blackburn with Darwen’s ecological network will not be permitted unless; (i) The harm caused is significantly and demonstrably outweighed by other planning considerations (ii) An appropriate mitigation strategy secured.

3.5.4 Ecology:

The application site is covered by the BHS: Higher Whittaker Pasture (ref: 61NE10). Prior to the works associated with the previously refused planning application 10/15/0912 the BHS formerly supported an upland type of Caltha meadow, referable to as the nationally scarce MG8 Cynosurus cristatus-Caltha palustris grassland. It was dominated by Caltha palustris, a flowering plant known most commonly in England as Marsh Marigold or Kingcup, though also supported a wider ecosystem of forbs, grasses, fungi, mosses, invertebrates and microbes. The site is also within 50m of the West Pennine Moor SSSI.

3.5.5 The current application is supported by an Ecological Appraisal produced by Ascerta. The document includes a habitat survey that grades the site’s ecological value as ranging between negligible and county level. It should be noted that the survey work informing the appraisal was undertaken post the unauthorised work associated with application 10/15/0912 and thus the baseline position reported in the document can be considered to be compromised. A point highlighted in the public objections received; as well as being recognised as a limitation in section 4.4 of the Ascerta document.

3.5.6 The applicant has maintained throughout the assessment of the previous application and in conjunction with the current one that the rare grassland had already been lost/harmed by actions associated with the previous owner of the land, which included the setting of fires. This position is difficult to verify, though it should be acknowledged that the last ecological audit of the land by the County Council was a number of years ago. Accordingly the definitive baseline position, immediately prior to any work at the site, is difficult to establish.

3.5.7 Notwithstanding the problems raised previously in relation to establishing the baseline ecological position, an assessment of the ecological impact of the development is required.

3.5.8 The applicant's own submission is supplemented by an ecological appraisal that includes both a desk study and field survey. Given the BHS designation, planning history and objections raised, the report's results on the 'semi-improved neutral grassland' are noteworthy;

"In 2015 only a small area (approximately 1,120m²) of this habitat remained after earthworks and overgrazing by horses. However, the habitat has recovered and a diverse sward of vegetation has re-established over much of the site. The grazing regime has been lessened since 2015 and the horses receive supplemental feeding as well as restricted access to the area. The vegetation has benefitted from this management regime and recovered well, with many species indicative of the BHS designation noted, including an orchid and wet flush species such as marsh marigold, marsh thistle and angelica. A full species list, including DOMIN values are presented in Appendix 2 and this grassland is considered to be species rich. The species rich grassland habitat can provide foraging habitat for amphibians, small mammals, birds and bats, and invertebrates but is unlikely to provide nesting bird habitat due to the occasional presence of horses grazing. It is listed as the citation feature of the BHS as it is scarce in Lancashire".

3.5.9 The report also offers comment in relation to the designated sites and habitats;

"The site is designated as 61NE10 Higher Whittaker Grassland Biological Heritage Site (BHS) (non-statutory designation) and part of the site is designated as the West Pennine Moors SSSI. The BHS is designated for the species rich semi-improved neutral grassland, including the wet flushes (citation is included in Appendix 4) and originally this habitat covered approximately 8,300m² (last surveyed in 2000). Currently there is approximately 6,540m² of the habitat on the site and approximately 1,000m² will be lost to the proposals. Policy CS15 of the Local Plan, ensures protection of Biological Heritage Sites and any loss of habitat is unlikely to be acceptable to the Council. Protection of SSSI habitat is also covered by policies within the Local Plan. The Lower Whittaker Pastures BHS (61NE10) is hydrologically connected to the Higher Whittaker Pastures, but measures will be taken to ensure the hydrological connectivity is unaffected by the proposals to include use of ménage surfacing with appropriate low pH and control of drainage from the ménage and stable area to ensure water does not drain into the surrounding BHS or SSSI".

3.5.10 The conclusion within the ecological appraisal is that the development will not harm local ecology. That position is disputed within the objections received (see section 9.0). Members are advised that even if the assessment is narrowed to the net loss of the BHS area alone, in the absence of appropriate mitigation and/or compensation the development is contrary to the

requirements of Paragraph 175 of the NPPF, Core Strategy Policies CS13 and CS15, and Policy 9 of the LPP2

3.5.11 However, as set out in sections 3.5.2 and 3.5.3 of this report, the national and local policy requirements allow for development that may harm ecological assets, subject to appropriate mitigation and or compensation. The applicant has sought to address the ecological harm by the submission of an Ecological Management Plan. The objectives of the Ecological Management Plan are:

- *Ensure protection of the retained BHS and SSSI onsite during construction;*
- *Control Invasive species within the BHS and SSSI;*
- *Ensure protected species are not harmed as a result of the works;*
- *Provide details of grazing regime to ensure the value of the BHS and SSSI habitats are not harmed as a result of the proposals; and*
- *Provide details for on-going management of the grazed area to ensure a reduction in species such as dock and thistle and an increase in species for which the BHS is designated.*

“The outcomes of the Management Plan would be to ensure restoration of the species rich grassland to include restoration of feature and species for which the grassland was originally designated as a BHS. Once restored, the Plan aims to ensure sustainable management of the grassland as a species rich sward that retains the features for which the BHS was designated”.

3.5.12 The Management Plan covers a period of 10 years, and includes a detailed maintenance schedule for the initial 5-year period. The recommendations from the ecological report are included in the management prescriptions. The management plan indicates that it should be reviewed after the first year and updated as necessary. Thereafter it should be reviewed on a 5-yearly basis and updated accordingly.

3.5.13 The main recommendations addressed through the Management Plan are;

1. Retention of the pond habitat and a 3-5m margin along pond margin to be kept free from grazing as current;
2. Control of montbretia, dock and creeping thistle by spot spraying;
3. Reseeding and plug planting bare earth areas with an appropriate, native mix of meadow and wet flush species;
4. Avoiding vegetation and building removal during the bird breeding season (1 March to 31 August inclusive) or undertake a survey for breeding birds and ensure any active nests found are protected within a suitable buffer zone until they are no longer in use;
5. Lighting proposals sensitive to the needs of bats;
6. Habitat enhancement with the installation of 2 bird boxes, 1 bat box, and an amphibian hibernacula; and
7. Habitat creation to include tree planting using appropriate native species.

3.5.14 The submitted Ecological Management Plan has been appraised by the Council’s consultants, Capita Ecology, as well Natural England (NE). Indeed, in part, the document has been drawn together in conjunction with NE. Both

consultees have accepted the document and removed their earlier objections to the proposals.

3.5.15 In their response Capita Ecology are clear that in isolation the proposal fails the provisions of *Policy CS15: Protection and Enhancement of Ecological Assets*. However, it is advised that the submitted ecological management plan would, if strictly adhered to, eventually restore and retain features for which the BHS was originally designated. Providing that the management plan is conformed to, with a review of the site and plan on a yearly basis for the first five years, followed by a regular five year review for the remaining 20 years by a suitably qualified ecologist these measures should enable the site to be restored in keeping with its designated status. This matter can be controlled via planning condition and is set out in section 4.1 of this report.

3.5.16 NE, whilst principally concerned with the impact of the development upon the neighbouring SSSI, have also offered no objection to the revised application. That position is subject to conditions relating to (i) preventing the dispersal of the surfacing within the ménage in to the SSSI as this has potential to affect the pH level of the soil.; and (ii) drainage controls to again prevent surface water being discharged towards the grassland.

3.5.17 Visual Amenity:

Policy 41 of the LPP2; (part 1) sets out that development will be permitted provided there is no unacceptable impact on landscape character and the principal traits associated with it. Policy 42: Equestrian Development, amongst other considerations advises that proposals can be supported if they do not have an adverse impact on the character and visual amenity of the area. Policy 11 of the LPP2 relates to design and sets out a requirement to present a good standard of design; demonstrating an understanding of context and the need to make a positive contribution to the local area

3.5.18 The proposed ménage and stable block development could be perceived as intrusions in to a natural landscape, though both elements are relatively common forms of development within the borough's rural areas.

3.5.19 Although a new stable block that has been built on site since the application was lodged, it is different in size, form and materials to that set out within the application. Nonetheless, the development provides a useful reference to understand the likely visual impact of the proposed stable. The siting of the block on the lowest portion of the site serves to reduce its impact, as when viewed from distance the building is set against the rising land reducing its prominence. The proposed building, whilst approximately double the size of that currently in-situ, is considered to have a similar relationship with the landscape. A notable difference is the use of render on the proposed details, whereas the in-situ stable is constructed with timber. It is considered that the use of render is non-vernacular and likely to be incongruous within the setting. Either natural stone or timber are more acceptable solutions. The use of acceptable/appropriate facing materials could be successfully addressed by a

suitably worded planning condition, should the development be supported. The use of timber post and rail fencing raises no concern in this rural setting.

3.5.20 On balance, the changes to site levels and addition of ménage and stable block are not perceived as having an unacceptable impact upon landscape character or to be harmful to the visual amenity of the locality, more generally. The development in this regard is consistent with Policies 11, 41 and 42 of the LPP2, subject to a condition requiring materials to be submitted and agreed.

3.5.21 Residential Amenity:

Policy 8 (part ii) of the LPP2 seeks to secure satisfactory levels of amenity for surrounding uses, with reference to matters including; noise, odour, light, dust, other pollution or nuisance and the relationship between buildings.

3.5.22 The public objections received include reference to issues including overlooking and disturbance affecting the adjacent garden area, and loss of amenity from odours. There would appear no realistic prospect of significant harm from overlooking arising from the use of the ménage area. The land levels are such that a rider in the ménage would have little opportunity for overlooking; should this even be practical whilst handling/working a horse. In any event any such overlooking would be casual and relatively infrequent and would not substantiate refusal. The potential for animal effluent to significantly harm the amenity of neighbouring residents is addressed in the response of the Head of Public Protection. It is considered that the matter can be adequately addressed by the application of a planning condition requiring details of the storage and disposal of manure and or soiled bedding. Subject to the condition it is submitted to Members that the proposal would satisfy the requirements of Policy 8 (part ii) of the LPP2

4.0 **RECOMMENDATION**

4.1 **APPROVE** subject to the following conditions

- Commence development within 3 years
- Stable and ménage to be for personal use only
- Materials to be submitted and agreed
- Details of appearance and position of the kick board to western edge of ménage to be submitted and agreed
- Construction management plan to safeguard SSSI to be submitted and agreed
- Development to be in accordance with the Ascerta: Ecological Management Plan (dated January 2018)
- Following implementation of the planning permission an annual review of the site and ecological management plan to be submitted for the first 5 years, followed by a five-yearly review for the remaining 20 years.
- Drainage scheme to be submitted and agreed
- Prior to first occupation of the stable block a scheme detailing the storage and disposal of animal effluent to be submitted and agreed

5.0 PLANNING HISTORY

- 5.1 10/15/0912 - Construction of a stable block for up to 6 horses with storage and tack room, & ménage (Refused)

6.0 CONSULTATIONS

Public Protection

No objection subject to a condition relating to the storage and disposal of animal effluent in order to safeguard the amenity of neighbouring residents

Local Drainage Authority

No objection subject to a condition requiring a drainage scheme to be agreed

Capita Ecology

The application fails to comply with Policy CS15: Protection and Enhancement of Ecological Assets, where the borough's ecological assets will be protected, enhanced and managed with the aim of establishing and preserving functional networks which facilitate the movement of species and populations.

However, an ecological management plan has been submitted which if strictly adhered to would eventually restore and retain features for which the BHS was designated. Providing that the management plan is conformed to, with a review of the site and plan on a yearly basis for the first five years, followed by a regular five year review for the remaining 20 years by a suitably qualified ecologist these measures should enable the site to be restored in keeping with its designated status.

We recommend that the implementation of the ecological management plan and a summary report of the annual monitoring to be submitted to yourselves is enforceable by condition.

Natural England

The application has answered a number of concerns raised during the pre-application phase. They have addressed drainage issues from the ménage and stables, as it is important for any nutrient rich water to be drained away from the protected sites. They have also addressed concerns about the ménage surface and the potential this may have to affect the pH of the SSSI (the grassland being low nutrient and low-neutral pH)

Additional responses from the applicant relating to (i) the use of a kickboard on the western edge of the ménage; (ii) the raising of the kick board to the middle strut of the post and rail fence; and (iii) storage of waste away from the SSSI boundary sufficient to remove any objection

Highways

No objection to the principle of the stable development provided the development is for personal use only.

Public Consultation

3 neighbouring properties have been individually consulted by letter and a site notice displayed. The consultation exercise was repeated following the receipt of amended details. 8 letters of objection have been received; they are set out in section 9.0 of this report

North Turton Parish Council

No objection to the proposed stable and ménage, but concerns with the very narrow roads that feed in to the site

7.0 CONTACT OFFICER: Martin Kenny, Principal Planner

8.0 DATE PREPARED: 31st October 2018

9.0 SUMMARY OF REPRESENTATIONS

9.1 Representations from Peter Jepson, Chartered Ecologist and The Wildlife Trust for Lancashire, Manchester, and North Merseyside.

Peter Jepson, Chartered Ecologist, 17th June 2018:

I have not had chance to read in detail, but a quick scan through the Ecology Report and the Management Plan leaves me with significant concerns.

First and foremost the documents mention you both and give the impression that you are in agreement with the contents and support the application. Please confirm whether or not this is the case.

In terms of habitat, as a BHS it was designated under Guideline Gr1, for grassland type NVC 8 - Caltha meadow, the need to restore it as this habitat gets no mention. The survey in September is totally inappropriate for this habitat, the Management Plan does not state who should receive the monitoring reports nor how these reports would be actioned should the desired (but unstated aim of Caltha meadow) not being delivered.

If for no other reasons this application needs to be refused.

I will give the application more detailed consideration in the next few days, and why given my and others previous objections over the development here, without planning permission, that BwD did not feel fit to notify the local experts.

Philip Reddell, South Pennines Grasslands Project Officer, The Wildlife Trust for Lancas hire, Manchester and North Merseyside, 18th June 2018 (response to Peter Jepson):

“Hello Peter

I don't support the application and shouldn't be included in the Ecology report and Management plan.

I visited the site in September 2017 and met with the landowner at Karen's request. I made some recommendations for restoration of the stripped areas of the site to Karen. Looking back through emails; these were that attempting to seed the bare areas wouldn't be successful due to standing water and compaction from heavy machinery, a recommendation on herbicide for control of dock and thistle, and plug planting to increase the numbers of certain species.

I've had no contact with the landowner since.

Thanks

Phil”

- 9.2 The issues and comments referred to above by Mr Jepson and Mr Reddell, have been addressed in paragraphs 3.5.8, and 3.5.11 – 3.5.16 above.

Objection Dominic Middlehurst, Higher Whittaker Cottage, Longworth Road North, Belmont, Bolton. - Rec 06/06/2018

Planning Application 10 /18 / 0154 - Higher Whittaker House, Longworth Road North, Belmont

Formal Observations / Objection

Martin,

In line with your letter requesting observations on the revised / amended plans and our telephone conversations please find below our observations / concerns / and formal objections to the planning application.

Note:- We are direct neighbours to the applicant and the South elevation of our private garden directly overlooks the land of the proposed development, as shown on the planning drawings.

1. Land where Development is Proposed:-

The land is designated as a Biological Heritage Site which the planning applicant was and is currently aware of.

This land was severely excavated prior to obtaining the relevant consent in July / August 2015 by the planning applicant, which has changed its appearance and ecology dramatically beyond recognition.

During this destruction a council enforcement officer, Mr. Alastair Phillips visited site and halted all work via an enforcement notice.

Unfortunately, major damage had been caused by this time with the following important countryside features being destroyed / removed:-

- **Number of trees**
- **Hedges**
- **Large pond has been completely filled in which was close to the road**

- **Destroyed habitat area for many, birds, ground nesting birds, insects, wild flowers, pond life including amphibians**

At the time the local residents were advised that this land would be returned to as near as possible, its original state. To date this has not been done or requested by the Council to our knowledge.

Subsequently two wooden stables and hardcore standing and surround have been constructed where the existing pond was situated.

The first question which needs addressing / answering by the council is why they are considering a planning application on land which by rights should have been returned to its natural state before the excavations in July 2015.

I enclose 2 No. aerial views of the land prior to the excavation of the land.

Picture 1 – Details the land in 2006

Picture 2 – Details the land in 2009

2. Previous Planning at Higher Whittaker Location

Over the past 10 years there has been development, via approved Planning, at Higher Whittaker Cottage and at Higher Whittaker House. On both occasions a concern from the planning department was the visibility from the road which due to the location of the developments and the use of natural stone was deemed acceptable. Also both developments were replacing existing structures.

The proposed plans for the stables and ménage under this application are adjacent to the road therefore clearly visible and also visible across the valley from residents in Belmont village. Also, the construction details rendered exterior walls which is not natural random stone in line with the existing structures visible from the road.

3. Specific Concerns and Objections

Environmental Impacts:-

Given the history of this site and the destruction of habitat 3 years ago we have seen the decline in the ground nesting birds, lapwings, curlews and pheasants, on this land. This land is now just starting to recover providing cover and protection for nesting birds and habitat for mammals crucial for the local kestrels, barn owls and short eared owls. Covering this land with two man-made structures will further damage the land and again destroy the habitat for the wildlife listed above which is starting to recover.

Amenity Impacts:-

Our private garden South border directly overlooks the whole area where the new stables and ménage is proposed. The proposed development will effectively cover approx. 80% of our overall outlook on this particular border.

This will therefore impact on our views down to the valley.

The ménage location is adjacent to our private garden South border and is shown only 3 metres from our border. The ménage is shown running over a length of 37 metres, which is over half the length of our garden border. This development will impact on our privacy and air quality as horse and riders will be visible given the height of horse and rider. This land as stated in the environmental impacts text above is now recovering and attracting wildlife. Construction a man-made artificial ménage will therefore destroy the habitat again. **We therefore object to the construction of the ménage (See attached Picture 1).**

Visually the proposed stable block is too large and the land mass is unable to support the number of stables / horses proposed. We appreciate the need for stables and would support a smaller structure typically providing:-

4No. stables, tack room and store room and reduced roof overhang. This would decrease the roof length from approx. 18.68 metres to 14 metres. The roof ridge height, (i.e. stables overall height), to not exceed the current stables height which is 3 metres from ground level, refer to Topographical drawing. See attached hand marked-up drawing. **We therefore object to the number of stables and physical size of the structure.**

We will support a smaller structure as detailed above and as shown on hand marked-up attached drawing, Proposed Stables Elevations and Plans (This has been discussed with the applicant).

We request confirmation that:-

- The stables and grazing will be restricted to horses owned by the residents of Higher Whittaker House.
- The stables and grazing will be for private use only by the residents of Higher Whittaker House and will not be used as a business / equestrian facility.
- External lighting will be **limited to the stable structure ONLY** and be in line with the submitted datasheet i.e. downward lighting, only providing access lighting levels which are typically 10 lux.

The applicant currently stables 2No. horses on the land.

This results in smells as the prevailing wind carry's smell to our property. Any increase in the number of horses / stables will impact on our right for good air quality

There has also been a dramatic increase in vermin, typically rats, with the council and private vermin control contractors called out. This issue has only become a problem since the introduction of horses and associated feed at the property.

We are concerned that the Planning Department are considering this application given the history of the site and are confused with regard to lack of enforcement to re-establishing the land to provide the required habitat as the proposed development will again destroy the recovering land / habitat with man-made structures.

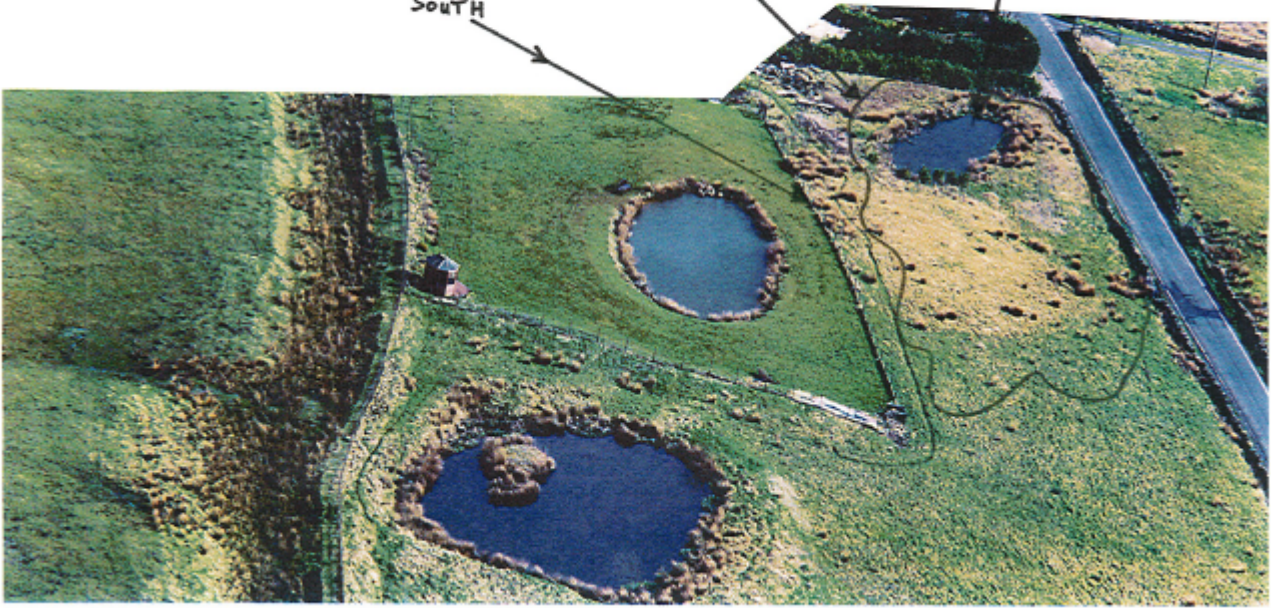
As our local council we rely on you to enforce any issues and also to ensure that the local area is preserved and looked after correctly.

PICTURE 1
LAND IN 2006

POND REMOVED/DESTROYED
BY APPLICANT IN 2015

NEIGHBOURS
FENCE LINE
SOUTH

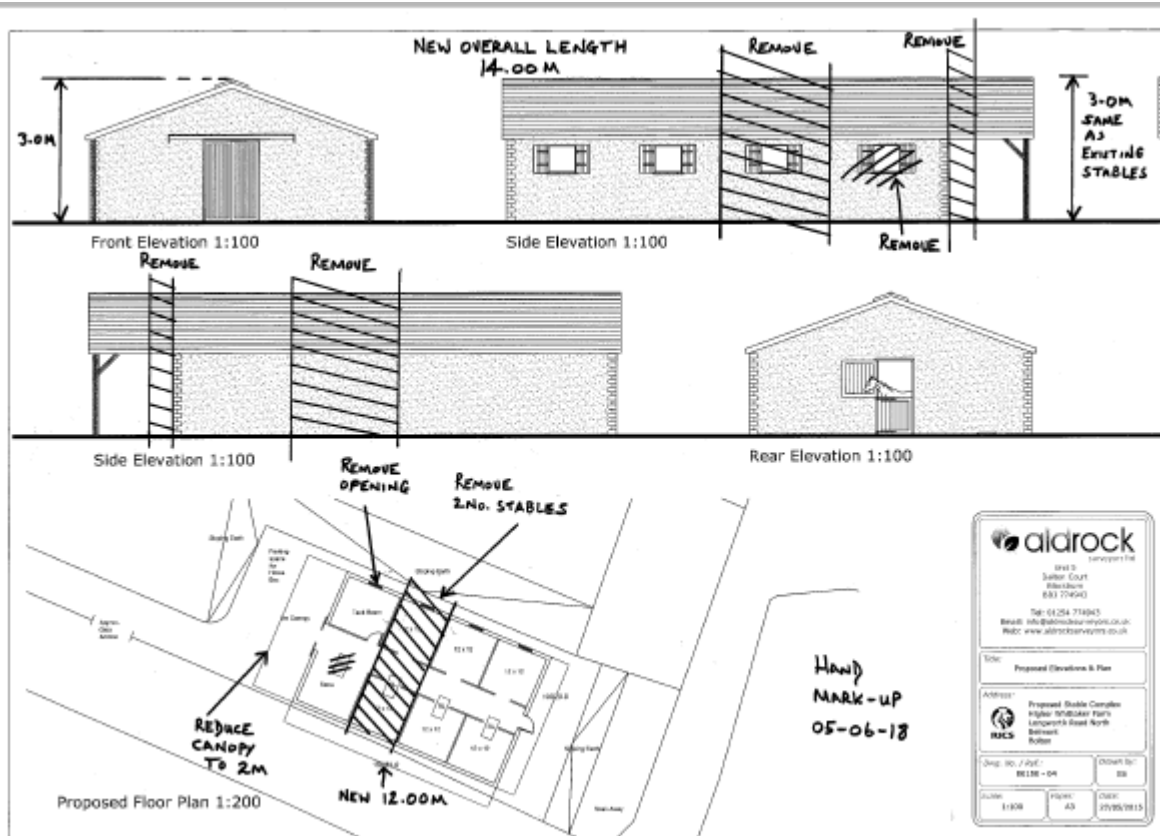
AREA UNDER
PLANNING
APPLICATION



ilton, BL7 8BH, UK

PICTURE 2
LAND IN 2009

POND
DESTROYED IN
2015 BY
APPLICANT



Objection Eileen & Steve Gallagher, Higher Whittaker Farm, Longworth Road North, Belmont, Bolton. - Rec 04/06/2018

Dear Martin Kenny

We do have a number of comments that we wish to make on the application by our neighbours at Higher Whittaker House for a stable block and menage on land adjacent to Higher Whittaker House.

Firstly we wish to point out that the drawings accompanying the application have an area outlined in blue which are referred to as "other lands owned by the applicant" which include our property and land. We hold a 999 year lease at a peppercorn rent on our property and land and we are the owners of it.

Our second regards the number of stables to be constructed, which causes us to be concerned about the possibility that there will be a livery and/or equine business developed, which we would not wish to see because of the impact on our residence. Currently there are two horses belonging to our neighbours that are stabled on the land and we would consider that a maximum of four stables should be allowed.

We are also concerned about the lighting on the menage because of the impact on the Owls and Bats which are resident in the area and which contribute to our enjoyment of life in our property.

Finally there has been a very significant increase in the number of rats both in our garden and in the surrounding area since the horses were stabled in the adjacent field. I understand that this may be an inevitable outcome when there are stables in the Countryside, but there may be a further increase in numbers of rats if there are more horses and stables.

We hope you will take our views in to account when considering this Application.

Objection Michael & Dorothy Saville, Lower Whittaker Farm, Longworth Road North, Belmont, Bolton. - Rec 21/06/2018

Regarding Planning Application 10 / 18 / 0154 - Higher Whittaker House, Longworth Road North, Belmont BL7 8BH

Objection

Martin,

We have been informed by our neighbours that a planning application has been submitted at the above property address.

We are listed on the council website as direct neighbours however we have **NOT** received a letter informing us of the application, which is odd as we have lived here most of our life.

The above said we are now aware of the application and have reviewed the plans on the council website.

We send this letter by recorded delivery to formally object to the complete planning application.

The land is part of the West Pennine Moors and is a Biological Heritage Site.

This land was damaged by the current owner some 3 years ago and a pond was removed both of which destroyed habitat for wildlife and plant life. The council was involved at the time, **please check your records.**

Local residents were advised that this land would be returned to its original state **however this has not happened.**

Some 3 years later the land is now recovering however the pond has not been reinstated. The land is now again supporting wild flowers and wildlife including mammals, and ground nesting birds.

This is why we are astonished that the council is considering a development on the site which will again destroy the habitat for wildlife and moorland plants and flowers.

The owner has already erected wooden stables and hardstanding where the pond used to be situated, **which I assume the council are aware of.**

The current wooden stables, hardstanding and horse box are very unsightly and stand out on the landscape. These are very visible can even be seen from the other side of the valley.

This proposed planning application development will be a blot on the moorland landscape and will be clearly visible from the village and the road.

We would request that the council:-

Firstly, explain to the residents of Belmont why they have not enforced the reinstatement of the land

Secondly, explain why they are considering a planning application which will again destroy the land and habitat for wildlife and plant life.

The objection is based on all the above criteria.

I trust the council will enforce the protection of this land.

Objection Belmont Residents. – Rec 09/04/2018

Planning Application 10 /18 / 0154 - Higher Whittaker House, Longworth Road North, Belmont

Formal Objection

Martin,

The residents of Belmont Village have been made aware of a new / re-submitted planning application at Higher Whittaker House on the green belt land which was destroyed by the applicant back in 2015.

There has been no notification posted at the address to allow residents to view the plans and pass comment as of today 6th April 2018.

From Belmont Village we have views of the land and also use Longworth Road North for daily exercise walks.

A great number of residents are very surprised given the history of this site that the council are even considering an application.

We have previously written to Alastair Phillips in 2015 regarding the works being carried out via letter which detailed the items which have been destroyed or removed, typically a wildlife pond, hedges, trees as well as the meadow which was used by ground nesting birds. This letter was sent by recorded delivery and acknowledged verbally.

Over the past 10 years there has been development, via approved Planning, at Higher Whittaker Cottage and at Higher Whittaker House. On both occasions when Planning was challenged on development in the area they stated that this would be the last development allowed, however we now see a **new application submitted**.

This application is for a building which will be very visible, locally from the road and from the village below, and built on land which we were advised was green belt and of interest environmentally.

The proposed stables and ménage will be seen as unsightly and a blot on the landscape.

The new planning application for stables and a ménage will have a great impact with regard to the environment as the landscape, meadowland and moorland, will be changed. Furthermore this new landscape will not support the wildlife requirements for this type of specific land.

This land mass has insufficient area for the 2No. horses which are currently on the site. The application calls for 6No. stables.

Also as previously stated the residents of the village were advised at no other development would be granted at the properties at Higher Whittaker.

As our local council we rely on you to enforce any issues and also to ensure that the local area is preserved and looked after correctly.

We are confused at the Planning Department for considering this application and have concerns on how this is being managed given the history of the site.

As local community we are relying on you, the Council, to enforce any development and return the land to as near as possible its original state.

Could you please post this letter on the planning website so all the residents can be assured that an objection has been raised and received by the planning department.

Objection Roy W Rhodes, The Rough Lee, Naylor's Terrace, Belmont, Bolton. - Rec 28/06/2018.

Dear Mr Kenny,

I wish to submit a formal objection to the above planning application on the grounds that a previous almost identical application was refused and since that date Blackburn with Darwen Council has failed to ensure that the reinstatement specifically required in relation to the refusal has been carried out. Monitoring of the grazing regime also seems to have been neglected. As a matter of principle it surely cannot be Council Policy to allow development to nibble away at the edges of sites of local and now national importance (part SSSI). Wildlife Trust and Natural England staff are mentioned as having been consulted about various aspects but they have not endorsed the proposals.

I did not see any mention in the ecological report of the precise grassland vegetation community for which the site was notified. The surveys were not conducted at the most appropriate time to assess Marsh Marigold abundance and distribution (April/May). Specific actions are detailed in the text together with the assertion that the management plan will contain "some" of them. A far from inspiring document.

The development was started without planning permission and should have been completely rejected for ever in view of the partial destruction of a Biological Heritage Site. I cannot believe that no one told the purchaser of the site that it was a designated BHS.

REPORT OF THE DIRECTOR

Plan No: 10/18/0290

Proposed development: Reserved Matters application (access within the site, landscape, layout, appearance, scale) pursuant to outline application 10/15/0496 for Phase 1a comprising of 95 dwellings and associated infrastructure

Site address: Former Sappi Paper Mill, Livesey Branch Road, Feniscowles, BB2 5HX

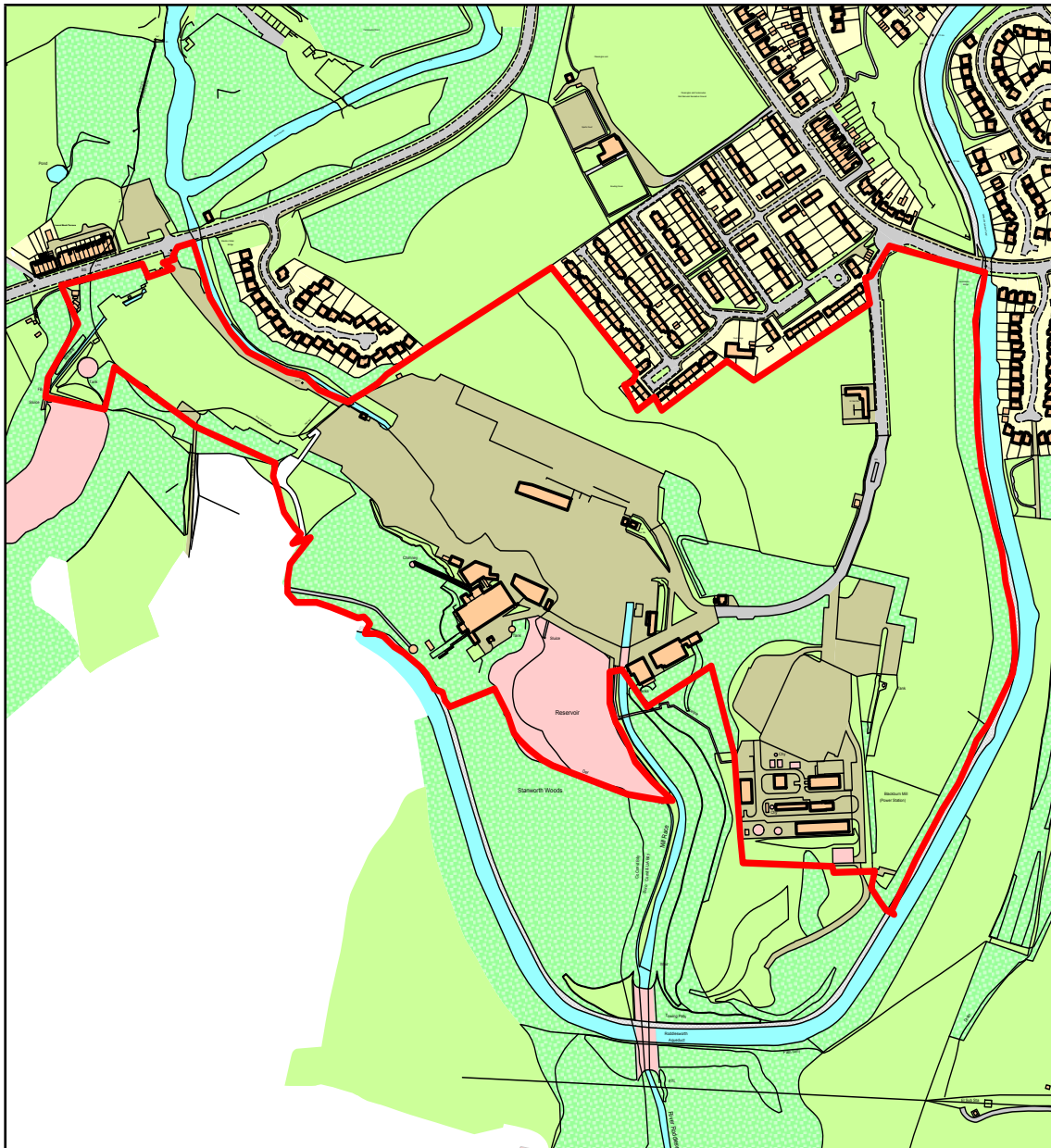
Applicant: Blackburn Waterside Regeneration Ltd

Ward: Livesey With Pleasington

Councillor Derek Hardman

Councillor John Pearson

Councillor Paul Marrow



1.0 SUMMARY OF RECOMMENDATION

1.1 APPROVE – Subject to recommended conditions (see paragraph 4.0).

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

2.1 This application is before Members as it relates to phase 1a of the reserved matters to an outline application that was previously considered and approved at the November 2015 meeting of the Planning & Highways Committee

2.2 Planning permission 10/15/0496 related to an outline approval, with all matters reserved save for means of access. The approval allowed for a mixed use development of a maximum of the following: 500 dwellings, 3,224m² of office employment (use class B1a), 9,192m² of light industrial employment (use class B1c), 333m² of retail floor space (use class A1) and a 1,110m² community building (use class D1). The proposal also relates to associated ancillary works. As some part of the development is located within the Chorley Borough Council's (CBC) boundary, an outline planning permission (planning application number 15/00475/OUTMAJ) has been also granted by Chorley Borough Council

2.3 As the first development phase, the current reserved matters application will deliver a high quality housing scheme which will widen the choice of family housing in the Borough, whilst also bringing a brownfield industrial site back in to use. It supports the Borough's planning strategy for housing growth as set out in the Core Strategy. The proposal is also satisfactory from a technical point of view, with all issues having been addressed through the application, or capable of being controlled or mitigated through planning conditions.

3.0 RATIONALE

3.1 Site and Surroundings

3.1.1 The proposal relates to the first phase of the redevelopment of the area commonly referred to as the 'SAPPI site' given the last occupant of the majority of the area. The site forms part of an irregular shaped parcel of land positioned to the south west of Livesey Branch Road and south east of Moulden Brow and measuring approximately 26.8 hectares.

3.1.2 The SAPPI site has historically been used for industrial activity but the mill buildings have now been demolished and the area is no longer in active use. The southern portion of the site is largely undeveloped and is comprised of woodland and grassland. The River Roddlesworth runs through the site from south to north and is culverted beneath the former mill area within the central portion of the site. The north and east sections of the site are zones of previously undeveloped grassland.

3.1.3 The current reserved matters application is identified as Phase 1a of the SAPPI development and affects approximately 3 Ha of land to the north of the site. The area is bounded to the east by a network of streets including Coronation Avenue and Princess Gardens. The site is currently accessed via

an existing priority controlled 'T' junction, located to the east of the site on the A6062 Livesey Branch Road. This provides direct access to the existing CHP Plant and the remaining undeveloped land in the lower portion of the site. The application site is comprised of grassland with sporadic tree coverage, though also contains a brick built electricity sub-station. The land is flat, though falls steeply on its southern edge.

3.2 Proposed Development

3.2.1 The submission is a reserved matters application, addressing access within the site, landscape, layout, appearance, scale; pursuant to outline application 10/15/0496 for Phase 1a comprising of 95 dwellings and associated infrastructure.

3.2.2 The proposal seeks to deliver a mix of residential housing, comprised of;

- 13 no. 2 bed terraced and semi-detached houses
- 39 no. 3 bed terraced and semi-detached houses
- 35no. 4 bed detached and semi-detached houses
- 8no. 5 bed detached houses

3.2.3 The new dwellings are of bespoke design and have a modern appearance. The units are constructed with a mix of red brick, render and cladded walling and grey concrete tile roofing. Consideration has been given to the orientation of the properties to ensure outward facing development to all public spaces creating active frontages. Dual aspect dwellings are utilised throughout the development to avoid blank gables and uninteresting street scenes. Enhanced landscaping through hedgerows and change in material delineates the public and private realm. All private garden spaces are created to the rear of the properties and designed to adjoin other rear gardens creating defensible and secure spaces.

3.2.4 This existing priority junction with Livesey Branch Road will be enhanced to improve access to the southern section of the site, the form of priority control will be retained. However the junction will be reduced in size and the large expanses of carriageway on the development arm reduced to form a more compact, safer and formalised priority junction.

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 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
CS5 – Locations for New Housing
CS6 - Housing Targets
CS7 – Types of Houses
CS15 - Protection and Enhancement of Ecological Assets
CS16 – Form and Design of New Development

3.3.4 Local Plan Part 2 (LPP2)

Policy 1: The Urban Boundary
Policy 7: Sustainable and Viable Development
Policy 8: Development and People
Policy 9: Development and the Environment
Policy 12: Developer Contributions
Policy 18: Housing Mix
Policy 28: Development Opportunities
Policy 36: Climate Change
Policy 40: Integrating Green Infrastructure & Ecological Networks

3.4 Other Material Planning Considerations

3.4.1 National Planning Policy Framework (The Framework).

3.4.2 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 (paragraph11).

3.5 Assessment

3.5.1 In assessing this reserved matters application there are a number of important material considerations that need to be taken into account, as follows:

- Principle;
- Design and Layout;
- Highways and access;
- Amenity impact; and
- Affordable Housing

3.5.2 Principle of Development

The principle of residential development within the site has already been considered and accepted through the assessment and subsequent approval of outline planning application 10/15/0496.

3.5.3 Design and Layout

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.

3.5.4 The proposed development provides a net density of approximately 30 units per hectare. The 95 units comprise of; 13no. 2 bed units, in a mix of terrace and semi-detached house types; 39no. 3 bed units, again in a mix of terrace and semi-detached house types; 35no. 4 bedroom units, in semi-detached and detached format; and 8no. 5 bedroom detached houses.

3.5.5 A detailed design and access statement has been provided which sets out the key design principles, which are taken forward in the application proposals. These include;

- In line with the outline approval, access to this initial phase of development is taken from Livesey Branch Road. As the layout identifies, a clear hierarchy of streets have been established with the primary link giving way to a series of shared surfaces and private drives.
- The outward facing development allows gardens to face other gardens creating high quality defensible space for future residents.
- The careful positioning of dwellings within the site ensures the creation of vista stops. Similarly, dual aspect dwellings have been employed to key corners to ensure active frontages and street scenes.
- Adequate space between dwellings has been achieved ensuring a high quality environment for future residents. This is also the case where the development is located close to existing residential uses.
- Enhanced landscaping through hedgerows and change in material delineates the public and private realm. All private garden spaces are created to the rear of the properties and designed to adjoin other rear gardens creating defensible and secure spaces.
- In line with RES2D, a strong presence has been created to the main link road with careful consideration given to the parking solution avoiding long runs of car parking. To the southern boundary, given the sites elevated position, outward facing properties would take advantage of views over the later phases of the site. This strong backdrop would also create an interesting street scene when viewed from latter phases of the development.
- Although the buildings are reflective of their residential use, the spaces and design allows future conversion, adaptation and extension in order to address future needs of occupants.

- The properties have a modern appearance, with the units being constructed with a mix of red brick, coloured render and horizontal board cladding. All units will have grey concrete tile roofing.
- 3.5.6 The properties have carefully considered internal layouts to offer a variety of configurations to appeal to families of varying sizes and needs. The house types represent an appropriate variety of styles and, together with their orientation, will create varied and attractive street scenes, consistent with the requirements of policies CS16 and 11 of the LPP2. Basic details of the external materials have been submitted but the matter is already secured via conditions imposed upon the outline planning approval.
- 3.5.7 Policy 18 of the Local Plan Part 2 illustrates that the Council requires a detached and semi-detached housing offer to be the principal element of the dwelling mix on any site that is capable of accommodating such housing. Given the intended mix the proposal is wholly compliant with this requirement.
- 3.5.8 The comprehensive details submitted illustrate a design and layout which show dwellings, infrastructure and landscaping which accords with the provisions of the relevant policies of the development plan.
- 3.5.9 Highways and Access:
- Core Strategy Policy 22: Accessibility Strategy and Local Plan Policy 10: Accessibility and Transport, aim to ensure that new developments provide appropriate provision for access, car parking and servicing so as to ensure the safe, efficient and convenient movement of all highway users is not prejudiced.
- 3.5.10 The site is currently accessed via an existing priority controlled 'T' junction, located to the east of the site on the A6062 Livesey Branch Road. This provides direct access to the existing CHP Plant and the remaining undeveloped land in the lower portion of the site. Livesey Branch Road is a single carriageway road subject to a 30mph speed limit. The road is residential in nature with pedestrian crossing facilities and footways provided on both sides. This existing priority junction will be enhanced to improve access to the southern section of the site, the form of priority control will be retained. However the junction will be reduced in size and the large expanses of carriageway on the development arm reduced to form a more compact, safer and formalised priority junction. Delivery of the latter phases of the SAPPI development will provide for an internal stem road linking Livesey Branch Road through to Moulden Brow
- 3.5.11 The proposal is supported by a Transport Technical Note (TN). The TN reported there being capacity of the nearby 'Feilden Arms junction' meaning up to 250 additional dwellings could be provided (within the SAPPI site or other development in the locality) without significantly adverse highway impacts. The review undertaken by Jacobs, on behalf of the Council, disputed that assessment. Subsequent dialogue and negotiations associated with s106 deed of variation application 10/18/0740 (also before Members as part of this month's Planning & Highways Committee agenda) , would secure delivery of

the full length of the internal spine road. It has therefore been agreed that the 95 units associated with Phase 1a could occur without detriment to the wider highway network and/or highway safety.

3.5.12 Parking provision for the development is in accordance with the Council's adopted parking standards; 2 spaces for 2/3 bed units and 3 spaces for 4+ bedroom properties. Furthermore the driveway parking spaces are all compliant with the adopted space requirements of 5.5m x 2.4m. Similarly all of the garages within the development (detached and integral) are in compliance with the relevant space standard of 3m x 6m

3.5.13 Highways colleagues have requested a number of conditions. A construction methods condition is unnecessary as this matter is already secured at outline stage (condition 4 of 10.15/0496). The following matters can be controlled, however;

(i) Prior to the occupation of any of the dwellings hereby approved, details of the proposed arrangements for future management and maintenance of the proposed streets within the development shall be submitted to and approved by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and Maintenance Company has been established.

(ii) Prior to the construction of any of the streets referred to in the previous condition full engineering, drainage, street lighting and constructional details of the streets shall be submitted to and approved in writing by the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details.

(iii) Sightlines at vehicular access points to be safeguarded in perpetuity

3.5.14 Subject to the delivery of the spine road – as controlled by the separate deed of variation application 10/18/0740 – matters already controlled by condition within the outline approval for the site and the above requested conditions, the proposal can be considered to meet the requirements of Policy 10 of the Local Plan Part 2

3.5.15 Residential Amenity:

Policy 8 of the LPP2 relates to the impact of development upon people. Importantly, at section (ii) of the policy there is a requirement for all new development to secure satisfactory levels of amenity for surrounding uses and future occupiers of the development itself. Reference is made to matters including; noise, vibration, odour, light, dust, privacy/overlooking and the relationship between buildings.

3.5.16 Members will note that the technical assessment relating to noise, vibration, odour and dust are already controlled by planning conditions associated with the outline approval for the site. The consideration, therefore, is whether the

proposed site layout and design of the properties would meet the policy requirements in relation to light, privacy/overlooking and the relationship between dwellings.

3.5.17 The Council's Residential Design Guide SPD indicates an appropriate separation of 21 metres between facing windows of habitable rooms of two storey dwellings, unless an alternative approach is justified to the Council's satisfaction. Where windows of habitable rooms face a blank wall or a wall with only non-habitable rooms a separation of no less than 13.5 metres shall be maintained, again unless an alternative approach is justified to the Council's satisfaction.

3.5.18 The development is wholly consistent with the SPD requirements, both in relation to the separation to properties within the site and those on the periphery along Coronation Avenue and Princess Gardens. As such, the objections relating to loss of privacy and light impacts cannot be substantiated. In order to safeguard this position going forward it is considered to be appropriate to attach a condition removing permitted development rights for extensions and alterations within the application site.

3.5.19 It is submitted to Members that subject to the matters controlled via condition on the outline approval 10/15/0496, allied to the suggested condition detailed above, the proposal will provide for appropriate amenity standards for surrounding uses and future occupants of the development, in accordance with the requirements of Policy 8 and the Council's adopted Residential Design Guide standards.

3.5.20 Affordable Housing:

Core Strategy Policy CS8 advises that all new residential development will be required to contribute towards the Borough's identified need for affordable housing; this being achieved through on-site provision, or through a financial contribution towards off-site delivery. The overall target for affordable housing is set at 20%

3.5.21 Local Plan Policy 12: Developer Contributions, which accords with the NPPF, indicates that where request for financial contributions are made the Council should be mindful of the total contribution liability incurred by developers. Members should note that the negotiated s106 agreement attached to the outline approval requires a payment of £350,000, though the current deed of variation application (that also sits before Members as part of this month's agenda) would reduce this figure to £115,000. Given the liabilities associated with this former industrial site and the other contributions required of the developer, the policy requirements can be considered to be met.

3.5.21 Other Matters:

Members are reminded that the other technical matters associated with the site and developments of this nature are already secured by conditions

attached to the outline approval to which this current reserved matters application is associated. This includes the following issues; flood risk and drainage, land contamination, ecology, education provision and public protection considerations. Accordingly they need not be considered further as part of the current application's assessment.

3.5.22 Summary:

This report assesses the reserved matters application for 95 dwellings on phase 1a of the SAPPI redevelopment. In considering the proposal a wide range of material considerations have been taken in to account during the assessment of the planning application.

3.5.38 The assessment of the proposal clearly shows that the planning decision must be made in terms of assessing the merits of the case against any potential harm that may result from its implementation. This report concludes the proposal provides a high quality housing development with associated infrastructure, which meets the policy requirements of the Blackburn with Darwen Core Strategy, Local Plan Part 2, adopted Supplementary Planning Documents and the National Planning Policy Framework.

4.0 RECOMMENDATION

4.1 APPROVE subject to conditions relating to the following matters;

- Development within 2 years
- Approved details/drawings
- Prior to the occupation of any of the dwellings hereby approved, details of the proposed arrangements for future management and maintenance of the proposed streets within the development shall be submitted to and approved by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and Maintenance Company has been established.
- Prior to the construction of any of the streets referred to in the previous condition full engineering, drainage, street lighting and constructional details of the streets shall be submitted to and approved in writing by the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details.
- Sightlines clearance to be kept in perpetuity for all access points
- Permitted development rights to be removed (Part 1, Classes A to E)

5.0 PLANNING HISTORY

5.1 10/12/0048 – Prior Approval for complete demolition of former Sappi Paper Mill including all outbuildings, tanks and enclosures down to the slab level of each structure (Approved March 2012)

10/13/1011 – Environmental Impact Assessment screening request; mixed use development comprising residential and employment uses (EIA not required, November 2013)

10/15/0496 – Outline application for a maximum of the following: 500 dwellings, 3,224m² of office employment (use class B1a), 9,192m² of light industrial employment (use class B1c), 333m² of retail floor space (use class A1) and a 1,110m² community building (use class D1). (Approved November 2015)

- 5.2 Additionally, a significant number of planning applications relating to the historical use of the site have been identified, but none are considered to be relevant to the determination of the current application.

6.0 CONSULTATIONS

Public Protection:

Public protection issues including, noise, air quality, land contamination and residential amenity previously addressed and controlled by conditions imposed upon the outline planning approval for the site

Environment Agency:

No comments.

Canal and River Trust:

No comments.

Capita Ecology:

Issues addressed through controls within existing outline approval affecting the site.

United Utilities:

It should be noted that we have previously commented on the Outline Application (Planning Ref: 10/15/0496) to which the above application relates.

According to our records there is an easement affected by the proposed development site which is in addition to our statutory rights for inspection, maintenance and repair. The easement dated 21/07/1964 UU Ref: F2946 has restrictive covenants that must be adhered to. A water main crosses the site. As we need access for operating and maintaining it, we will not permit development over or in close proximity to the main. You will need an access strip as detailed in our 'Standard Conditions for Works Adjacent to Pipelines'.

Lead Local Flood Authority:

No objections

Arboricultural Manager:

No comments.

Education Department:

No comments.

Environmental Services:

No issues providing sufficient space on each plot for 2-3 bins, and sufficient access for the bin vehicles.

Highways:

The proposal is supported by a Transport Technical Note (TN), which has been independently reviewed by Jacobs on behalf of the Council. The TN reported capacity of the nearby 'Feilden Arms junction' meaning up to 250 additional dwellings could be provided (within the SAPPI site or other development in the locality) without significantly adverse highway impacts. The Jacobs review disputed that assessment, though through dialogue and the separate assessment of the s106 deed of variation application 10/18/0740, which in-part addresses delivery of the SAPPI spine road, it has been agreed that the 95 units associated with Phase 1a could occur without detriment to the wider highway network and/or highway safety.

Vehicular access in to the site is taken from Livesey Ranch Road. The current access is a large banjo style entrance, which is to be altered to provide a priority junction to aid movement. Those works would fall under a s278 improvement scheme – a request is made for a Grampian junction to address this, though the matter is already secured via condition 5 of the outline approval.

With regard to the internal arrangements; the proposal internal stem road was initially too wide, though the concern has been addressed through submission of amended layout drawing received 2nd November 2018. The proposed parking arrangements, with reference to both size and number, accord with the Council's adopted parking standards.

Suggested condition relating to construction methods statement is not required as the matter is already secured via condition 4 of the outline approval for the site.

Further suggested conditions relating to details of arrangements for future maintenance and management of the proposed streets, until such time that an agreement has been entered into under section 38 of the Highways Act 1980, or a private maintenance company is established; full details of the

engineering, drainage, street lighting and construction details of the streets to be submitted and agreed.

PROW:

The scheme provides for accommodation of existing and new access pathways in to the development site and therefore the PROW team have no objections.

Livesey Parish Council:

No comments.

Public Consultation:

Public consultation has taken place, with 217 neighbouring properties individually consulted via letter, site notices displayed and press notices issued. In response the Council have received 2 letters of objection and 1 letter of comment. The submissions can be reviewed in section 9.0 of this report

7.0 CONTACT OFFICER: Martin Kenny, Principal Planner

8.0 DATE PREPARED: 2nd November 2018

9.0 SUMMARY of REPRESENTATIONS

Objection Andrew Eastham. Rec 04/05/2018

Good Morning

You recently wrote to us with reference to the above planning application.

At this stage it is difficult to comment on the application as the amount of documentation etc is difficult to get to the bottom of.

We are at 40 Tintagel Close and will be the nearest house on this side to the development and therefore have a number of concerns that require further information.

Exact Location of houses near our property

Number, size style and proposed value of properties to built near to our home.

Height of the proposed homes and if they will even be visible.

Privacy, noise and security with proposed footpath and potential for Children to play on the banking from the houses below

Exact number of properties over the entire development

Light pollution.

Phase programme for build dates etc.

We have had a lot of disruption with noise dust traffic over recent years and if this goes through are looking at potentially a lot more.

Our other major objection is traffic. We have been here for over twenty years and have noticed already as a result of nearby developments an increase in traffic. This size of development can not possible be using Preston Old Road for its major route to the motorway. Traffic to the Toll Bar lights backs up now as does traffic in to the village. Livsey Branch Road and Feniscowles Village are often solid especially around School opening and closing times. This surely can only get worse and therefore negatively impact on our lives, which is simply not fair.

I do not want to dismiss this project off hand but in the absence of more information we have no alternative but to **object**.

Objection Susan Nicholas, 3 Park Lodge, Blackburn. Rec. 26/04/2018

Dear Mr Kenny and who-ever it may concern.

I received your letter dated 16th April 2018, on the 19th April 2018, informing me that the planning application for phase 1A on the above Sappi site, has now been submitted. From which date is the 21 days applicable?

I live in the upper flat at 3 PARK LODGE, as an owner/occupier, which directly overlooks this site. My lounge and my bedroom will be greatly affected, and my privacy invaded. Because of my upper elevation, any screening would be of no use, from the proposed 4 bedroomed detached property and garage.

I have spoken twice to you Mr Kenny about looking at the plans. You said I could view them on the Town Hall computers as I am not on line. I went to Blackburn town hall on Friday 20th April and was informed by staff that, the plans cannot be viewed there, the site is blocked? However, they did offer as an alternative for me to see the "only paper plan." A member of your staff brought the file down to show me. This had no actual written details about distances or building materials to be used etc, so she (Clare) suggested another phone call to yourself Mr Kenny. I did speak again with you and you gave me the distance of 18 metres from my building to the new build. Because of the "V" shape that occurs on my border, it appears to be closer to the new build than the other residents properties along Princess Gardens and

2/ Coronation Ave.

- It is too close to me, and I ask that you consider increasing this distance please.
- To retain my privacy is of the utmost importance to me and also to retain the value to my property.
- I am concerned about noise levels and air pollution, from the proposed garage to be built alongside the new house
- The loss of this beautiful meadow is very regrettable to me. It was one of the main attractions to buying this property in the first place. Park Lodge is the original stone landowners property, it was here in this lovely location first. I have enjoyed the delight of observing the varied

wildlife that visit this place, with its quiet peacefulness. That will be no longer. It will not be a "meadow."

- I spoke at the council meeting in November 2015, against building on this site, but as you know it was fruitless, it was given the go ahead.
- What can be done now is to give the residents already here the consideration they deserve, in at the very least knowing what is being proposed.
- I have spoken with neighbours and it appears that your website is very difficult to access through to the actual plans and details of distances etc. How can that be acceptable at this crucial stage in the proceedings.
- I suggest to improve the openness and communication that -

that a meeting for residents be arranged sooner rather than later. The local councillors could be available to support their residents. It would be an opportunity to ask questions, face to face. Paper plans and on-line info could be shown to everyone. Technology is here to stay, but not the only way, when it seems so difficult to access without knowing which buttons to press.

3.

- Maybe this meeting could be held in the club house on the Memorial Recreation ground, adjacent to this estate. It has been used before some years ago when the Sappi site was sold on, and building was first proposed. Now we are at the point of starting to build, then surely it is even more important to have a voice, before the concrete and bricks and mortar are laid down.
- These are our homes. Privacy is of the utmost importance to me, and if new properties are being built too close to existing properties then everybody loses. This will include anybody buying the new homes. They will want privacy too - from us.

- It makes sense. Less is more, so they say.
 - I do understand the need for more housing stock. Our younger generation need homes. It is questionable whether large detached properties are needed - there are enough already on the market. The one proposed to be built behind me seems to have such a small garden available - perhaps not such a good selling point. Maybe there are too many properties for this site? Who wants to be squashed into small spaces? No-one, we all need space and privacy. It is good for our well being.
 - To conclude, please take this letter as a serious objection to things as they appear to stand.
 - I do hope for a satisfactory outcome for all concerned.
-

Comment Andrew Eastham. Rec 14/09/2018

Good Evening Martin

With reference to your letter dated 11th September.

I have just tried to review the relevant documents and can not see what or where the amendments are. Can all concerned realise that residents are generally gainfully employed in other areas. I feel that we need to see simplified information.

In addition to the above I raised questions and comments following your previous letter earlier this year. I have had no response. We can not simply be ignored.

I can already make the following observations.

SINCE RECENT DEVELOPMENTS IN THE AREA PRESTON OLD ROAD HAS BECOME SOLID AT PEAK TIMES. THIS ROAD CANNOT COPE WITH THE ADDITIONAL TRAFFIC. TO PUT ANOTHER 500 HOUSES IN TO THE MIX IS MADNESS WITHOUT MAJOR CHANGES TO THE ROAD. SPEEDING IS ALSO AN ISSUE AT OTHER TIMES.

THERE MUST BE A PELICAN CROSSING OR AT LEAST A ZEBRA CROSSING AT THE BOTTOM OF TINTAGEL CLOSE ALONG WITH TRAFFIC CALMING MEASURES BEFORE TINTAGEL COMING FROM PRESTON.

THE SITE IF DEVELOPED MUST HAVE STRICT WORKING TIMES, WE HAVE HAD ENOUGH DISTURBANCE WITH THE CLEARANCE.

I am not trying to dismiss this plan we just need to understand exactly what the development will look like and also what measure the council will take to minimise the impact on existing residents. It is simply unfair to have our world adversely effected just for this development to take place.

One final thought is who is going to live in these houses? There is not a housing shortage of this type and price in this area and it is not as if any new ventures are coming to the area which would create a vast amount of new jobs. There is too much development as it is. These houses if built will not sell, therefore prices reduce all of this has a negative effect on everything surrounding including the value of our houses.

I think I have raised a number of significant points and questions and would welcome a dialogue / meeting to discuss further

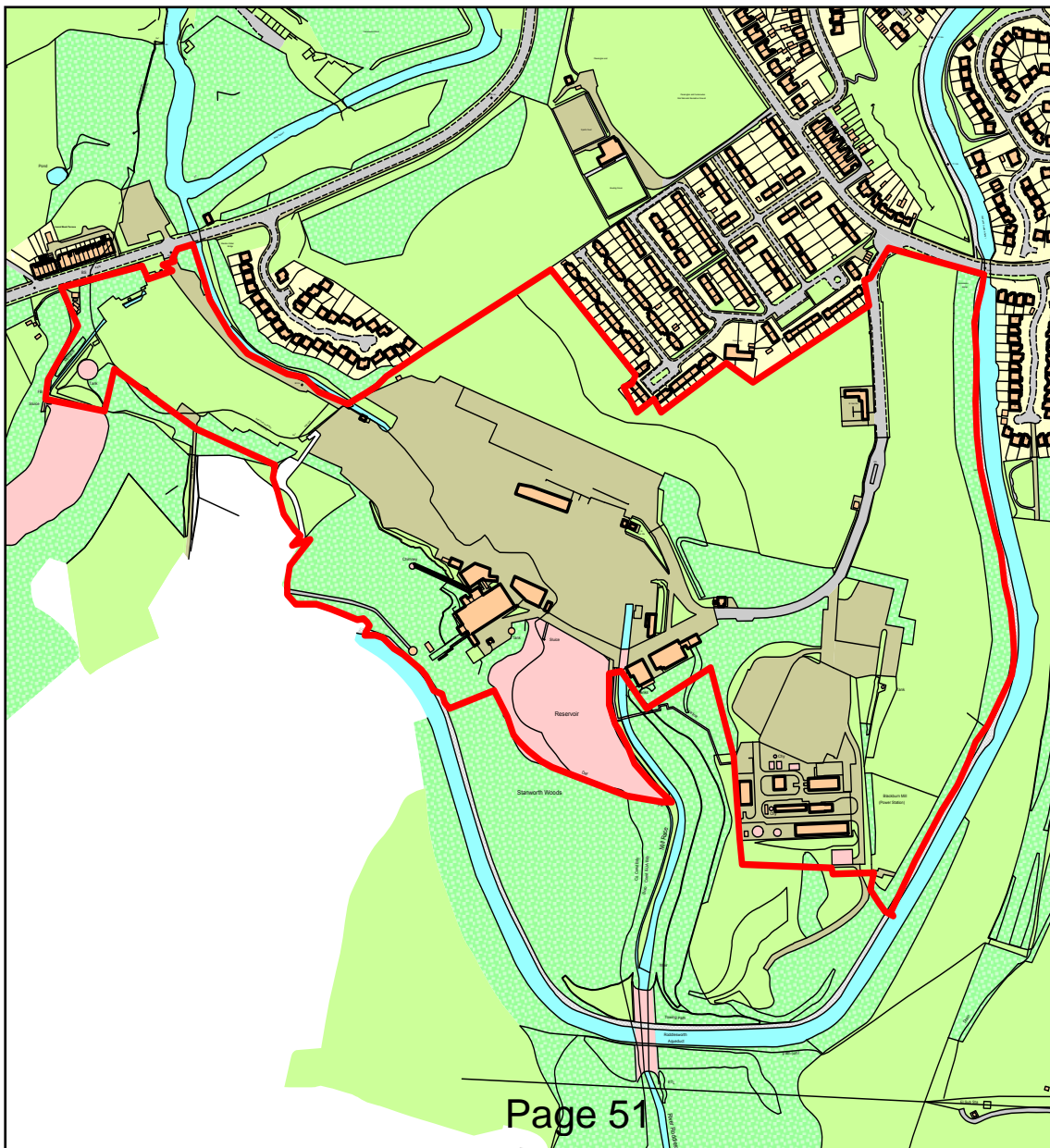
Proposed development: Variation of conditions 2, 6, 14, 15, 16, 18, 19, 22, 29, 32, 33, 36, 37, 38, 40, 41, 43 and 44 pursuant to planning application 10/15/0496 relating to outline planning permission with all matters reserved save for access for a mixed use development of a maximum of the following: 500 dwellings, 3,224m² of B1a employment use, 9,192m² of B1c employment use, 333m² of A1 commercial use, 1,110m² community building, structural planting and landscaping, informal open space and associated ancillary works, to facilitate a phased development

Site address: Former Sappi Paper Mill, Livesey Branch Road, Feniscowles, BB2 5HX

Applicant: Blackburn Waterside Regeneration Ltd

Ward: Livesey With Pleasington

**Councillor Derek Hardman
Councillor John Pearson
Councillor Paul Marrow**



1.0 SUMMARY OF RECOMMENDATION

- 1.1 **APPROVE** – amending conditions attached to planning permission 10/15/0496

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

- 2.1 This application is before Members as it relates to amendments to an application that was previously considered and approved at the November 2015 meeting of the Planning & Highways Committee
- 2.2 Planning permission 10/15/0496 related to an outline approval, with all matters reserved save for means of access. The approval allowed for a mixed use development of a maximum of the following: 500 dwellings, 3,224m² of office employment (use class B1a), 9,192m² of light industrial employment (use class B1c), 333m² of retail floor space (use class A1) and a 1,110m² community building (use class D1). The proposal also relates to associated ancillary works.
- 2.3 The current proposal seeks to modify 18 conditions within the extant planning approval. The amendments are principally to allow a phased approach to the discharge of the planning conditions and, ultimately, delivery of the development throughout the site. The proposed changes are identified as being agreeable and without detriment to the technical assessments they address.

3.0 RATIONALE

3.1 Site and Surroundings

- 3.1.1 The proposal relates to land within both Blackburn with Darwen's and Chorley Borough's administrative boundaries. The application site is an irregular shaped parcel of land positioned to the south west of Livesey Branch Road and south east of Moulden Brow and measuring approximately 26.8 hectares. The site is commonly referred to as the 'SAPPI site' given the last occupant of the majority of the site.
- 3.1.2 The site comprises an area that has historically been used for industrial activity but the mill buildings have now been demolished and the site is no longer in active use. The southern portion of the site is largely undeveloped and is comprised of woodland and grassland. The River Roddlesworth runs through the site from south to north and is culverted beneath the former mill area within the central portion of the site. The north and east sections of the site are zones of previously undeveloped grassland.
- 3.1.3 Access to the site is off Livesey Branch Road to the north and from the west off Moulden Brow, though the latter is currently closed off and not in use. Existing residential areas bound the north of the site on the network of streets including Coronation Avenue and Princess Gardens. Another residential area

is located on Tintagell Close, also to the north of the site. A combined heat and power plant is situated to the south east of the site.

3.2 Proposed Development

3.2.1 The proposal seeks to amend the wording of conditions 2, 6, 14, 15, 16, 18, 19, 22, 29, 32, 33, 36, 37, 38, 40, 41, 43 and 44 of the extant permission, 10/15/0496. The subject of the conditions are outlined below, and discussed in greater detail within section of 3.5 of this report

Condition 2: Identifies the reserved matters

Condition 6: Off-site highway works at Finnington lane/Moulden Brow

Condition 14: Foul and surface water drainage on separate systems

Condition 15: Foul drainage details

Condition 16: Surface water drainage details

Condition 18: Development tied to submitted Flood Risk Assessment

Condition 19: Water management within Star Reservoir

Condition 22: Air quality mitigation

Condition 29: Contaminated land validation

Condition 32: Arboricultural method statement

Condition 33: Tree protective fencing

Condition 36: Habitat management

Condition 37: Recreational access

Condition 38: Further bat surveys

Condition 40: Badger survey

Condition 41: Ecological assessment relating to trees being removed

Condition 43: Public open space provision

Condition 44: Management and maintenance of public open space

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 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
CS5 – Locations for New Housing
CS6 - Housing Targets
CS7 – Types of Houses
CS15 – Protection and Enhancement of Ecological Assets

3.3.4 Local Plan Part 2 (LPP2)

Policy 8: Development and People
Policy 9: Development and the Environment
Policy 12: Developer Contributions
Policy 28: Development Opportunities
Policy 36: Climate Change
Policy 40: Integrating Green Infrastructure & Ecological Networks

3.4 Other Material Planning Considerations

3.4.1 National Planning Policy Framework (The Framework).

3.4.2 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 (paragraph11).

3.5 Assessment

3.5.1 The prospective developer for the site has identified limitations to the future development of the site due to the wording of conditions imposed on the 10/15/0496 planning approval. The developer has indicated that a phased approach to the development of the site will occur and has therefore suggested amendments to 17 conditions. Additionally, due to negotiations to the current s106 planning agreement attached to the 2015 approval it is also suggested that a further condition can be removed.

3.5.2 The applicant's submission for each affected condition is set out below in italics, followed by an officer assessment of the appropriateness of the proposed change .

3.5.3 Condition 2

This condition refers to the submission of all Reserved Matters applications in advance of development commencing however there is a clear intention to develop the site in a phased manner. It is therefore sought that the wording of this condition be altered to read as follows:

Details of the following matters (subsequently referred to as the reserved matters) for each phase of development (as defined under condition 9) shall

be submitted to and be approved in writing by the Local Planning Authority before the commencement of any works:-

- a) Appearance.*
- b) Landscaping.*
- c) Layout*
- d) Scale*

➤ The suggested change is reasonable and can be accepted

3.5.4 Condition 6

This condition advises that no development (excluding site preparation and ground work) shall occur until a scheme detailing the following works to the Finnington Lane/Moulden Brow traffic signal junction has been submitted to and approved in writing. However subsequent to this request additional discussions and agreements have taken place which omits this requirement completely. It is therefore proposed that this condition be removed from the approval.

➤ The off-site works are identified as being delivered through other development(s) in the area, and thus removal of this condition would be without detriment to highway interests.

3.5.5 Condition 14

This condition states that for the avoidance of doubt, surface water shall drain separately from the foul. Unless otherwise agreed in writing, no surface water shall discharge directly or indirectly into the public foul, combined or existing surface water sewerage systems in accordance with the Foul and Surface Water Drainage Strategy submitted and approved pursuant to conditions 10/11/12/13 and with the details contained in the submitted application form, flood risk assessment prepared by Edenvale Young dated 7 May 2015, and the Drainage Report prepared by Bright Young Consulting ref: 1872/DR001 Rev 1 dated 14 May 2015.

As you are aware, we are in the process of updating the Flood Risk Assessment and this will be submitted to the Local Authority shortly. It is therefore requested that subject to agreement, the condition be amended in order to include for the updated report and would therefore include for this as follows:

This condition states that for the avoidance of doubt, surface water shall drain separately from the foul. Unless otherwise agreed in writing, no surface water shall discharge directly or indirectly into the public foul, combined or existing surface water sewerage systems in accordance with the Foul and Surface Water Drainage strategy submitted and approved pursuant to conditions 10/11/12/13 and with the details contained in the submitted application form, flood risk assessment prepared by Edenvale Young dated 7 May 2015, and the Drainage Report prepared by Bright Young Consulting ref: 1872/DR001 Rev 1 dated 14 May 2015 or any subsequent future reports approved by the Local Authority which supersedes those original documents.

- The proposed change is supported by the Lead Local Flood Authority; allowing for flexibility should an amended FRA be agreed. On that basis the amendment still satisfies Policy 9 and can be accepted.

3.5.6 Condition 15

The wording of this condition requires alteration as it implies that we are required to complete all drainage works within the phase. This is a huge upfront cost for the development. It is preferred that this condition be altered to allow the completed houses to connect to the approved foul and surface water system in line with a wider drainage strategy. May we therefore suggest that the condition be reworded to state: -

Prior to commencement of any phase or part of any phase of the development hereby permitted, full details of the foul drainage scheme for that phase including full details of any connections to the foul sewer network and any necessary infrastructure shall be submitted to and approved in writing by the local planning authority (in consultation with United Utilities Limited). The details for each part or phase must be consistent with the Foul and Surface Water Drainage Strategy submitted and approved pursuant to the above conditions 10/11/12/13. No housing or other development shall be occupied until the approved foul drainage scheme for that phase connecting to the house has been completed in accordance with the approved details and written notice of this fact has been sent to the Local Planning Authority.

- The phased approach is again supported by the Lead Local Flood Authority and remains consistent with Policy 9. On that basis the change can be accepted.

3.5.7 Condition 16

Similar to Condition 14, it is requested that the condition be altered to allow for the development to be developed in line with an updated Flood Risk and Drainage report. The amended condition would therefore read as follows: -

Prior to the commencement of each phase or part of the development hereby permitted, full details for a surface water regulation system and means of disposal for that phase or part phase, based wholly on sustainable drainage principles and evidence of an assessment of the hydrological and hydrogeological context of the development for that phase shall be submitted to and approved by the local planning authority (in consultation with United Utilities Limited) in writing. The drainage scheme shall demonstrate that the surface water run off generated up to and including the 1 in 100 year critical storm including 30% climate change allowance will not exceed the run-off from the existing undeveloped site and following the corresponding rainfall event. The details for each phase must be consistent with the Foul and Surface Water Drainage Strategy submitted and approved pursuant to the above conditions 10/11/12/13 and with the principles established in the submitted application form, flood risk assessment prepared by Edenvale Young dated 7 May 2015, and the Drainage Report prepared by Bright Young Consulting ref: 1872/DR001 Rev 1 dated 14 May 2015 or any subsequent

future reports approved by the Local Authority which supersedes those original documents.

- The proposed change is supported by the Lead Local Flood Authority; allowing for flexibility should an amended FRA be agreed, whilst remaining consistent with Policy 9. On that basis the amendment can be accepted

3.5.8 Condition 18

The wording of this condition does identify the phasing of the scheme, however the works relate primarily to Phase 4 of the development. It is therefore requested that this condition be varied to refer to the submitted report and related to Phase 4 of the development. Suggested re-wording is as follows:

The development permitted by this planning permission shall only be carried out in accordance with the Flood Risk Assessment and the following mitigation measures detailed within the FRA or any subsequent future reports approved by the Local Authority which supersedes those original documents:
- Confirmation of the opening up of the existing culvert across the site, demonstrating that the 1 in 100 year return period capacity can be accommodated within the open channel. The mitigation measures shall be fully implemented prior to occupation of Phase 4 or within any other period as may subsequently be agreed, in writing, by the local planning authority.

- Due to the site topography the threat of flooding relates to Phase 4. The proposed change is supported by the Lead Local Flood Authority and the Environment Agency, whilst remaining consistent with Policy 9, thus the proposed amendment can be supported.

3.5.9 Condition 19

The area in which this refers relates primarily to the Phase 4 development parcel and in this regard, it is proposed that the wording of this condition be altered to reflect this. Suggested re-wording is as follows:

No development on Phase 4 shall occur until a scheme detailing the design for the inlet/outlet arrangements in order to provide water level management within the Star Reservoir has been submitted to and approved in writing by the Local planning Authority. The approved scheme shall be implemented prior to construction within Phase 4 of the residential development and thereafter retained.

- Again due to the site topography the threat of flooding relates to Phase 4. The proposed change is supported by the Lead Local Flood Authority and the Environment Agency, whilst remaining consistent with Policy 9, thus the proposed amendment can be supported.

3.5.10 Condition 22

The wording of this condition requires alteration as it implies that the development will be completed holistically and not in a phased manner. The suggested re-wording below looks to address this:

Prior to the commencement of any phase of the development a scheme to mitigate adverse air quality impacts associated with that phase shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall incorporate, but not be limited to, proposals outlined in the Air Quality Assessment Update Note (ref:620001856-002) received 2nd September 2015. The development shall be undertaken in accordance with the approved details.

- The proposed introduction of the phasing element is without detriment to the wider intentions of the condition. No objections have been raised by the Public Protection team and the proposal remains consistent with Policy 36, thus the change can be supported.

3.5.11 Condition 29

At present Condition 29 is a single pre-occupation condition and can't be discharged until all the buildings have been constructed and hence due to the very nature of a phased housing development would not be practicable to follow. The wording of this condition is also of concern as the agreed Remediation Scheme for each plot can only be signed off when the top soil is laid. The usual practice for the applicant is to do this last when all building works are finished. The clause set out in the condition does not give the applicant enough time to obtain approval prior to the sale and if this is undertaken, there would be the submission 500 individual Validation Reports. It is therefore suggested that this be amended to allow the submission of retrospective Validation Reports for a phase but the engineer is checking each plot prior to completion. A phasing plan is submitted for your approval.

It is therefore suggested that the wording of Condition 29 be split into each development Phase and for each, separated again to read as follows: -

29a Earthworks Remediation Verification (Pre-Commencement)

All groundwork activities including capping and delineation and removal of hotspots as required under condition 28 of this permission including any reporting and treatment of unexpected contamination should be submitted within a Earthworks Validation Report to demonstrate effective remediation of the ground.

29b Development Remediation Verification (Post-Occupation)

At the end of each phase, submit two copies of the Closure Report which provides verification that the additional remedial works required during construction of each dwelling (ie gas protection measures, top soil capping within gardens) as approved under condition 28 of this permission have been

carried out, shall be submitted to and approved in writing by the Local Planning Authority.

- The proposed changes still ensure that the development provides for a safe environment for occupants and users and prevents the spread of contamination. No objections have been raised by the Public Protection team and the proposal is considered to remain consistent with Policy 9, thus the change can be supported.

3.5.12 Condition 32 and 33

These conditions relate to the wider site however it does not explicitly reference the phasing of the development. In this regard, in order to delay development on site, it is suggested that the wording of those conditions be revised as follows to allow for a phased approach: -

Condition 32: Prior to any on site works for each phase of development, an arboricultural method statement and tree protection plan for that phase shall be submitted to and agreed in writing by the Local Planning Authority. The method statement shall clearly state how the tree(s) to be retained on site and overhanging the site will be protected during demolition and/or construction works. The agreed method statement shall be implemented in full prior to the undertaking of any on site works

Condition 33: Protective fencing shall be installed around all trees being retained within each phase the application site, in accordance with British Standard 5837: Guide for trees in relation to construction. This fencing should be installed prior to the commencement of any building works, ground works, demolition works or storage of any machinery, equipment or materials on site on that particular phase. This fencing should remain intact and in place until all works are completed on the relevant phase of the site. This fencing should be considered sacrosanct and no soil levels should be altered within the perimeter of this fence and no building materials or waste products should be stored inside the fence line.

- No objection to the suggested approach has been raised by the Council's Arboricultural Manager. The changes still protect trees within the site, consistent with Policy 9, but allow for a phased approach; the amendment(s) can therefore be supported.

3.5.13 Conditions 36, 37 and 38

The conditions relates to the wider site however it does not explicitly reference the phasing of the development. In this regard, in order to delay development on site, it is suggested that the wording of those conditions be revised as follows to allow for a phased approach: -

Condition 36: Prior to the commencement of development of any phase a habitat management report and plan for that phase shall be submitted to and approved in writing by the Local Planning Authority. The report shall include all measures of habitat conservation and enhancement necessary to mitigate

the impact of the development. The development shall be undertaken in accordance with the approved details

Condition 37: Prior to the commencement of any relevant phase of development (as defined under condition 9) an assessment of recreational access, including the formation of new woodland walkways, to the existing habitats and Biological Heritage Sites within the site shall be undertaken and submitted to and approved in writing by the Local Planning Authority. The report should provide sufficient information to assess whether the development is likely to impact on the integrity of these sites and identify mitigation measures, where appropriate. The development shall be undertaken in accordance with the agreed details

Condition 38: Should the development of any phase commence more than two active seasons from the date of the initial bat surveys, as detailed in the Bowland Ecology: Ecological Appraisal: April 2015, further bat surveys for that phase will be required to provide current information on the location of bat roosts and species and numbers of bats associated with individual roosts. The assessment shall include, but not be limited to, the survey of any buildings or structures with potential to support bat roosts that are to be demolished or have previously been identified as mitigation for the loss of existing roosts. The development thereafter shall be carried out in accordance with any necessary mitigation measures identified.

- Again the justification for the change is to allow a phased approach to delivery. Capita Ecology has indicated that whilst the ecological requirements could be phased, there is still a requirement for this approach to be co-ordinated to avoid fragmentation and habitat loss. On balance the proposal remains consistent with Policy 9 and can be supported.

3.5.14 Condition 40

Again, it is proposed that this condition be amended in order to take into account the phasing approach to the site. In this regard, it is proposed that the condition be re-worded as follows:

A badger survey relevant to that phase must be undertaken no more than 6 months prior to the commencement of works on any phase of the development and be submitted to and approved in writing by the Local Planning Authority. The survey shall identify whether there are any active badger setts present on site and as appropriate how impacts to badgers will be avoided, managed and mitigated. The development thereafter shall be carried out in accordance with the agreed measures.

- Notwithstanding the comments set out within section 3.5.13, no further concerns are raised by Capita Ecology. The revised wording still requires for pre-commencement survey work and is considered to remain consistent with Policy 9 and can be supported

3.5.15 Condition 41

Again, this condition refers to the site as a single development rather than taking a phased approach. It is therefore suggested that this condition be re-worded to read as follows:

Notwithstanding the details hereby approved, in accordance with the findings of the Bowland Ecology: Ecological Appraisal: April 2015 and the Bowland Ecology: Ecological Appraisal Addendum: September 2015, where trees are identified for removal on any specific phase of development they shall be inspected to identify features with roosting potential, including the presence of bat activity or bats themselves, prior to works commencing on that phase. This survey should be undertaken and the results submitted to the local planning authority for written approval.

- Notwithstanding the comments set out within section 3.5.13, no further concerns are raised by Capita Ecology. The revised wording still requires for pre-commencement survey work and is considered to remain consistent with Policy 9 and can be supported

3.5.16 Condition 43

This condition requires the submission of a scheme for the provision of public open space and equipped play areas shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include full details of all play and other equipment to be provided. The development thereafter shall be carried out in accordance with the approved details prior to the practical completion of 100 dwellings.

As part of the reserved matters application for the relevant phase (as defined under condition 9) a scheme for the provision of public open space shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include full details of all play and other equipment to be provided. The development thereafter shall be carried out in accordance with the approved details in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

You will note that based on the agreement for a financial contribution to the Cricket and Bowls, the equipped areas of play notations have been omitted completely from the suggested new wording of the condition.

- Members should note that the s106 deed of variation application (10/18/0740) that is also on the November committee agenda details the payment of commuted sums for off-site provision of recreational facilities at the Feniscowles Sports and Recreation Club and at Witton Park, in lieu of on-site provision. It is therefore submitted that the recreational needs of the development will still be met. On that basis the proposed change can be supported.

3.5.17 Condition 44

Prior to the commencement of each phase of the development details of the proposed arrangements for future management and maintenance of all of the open space of that phase, within the site shall be submitted to and approved by the local planning authority. The open space shall thereafter be managed and maintained in accordance with the approved management and maintenance details

You will note that based on the agreement for a financial contribution to the Cricket and Bowls, the equipped areas of play notations have been omitted completely from the suggested new wording of the condition.

- In line with the justification provided in section 3.5.16, it is reasonable to amend the wording, as suggested. The amended wording still requires the developer to provide details of the maintenance and management of the open space within the development. Accordingly the provisions of Policy 40 are still met

4.0 RECOMMENDATION

- 4.1 **APPROVE** – Reapplying all conditions imposed upon the extant permission 10/15/0496; amending the conditions in line with the details set out in section 3.5 of this report

5.0 PLANNING HISTORY

- 5.1 10/12/0048 – Prior Approval for complete demolition of former Sappi Paper Mill including all outbuildings, tanks and enclosures down to the slab level of each structure (Approved March 2012)

10/13/1011 – Environmental Impact Assessment screening request; mixed use development comprising residential and employment uses (EIA not required, November 2013)

10/15/0496 – Outline application for a maximum of the following: 500 dwellings, 3,224m² of office employment (use class B1a), 9,192m² of light industrial employment (use class B1c), 333m² of retail floor space (use class A1) and a 1,110m² community building (use class D1). (Approved November 2015)

- 5.2 Additionally, a significant number of planning applications relating to the historical use of the site have been identified, but none are considered to be relevant to the determination of the current application.

6.0 CONSULTATIONS

Public Protection:

No objections

Lead Local Flood Authority:

No objections to the conditions relating to drainage being varied

United Utilities:

No comments.

Capita Ecology:

Whilst some of the ecological requirements could be phased, we recommend that the ecology surveys are coordinated. The impact of phasing the surveys would result in a large amount of change to ecological features which would affect protected species within other parts of the site. Habitat loss and fragmentation in one area would undoubtedly change the flight pattern and foraging behaviour of bats which could lead to inaccurate findings for the subsequent surveys and unsatisfactory mitigation measures.

Please ensure that prior to the commencement of any phase a habitat management report and plan is submitted by the applicant including the information of new woodland walkways to the existing habitats and Biological Heritage Sites.

Additional comments relating to the scope of subsequent reports are also set out, but not considered to be relevant to the assessment of this application.

Environment Agency:

No objection to varying of conditions to allow variation to flood risk assessment and timing of culvert opening

Chorley Borough Council:

No comments

Arboricultural Manager

No objections

7.0 CONTACT OFFICER: Martin Kenny, Principal Planner

8.0 DATE PREPARED: 2nd November 2018

REPORT OF THE DIRECTOR

Plan No: 10/18/0740

Proposed development: Variation of Legal Agreement/S106 for Variation to Section 106 Planning Obligation for planning Application 10/15/0496

Site address: Sappi Paper Mill, Livesey Branch Road, Feniscowles, BB2 5HX

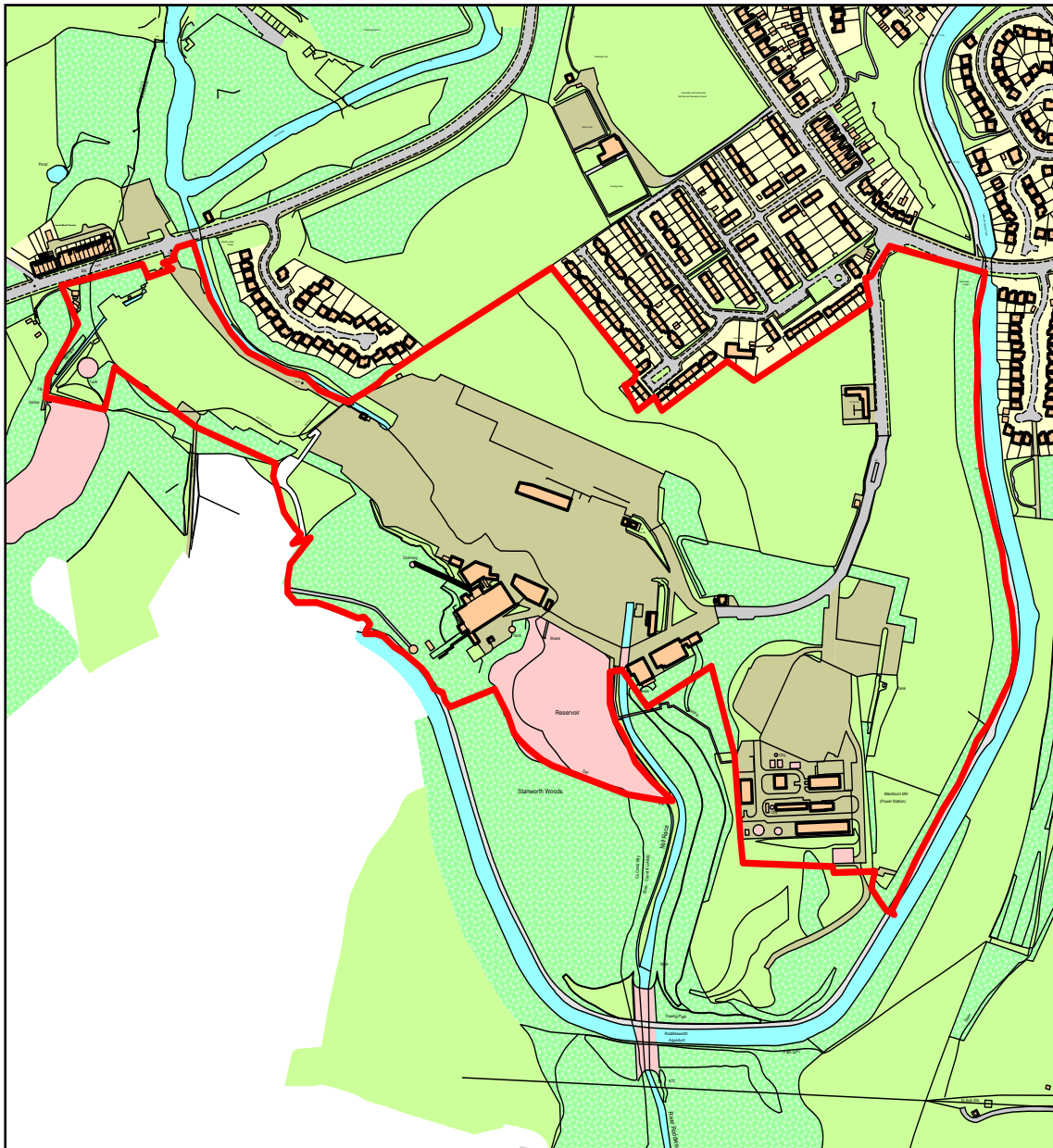
Applicant: Blackburn Waterside Regeneration

Ward: Livesey With Pleasington

Councillor Derek Hardman

Councillor John Pearson

Councillor Paul Marrow



1.0 SUMMARY OF RECOMMENDATION

- 1.1 It is recommended that Members **agree** to the variation of the existing Section 106 Agreement

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

- 2.1 This application is before Members as it relates to amendments to the Section 106 Agreement (s106) attached to planning permission 10/15/0496, which was previously considered and approved at the November 2015 meeting of the Planning & Highways Committee.

- 2.2 Planning permission 10/15/0496 related to an outline approval, with all matters reserved save for means of access. The approval allowed for a mixed use development of a maximum of the following: 500 dwellings, 3,224m² of office employment (use class B1a), 9,192m² of light industrial employment (use class B1c), 333m² of retail floor space (use class A1) and a 1,110m² community building (use class D1) and ancillary works. The approval was subject to a s106 that secured commuted sum payments totalling £423,000 for the following matters;

£350,000 for the off-site provision of affordable housing. The sum being payable in its entirety prior to the commencement of the first dwelling.

£73,000 towards the requirements of travel planning associated with the development.

- 2.3 The current proposal revises the commuted sum payment upwards to total £825,000, whilst also introducing a mechanism to ensure delivery of the spine road required as part of the overall development of the SAPPI site. The amended proposal is considered to ensure for a sustainable form of development that accords with the national and local planning policy requirements.

3.0 RATIONALE

3.1 Site and Surroundings

- 3.1.1 The proposal relates to land within both Blackburn with Darwen's and Chorley Borough's administrative boundaries. The application site is an irregular shaped parcel of land positioned to the south west of Livesey Branch Road and south east of Moulden Brow and measuring approximately 26.8 hectares. The site is commonly referred to as the 'SAPPI site' given the last occupant of the majority of the site.

- 3.1.2 The site comprises an area that has historically been used for industrial activity but the mill buildings have now been demolished and the site is no longer in active use. The southern portion of the site is largely undeveloped and is comprised of woodland and grassland. The River Roddlesworth runs through the site from south to north and is culverted beneath the former mill

area within the central portion of the site. The north and east sections of the site are zones of previously undeveloped grassland.

- 3.1.3 Access to the site is off Livesey Branch Road to the north and from the west off Moulden Brow, though the latter is currently closed off and not in use. Existing residential areas bound the north of the site on the network of streets including Coronation Avenue and Princess Gardens. Another residential area is located on Tintagell Close, also to the north of the site. A combined heat and power plant is situated to the south east of the site.

3.2 Proposed Development

- 3.2.1 The extant approval 10/15/0496 is subject to a s106 securing monies towards the off-site provision of affordable housing and assessment of travel plan documents. Those payments total £423,000; £350,000 towards affordable housing provision (of which 6% is to be directed to Chorley BC) and £73,000 towards travel plan formation and monitoring.

- 3.2.2 The current deed of variation application seeks to revise the commuted sum payment upwards to a total of £825,000. The payment requirements are set out in the following table;

Time	Current	Cricket & Bowls Club	Witton Park Sportsturf	Affordable Housing (Chorley)	Affordable Housing (BwD)
Commencement	£237,750	£137,750	£100,000		
12 months	£355,750	£112,250	£222,500	£21,000	
24 months	£155,000	£100,000	£37,500		£17,500
36 months	£77,000				£77,000
TOTAL	£825,500	£350,000	£360,000	£21,000	£94,500

- 3.2.3 In addition the s106 variation also introduces a clause relating to the Developer being required to construct a spine road linking Livesey Branch Road and Moulden Brow at its own cost. The requirements of the new clause being that;

- 3.2.4 *“The road will be completed by no later than the occupation of the 180th dwelling or 3 years from the date of this agreement whichever is sooner.*

The Developer will grant to the Council an Option agreement to acquire the Freehold of the land to construct the road and associated infrastructure. The Option can be exercised if the Developer fails to meet the above obligations. In addition the Council may exercise the Option if the Developer has not commenced the construction of the new river channel within 24 months and the Option will be valid for 5 years from the date of this Agreement”.

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 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
CS5 – Locations for New Housing
CS6 - Housing Targets
CS7 – Types of Houses
CS8 – Affordable Housing Requirements

3.3.4 Local Plan Part 2 (LPP2)

Policy 10: Accessibility and Transport
Policy 40: Integrating Green Infrastructure & Ecological Networks

3.4 Other Material Planning Considerations

3.4.1 National Planning Policy Framework (The Framework).

3.4.2 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 (paragraph11).

3.5 Assessment

3.5.1 Extensive dialogue between Council officers, the site owners and prospective developers has been ongoing to seek to ensure that the development approved within the 10/15/0496 application will be brought forward; given the benefits of bringing the redundant industrial site in to use and the contribution this would provide towards the Council's housing delivery and growth objectives.

3.5.2 As part of the negotiations linked to reserved matters application 10/18/0290 (which is also before Members as part of the agenda for this month's committee) it was identified that a mechanism for delivery of the entire spine road linking Livesey Branch Road and Moulden Brow was necessary to ensure that if the latter phases of the SAPPI site's development didn't occur there would not be unacceptable impacts on the surrounding highway network.

- 3.5.3 It is submitted to Members that the clause identified in section 3.2.4 of this report, offers an effective backstop option to provide for the spine road and thus insures against partial development of the site and the potentially adverse transport impacts that could create. On that basis the submission is consistent with *Policy 10: Accessibility and Transport* of the Local plan Part 2 and can be supported.
- 3.5.4 The ongoing dialogue also identified shortcomings in the provision of community facilities in the locality, as well as limitations on the provision of on-site equipped play, as was required by condition 43 of the extant permission 10/15/0496. The developer has agreed to provide for a total of £710,000 towards the provision of community facilities in the locality; to be split between the neighbouring Feniscowles Cricket and Bowls Club and Witton Park Sportsturf facility (as detailed in the table within section 3.2.2 of this report). The increased cost to the developer is partially compensated by the fact on-site provision and future management/maintenance is no longer required.
- 3.5.5 Members are advised that the proposed variation still provides for the future needs of the development and its occupants, as well as strengthening provision for the established community. Accordingly the proposed change remains consistent with the requirements of *Policy 40: Green Infrastructure* of the Local Plan Part 2.
- 3.5.6 Although there is a substantial increase in the overall contribution required by the developer - £825,000 total, equating to a £402,000 increase - the variation would result in a drop in the contribution towards off-site provision of affordable housing and removal of the requirement to pay towards travel planning associated with the development. The proposed variation still provides for £115,000 to affordable housing provision, of which £21,000 would be directed towards Chorley BC as the application site straddles the administrative boundary. That level of provision falls below the 20% target set out in Core Strategy Policy *CS9: Affordable Housing Requirements*, though that is also the case within the existing s106 due to viability issues with the site.
- 3.5.7 Members are advised that, on balance, the changes are justified given the overall benefits of delivery of development within the site. Furthermore, the re-direction of the commuted payments will ensure for a sustainable development and strengthen the recreational provision for the established community.

4.0 RECOMMENDATION

- 4.1 **APPROVE** – variation of the s106 Agreement pursuant to planning application 10/15/0496

5.0 PLANNING HISTORY

- 5.1 10/15/0496 – Outline application for a maximum of the following: 500 dwellings, 3,224m² of office employment (use class B1a), 9,192m² of light industrial employment (use class B1c), 333m² of retail floor space (use class

A1) and a 1,110m² community building (use class D1). (Approved November 2015)

- 5.2 Additionally, a significant number of planning applications relating to the historical use of the site and the demolition of buildings have been identified, but none are considered to be relevant to the determination of the current application.

6.0 CONSULTATIONS

Chorley Borough BC

See update report

- 7.0 CONTACT OFFICER: Martin Kenny, Principal Planner**

- 8.0 DATE PREPARED: 2nd November 2018**

REPORT OF THE DIRECTOR

Plan No: 10/18/0963

Proposed development: Full Planning Application for refurbishment of two existing AGPs (Artificial Grass Pitches) with replacement artificial grass pitch surfaces, floodlights, ball stop fencing and hard standing areas

**Site address:
Witton Country Park
Preston Old Road
Blackburn
BB2 2TP**

Applicant: Blackburn With Darwen Borough Council

Ward: Livesey With Pleasington

**Councillor Derek Hardman
Councillor John Pearson
Councillor Paul Marrow**



1.0 SUMMARY OF RECOMMENDATION

1.1 APPROVE – Subject to recommended conditions (see paragraph 4.0).

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

2.1 The proposal will deliver two modern Artificial Grass Pitches (AGPs) which can be used throughout the year. It supports the Borough's planning strategy for provision of appropriate facilities for outdoor sport and recreation in the Green Belt. The proposal is also satisfactory from a technical point of view, with all issues having been addressed through the application, or capable of being controlled or mitigated through planning conditions.

2.2 The application is before the committee as it is a Blackburn with Darwen Borough Council site and the application has been submitted by the Council's Leisure Team.

3.0 RATIONALE

3.1 Site and Surroundings

3.1.1 The application site comprises two existing Artificial Grass Pitches (AGPs), fencing, flood lighting, changing rooms/admin office and parking situated within the grounds of Witton Country Park. The pitches have independent access for vehicular traffic from the main Witton Country Park entrance with pedestrian routes permeating through the site.

3.1.2 The park land extends to the north and west with residential properties to the south and east on Preston Old Road. The two adjacent artificial grass pitches (AGPs) are surrounded by amenity grassland. The River Darwen, bordered by semi-natural woodland, is situated north of site.

3.1.3 Public transport links are accessible from the site, with the nearest bus stop being, located a short walk (approx. 300m) on Preston Old Road. From here there are regular services to Blackburn Town Centre and the surrounding area.

3.2 Proposed Development

3.2.1 The proposal is a full planning application for the refurbishment of two existing AGPs (Artificial Grass Pitches) with replacement artificial grass pitch surfaces, floodlights, ball stop fencing and hard standing areas.

3.2.2 The proposal has been prepared in accordance with published Design Guidance Notes (The Football Association (FA) / Sport England) pertinent to external artificial sports facility provision which involves:

- Open steel mesh ball stop fencing and entrance gates around the entire AGP perimeter at 4.5m above ground level.

- New open steel mesh pitch perimeter barrier and entrance gates internally within the fenced enclosure to segregate the pitch playing area (the field of play) from adjoining hard standing areas are 1.2m and 2.0m above ground level.
- Thirty two new luminaires mounted onto sixteen replacement floodlight masts located along Northern and Southern sides of both AGPs at 15m above ground level.
- New hard landscaping treatments around the refurbished AGPs are restricted to additional porous asphalt surfacing.
- Surplus area of previous AGP (the Western AGP) returned to grass surfacing. All other grassed land surrounding the AGPs affected by the development reinstated to grass (in accordance with in accordance with BS 4428:1989 Code of Practice for General Landscape Operations).

3.3 Development Plan

3.3.1 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:

3.3.2 Core Strategy

- CS16 – Form and Design of New Development

3.3.3 Local Plan Part 2

- Policy 3 – Green Belt
- Policy 7 – Sustainable and Viable Development
- Policy 8 – Development and People
- Policy 9 – Development and the Environment
- Policy 10 – Accessibility and Transport
- Policy 11 – Design
- Policy 40 – Integrating Green Infrastructure and Ecological Networks with New Development

3.4 Other Material Planning Considerations

3.4.1 National Planning Policy Framework (NPPF)

The National Planning Policy Framework 2018 (Framework) is a material consideration in planning decisions. The Framework sets out a presumption in favour of sustainable development, which has three overarching objectives, economic, social and environmental. Paragraph 11 of the Framework explains that for decision taking, this means approving development proposals that accord with the development plan without delay. Section 13 of the Framework

relates to protecting Green Belt Land, and Section 8 relates to promoting healthy communities.

3.5 Assessment

3.5.1 In assessing this application there are a number of important material considerations that need to be taken into account as follows:

- Principle;
- Highways and access;
- Design and Layout;
- Amenity impact; and
- Environmental issues

Principle

3.5.2 The principle of the development is considered under the Blackburn with Darwen Local Plan Part 2: Site Allocations and Development Management Policies and the National Planning Policy Framework 2018 for development within the defined Green Belt.

3.5.3 The Framework 2018 which was updated in July reiterates the special protection of the Green Belt where there is a general presumption against inappropriate development which is, by definition, harmful to the openness and permanence of the Green Belt. One of the exceptions in the Green Belt is the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. The Council's Local Plan Part 2, Policy 3 'The Green Belt' echoes national policy in this stance.

3.5.4 As an existing outdoor sports facility, the principle of the current proposal is considered to be acceptable and in accordance with the provisions of the development plan in terms of delivering development within the Green Belt. This is subject to the more detailed considerations also being in accordance with adopted development plan policy and national guidance.

3.5.5 Highways and Access

Core Strategy Policy 22: Accessibility Strategy and Local Plan Policy 10: Accessibility and Transport, aim to ensure that new developments provide appropriate provision for access, car parking and servicing so as to ensure the safe, efficient and convenient movement of all highway users is not prejudiced.

3.5.6 Parking provision for the development is to be retained as per the existing set up with no further demand expected based upon the scope of the works being for the refurbishment of site and not the provision of additional pitches.

3.5.7 Highways Colleagues are appraising the submission with the response to be made available by way of an update report. Overall, the scope of information submitted in support of the transport and highways aspects of the proposal illustrate an acceptable form of development. As such, subject to no objection from Highways Colleagues, it is in accordance with the requirements of Policy 10 of the Local Plan Part 2.

3.5.8 Design and Layout

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, public realm, movement, sustainability, diversity, materials, colour and viability. This underpins the main principles of sustainable development contained in the NPPF.

3.5.9 A detailed Design and Access Statement has been provided which sets out the key design principles which are taken forward in the application proposals design response, reflecting the policy requirements include:

- Proximity changing rooms
- Proximity reception facilities
- Proximity for management and supervision of users
- Avoidance of unacceptable impact to residential neighbours (noise, visual and residential amenity) or the ability to introduce impact mitigation measures
- Avoidance of unacceptable impact to any local biodiversity and ecology or the ability to introduce impact mitigation measures

3.5.10 The installed appearance of perimeter ball stop fencing (4.5m high), pitch perimeter barriers (1.2m and 2.0m high) and associated gated entrances will be finished to polyester powder coated RAL6005 moss green, all supported with an intermediate post system and entrance gates of matching colour.

3.5.11 The comprehensive details submitted illustrate a modern design and layout which also reflects the existing pitches infrastructure and landscaping. As such the proposal is considered to accord with the provisions of the relevant policies of the development plan.

3.5.12 Amenity Impact

Policy 8 of the LPP2 relates to the impact of development upon people. Importantly, at section (ii) of the policy there is a requirement for all new development to secure satisfactory levels of amenity for surrounding uses and future occupiers of the development itself. Reference is made to matters including; noise, vibration, odour, light, dust, privacy/overlooking and the relationship between buildings.

3.5.13 The proposed type and quality of ball-stop fencing is consistent with current Football Association (FA) technical requirements for fencing to enclose artificial grass sports pitches. Panels are insulated from the posts using neoprene washers fitted to every fence post / mesh fixing point to aid noise reduction and acoustic attenuation by reducing rattle and vibration from ball impacts.

3.5.14 To ensure that overspill and backward light projected outside the AGP areas from flood lights does not create unacceptable light impact to residential neighbours, luminaires will be installed with minimal aiming angles (as recommended by The Institution of Lighting Professionals (ILP)) to reduce horizontal and vertical overspill.

3.5.15 The Council's Public Protection Team has reviewed the application and offers no objection to the development subject to standard hours of construction condition. As such, the overall impact of the proposed development is considered to accord with the provisions of the adopted and Local Plan Part 2 as any potential harm to amenity has been addressed or can be adequately controlled or mitigated through planning conditions. Indeed, the introduction of modern fencing is likely to see a reduction in noise from the existing pitches.

3.5.16 Drainage, Flood Risk & Ecology

Policy 9 of the adopted Local Plan Part 2 sets out that development will be required to demonstrate that it will not be at an unacceptable risk of flooding and impact on environmental assets or interests, including habitats, species and trees.

3.5.17 Following a review of the application, no objection has been offered by the Environment Agency; subject to the applicant being made aware that they may require a permit under the Environmental Permitting (England and Wales) Regulations 2016 from the Environment Agency.

3.5.18 The application has also been accompanied by an Ecological Appraisal which identifies that no protected species are present within the vicinity of site. Additionally, measures are recommended for the control of invasive plant species and mitigation measures to no unacceptable adverse impacts are likely to occur. As such, the overall impact of the proposed development is considered to accord with the provisions of the adopted Local Plan Part 2 as any potential risk of flooding or ecological harm has been addressed or can be adequately controlled or mitigated through planning conditions.

3.5.19 Summary:

This report assesses the full planning application for refurbishment of two existing AGPs (Artificial Grass Pitches) with replacement artificial grass pitch surfaces, floodlights, ball stop fencing and hard standing areas on Witton Country Park, Blackburn. In considering the proposal a wide range of material considerations have been taken in to account during the assessment of the planning application.

3.5.20 The assessment of the proposal clearly shows that the planning decision must be made in terms of assessing the merits of the case against any potential harm that may result from its implementation. This report concludes the proposal provides for two modern Artificial Grass Pitches (AGPs) which can be used throughout the year, meeting the policy requirements of the Blackburn with Darwen Core Strategy, Local Plan Part 2, and the National Planning Policy Framework 2018.

4.0 RECOMMENDATION: Approve subject to Conditions which relate to the following matters:

- Commence within 3 years
- Approved details/drawings
- Limitation of construction site works to: 08:00 to 18:00 Mondays to Fridays, 09:00 to 13:00 Saturdays, Not at all on Sundays and Bank Holidays.
- Developed in accordance with the recommendations of the submitted Ecology Assessment.

5.0 CONSULTATIONS

5.1.1 Drainage Section

No comments yet received and to be provided by way of an update report.

5.1.2 Public Protection

Recommendation conditions:

- Site working hours to be limited to between 8am-6pm (Monday-Friday) and 9am-1pm on Saturdays. No works on Sundays or Bank Holidays.

5.1.3 Highways

No comments yet received and to be provided by way of an update report.

5.1.4 Environment Agency

The developer may require a permit under the Environmental Permitting (England and Wales) Regulations 2016 from the Environment Agency for any proposed works or structures, in, under, over or within 8 metres of the bank of the River Darwen, which is designated a Main River. In particular, no trees or shrubs may be planted, nor fences, buildings, pipelines (including outfalls) or any other structure erected within 8 metres of the top of the bank of the Main River, or landward toe of any flood defence, without an environmental permit. Some activities are also now excluded or exempt. For further information, the developer should refer to the GOV.UK website:
<https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>.

5.1.5 Public consultation

Public consultation has been undertaken, with over 42 letters posted to neighbouring addresses and 2 site notices affixed. The consultation period expires on 6th November 2018: No letters of representation have been received with any further representations to be provided by way of an update report.

6.0 CONTACT OFFICER: Alec Hickey, Senior Planner - Development Management.

7.0 DATE PREPARED: 01st November 2018

DEPARTMENT OF RESOURCES

ORIGINATING DIVISION: Highways and Transportation Capita

REPORT TO: Blackburn with Darwen Borough Council

Planning and Highways Committee

COMMITTEE DATE: 15th November 2018

TITLE : Diversion of Public Footpath 209 Jacks Key (Part)

WARDS: Darwen

COUNCILLORS: Kevin Connor, Lilian Gladys Salton, Neil Andrew Slater

1. PURPOSE OF THE REPORT

- 1.1 To seek committee approval for a public path order under the Highways Act 1980, Section 119 to divert part of public footpath 209 Darwen, around Jacks Key reservoir.

2. BACKGROUND

- 2.1 On the 3rd of May 2016 Blackburn with Darwen Borough Council (PROW) received an application to divert footpath 209 (part).
- 2.2 The applicant has advised that the existing route across the earth dam has become potentially unsafe and may collapse if the dam was to fill to its entirety. The applicant has also confirmed that he is willing to provide the new path to a standard that is to the satisfaction of the Highway Authority.
- 2.3 A report has been prepared which seeks to address those matters before Blackburn with Darwen Borough Council, namely the application for the public path diversion order to divert the path as shown on the plan attached to this report and enabling them to consider whether, or not to promote the Order requested.

3. LAW

- 3.1 The relevant legislation is the Highways Act 1980, Section 119 to divert part of public footpath. Please see attached report for further details.

4. DETAILS

4.1 Please refer to accompanying report.

5. FINANCIAL IMPLICATIONS

5.1 The cost of the diversion of the new path will be met by the Applicant and is in the region of £4,000

6. RECOMMENDATION

The committee may *either* decide to 'Promote the Order' or 'Not to Promote the Order'

6.1 **It is the officer's recommendation that the legislative criteria have been met and the committee should resolve to Promote the Public Path Order.**

BACKGROUND PAPERS
CONTACT OFFICER
DATE PREPARED

Plan and Report
Lorraine Mellodey PROW Officer, 01254273525
16 October 2018

Highways Act 1980 – Section 119
Application for Public Path Diversion Order
Public Footpath, Darwen No 209 (Pt) – Jacks Key Reservoir

1.0 Introduction

1.1 This report seeks to assist Blackburn with Darwen Borough Council in their determination of an application to divert part of Public Footpath, Darwen No 209 as shown on plan 1 attached to the report.

2.0 Background

2.1 Blackburn with Darwen Borough Council is the Highway Authority for the area within which the path proposed for diversion lies.

2.2 Public Footpath, Darwen No 209 is recorded on the Definitive Map and Statement for the area.

2.3 On 3rd of May 2016 Blackburn with Darwen Borough Council received an application to divert a section of the footpath as shown on the attached plan. The applicant has advised that the existing route across the earth dam has become potentially unsafe and may collapse if the dam was to fill to its entirety. The applicant has also confirmed that he is willing to provide the new path to a standard that is to the satisfaction of the Highway Authority.

2.4 This report seeks to advise the Council of the outcome of statutory and non-statutory consultations, and an assessment against the relevant legislative criteria, thus enabling them to consider whether, or not to promote the Order requested.

3.0 Legislative Criteria

3.1 Section 119 of the Highways Act 1980 gives local authorities the powers to make orders to divert footpaths, bridleways or restricted byways where it is considered expedient to do so in the interests of either the owner/lessee/occupier of the land and/or the public.

3.2 Such an Order must not alter the termination point of a path or way if that point is not on a highway; or (where it is on a highway) otherwise to another point on the same highway, or a highway connected with it, and which is substantially as convenient to the public.

3.3 An Order made under Section 119 of the 1980 Act shall not be confirmed unless the Authority (or where appropriate the Secretary of State) is satisfied that it is expedient, as described above, and that the path will not be substantially less convenient as a consequence of the diversion. The Authority (or the Secretary of State) must also have regard to the effect to which:

- The diversion would have on public enjoyment of the path as a whole
- The effect on other land served by the path
- Any provisions for compensation
- Any material provision within a Rights of Way Improvement Plan
- The needs of agriculture and forestry; biodiversity; and disability discrimination legislation

4.0 Assessment Against the Legislative Criteria

4.1 The decision whether or not to promote a Public Path Diversion Order is discretionary. If the criteria of the legislation are considered to be met, the Authority should reasonably be expected to state any grounds for refusal should it decide not to make an Order.

Landowner/Public Interest

4.2 The proposal is considered to be in the interests of the landowner because it will move the path away from the immediate vicinity of the unstable land eliminating the need for reactive plans should the land collapse.

4.3 It may also be considered that there are some public benefits to the proposal in so much that the proposed new route has been constructed with ornamental features and a bridge over a brook. As mentioned above it will eliminate the risk of collapse if the dam was to fill to its entirety.

Termination Points

4.4 There will be no change in the termination points.

Convenience & Enjoyment

4.5 The proposed diversion is approximately 50 metres longer than the current route. Any increase in distance must however be taken in context to the nature of the route, and indeed the overall distance travelled by anyone using the path. In this particular case the path is in a rural location and only likely to be used for recreational purposes, and as part of a longer walk. In such circumstances it may be reasonable to conclude that, in terms of length, the alternative is not substantially less convenient.

4.6 With regard to other issues which may have an affect on the convenience of the route, the new path will have an improved surface to a standard acceptable by the Highway Authority. There would not therefore appear to be any reason to suggest that the proposed alternative path will be less convenient than the current route.

Land Served by the Path and Compensation

4.7 The path is not used for the purposes of accessing any land, and the agreement of all affected landowners has been provided. As a result, there would not appear to be any issues arising regarding land served by the path or compensation arising from its diversion.

Material Provisions within the Rights of Way Improvement Plan

- 4.8 There are no material provisions within the Rights of Way Improvement Plan for the area which would have an effect on the proposals. Furthermore, such a document may not fetter the discretion of the Authority when making its decision whether or not to promote the requested Order.

Agriculture and forestry; biodiversity; and Disability Discrimination Legislation

- 4.9 It is not considered that there are any issues arising with regard to agriculture or forestry and having carried out various consultations with interested parties there would appear to be no issues arising surrounding biodiversity. The proposed new path offers an improvement to gradients and surface in terms of access for people with disabilities.

5.0 Consultations

- 5.1 Consultation have been undertaken with a range of user/interest groups in the area. No objections have been received

6.0 Conclusion

- 6.1 In conclusion, the criteria of the legislation appear to have been met and the proposal has not attracted any objections during the pre-order consultation process.

7.0 Decision Required

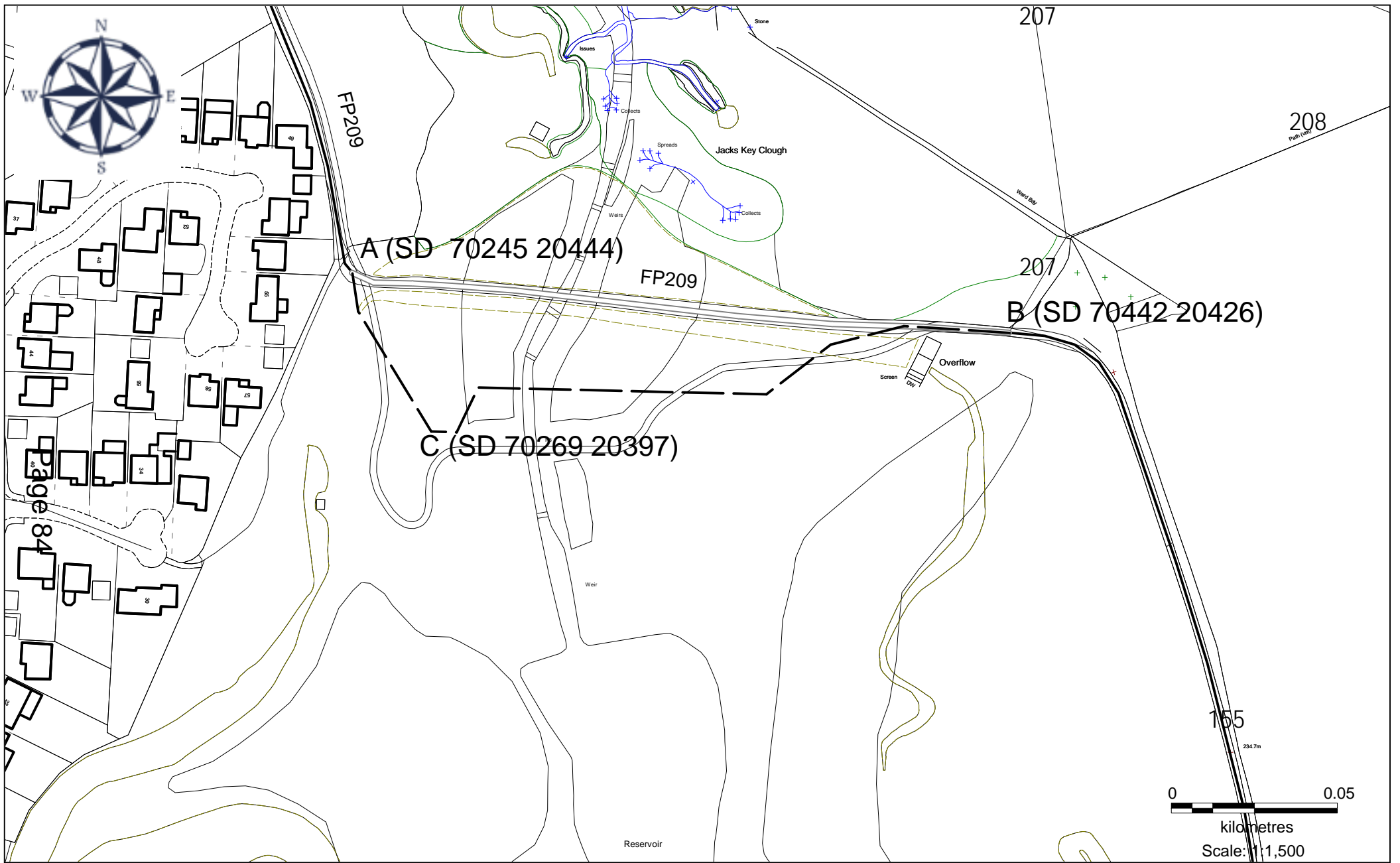
- 7.1 If, having considered all of the relevant information, the Authority is minded to approve the application to divert the path they should resolve that:

- a) a Public Path Diversion Order be made pursuant to Section 119 of the Highways Act 1980 to divert part of Public Footpath, Darwen 209 as shown on the attached plan.
- b) if no objections are duly lodged, the Authority confirms the Order; or
- c) if objections are duly lodged, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.

- 7.2 If, having considered all of the relevant information, the Authority are minded to refuse the application (not to promote the application), the applicant should be advised of this decision, and that there are no rights of appeal.

8.0 Recommendation

- 8.1 Whilst it is your Officer's view that the criteria of the legislation have been met, Members must make their own decision **whether or not to promote** the requested Order. Any such decision is quasi-judicial in nature and must be made based upon the relevant evidence and facts of the case set against legislative criteria.



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Date Printed: 2018/10/16

Title :Diverson of Public Footpath 209 (Part) Darwen

Legend

— Unaffected Rights of Way

--- New Route

New Route

▬ Closed Right Of Way

Closed Right Of Way

DEPARTMENT OF RESOURCES

ORIGINATING DIVISION: Highways and Transportation (PROW)

REPORT TO: Blackburn with Darwen Borough Council
Planning and Highways Committee

COMMITTEE DATE: 15th November 2018

TITLE : Diversion of Public Footpath 1 Livesey (part)

WARDS: Livesey With Pleasington

COUNCILLORS: Derek James Hardman, John Pearson and Paul David Marrow

1. PURPOSE OF THE REPORT

1.1 To seek committee approval for a public path order under the Highways Act 1980, Section 119 to divert part of public footpath 1 Livesey at the entrance of the development from Livesey Branch road in Blackburn.

2. BACKGROUND

2.1 On 18/10/16 Blackburn with Darwen Borough Council received an application for planning permission for the erection of 167 No. residential units with associated vehicular access and car parking” This is registered under application reference 10/16/1132 and has been granted.

2.2 The proposed development has an impact on the alignment of Public Footpath, 1 Livesey which may be considered to necessitate its diversion.

2.3 On the 2th January 2017 Blackburn with Darwen Borough Council (PROW) subsequently has received an application to divert footpath 1 Livesey

2.4 A report has been prepared which seeks to address those matters before Blackburn with Darwen Borough Council, namely the application for the public path diversion order to divert the path as shown on the plan attached to this report and enabling them to consider whether, or not to promote the Order requested.

3. LAW

3.1 The relevant legislation is the Highways Act 1980, Section 119 to divert part of public footpath. Please see attached report for further details.

4. DETAILS

4.1 Please refer to accompanying report.

5. FINANCIAL IMPLICATIONS

5.1 The cost of the diversion of the new path will be met by the Applicant.

6. RECOMMENDATION

The committee may *either* decide to 'Promote the Order' or 'Not to Promote the Order'

6.1 **It is the officer's recommendation that the legislative criteria have been met and the committee should resolve to Promote the Order.**

BACKGROUND PAPERS
CONTACT OFFICER
DATE

Plan and Report
Lorraine Mellodey 01254273525
5/10/2018

Highways Act 1980 – Section 119
Application for Public Path Diversion Order
Public Footpath, Livesey 1 (Pt) – Livesey Branch road Blackburn

1.0 Introduction

1.1 This report seeks to assist Blackburn with Darwen Borough Council in their determination of an application to divert part of Public Footpath, Livesey No 1 as shown on plan 1 attached to the report.

2.0 Background

2.1 Blackburn with Darwen Borough Council is the Highway Authority for the area within which the path proposed for diversion lies.

2.2 Public Footpath, Livesey No 1 is recorded on the Definitive Map and Statement for the area.

2.3 On 4th January 2017 Blackburn with Darwen Borough Council received an application to divert a section of the footpath as shown on the attached plan. The applicant has advised that the application seeks to allow users continued access, whilst separating pedestrians from vehicles.

2.4 The diversion application was originally submitted in connection with a planning application. This application was granted on 15/12/16 and this diversion is being processed under the Highways Act 1980 as the works over the Right of Way are complete. The completed works have not interfered with the use and enjoyment of the Right of way and the applicant is seeking to protect the pedestrians by providing a dedicated footway.

2.5 This report seeks to advise the Council of the outcome of non-statutory consultations, and an assessment against the relevant legislative criteria, thus enabling them to consider whether, or not to promote the Order requested.

3.0 Legislative Criteria

3.1 Section 119 of the Highways Act 1980 gives local authorities the powers to make orders to divert footpaths, bridleways or restricted byways where it is considered expedient to do so in the interests of either the owner/lessee/occupier of the land and/or the public.

3.2 Such an Order must not alter the termination point of a path or way if that point is not on a highway; or (where it is on a highway) otherwise to another point on the same highway, or a highway connected with it, and which is substantially as convenient to the public.

3.3 An Order made under Section 119 of the 1980 Act shall not be confirmed unless the Authority (or where appropriate the Secretary of State) is satisfied that it is

expedient, as described above, and that the path will not be substantially less convenient as a consequence of the diversion. The Authority (or the Secretary of State) must also have regard to the effect to which:

- The diversion would have on public enjoyment of the path as a whole
- The effect on other land served by the path
- Any provisions for compensation
- Any material provision within a Rights of Way Improvement Plan
- The needs of agriculture and forestry; biodiversity; and disability discrimination legislation

4.0 Assessment Against the Legislative Criteria

4.1 The decision whether or not to promote a Public Path Diversion Order is discretionary. If the criteria of the legislation are considered to be met, the Authority should reasonably be expected to state any grounds for refusal should it decide not to make an Order.

Landowner/Public Interest

4.2 The proposal is considered to be in the interests of the landowner because it will facilitate the approved planning application to build 167 dwellings.

4.3 It may also be considered that there are some public safety benefits to the proposal in so much that the proposed new route will be a main entrance to 167 dwellings and the diversion seeks to move the route from the centre of a carriageway to a dedicated footway.

Termination Points

4.4 There will be no change in the termination points.

Convenience & Enjoyment

4.5 The proposed diversion is approximately 3 metres longer than the current route. Any increase in distance must however be taken in context to the nature of the route, and indeed the overall distance travelled by anyone using the path. In this particular case the path is in an urban location and is a link to the wider Rights of way network. In this case the path will be substantially more convenient than the original line as the pedestrians have been moved from a shared use track on to a footway dedicated for pedestrians.

4.6 With regard to other issues which may have an affect on the convenience of the route, the new path is a metalled surface .

Land Served by the Path and Compensation

4.7 The applicant is the land owner over the affected route. As a result, there would not appear to be any issues arising regarding land served by the path or compensation arising from its diversion.

Material Provisions within the Rights of Way Improvement Plan

4.8 There are no material provisions within the Rights of Way Improvement Plan for the area which would have an effect on the proposals. Furthermore, such a document may not fetter the discretion of the Authority when making its decision whether or not to promote the requested Order.

5.0 Consultations

5.1 Consultations have been undertaken with a range of user/interest groups in the area. The Councillors have also been consulted. No objections have been received

6.0 Conclusion

6.1 In conclusion, the criteria of the legislation appear to have been met and the proposal has not attracted any objections during the pre-order consultation process.

7.0 Decision Required

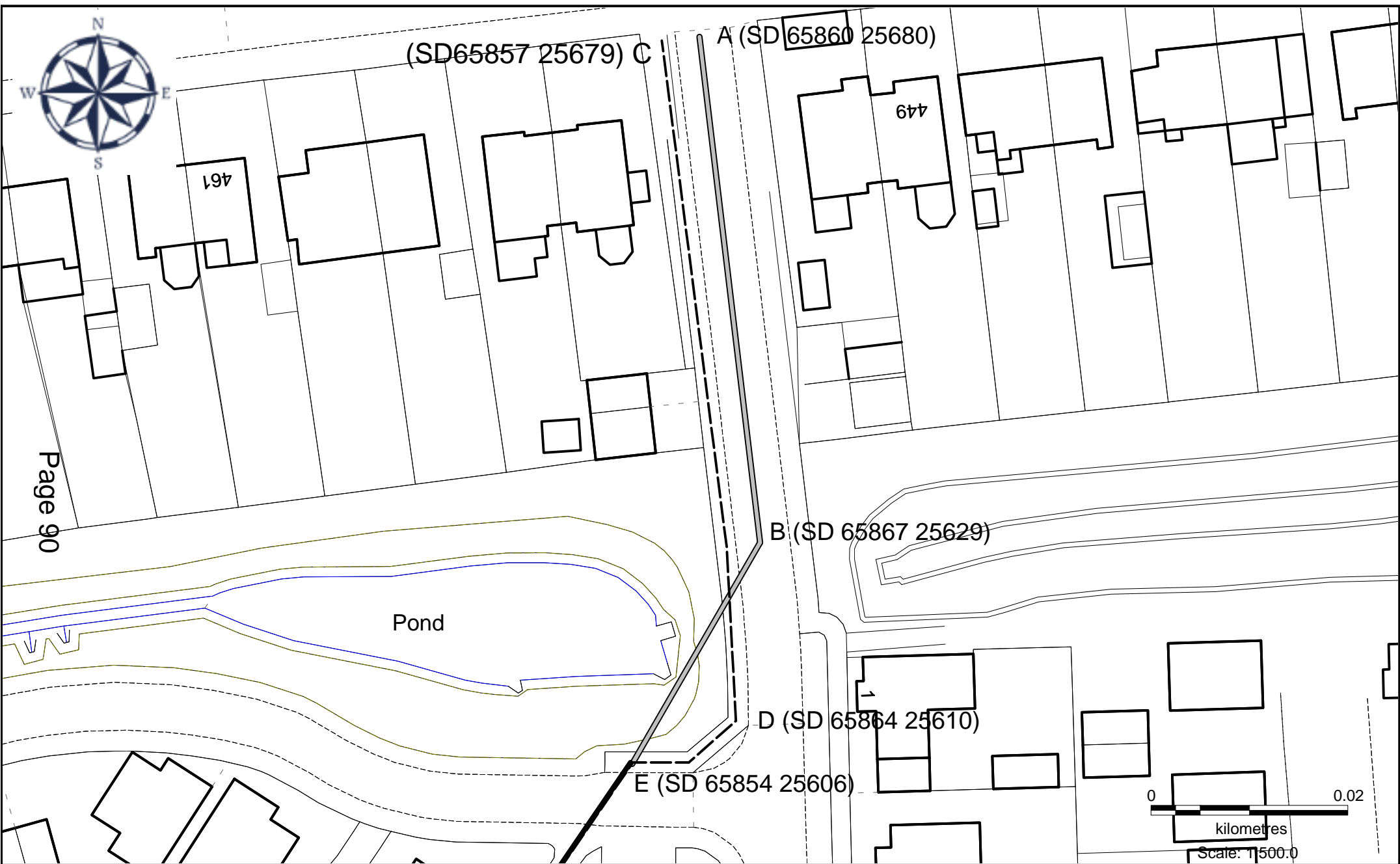
7.1 If, having considered all of the relevant information, the Authority is minded to approve the application to divert the path they should resolve that:

- a) A Public Path Diversion Order be made pursuant to Section 119 of the Highways Act 1980 to divert part of Public footpath Livesey No 1 as shown on the attached plan.
- b) If no objections are duly lodged, the Authority confirms the Order; or
- c) If objections are duly lodged, and not subsequently withdrawn, the Order be passed to the Secretary of State for confirmation.

7.2 If, having considered all of the relevant information, the Authority are minded to refuse the application (not to promote the application), the applicant should be advised of this decision, and that there are no rights of appeal.

8.0 Recommendation

8.1 Whilst it is your Officer's view that the criteria of the legislation have been met, Members must make their own decision **whether or not to promote** the requested Order. Any such decision is quasi-judicial in nature and must be made based upon the relevant evidence and facts of the case set against legislative criteria.



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**Title: Footpath 1 Livesey (part) Public Path Diversion
 Order 2018**

Legend
 — Unaffected Rights of Way - - - Closed Right Of Way
 — New Route

Page 90

ORIGINATING DIVISION:	HIGHWAYS AND TRANSPORTATION - CAPITA
REPORT TO:	BLACKBURN WITH DARWEN BOROUGH COUNCIL PLANNING AND HIGHWAYS COMMITTEE
DATE:	3rd October 2018
TITLE:	PETITION – ONE WAY STREET - BROOKFIELD STREET, BLACKBURN
WARD:	Shear Brow and Corporation Park ward
COUNCILLORS:	Suleman Khonat Hussain Akhtar Mahfooz Hussain

1.0 PURPOSE OF THE REPORT

The purpose of the report is to advise the Committee of a petition from residents of Brookfield Street, Blackburn regarding their request to make Brookfield Street One Way from Whalley Street down to its junction with Carr Street.

2.0 BACKGROUND

A petition was received on 30th May 2018, stating that the residents of Brookfield Street, request, demand and require the whole of Brookfield Street to be made one way.

The petition was signed by 27 residents of 27 properties from a total of 43 properties on Brookfield Street. The signatories all reside at properties within no's 2- 43.

3.0 DETAIL

Brookfield Street is located in the Shear Brow and Corporation Park ward, linking Whalley Street to Carr Street, and is situated close to Randal Street and the Whalley Range Bazaar area.

The petition alleges that since the introduction of the one-way order on Blackburn street on the 18th January 2018 there has been an increase in traffic flows which have compounded issues being experienced by the residents in relation to non-residents parking on Brookfield Street.

It is also alleged that the following issues are being experienced:

- 1) Vehicles having to reverse up Brookfield Street due to on coming vehicles entering from Carr Street.
- 2) Heated arguments and near physical violence due to drivers refusing to give way to each other
- 3) Delays exiting and accessing Brookfield Street.
- 4) Increased noise levels due to car horns
- 5) Dramatic increase in traffic
- 6) Residents are scared to allow their children out on the street.
- 7) Increased litter and anti-social behaviour

The petition was preceded by a letter requesting residents parking from Mr Sadiq of 3 Brookfield Street in August of 2017 which was rejected due to budgetary constraints.

Despite the issues alleged in the petition there have been no corroborating reports received by Blackburn with Darwen BC.

Despite the issues alleged by the lead petitioner these are not solely affecting Brookfield Street but many streets in the immediate vicinity. Should the petition be approved it will only move the issues to surrounding streets and add to the existing issues being experienced by those residents.

4.0 IMPLICATIONS

Customer	None
Financial	Yes
Anti-poverty	None
Crime and Disorder	None

5.0 RECOMMENDATION

It is recommended that:

- the Committee support the officer recommendations that the request for the introduction of a One-way system on Brookfield Street is rejected.
- the lead petitioner is informed of the decision.

6.0 BACKGROUND PAPERS:	Petition
7.0 CONTACT OFFICERS:	Simon Littler
8.0 DATE PREPARED:	11 TH September 2018

ORIGINATING DIVISION: HIGHWAYS AND TRANSPORTATION
CAPITA

REPORT TO: BLACKBURN WITH DARWEN BOROUGH COUNCIL
PLANNING AND HIGHWAYS COMMITTEE

DATE: 25th September 2018

TITLE: OBJECTION – PROPOSED RAISED SPEED TABLES – GIB
LANE BLACKBURN

WARD: LIVESEY WITH PLEASINGTON
EWOOD

COUNCILLORS: Derek Hardman
John Pearson
Paul Marrow
Maureen Bateson
Jamie Groves
Jim Casey

1.0 PURPOSE OF THE REPORT

The purpose of the report is to advise the Committee of the receipt of six letters of objection to the proposal to install raised speed tables on Gib Lane, Blackburn.

2.0 BACKGROUND

Following planning approval for several residential developments, all of which are to be accessed off Gib Lane, a planning condition to implement a road safety scheme along Gib Lane was attached. The consultation carried out at the planning stage included details of the proposed road safety scheme which incorporated raised speed tables at road junctions along Gib Lane.

Subsequently a Section 278 Agreement was entered into by the developers whereby the council, acting as Highway Authority, carry out the engineering design and implementation of the scheme.

3.0 DETAIL

Approval to advertise this proposal was given by the Executive Member for Regeneration in May 2018 and this was advertised on 14th June 2018.

Six letters of objection to the proposals were received, four from residents of Gib Lane and two from residents of Risedale Grove.

The objections can be summarised as follows:

- 3.1 The road humps will cause problems in winter for vehicles trying to climb the hill and an alternative form of traffic calming needs to be provided.
- 3.2 The site notices placed on lamp posts do not have plans attached.
- 3.3 There is an unnamed road included on the notice which only has approval for a cycleway and footpath.

- 3.4 The proposal to have 8 platforms will be a major inconvenience for residents of Gib Lane.
- 3.5 Road humps cause damage to resident's cars as well as being a health concern to those who have neck or back injuries.
- 3.6 Request that the council give serious consultation to the proposed traffic calming measures and that if the notion is not to be rebuked, then alternative, safer and more sensible plans be put in place.
- 3.7 There is no justification for calming at the entrances to those new dwellings which will exit onto Gib Lane, they are no different to all other houses on Gib Lane who do not have any calming.
- 3.8 I definitely do not want any traffic calming near or in front of 36 Gib Lane.

The response to each of these objections is as follows:

- 3.1 There are other steep roads within the borough which have traffic calming without causing problems for vehicles in the winter. In addition, Gib Lane is on a gritting route and as such is treated when adverse weather is forecast.
- 3.2 There is no requirement to post plans on site. The notice contains details of the position of each raised speed table.
- 3.3 This is a planning issue.
- 3.4 The 'humps' proposed are in fact raised speed tables along the road and at junctions with side roads. Whilst these are designed to reduce the speed of vehicles along Gib Lane they should not cause any major inconvenience to users.
- 3.5 Any road hump or raised speed table need to be 'uncomfortable' to achieve the necessary traffic calming. The level of discomfort is greatly reduced if they are traversed at a sufficiently slow speed and hence if used correctly, i.e. at low speeds, there should be no damage to vehicles or their occupants.
- 3.6 Other traffic calming measures were considered but raised speed tables were considered to be the best/appropriate solution in this instance.
- 3.7 Raised speed tables are proposed along the length of Gib Lane and not only at road junctions. There are junction tables proposed at both new and existing road junctions on Gib Lane.
- 3.8 The spacing of the raised speed tables together with the position of road junctions means that there is a proposed table at the side road adjacent to No 36 Gib Lane

Officers consider that the majority of the objections are those normally raised against any proposed traffic calming containing raised tables or road humps rather than specific objections to the scheme.

Objections 3.7 and 3.8 are those which could be considered to be specific to the scheme. These relate to the positioning of the raised tables along the street, at road junctions and close to one property in particular. Objection 3.7 questions the need for calming at the entrances to the new developments as they are no different to the entrances to existing residential areas. The intention of the scheme is to calm the increased traffic which will use Gib Lane. This is being achieved with the introduction

of raised speed tables along the road some of which coincide with junctions, both existing and new. Regarding Objection 3.8, No 36 Gib Lane is close to both a new and an existing road junction at a location where a speed table is required. Not wanting a raised table outside or near to your property is not a valid reason for objection.

For the above reasons, officers recommend that the objections are overruled and that the scheme is implemented as designed.

4.0 IMPLICATIONS

Customer	Amenity
Financial	The costs of implementing the scheme are being met by the developers through a Section 278 Agreement.
Anti-poverty	None
Crime and Disorder	None

5.0 RECOMMENDATION

It is recommended that the Committee recommends that the Executive Member support the officer recommendations that:-

- the objections are overruled.
- the scheme is implemented as designed.
- the objectors are informed of the decision.

6.0 BACKGROUND PAPERS:	Letters of objection Plan
7.0 CONTACT OFFICERS:	Tammy Rehman
8.0 DATE PREPARED:	18 th October 2018

By virtue of paragraph(s) 5 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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