

Public Document Pack

Planning and Highways Committee

Wednesday, 29th May, 2019

6.30 pm

Conference Room 1, Blackburn Town Hall

AGENDA

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Date Published: Monday, 20 May 2019
Denise Park, Chief Executive

Agenda Item 2

PLANNING AND HIGHWAYS COMMITTEE

Thursday, 18 April 2019

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

OFFICERS - Gavin Prescott (Development Manager), Michael Green (Legal) and Wendy Bridson (Democratic Services).

RESOLUTIONS

80 **Welcome and Apologies**

The Chair welcomed everyone to the meeting. Apologies were received from Cllrs Hardman, Richards and Slater.

As it was the final meeting of the Planning & Highways Committee in the 2018/19 Municipal Year, the Chair expressed his thanks to everyone for their input over the last year.

The Chair informed Members of the Committee that as the next scheduled Committee fell on the same day as the European Election, a new date had been identified as Wednesday 29th May 2019, with site visits also taking place that same day.

81 **Minutes of the Previous Meeting**

RESOLVED – That the minutes of the last meeting held on 21st February 2019 be confirmed and signed as a correct record.

82 **Declaration of Interest**

RESOLVED – There were no Declarations of Interest received.

83 **Planning Applications for Determination**

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.

84 **Planning Application 10/18/0094**

Applicant – Lidl UK Gmbh

Location and Proposed Development – Furthergate Works, St Clements Street, Blackburn, BB1 1AB

Full Planning Application: Demolition of existing building and the erection of a Lidl store (Use Class A1) with associated works including improved access,

parking area and landscaping.

Decision under Town and Country Planning Acts and Regulations -

Members were recommended to defer the application to the May Committee meeting, in order to allow detailed consideration to be made relating to further representations received and submitted regarding the planning policy principle and highway issues.

RESOLVED – That the application be deferred to the May Committee Meeting.

85 Planning Application 10/19/0056

Applicant – Countryside Properties UK Ltd

Location and Proposed Development – Land off Queen Victoria Street, Blackburn, BB2 2RZ

Full Planning Application for Demolition of existing buildings on site and the erection of 68 dwellings and associated works.

Decision under Town and Country Planning Acts and Regulations -

Approved subject to the recommended conditions set out in the Director's Report and additional conditions highlighted in the Update Report.

86 Planning Application 10/19/0074

Applicant – Blackburn with Darwen Borough Council

Location and Proposed Development – 27 Blackburn Enterprise Centre, Furthergate, Blackburn, BB1 3HQ

Full Planning Application (Regulation 4) for Change of use of second floor unit (suite 27) from taxi booking office to general office.

Decision under Town and Country Planning Acts and Regulations -
Approved.

87 Planning Application 10/19/0089

Applicant – Blackburn with Darwen Borough Council

Location and Proposed Development – St Aidan's Respite Centre, 124 St Aidan's Avenue, Blackburn, BB2 4EY.

Single storey side extension and new front porch, creation of new vehicular access and off street parking and replacement boundary fencing

Decision under Town and Country Planning Acts and Regulations -
Approved subject to the recommended conditions set out in the Director's Report.

88 Petition regarding Planning Application 10/19/0123

A report was submitted to inform the Committee of the receipt of a petition relating to Planning Application 10/19/0123, the grounds for which were outlined in the report submitted.

The petition was received on the 28th March 2019 and contained 27 signatories. Two signatures were being considered invalid as highlighted in the Update Report.

The Committee was advised that the application had not yet been determined.

RESOLVED – That the report be noted.

89 Appeals Monitoring Update

Members were presented with an update of recently decided appeals since the last monitoring report in October 2018. The appeals were determined during the period 6th October 2018 to 5th April 2019, with 5 appeals being dismissed and 1 being allowed.

The update would also be presented to the Cross Party Working Group at their meeting on the 21st May 2019.

RESOLVED – That the report be noted.

90 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.

91 Enforcement Update Report

A report was presented to Members with an overview of 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 report be noted.

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:

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: 29/05/2019

Application No	Applicant	Site Address	Ward
Application Type			

10/18/1094

Lidl UK Gmbh
C/O Agent

Furthergate Works
St Clements Street
Blackburn
BB1 1AB

Audley & Queens Park

Full Planning Application (Regulation 3) for Demolition of existing building and the erection of a Lidl store (Use Class A1) with associated works including improved access, parking area and landscaping

RECOMMENDATION: Permits

10/18/1153

Ms G Lomax
Moorthorpe Cottage
Park Road
Darwen
BB3 2LQ

Land adjoining Moorthorpe Cottage
Park Road
Darwen
BB3 2LQ

West Pennine
Whitehall

Outline Planning Application for Outline planning application with all matters reserved except for access and layout for erection of 9 dwellings with detached garages

RECOMMENDATION: Permits

10/19/0196

Mr Christopher Gore
West Pennine Remembrance Park
Edgworth
Bolton
BL7 0LR

West Pennine Remembrance Park
Park Lodge
Entwistle Hall Lane
Edgworth
Bolton
BL7 0LR

West Pennine

Variation/Removal of Condition/Minor Material Amendment for Removal of Conditions No's 1 (temporary 12 month use) and 6 (prior notification of interment dates), and variation of Condition Nos. 2, 3, 4 & 5 to remove reference to 'temporary' pursuant to planning application 10/17/1428.

RECOMMENDATION: Permits

REPORT OF THE DIRECTOR

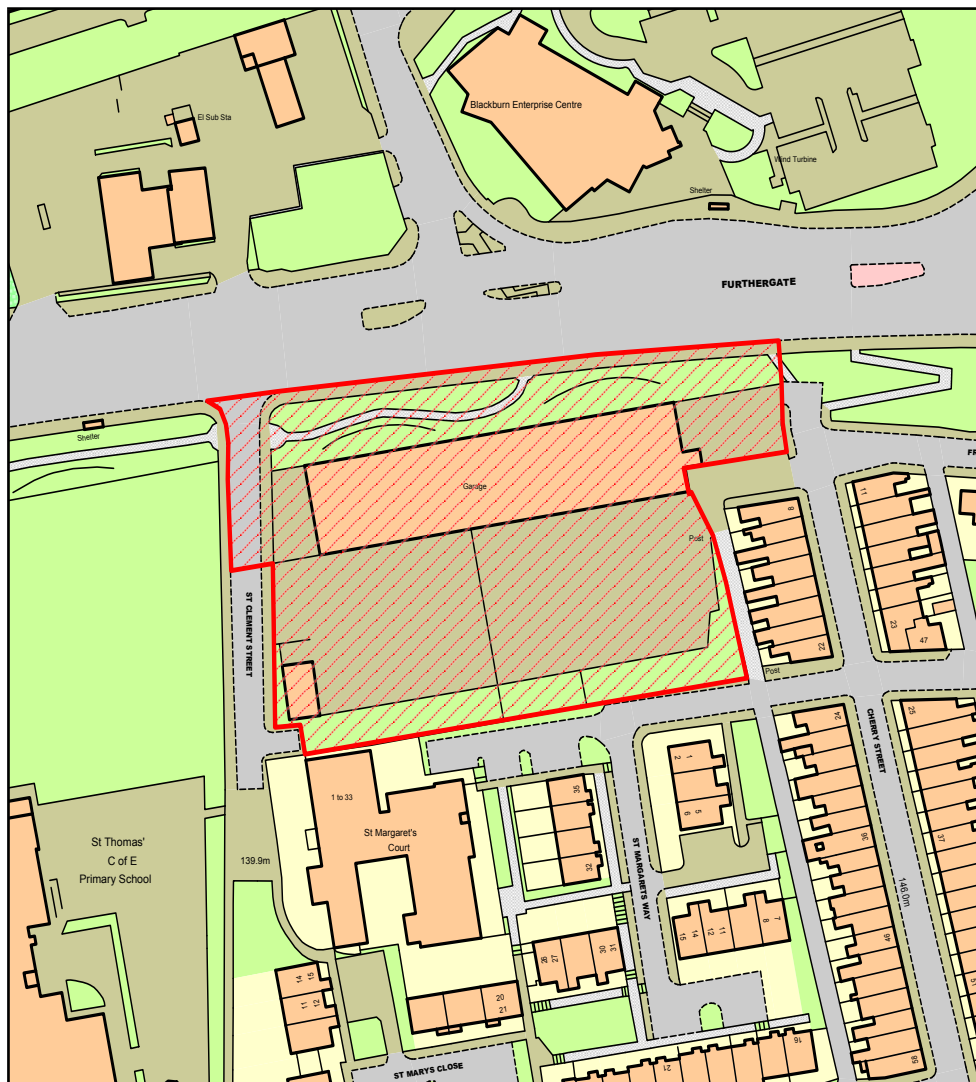
Plan No: 10/18/1094

Proposed development: Full Planning Application: Demolition of existing building and the erection of a Lidl store (Use Class A1) with associated works including improved access, parking area and landscaping.

Site address:
Furthergate Works
St Clements Street
Blackburn
BB1 1AB

Applicant: Lidl UK Gmbh

Ward: Audley & Queens Park
Councillor: Yusuf Jan-Virmani
Councillor: Maryam Batan
Councillor: Salim Sidat



1.0 SUMMARY OF RECOMMENDATION

1.1 APPROVE – Subject to conditions as set out in paragraph 4.1.

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

- 2.1 The proposal will deliver a high quality retail development with associated off-street parking provision, which will assist in widening the retail offer in the borough; in accordance with the Council's strategic aims and objectives for economic growth and expansion of public facilities and services, without prejudice to existing retail provision in the borough's Town and District Centres. 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 planning application is submitted following pre-application discussions and a follow-up written appraisal of the merits of the proposal. The main issues are summarised as follows:

- *The need to justify loss of the existing B2 employment use (employment uses typically are identified as industrial B1, B2 or B8 uses).*
- *The need to justify the proposed out of centre retail use, to ensure no unacceptable impact on the borough's defined Town and District Centres, through submission of a Retail Impact Assessment and Sequential Test. The scope of the assessments was agreed at pre-application stage.*
- *The need to safeguard neighbouring residential amenity and air quality, through submission of targeted reports to assess likely impacts.*
- *The need to demonstrate appropriate access / egress arrangements, to ensure safe and efficient highway movement, through submission of a Transport Statement and other supplementary reports as deemed necessary. Concern was expressed at the potential conflict of vehicles turning right out of the St. Clements St / Furthergate junction.*
- *The need to provide off-street parking and serving in accordance with the Council's adopted standards.*
- *The need to ensure appropriate design standards, in order to reinforce the established character of the locality. Concern was expressed at the intention to site the car park to the front of the site and building to the*

rear which could result in a car dominated form of development, inconsistent with the general pattern along Furthergate.

- 3.1.2 The application site is Furthergate Works which is currently occupied by Fix Auto. It is located within the Inner Urban Area of Blackburn, to the immediate south of Furthergate - a length of the A678 arterial road that leads into Blackburn Town Centre - and is flanked by Cherry Street to the east and St. Clement Street to the west. An industrial building exists along the northern boundary adjacent to Furthergate with an associated parking / servicing area to the rear. A length of landscaped verge adjacent to Furthergate is also included which runs the length of the site. The site is essentially rectangular, extending to circa 0.87 hectares, with the existing building occupying a floor area of circa 1,733 square metres. Land levels throughout the site are consistent.
- 3.1.3 The area is generally defined by its mixed use character. Land to the north of Furthergate hosts a range of commercial uses. Land to the immediate west hosts St Thomas C of E Primary School and associated playing fields. Land to the south and east hosts residential terraces and cul-de-sacs.
- 3.1.4 The length of the A678 that is Furthergate comprises, in part, 6 lane traffic including a dedicated bus lane and 'ghost island'. The road forms a dominant physical separation between the allocated employment area to the north and the residential area to the south.
- 3.1.5 Vehicular access to the site will be from the east of St. Clements Street, close to its junction with Furthergate. Pedestrian connectivity is provided by footways along Furthergate and from the neighbouring residential street network.
- 3.1.6 The site is well served by the public transport links that run along Furthergate, which forms part of the wider Pennine Reach network.
- 3.1.7 The site is unallocated, in accordance with the Blackburn with Darwen Borough Local Plan Part 2, Site Allocations and Development Management Policies.

3.2 Proposed Development

- 3.2.1 The proposal seeks planning permission for the demolition of the existing building and erection of a Lidl Store (use Class A1), comprising 1,896 square metres gross internal floor area with a net sales area of 1,312 square metres, and associated works including alterations to the St. Clement Street / Furthergate junction, vehicular access into the site from St. Clements Street, vehicular egress from the site onto Cherry Street, car parking and landscaping; as set out in the submitted drawings. The proposal seeks to supplement Lidl's pre-existing offer in Blackburn with Darwen through the introduction of a new store to cater for residents in the east of the borough and transient trade.

3.2.2 Lidl's position in the market is defined by a 'retail philosophy centred on simplicity and maximum efficiency at every stage of business, from supplier to consumer'. It is categorised as a 'deep discounter' concentrating on selling a limited range of primarily own brand goods at competitive prices.

3.3 Development Plan

3.3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

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 Blackburn with Darwen Core Strategy:

- CS2: Types of Employment land
- CS3: Land for Employment Development
- CS4: Protection and reuse of employment sites
- CS11: facilities and Services
- CS12: Retail Development
- CS16: Form and Design of New Development

3.3.2 Blackburn with Darwen Local Plan Part 2 (2015):

- Policy 2: The Inner Urban Area
- 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 26: Town Centres – a Framework for Development
- Policy 27: District Centres – a Framework for Their Development
- Policy 29: Assessing Applications for Main Town Centre Uses
- Policy 40: Integrating Green Infrastructure & Ecological Networks with New Development
- Policy 47: The Effect of Development on Public Services

3.4 Other material Planning Considerations

3.4.1 National Planning Policy Framework (The Framework):

The Framework sets out the government's aims and objectives against which planning policy and decision making should be considered. At its heart is a presumption in favour of sustainable development, which should proceed without delay, unless impacts which significantly and demonstrably outweigh

the benefits of a proposal are identified. The following sections of the Framework are considered relevant to assessment of the proposal:

- Section 6: Building a strong, competitive economy
- Section 7: Ensuring the vitality of town centres
- Section 11: Making effective use of land
- Section 12: Achieving well-designed places

3.4 Assessment

3.4.1 The Development Plan reaffirms The Framework's principles of sustainability which includes support for sustainable economic development and encouragement of effective re-use of land; subject to the principles of high quality design and securing a good standard of amenity for all existing and future occupants of land and buildings.

3.4.2 In assessing this application, the following important materials considerations have been taken into account:

- Principle
- Accessibility and Transportation
- Amenity
- Design / Character and Appearance
- Environment

3.4.3 Principle

The principle of the development is guided by the sites current employment use (notwithstanding that it is not allocated as an Employment Site in the Local Plan Part 2), which is accepted as a lawful B2 use, and retail policy. Taking each in turn:

3.4.4 The Core Strategy sets out the principle of protecting existing employment sites (typically classified as B1, B2 or B8 uses) whether allocated as such or not, in order to maximise economic potential and in recognition of an under provision within the borough. The Commercial Property Market Study, published December 2015, sets out in detail the Borough's position relative to employment provision; a copy of which was provided to the applicant at pre-application stage. The study builds on the borough's 2013 Employment Land Review and evidence base for the subsequent Development Plan.

3.4.5 The site's location is considered to be highly sustainable, by virtue of its position on a main arterial road and proximity to motorway links. Moreover, its size and layout is of a type that is evidently in demand. Accordingly, the principle of an A1 proposal is tested against the aims and objectives of Core Strategy Policy CS4, which sets out a presumption towards retention of employment land, unless it's current use causes an unacceptable loss of amenity for surrounding uses or it is demonstrated that the land is no longer capable of beneficial use for employment within the life of the Core Strategy.

- 3.4.6 Notwithstanding the sites generally sustainable location, the primary point of access from St. Clements Street is less than optimal for general employment purposes, on account of the volume and type of vehicular movement associated therewith. This is considered to be in contrast to the type of heavy traffic generated by a Lidl store, which is limited to only one Heavy Goods Vehicle (HGV) delivery a day. HGV conflict with traffic associated with drop off and pick up times along St. Clements Street for the nearby St. Thomas C of E Primary School, is also recognised as problematic. In this regard, the highway network will benefit from the proposal offering 2 hours free parking, thereby allowing parents to park free of the public highway during these times.
- 3.4.7 The sites size of less than 1 hectare is considered to limit its redevelopment potential for a viable employment use, particularly through a new build proposal. In this context, it should be recognised that permission exists for the demolition of the existing building, which was secured under permitted development rights afforded by the (General Permitted Development) Order 2015 (as amended), following assessment of a prior notification submission to the Local Planning Authority (10/18/1064). The building can, therefore, be lawfully demolished without any obligation to redevelop the site.
- 3.4.8 The sites proximity to residential uses to the south and east is such that detriment to amenity levels currently experienced could be unduly impacted by vacation of Fix Auto's from the site. The Fix Auto operation, although an accepted, lawful, general industrial B2 use, is relatively non-intrusive in terms of noise generation and general nuisance although a degree of noise from vehicle maintenance is nonetheless experienced. This is in contrast to the potential alternative B2 uses of the site which could pose a much greater threat to residential amenity by virtue of increased activity, odour, dust, light or other forms of pollution, which could not be controlled under the planning process.
- 3.4.9 Reinforcing this position, a letter from the Director of Fix Auto's, confirms the intention to relocate regardless of whether the application is approved; an eventuality which exposes the site to alternative unrestricted B2 uses and a consequential increased threat to residential amenity.
- 3.4.10 The proposed Lidl store represents a de-intensified use of the site, with a reduced threat to neighbouring amenity. It is submitted that during public exhibitions held by Lidl, prior to submission of the planning application, neighbouring residents anecdotally raised their concern at current noise levels experienced from the site and offered support of the proposal as a more residentially compatible use.
- 3.4.11 Alternative B1a industrial office accommodation is not considered viable, on account of the scale of the building making it unsuitable for such conversion. This is supported by the aforementioned Market Study which identifies a local office market demand on smaller suites of below 500 square metres.
- 3.4.12 Alternative B8 storage and distribution accommodation is also considered less than viable, on account of the sites logistics, scale and general market demand for larger buildings.

- 3.4.13 Submitted figures identify the site as currently employing 23 staff, within a floor space of 1,733 sqm (plus mezzanine), equating to 1 employee per 113 sqm. The proposed Lidl store will employ 40 staff on a floor area of 1,896 sqm, equating to 1 employee per 45 sqm; thereby demonstrating a greater than existing employment opportunity. Moreover, Fix Auto's stated intention to relocate within the borough ensures a net employment gain.
- 3.4.14 Within the life of the Development Plan, additional employment land is committed; together with the key strategic employment allocation at Whitebirk, adjacent to Junction 6 of the M65 which, although located within the Borough of Hyndburn, is well positioned to serve Blackburn with Darwen, with approximately 40% attributed to the borough's identified need.
- 3.4.15 Taking into account these demonstrable material circumstances, the proposal is considered to be consistent with Policy CS4 of the Development Plan and the objectives of The Framework.
- 3.4.16 Impact of the borough's strategic retail aims and objectives also guides the principal of the proposal. In this regard, scope of the Sequential Test and Retail Impact Assessment was agreed at pre-application stage, in order to inform retail impact on the relevant Town and District Centres in proximity to the application site; on account of the site being located neither within or on the edge of a defined Centre. The scope of the assessment is as follows:

The Sequential Test

- Blackburn Town Centre
- Little Harwood District Centre (27/3)
- Bastwell District Centre (27/4)
- Whalley Range District Centre (27/5)
- Johnson Street District Centre (27/7)
- Higher Eanam (27/8)
- Audley Range (27/10)

The Retail Impact Assessment

- Blackburn Town Centre
- Little Harwood District Centre (27/3)
- Bastwell District Centre (27/4)
- Whalley Range District Centre (27/5)
- Johnson Street District Centre (27/7)
- Higher Eanam (27/8) and
- Audley Range (27/10)
- New Bank Road (27/6)
- Whalley Banks (27/9)

- 3.4.17 An audit of the submitted information was independently undertaken by G L Hearn, on behalf of the Council, on the premise that the relevant Development Plan policies are broadly consistent with The Framework.
- 3.4.18 The Sequential Test assessed suitability of the former Blackburn Indoor Market, in Blackburn Town Centre, which is currently being marketed.

Although the site is suitable in size, a number of issues are identified by the applicant; including flood risk (the site lies within Flood Zone 2 and 3); costs associated with the culvert beneath the site; historic setting of the site relative to its proximity to listed buildings and the Council's preferred option of a comprehensive redevelopment of the site. Although some of the issues cited are not considered to prohibit the proposal, the site is recognised as currently occupied by businesses which would need to be relocated; indicating that the site is unlikely to be immediately available. Its distance from a main road would also be contrary to meeting Lidl's business requirements. Accordingly, the site cannot be considered sequentially preferable.

3.4.19 The Lidl owned site at Eanam / Cicely Lane is also discounted as sequentially preferable, on account of logistical issues identified by Lidl which has prevented them from bringing the site forward for development.

3.4.20 The final site considered is on Canterbury Street which is accepted as being too small to accommodate the proposal.

3.4.21 No other sites are identified either within or on the edge of the identified Centres which could be considered more or equally as accessible as the application site. Moreover, the Council have not identified any additional sites which should be sequentially considered.

3.4.22 Accordingly, the proposal is considered compliant with the Sequential approach to retail development.

3.4.23 Retail impact assessment considers impact on investment in Blackburn Town Centre. The Council are satisfied that the proposal will not prejudice delivery of the key strategic former market's site. No other investment in any surrounding centres which could be prejudiced by the proposal has been identified.

3.4.24 Impact of the vitality and viability of the identified Centres is supported by data based on population and expenditure drawn from a five minute drive time from the application site. Although there are some differences in turnover of centres and stores identified in the applicant's assessment and data possessed by the Council, the proposed spread of trade is considered to have been reasonably assessed. Whilst it is accepted that the majority of trade will be drawn from larger superstores at Tesco and Asda, it is important to recognise that these stores are not afforded any retail policy protection. Localised trade drawn from surrounding District Centres demonstrates a reasonable spread given the location and overall health of those Centres. Overall, the trade drawn from Blackburn Town Centre is considered to be insignificant, given the projected turnover of the Centre.

3.4.25 The overall retail impact of the proposal on the identified Centres is not considered to be 'significantly adverse'. Accordingly, the proposal is considered compliant with Development Plan Policies CS12 and 29.

3.4.26 Consequently, the principle of the proposal is compliant with the Development Plan and The Framework.

3.4.27 Accessibility and Transportation

Policy 10 requires that road safety and the safe, efficient and convenient movement of all highway users is not prejudiced and that appropriate provision is made for off street servicing and parking in accordance with the Council's adopted standards.

3.4.28 A Transport Statement (TS) submitted in support of the application has been reviewed by Capita Highways and the Council's highway consultee; supplementing detailed drawings which propose an alteration to the St. Clements Street / Furthergate junction in the form of widening the radii and realignment of the footway. These works are supported and would be delivered under a Section 278 agreement with the Local Highways Authority to be secured by application of an appropriately worded condition.

3.4.29 The primary access / egress at the site will be taken from the existing point east of St. Clements Street. Initial concern was expressed at the proximity to the St. Clements Street / Furthergate junction – measured at circa 30m – and the threat of queuing traffic onto Furthergate. The existing circumstances associated with the industrial use are, however, recognised as having the potential to generate a higher volume of heavy goods vehicular movement which is considered to balance out concern in this regard; on account that the proposed use will not present a significant additional threat to highway efficiency or safety.

3.4.30 Significant concern was also expressed at the frequency of traffic movements at the St. Clements Street / Furthergate junction, particularly with regard to right turn manoeuvres onto Furthergate. Consequently, utilisation of an existing egress contiguous with adopted highway, directly onto the northern most point of Cherry Street, has been negotiated with the applicant. This is rather than the alternative existing access / egress immediately adjacent to no. 8 Cherry Street, on account of this land being outside of the ownership of the applicant. Use will be limited to egress only and will serve as an effective alternative to the St. Clements Street / Furthergate junction, particularly for local traffic; thereby alleviating right turn pressures onto Furthergate. Egress only limitation at the junction will be secured by condition.

3.4.31 Whilst the Cherry Street egress offers a beneficial supplementary point of egress, particularly for local traffic, the pressures on the St. Clement Street / Furthergate junction are acknowledged as a significant concern, as highlighted by the Council's Highways consultees. To this end, the pre-existing circumstances associated with the application site should be afforded proportionate weight. These circumstances involve a significant number of staff, customer and trade deliver vehicles entering and leaving the site throughout the course of a working day; although staff vehicular movement is accepted as mainly limited to standard opening and closing times. Moreover, Fix Auto's commitment to vacating the site may well result in increased vehicular movement than that experienced with either the current or proposed use. This is particularly true of HGV movements, due to the lawful, unrestricted B2 industrial use. Accordingly, whilst use of the St. Clement Street junction is recognised as presenting a degree of right turn risk, the

degree of such risk associated with the proposal, in this context, is considered, on balance, to be acceptable.

- 3.4.32 Convenient pedestrian access to the site is offered from both Furthergate and St. Clements Street.
- 3.4.33 Appropriate provision and layout of 117 car parking spaces will be provided on site, of which 6 are disabled and 8 are parent child. In addition, 2 Powered Two Wheel spaces and 6 cycle stands will be provided, as will a taxi pick up and drop off point. Parking provision is considered acceptable when assessed against the Council's adopted parking standards; reinforced by the absence of objection in this regard from the highways consultee. It should also be recognised that the site benefits from excellent links to public transport which operate frequently along the A678.
- 3.4.34 The overall internal site layout appropriately caters for HGV deliveries; as demonstrated by a Swept Path Analysis and includes safe crossing points for customers and staff.
- 3.4.35 A Demolition Method Statement supports the application which has been reviewed as an acceptable methodology in addressing traffic management during demolition works. Although a similar Construction Method Statement has not been submitted to address the construction phase of the development, this can be secured by condition.
- 3.4.36 A Travel Plan has also been submitted and reviewed. The plan is considered to appropriately address the fundamental principles of sustainable travel. Its delivery will be secured by condition.
- 3.4.37 Third party objection has been received expressing concern towards the following matters:
- 3.4.38 Highway impact as a result of traffic generation from the nearby St Thomas C of E Primary School and its effect on adequacy of customer parking on the proposed car park serving the new store; given that Lidl intend to allow free parking for school traffic during drop off and pick up times. The applicants offer is welcomed, as it will alleviate congestion currently experienced on St. Clements Street, on account that off-street parking for school traffic is not currently available within the Fix Auto site. It should be recognised that Lidl are not obliged to offer availability of their car park and that the volume of school traffic is a pre-existing circumstance that the Council cannot arbitrarily impose responsibility on the applicant to cater for. A more detailed assessment of existing school traffic and car park accumulation (of Lidl and school demand), in this context, is not, therefore, justified. The applicant has confirmed that, whilst school traffic will be allowed to park on the store car park on an informal basis, the situation will be internally monitored to establish whether school traffic is having a negative effect on customer parking capacity. If so, right is reserved to restrict parking to customers only.

3.4.39 The absence of a 'swept path analysis' to demonstrate affective manoeuvrability. As aforementioned, this has been provided. It details all movements in and out of St Clements Street for a maximum legal articulated HGV, and is considered acceptable by the Council's highways consultee.

3.4.40 That traffic data was not collected during a 'neutral' period. Traffic surveys were undertaken on Thursday 18th October 2018 and Saturday 20th October 2018. As stated in WebTAG Unit M1.2 'Data Sources and Surveys' paragraph 3.3.6; *'Surveys should be carried out during a neutral or representative month, avoiding main and local holiday periods, local school holidays and half terms, and other abnormal traffic periods. National experience is that the following Monday to Thursdays can be neutral:*

- *Late March and April – excluding the weeks before and after Easter;*
- *May – excluding the Thursday before and all of the week of each Bank Holiday;*
- *June;*
- *September – excluding school holidays or return to school weeks;*
- *all of October; and*
- *all of November – provided adequate lighting is available.*

This requirement often dictates the timescale of the appraisal. Data processing may also add substantially to the study timescale".

3.4.41 Accordingly, the Traffic Surveys have demonstrably been conducted during a neutral period. Moreover, Capita Highways audit of the TS concluded that the dates and times of the surveys were considered appropriate for the purposes of assessing the impact of the proposed development on the local highway network.

3.4.42 That inconsistencies exist with the submitted flow diagrams. No inconsistencies have been reported by Capita Highways in their TA audit. It is considered that the only inconsistency that could be cited is the fact the a reduction in number of right turners out of St. Clements Street has not been sought, as a result of opening the egress onto Cherry Street. This, however, ensures that the St. Clement Street assessments are as robust as possible.

3.4.43 Accordingly, on balance, the proposal is considered to be acceptable from a highway safety and efficiency perspective; subject to implementation of the aforementioned measures, to be secured by condition.

3.4.44 Amenity

Policy 8 requires a satisfactory level of amenity and safety is secured for surrounding uses and for occupants or users of the development itself; with reference to noise, pollution, nuisance and the relationship between buildings.

3.4.37 Position of building

The proposed store will be single storey, positioned circa 3.4m from the southern boundary of the site, along a length of circa 77m. Appropriate separation between residential uses at St. Margaret's Court, St. Margaret's

Close and Cherry Street, in accordance with adopted standards, is achieved; thereby ensuring satisfactory levels of residential amenity.

3.4.38 Noise

The site is positioned adjacent to residential uses identified above, located to the south and to the east. Store opening hours will be limited by condition to between 07:00 – 22:00 hours daily, with the exception of Sundays and Bank Holidays which will be limited to 10:00 – 17:00 hours. However, on account of the relative proximity of the proposed development and the potential impacts on residential amenity, a Noise Impact Assessment has been submitted and reviewed by the Council's Public Protection consultee. It is accepted that appropriate levels of residential amenity will be achieved during daytime hours; aided by provision of a 2.4m high acoustic fence mitigate noise disturbance to adjacent dwellings along Cherry Street. Night time noise is, however, considered to pose a significant threat to residential amenity; in recognition of the applicants desire to be able to receive deliveries, on occasion, when traffic conditions and other external factors outside of their control dictate the need during the night (ie between 23:00 and 07:00). In this regard, the applicant argues that the existing industrial B2 use of the site is unrestricted. Moreover, Fix Auto vacating the site means introduction of a future industrial use could well give rise to greater residential amenity impact, by virtue of increased activities, including deliveries on a continued unrestricted basis. In this context, and having regard to the aforementioned acoustic fence, the ability to receive night time deliveries, on an infrequent basis, is considered to be acceptable.

3.4.39 Appropriate amenity levels during demolition and construction phase of the development shall be secured by conditions limiting works to between the hours of 08:00 – 18:00 Monday to Friday; Saturdays 09:00 – 13:00 and no works on Sundays or Bank Holidays, and control of noise, vibration, dust and light pollution in accordance with submitted methodology statements.

3.4.40 Lighting

Impact of column mounted lighting to the external areas of the site has also been assessed by the Council's Public Protection consultee. Providing is implemented in accordance with the submitted scheme of mitigation, it is considered to pose no significant threat to residential amenity. Timely implementation of the scheme will be secured by condition.

3.4.41 Air quality

Two electric vehicle charging points will be provided within the western end of the car park; in accordance with the Council's strategic Planning Advisory Note on air quality.

3.4.42 Contaminated land

Threat from potential ground contamination can be considered by appropriate reports which will be secured by condition.

3.4.43 Drainage

Policy 9 requires incorporation of appropriate drainage measures, in order to demonstrate that it will not be at an unacceptable risk of flooding.

3.4.44 A Flood Risk Assessment (FRA) submitted in support of the application identifies the site as located within Flood Zone 1 which, according to the Environment Agency data, attributes a less than 0.1% risk of fluvial flooding. Review of the FRA and drainage strategy by the Councils Drainage consultee and United Utilities confirms no objection to the proposal, providing foul and surface drainage measures are appropriately introduced. These requirements will be secured by condition.

3.4.45 Ecology

Policy 9 requires consideration of ecological matters, including protection / mitigation of important habitat.

3.4.46 A Preliminary Ecological Appraisal and Preliminary Bat Roost Assessment support's the application. The same was considered under the aforementioned application for demolition. The appraisals demonstrate no significant ecological disturbance, including no identified presence of bats. No additional surveys are, therefore, required. Indeed through introduction of proposed landscape enhancement, a net gain in biodiversity will be achieved. Recommended avoidance and mitigation measures through demolition and construction phases will be secured by condition.

3.4.47 Design / Layout / Character and Appearance

Policy 11 requires a good standard of design and will be expected to enhance and reinforce the established character of the locality and demonstrate an understanding of the wider context towards making a positive contribution to the local area.

3.4.48 The layout of the site involves siting the car park to the front, adjacent to Furthergate and the store building adjacent to the rear boundary. Although this layout is contradictory to the pre-application response, which advocated the car park to the rear to avoid perception of a parking dominated street scene; the applicant submits that the design has been informed by the site constraints and their operational requirements, which would be compromised by an alternative layout. Moreover, easily identifiable car parking is considered important to the overall strategic objectives of the company. Whilst the layout is not considered an optimal urban design solution, it is not, on balance, considered demonstrably harmful, having regard to the sites context and its surroundings, including the green corridor adjacent to Furthergate which acts as an effective landscape break between the highway and the development. Appropriate hard and soft landscaping will feature across the site, further softening the visual impact of the development.

3.4.49 The green corridor referred to is within the applicants control, following agreement reached with the Council's Property Management team. An appropriate maintenance strategy of this area will be secured by condition, to ensure its enhancement.

3.4.50 The proposed building is single storey, of contemporary design. It features a single height glazed entrance positioned at the north western corner of the frontage. The western elevation will be full height curtain wall glazing. Remaining elevations will be steel clad in an appropriate contrasting cream / grey combination. The roof will be grey clad and mono pitched, sloping gently from south to north. Advertisements will feature along much of the frontage of the building. These will be considered under a separate application for Advertisement Consent. Design of the building appropriately responds to the sites characteristics and the wider commercial make-up of Furthergate.

3.4.51 Summary

This report assesses the full planning application for demolition of the existing building, erection of new Lidl store and associated works. In considering the proposal, a wide range of material considerations have been taken into account to inform a balanced recommendation.

4 **RECOMMENDATION**

4.1 **Approve** – subject to conditions which relate to the following matters:

- 3 year implementation period
- Implementation of deconstruction / demolition in accordance with submitted methodology
- Prior to commencement of construction, submission of a Construction Method Statement
- Prior to commencement of construction, submission of technical design of junction improvement to Furthergate / St. Clements St and to the Cherry St egress
- Prior to commencement of construction, submission of a scheme for the maintenance and connectivity through the green corridor along Furthergate
- Visibility splays to remain unobstructed
- Prior to implementation of the use, submission of a covered storage area for PTW and cycle spaces
- Implementation of agreed Travel Plan
- Implementation of agreed lighting scheme and mitigation methods
- Control of trading hours to between Monday to Saturday: 07:00 – 22:00 hours and Sundays and Bank Holidays 10:00 – 17:00 hours
- Provision of two electric vehicle charging points
- Boundary treatments, including acoustic fence, to be implemented prior to commencement of use
- Prior to commencement of construction, submission of a Contaminated Land Report
- Prior to commencement of approved use, submission of a Validation Report demonstrating effective contaminated land remediation.
- Unexpected contamination
- Prior to commencement of construction, submission of a surface water drainage scheme
- Foul and surface water to be drained on separate systems
- Implementation of recommended ecological appraisal methodology

- Prior to commencement of approved use, implementation of all agreed hard landscaping and implementation of all soft landscaping within first available planting season after completion of the development
- Limitation of the premises to the approved A1 use and no alternative use without express consent
- No sub-division or mezzanine of the building without express consent

5 PLANNING HISTORY

5.5 No relevant planning history

6 CONSULTATIONS

6.1 Arboricultural Officer
No response offered.

6.2 Drainage Section
No objection subject to implementation of separate foul and surface water drainage scheme; by condition.

6.3 Environmental Services
No objection.

6.4 Public Protection
Noise / Dust / Vibration
Recommended conditions:

- Opening hours limited to between 07:00 – 22:00 Monday – Friday and 10:00 – 17:00 hours on Sundays and Bank Holidays
- Site working hours to be limited to between 08:00 – 18:00 Monday to Friday and 09:00 – 13:00 on Saturday. No works on Sundays or Bank Holidays.
- Implementation of the 'Deconstruction / Demolition Method Statement' control measures.
- Deliveries to the premises to be restricted to between 07:00 – 22:00 Monday – Sunday. This condition is considered unreasonable, on account of the fall-back position of an unrestricted B2 industrial use of the site.

6.4.1 *Air Quality*
Recommended conditions:

- Submission of a report detailing the siting and type of the two electric vehicle charging points proposed
- An assessment of the air quality impact undertaken
- Details of appropriate mitigation identified

These conditions are considered unnecessary on account of the agreed provision of the two charging points which are considered to accord with the aims and objectives of the Council's 'Planning Advisory Note: Air Quality (PAN)'; in acknowledgement of the PAN's advisory status.

6.4.2 *Contaminated Land*

Recommended conditions:

- Submission of detailed proposals for site investigations.
- Submission of validation of remedial measures.
- Unexpected contamination.

6.5 Highways Authority

Concern expressed as to the right turn from St. Clements Street onto Furthergate, on account of the 4 lane oncoming carriageway; notwithstanding proposed junction improvements. Acceptance of a secondary egress onto Cherry Street.

Recommended conditions:

- Submission of Construction Method Statement.
- Submission of junction improvements and secondary egress technical design
- Submission of maintenance and pedestrian connectivity strategy through green corridor along Furthergate
- Visibility splays to remain unobstructed
- Submission of covered PTW and cycle spaces.

6.6 Capita Ecology

No response offered.

6.7 Lancashire Constabulary

Recommended crime prevention measures incorporated into the development.

6.8 United Utilities

No objections, subject to submission of a surface water drainage scheme and foul and surface water to be drained separately; by condition.

6.9 Public consultation has taken place with 185 letters posted to neighbouring addresses, a press notice published on 8th December 2018 and display of three site notices on 8th November 2018. In response, 2 letters of objection have been received which are shown within summary of representations below.

7 CONTACT OFFICER: Nick Blackledge, Planner – Development Management.

8 DATE PREPARED: 10th May 2019.

9 SUMMARY OF REPRESENTATIONS

Objection Asda Stores, Grimshaw Park, Blackburn

Re: Application 10/18/1094 | Demolition of existing building and the erection of a Lidl store (Use Class A1) with associated works including improved access, parking area and landscaping | Furthergate Works, St Clements Street, Blackburn, BB1 1AB

On behalf of Asda Stores Limited ("Asda") we object to the above application for planning permission for an out-of-centre store submitted to Blackburn with Darwen Council ("the Council") by Lidl UK GmbH.

Asda operate a store approximately 300m from the edge of Blackburn town centre. The Asda store is located at Grimshaw Retail Park and is a popular destination for food and groceries shopping.

The application is for a new out-of-centre store on an operational employment site, measuring 1,796 sqm (GIA) that will be operated by Lidl. The application site is approximately 1km to the east of Blackburn town centre.

These representations are based on four main points, which are discussed in more detail below, and are summarised as follows:

1. The applicant has failed to demonstrate compliance with *Policy CS4: Protection and Re-Use of Employment Sites*;
2. The layout and design of the proposed store is not of sufficient high-quality fronting onto a major transport route;
3. The applicant has failed to provide an appropriate sequential assessment and has not demonstrated that the proposal meets the sequential test; and,
4. The trading philosophy of Lidl is not a material consideration when the application is seeking consent for a "Use Class A1" unit which could be operated by any retailer.

Planning Policy Position

The starting point for the consideration of the acceptability of a development is its accordance with the development plan. If a development is in accordance with the plan, and the plan is up-to-date, then the decision should be to grant planning permission unless material considerations indicate otherwise. The NPPF does not change the statutory basis on which planning decisions are founded. Section 38 (6) of the Planning and Compensation Act 2004 remains the key decision-making principle.

The statutory development plan comprises the Core Strategy (January 2011), Local Plan 2 Site Allocations and Development Management Policies (December 2015), and Adopted Proposals Map (December 2015).

Policy CS4: Protection and Re-Use of Employment Sites of the Core Strategy states:

'The development for other uses of land in use for employment purposes will not be permitted unless the current use causes an unacceptable loss of amenity for surrounding uses, or it is demonstrated that the land is no longer capable of beneficial use for employment purposes within the life of the Core Strategy.'

Where it can be demonstrated that the employment use is causing loss of amenity or not capable of being redeveloped for employment, Policy CS4 goes on to permit different employment uses, community uses or residential development subject to other policies in the plan. It does not refer to retail use.

Policy CS16: Form and Design of New Development of the Core Strategy requires new development to be of a high standard of design, and to respect and reinforce local character. It goes on to say that development in prominent location, in areas of major change and on transport gateways will be required to demonstrate high standards of design.

Policy CS12: Retail Development of the Core Strategy says that Blackburn and Darwen Town Centres will be the focus for all major and a significant proportion of minor retail development, including "destination" retailing, over the life of the Core Strategy. If towards the end of the strategy period, sites to meet identified needs are not available within the Town Centres, development will be located according to the following sequential test:

- i. First, edge-of-centre sites
- ii. Second, within or on the edge of neighbourhood centres
- iii. Third, in locations elsewhere within the urban area that are easily accessible by non-car means

Policy 8: Development and People of the Local Plan 2 says that development will be permitted where it can be demonstrated that it will secure a satisfactory level of amenity for surrounding uses with reference to noise.

Loss of Employment Site

The applicant has failed to demonstrate compliance with *Policy CS4: Protection and Re-Use of Employment Sites* and being contrary to the development plan, the application should be refused on this basis alone.

The requirements of Policy CS4 are clear. The applicant must demonstrate that:

- The current Fix Auto operation is causing an unacceptable loss of amenity to surrounding uses; or,
- That the site is no longer of beneficial use for employment purposes by Fix Auto or another employment use within the life of the Core Strategy (i.e. for the next 7-12 years).

With regards to the first point, the site has been operating for employment purposes for many years. Fix Auto, formerly known as Gillibrands, has been trading from Furthergate Works since 1859. No evidence has been provided with the application to suggest that the current operation is causing an unacceptable loss of amenity to surrounding uses. Indeed, the Council should easily be able to identify whether any complaints have been received from nearby residents for instance. As such, it has not been demonstrated that the current operation is causing an unacceptable loss of amenity to surrounding uses, and in this regard the application does not comply with Policy CS4.

The applicant has tried to suggest that the Lidl store would have less of an impact on the amenity of the surrounding uses, but this is completely irrelevant as Policy CS4 does not require a comparison between the existing and proposed use. Even if this were the case this assumption is seriously questionable given that foodstores can have their own amenity issues especially with regards to goods deliveries, and it is not overlooked that the proposed service yard is alarmingly close to the nearest residential properties. Indeed, the applicants own noise assessment identifies an adverse impact from deliveries, and this is with mitigation, but tries to play down this fact because there is just a single delivery per day.

With regards to the second point, whilst the applicant suggest that Fix Auto are looking to relocate elsewhere, it is fundamental to reiterate that they are nevertheless still operating from this site, employing 23 people. It is also unclear whether their relocation is dependent on the success of Lidl gaining a retail consent on the site. If this argument was to be relied upon by the applicant, it would surely need to be evidenced that Fix Auto would be relocating irrespective of this application. However, even if Fix Auto located elsewhere, the applicant would still need to demonstrate that another employment operator would not be willing to take up the site, and this has not been done. As such, it has not been demonstrated that the site is no longer of beneficial use for employment purposes, and in this regard the application does not comply with Policy CS4.

Conversely, it is considered that this is a good location for employment uses. It has operated as such for many years; it is adjacent to a Secondary Employment Area; and not far from a Primary Employment Area. Most importantly, the site has significantly benefitted from the recent highways works directly connecting the site to the A678, an accessibility corridor leading to Junction 6 of the M65 motorway.

Furthermore, even if the applicant could demonstrate compliance with these parts of Policy CS4, the policy goes on to permit different employment uses, community uses or residential development subject to other policies in the plan. It does not refer to retail use.

Unacceptable Layout and Design

The layout and design of the proposed store is not of sufficient high-quality, fronting onto a major transport route and is contrary to Policy CS16. Indeed, the applicants themselves describe the scheme as "standardised" in terms of size, form, massing, materiality, signage, boundary treatments and landscaping (paragraph 7.35, Planning Statement).

The application site occupies a prominent location on the A678, an important route into and out of Blackburn. The existing Fix Auto unit creates a strong building line framing the well-maintained and planted landscaped corridor alongside the A678, with the car parking area tucked away behind the unit. This is precisely why the Council suggested that parking and servicing may benefit from being located to the rear of the site and the store building to the front of the site to better represent the

prevailing pattern of development in the area and help to avoid undermining the environmental enhancements.

Despite this, the proposed Lidl store is set as far back as is possible to do so from the site frontage, whilst leaving a 3m access strip at the rear of the unit. A wide expanse of tarmac is shown adjoining the landscaped corridor alongside the A678 and would do very little in the way of reinforcing the local character of the area, and this is despite the Council's justified recommendations. The applicant has chosen not to follow the Council's recommendations and with weak reasons for choosing to do so it remains to be shown that a scheme with a car park at the rear is not a workable solution.

Likewise, the elevational treatment along the A678 is dominated by large expanses of cladding and large advertisements, with the service yard also facing the street, and it is notable that the most interesting façade does not address the public realm. On the other hand, on the opposite side of the A678 the Blackburn Enterprise Centre is articulated with a range of quality materials (timber, brick and cladding) with a high proportion of glazing and has an interesting form immediately adjacent to the A678, positively contributing to the street scene.

In this regard it is worth reiterating Policy CS16 which requires new development to be of a high standard of design, and to respect and reinforce local character. Development in prominent location, in areas of major change and on transport gateways such as this, will be required to demonstrate high standards of design. This proposal fails to do that and is therefore contrary to Policy CS16.

Inadequate Sequential Assessment

Firstly, before we address the inadequate sequential assessment, it is worth pointing out that the Core Strategy was adopted on the basis that the focus of all major retail development would take place within the Town Centres, and given the scale of this proposal it is considered a major retail development.

That said, the NPPF is also relevant and requires a sequential assessment looking at town centres and edge-of-centre sites. As such, the applicant has provided a sequential assessment with the application. However, the applicant has failed to provide an appropriate sequential assessment and has not demonstrated that the proposal meets the sequential test. The issue is that the Primary Catchment Area is based on a 0-5-minute off-peak drive time which is inappropriately small in this instance given the size of the proposed store, Lidl's growing popularity and the fact that there is expected to be trade drawn from other discounters more than 10-minutes' drive away (e.g. Aldi, Ewood Park). A PCA based on a 10-minute drive time is more representative of the distances people may be willing to drive to the store. A search on Google shows other centres (namely Whalley Banks and Bolton Road) within a 10-minute off-peak drive time of the application site which have not been included in the assessment. By excluding these centres, the sequential assessment is materially flawed. These centres need to at least be considered as failure to do so makes it impossible for the local planning authority to come to a robust and sound decision on whether the application passes the sequential test and any decision would be open to scrutiny.

Lidl Trading Philosophy

The trading philosophy of Lidl is not a material consideration when the application is seeking consent for a "Use Class A1" unit which could be operated by any retailer, unless there were restrictive conditions.

The applicant suggests that Lidl's trading policy differs from a traditional supermarket by selling from a limited range of own brand goods from modest-sized stores. However, whilst this may have been the original philosophy of the 'deep discounter' it is evident that there has been a slow but steady change towards that of a traditional supermarket when considering the main shop offer, increasing store sizes, increasing proportion of comparison goods, and the sale of labelled goods. Indeed, it is worth remembering that this application seeks consent for a 1,104 sqm net foodstore, which cannot be considered to be modest.

Furthermore, the application relies on Lidl's trading policy to suggest a limitation on the impact of the store, but in fact the application is for Class A1 retail which could in theory be occupied by any retailer. Lidl's trading philosophy should not therefore be a material consideration in this instance.

However, in the event of the Council being minded to support the development, suitable planning conditions should be applied to ensure that the character of the development is controlled. Planning considerations should be applied to the foodstore to restrict the range of goods and ensure that the unit is operated by a discount food retailer as proposed and cannot sell a wider range of goods than suggested without further recourse to the Council. In particular, the Council should place restrictions on the range of fresh food counters to be included in the store. Such conditions need to be robust and enforceable.

Other Material Consideration

It is noted that the Marks and Spencer store within Blackburn Town Centre, will be the largest impacted within a centre. Given the reported struggles faced by Marks and Spencer in recent years, and the closure of many of its stores, it is considered that this impact could be detrimental to this Town Centre store which is a material consideration that should be given significant weight.


Policy 8: Development and People of the Local Plan 2 says that development will be permitted where it can be demonstrated that it will secure a satisfactory level of amenity for surrounding uses with reference to noise. The applicants own noise assessment identifies an adverse noise impact from deliveries on the nearest residents, and this is with mitigation. The noise assessment tries to play down this fact by suggesting that there would just be a single delivery per day however the fact remains that the proposal will not secure a satisfactory level of amenity for nearby residents, and there is likewise no guarantee, without a restrictive condition, that there would only be a single delivery per day.

Conclusions

The Planning Acts make clear the weight to be accorded to the development plan policies. In particular Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The proposal does not comply with Policy CS4 of the adopted Core Strategy, which seeks to protect and re-use employment sites or Policy CS9 which requires development to be of a high standard of design. Other material considerations do not indicate that that the application should be considered



other than in accordance with the development plan. The application should therefore be refused on this basis.

The applicant has also failed to provide a sound sequential assessment. In the absence of clear evidence in the form of an appropriate sequential assessment the Council are not able to conclude that the sequential test is passed. In this regard, it is worth remembering paragraph 90 of the National Planning Policy Framework which says:

"Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused."

Accordingly, the application should be refused planning permission.

We trust these comments will be taken into account in determination of the planning application.

Yours faithfully

Objection Asda Stores, Grimshaw Park, Blackburn Rec – 31/01/2019

Dear Nick,

10/18/1094 I Demolition of existing building and the erection of a Lidl store (Use Class A1) with associated works including improved access, parking area and landscaping I Furthergate Works, St Clement Street, Blackburn, BB1 1AB.

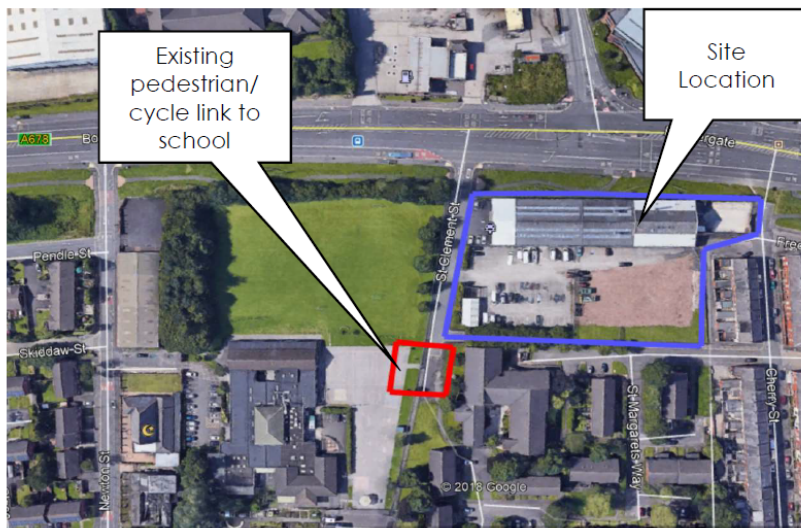
On behalf of ASDA Stores Ltd. (ASDA), TPS Transport Consultants Ltd (TPS) has reviewed the Transport Assessment, prepared by SCP, to accompany the above application for a Lidl foodstore on St Clement Street, Blackburn. Our review has sought to determine whether the development proposals will enable the continued satisfactory operation of the road network, whilst ensuring that road safety is not detrimentally affected.

Following our review of the Transport Assessment we have several concerns regarding the highways impact of the proposals. These concerns form the basis of ASDA's formal objection to the application and are summarised below.

Planning History and Development Proposals

The development proposals consist of the demolition of the existing accident repair centre (B2 use) on the site, and the construction of an A1 foodstore to be occupied by Lidl, with an RFA of 1,104sqm. The proposals include 101 car parking spaces, with servicing via the customer car park. The development site fronts onto the A678 (Furthergate), which is a key route into Blackburn, and takes access from St Clement Street, to the west of the site.

Figure 1 – Location of existing pedestrian and cycling link into the school from St Clement Street



(Source: Google)

Servicing

The TA includes a swept path analysis drawing to demonstrate the movements of HGV vehicles servicing the foodstore, but the swept path analysis provided only demonstrates left-in and left-out movements to and from Furthergate with no confirmation of the intended servicing routes. Furthermore, in order to undertake the left turn into St Clement Street, the HGV is required to overrun the centerline.

The TA suggests that 'this is not a significant issue', however the development proposals result in an intensification of use of St Clement Street and we would, therefore, suggest that there will be an increased risk of conflict between HGVs, customers and school related traffic.

Furthermore, the TA does not detail when servicing will be undertaken. We would suggest that a condition is imposed which restricts deliveries to outside store (and school) opening hours. We would also request that confirmation of servicing routes and / or further swept path analysis drawings are provided to demonstrate additional movements can be undertaken satisfactorily.

Car Parking

As is stated within the TA, a total of 101 parking spaces are to be provided as part of the development proposals, which is compliant with the Blackburn and Darwen Council policy. Although the parking provision is compliant with Council policy, the parking accumulation section of the TA shows that the maximum accumulation would not exceed 51, meaning approximately 50% spare capacity at any given time, which will allow for increased demand at particular times of the year (e.g. Christmas and Easter).

The consultant has then stated that the car park – “*will be able to cater adequately for the customers traffic with the added school pick-up / drop-off activity of the nearby St Thomas School*”. The TA goes on to state that the car park will be monitored so as to establish whether school traffic is having a negative effect on the customer car parking, and if so, Lidl reserves the right to restrict parking to customers only.

No further detail on likely levels of parking associated with the school is included, neither is consideration given to the implications if parking for the school could not be accommodated within the Lidl car park. The Council cannot, therefore, have confidence that parking issues on St Clement Street will not occur. The TA should be revised to include a detailed assessment of existing school related parking on St Clements Street (and on the existing accident repair centre, if applicable). This should then be used to undertake a revised car park accumulation assessment, which combines the school and Lidl parking demand, with consideration given to the maximum anticipated demand during busier periods.

Further details should be provided as to how parking associated with the school will be managed if it can no longer be accommodated within the Lidl carpark (in the future). There are no parking restrictions currently on St Clement Street, in the vicinity of the site access, and there is nothing to stop school related parking occurring here (as seen in **Figure 2** below). This would not only impact on the movement of customer vehicles but would also preclude servicing of the store, based on the swept path analysis submitted.

Figure 2 – No existing parking restriction on St Clement Street



(Source: Google)

Furthermore, we would request that queue length data is used to validate the models and is made available, with a view to understanding how queuing back from the adjacent junctions impacts on the St Clement Street junction. The TA suggests that queue length surveys have been undertaken but no evidence of this is provided within the submitted document.

Summary

Following our review of the Transport Assessment, prepared by SCP to support the planning application for a Lidl foodstore on St Clement Street, Blackburn, we would like to draw your attention to the following points:

- More detail is required to establish current levels of school parking on St Clement Street (and the site, if applicable) and an accumulation assessment should be undertaken to demonstrate



whether this can be accommodated within the Lidl carpark during the busiest periods, and, if this provision is later removed, what impact resultant on-street parking would have on the ability of customers and servicing vehicles to access the store;

- No swept path analysis is provided to demonstrate vehicles turning right-in and right-out of the development site, no justification for this is provided. Given that servicing will take place via the customer car park, we would suggest a condition is imposed alongside any consent, to restrict servicing to outside store (and school) opening hours;
- The traffic data for the Saturday assessment was collected during the October half term school holidays, meaning that this data cannot be assumed to be representative of a neutral period. We would, therefore, request that traffic data should be recollected. Furthermore, queue length data should be made available, so the interaction between neighboring junctions and St Clement Street can be understood; and
- Inconsistencies are present within the flow diagrams relating to the development trips at the adjacent junctions surrounding the site; we would recommend this to be amended and the revised flow diagrams made available for review.

Given the above, it is considered that the Transport Assessment currently provides insufficient detail regarding development traffic movements, servicing and car parking, particularly. The highway authority cannot, therefore, arrive at a sound decision on the impact of the development proposals at this stage and, therefore, the application should be refused on highway grounds.

Comment Peter Weddle, Fix Auto Blackburn, Furthergate Works, St Clement Street, Blackburn Rec 01/03/2019

I am writing to you as the owner of the above planning application site and as the owner of the business, T.Gillibrand (Blackburn) Ltd t/a Fix Auto Blackburn, which currently operates from the site.

I can confirm that we have been considering our on-going occupation of the site for a long period of time and that it is our intention to relocate the business from the site.

I can also confirm that we have been in discussions with Blackburn with Darwen Borough Council regarding alternative sites and that it is our intention to continue the business's operation within the town.

The Lidl proposal will help to facilitate the relocation of the business to premises which better meets our future needs.

Hopefully this letter assists the Council in providing clarity over this position. If you require any further information, please do not hesitate to let me know.

REPORT OF THE DIRECTOR

Plan No: 10/18/1153

Proposed development: Outline planning application with all matters reserved except for access and layout; for erection of 9 dwellings with detached garages.

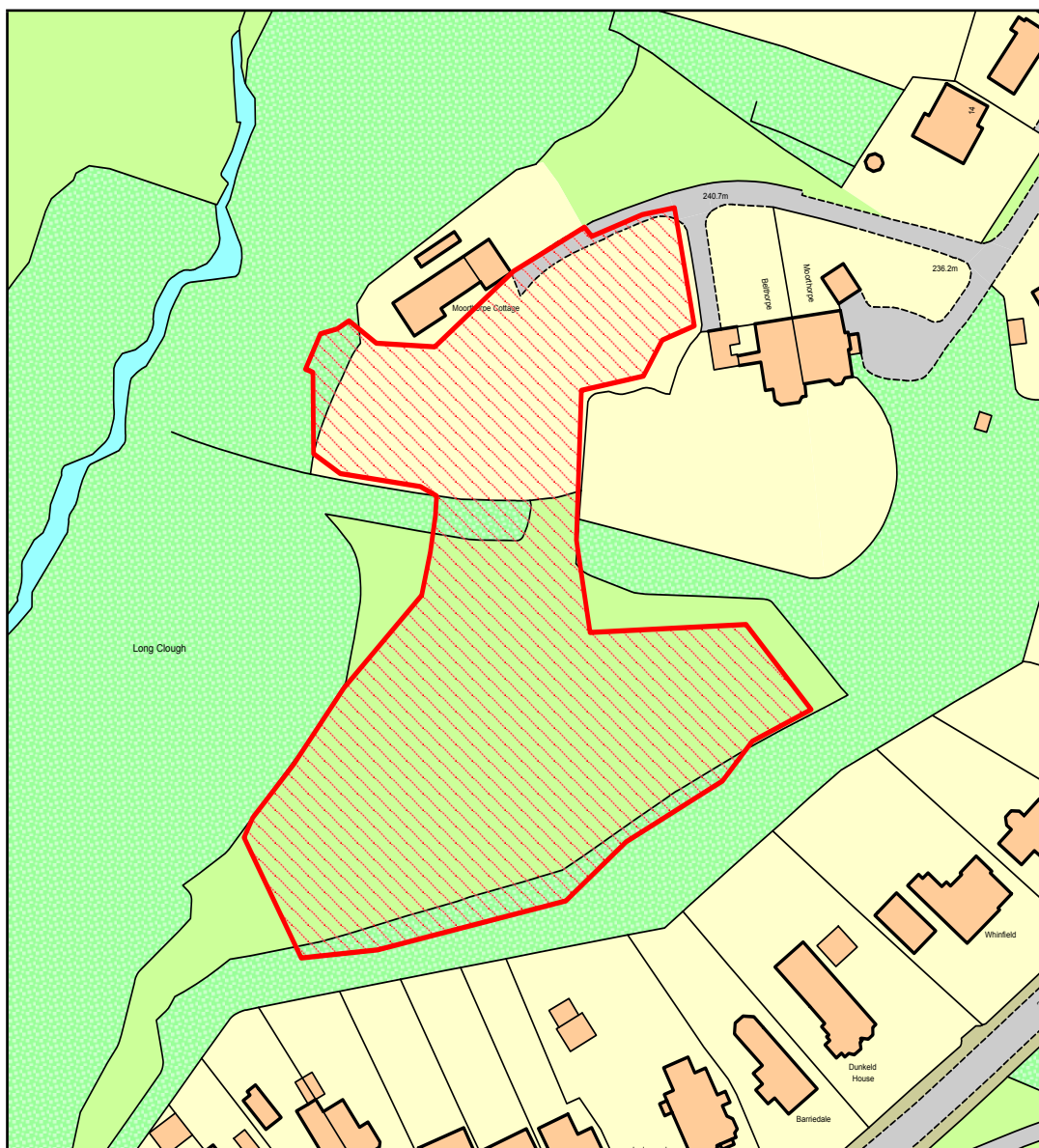
Site address:

**Land adjoining Moorthorpe Cottage
Park Road
Darwen
BB3 2LQ**

Applicant: Ms G Lomax

Ward: West Pennine

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



1.0 SUMMARY OF RECOMMENDATION

- 1.1 APPROVE - Subject to a Section 106 Agreement relating to the provision of off-site affordable housing, off-site Green Infrastructure and conditions; as set out in paragraph 4.1.**

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

- 2.1 The proposal is in outline form. It seeks to establish the principle of the residential development of the site for 9 units (some with detached garages), access from the public highway and the layout. All other detail is to be addressed under a subsequent application for *Reserved Matters*.
- 2.2 The proposal is demonstrably acceptable in principle. It corresponds with the Council's overarching housing growth strategy through delivery of high quality family housing consistent with the surrounding area; in accordance with the strategic aims and objectives set out in the Core Strategy and Local Plan Part 2. 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 application site is primarily allocated as a 'Development Opportunity'; identified as 'Long Clough, Darwen'; in accordance with the Adopted Policies Map of the Local Plan Part 2 for Darwen. The private drive that serves to access the site is not included in the allocation and is instead unallocated. The entirety of the site lies within the outer confines of Darwen's Urban Boundary, adjacent to open countryside
- 3.1.2 The site is privately owned; comprising 0.99 hectares in area and is located within the Whitehall district of Darwen, to the north of Whitehall Road. Access is taken off Printshop Lane / Park Road to the north east, along a private drive that currently serves 5 dwellings. The drive runs adjacent to the length of Chestnut Grove to the west. Moorthorpe Cottage and its associated curtilage lies to the north of the proposed dwellings and is the property closest associated with the development. The site area to be developed is grass and shrub land, bordered by mature trees and woodland groups protected by Preservation Order. The private access drive is hard surfaced. Land levels rise gently from east to west.
- 3.1.3 The immediate locality features large family dwellings set in spacious grounds within a wider area characterised by woodland and adjacent countryside. A woodland belt separates the application site from dwellings located along Whitehall Road to the south east, beyond which lies the Grade II listed Whitehall Park. The Grade II listed property 'Woodlands' is located to the north of the site.

- 3.1.4 Darwen town centre is approximately 1.3 miles to the north, accessible by public transport along the A666. It offers a typical range of amenities and includes public rail and bus transport hubs which provide convenient connections to locations such as Blackburn, Bolton, Preston and Manchester. The M65 motorway lies approximately 3.2 to the north.

3.2 Proposed Development

- 3.2.1 Outline planning permission is sought for a residential development of 9 detached houses. The application considers the principle of residential development, the layout of the proposed dwellings and access from the public highway into the site. The remaining details relative to appearance, landscaping and scale (including bedroom numbers / internal layout) will be considered under a subsequent application for *Reserved Matters*.
- 3.2.2 The proposal seeks to deliver a high quality development of family sized detached dwellings set within proportionate sized plots; each including either detached or integral garages. Highway infrastructure is laid out in cul-de-sac form with appropriately incorporated turning facilities. Retained woodland will define the landscape characteristics of the outer perimeter of the development. Detailed additional hard and soft landscaping will be addressed at reserved matters stage.

3.3 Development Plan

- 3.3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications 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 Housing
- CS8 – Affordable Housing Requirement
- CS15 – Ecological Assets
- CS16 – Form and Design of New Development
- CS18 – The Borough's Landscapes
- CS19 – Green Infrastructure

3.3.1 Local Plan Part 2

- Policy 1 – The Urban Boundary
- 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 12 – Developer Contributions
- Policy 18 – Housing Mix
- Policy 28 – Development Opportunities
- Policy 39 – Heritage
- Policy 40 – Integrating Green Infrastructure and Ecological Networks with New Development
- Policy 41 – Landscape

3.4 Other Material Planning Considerations

3.4.1 Green Infrastructure (GI) SPD

3.4.2 National Planning Policy Framework (The Framework)

The Framework sets out the government's aims and objectives against which planning policy and decision making should be considered. The following sections of the Framework are considered relevant to assessment of the proposal:

- Section 5 – 'Delivering a sufficient supply of homes'. In particular paragraph 59 which advocates the Government's objective of significantly boosting the supply homes through delivery of a sufficient amount and variety of land where it is needed; that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
- Section 8 – Promoting healthy and safe communities
- Section 11 – Making effective use of land
- Section 12 – Achieving well-designed places

3.5 Assessment

3.5.1 In assessing this application, the following important material considerations have been taken into account:

- Principle;
- Highways and access;
- Ecology;
- Trees;
- Amenity impact;
- Affordable Housing
- Green Infrastructure

3.5.2 Members are advised that the principle of residential development is guided by the sites allocation as a *Development Opportunity*; as set out in Policy 28 of the Local Plan Part 2. The policy supports development of *very small scale*

residential in the immediate vicinity of the existing dwelling, ensuring no loss of trees or woodland. Very small scale is not defined by the Policy, though it is considered that the layout of the 9 dwellings and associated infrastructure as proposed is consistent with the principles of *very small scale*. In this context, a previous permission for a single dwelling within the allocation is included in the assessment (ref. 10/16/1349). It should also be recognised that the site allocation is significantly larger than the application site and that the principle of residential development within the entirety of the allocation is accepted; notwithstanding a wider assessment.

- 3.5.3 It is recognised that the proposal involves loss of some trees and woodland. This is subsequently addressed within the 'Development and the Environment' body of the Report.
- 3.5.4 Although only a proposed layout is considered under this application, rather than a detailed assessment of scale and design of house types, it is sufficiently evident that the house typology presented is consistent with the aims and objectives of providing family sized homes to help widen the choice of house types in the Borough; as advocated by Policies CS7 and 18.
- 3.5.5 Policy CS8 and the GI SPD require new housing development to contribute toward affordable and public open space within the Borough, including new provision or enhancement of existing public open space. The locational nature of the site, as a transition between urban and rural, directs that affordable housing is not expected to be provided on site. Instead, an off-site contribution is considered appropriate. A GI contribution will be appropriately spent on enhancements in the locality. Members are advised that the applicant has committed to a Section 106 Legal Agreement for contributions equivalent to 20% affordable housing and £1406 per unit for GI; subject to planning permission.
- 3.5.6 Local residents have expressed concern as to the principle of a residential development in this locality. Members are advised that the sites Local Plan Part 2 allocation as a *Development Opportunity* ensures that a residential development is acceptable in principle; as justified by the aforementioned approach. The following matters are also required to be assessed as part of this outline application:
- 3.5.7 Amenity
Policy 8, supported by the SPD, requires a satisfactory level of amenity and safety is secured for surrounding uses and for occupants or users of the development itself; with reference to noise, vibration, odour, light, dust, other pollution or nuisance, privacy / overlooking, and the relationship between buildings.
- 3.5.8 As an outline application, amenity assessment is limited to the proposed layout which seeks to set the position of the dwellings, the extent of their curtilage and highway infrastructure. The layout demonstrates appropriate separation standards will be achieved between each proposed dwelling and existing dwellings adjacent to the site, notwithstanding any modest land level differential throughout the site; in accordance with separation standards set

out in the SPD. Mutual levels of residential amenity will, therefore, be achieved to safeguard from overlooking and dominance. Moreover, retention of the woodland group identified as W3, will form an appropriate physical separation between the development and properties to the south along Whitehall Road.

3.5.9 Although the proposal will intensify vehicular use of the private drive, the level of activity is not considered to result in significant noise impact on existing adjacent residents.

3.5.10 Application of planning conditions are recommended by the Council's Public Protection consultee to require assessment of underground conditions to guard against ground contamination and provision of electric vehicle charging points to mitigate air quality impact (in accordance with the Council's adopted *Air Quality Planning Advice Note*). A degree of disturbance during construction phase of the development is acknowledged as inevitable. This disruption is, however, temporary and considered acceptable, subject to application of a condition limiting hours of construction, in order to secure appropriate noise and vibration protection during construction works.

3.5.11 Environment

Policy 9 requires that development will not have an unacceptable impact on environmental assets or interests, including but limited to climate change (including flood risk), green infrastructure, habitats, species, water quality and resources, trees and the efficient use of land.

3.5.13 Trees

The proposal involves removal of individual trees and woodland within the site, subject to Tree Preservation Order *Moorthorpe Whitehall TPO 2003*. Notwithstanding the limitations set out in policy 28 in relation to trees on the site, their amenity value is appropriately assessed against the primacy of Policy 9, which sets out that; *development will be expected to incorporate existing trees into the design and layout of the scheme. Where it appears likely a proposed development will result in the loss of or harm to **trees of significant amenity value, nature conservation or intrinsic value**, the Council will consider making a Tree Preservation Order to ensure that due consideration is given to the importance of the trees in the planning process.* Accordingly, a Tree Survey and proposed Tree Removal Plan have been submitted in support of the application. The submission identifies proposed removal of 4no. individual trees within the site, identified as T31, T32, T33 and T34 on the Tree Removal Plan, a woodland group identified as G5 and partial removal of woodland group identified as G6. The submission has been peer reviewed by Urban Green, in the context that the principle of residential development is accepted, on account of the sites allocation. The review is summarised as follows:

3.5.14 It is considered that T31 (Grey Willow), detailed as a category C tree, is of low amenity value that should not constrain the development.

- 3.5.15 T32 (Sycamore) is detailed as a category A tree. This categorisation is, however, considered very generous and should be considered a category B, due to its impaired condition. Consequently, its retention beyond 40 years is unlikely. Moreover, it is accepted that the proposed highway infrastructure work would encroach within the Root Protection Area (RPA) of this tree to such an extent that retention would not be advisable.
- 3.5.16 T33 (Grey Willow), detailed as a category U tree displays significant decay. Its condition is such that it cannot realistically be retained in the context of the development.
- 3.5.17 T34 (Sycamore) is detailed as category B tree with potential to develop into a category A worthy of retention. It is recommended that, during construction work, the ground within the RPA should be excavated using hand tools under supervision of an Arboricultural Consultant to assess the extent of the root proliferation, in order to inform a decision on retention or removal of the tree.
- 3.5.18 G5 is a mixed group of Lime, Oak, Beach, Horse Chestnut and Sycamore trees. The Lime trees are considered inconsistent with the nature and form of the rest of the woodland on the site. Moreover, removal of G5 would visually expose the Northern aspect of W3, which is a high quality natural and well-developed group. In this context, G5 should not constrain development.
- 3.5.19 The 'overstorey' trees within group G6 should be retained. The 'understorey' rhododendron and standing deadwood should not constrain development.
- 3.5.20 Any other suppressed, dying, diseased or dangerous trees should be removed.
- 3.5.21 Consequently, in accordance with this independent review, no objection is offered against the proposed development; subject to a review of T34, retention of 'overstorey' trees within G6 and tree / woodland protection measures; to be secured through application of appropriately worded conditions.
- 3.5.22 Ecology**
Policy 9 set out that; *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 and local importance will not be permitted unless the harm caused is significantly and demonstrably outweighed by other planning considerations and an appropriate mitigation strategy can be secured.* Accordingly, an Ecological Impact Assessment has been submitted in support of the application. The submission has been peer reviewed by the Greater Manchester Ecology Unit, in the context that the principle of residential development is accepted, on account of the sites allocation. The review is summarised as follows:
- 3.5.23 Improved or semi-improved grassland on site are considered *species-poor* habitat types. Their loss is not, therefore, considered to be of ecological significance.

- 3.5.24 Notwithstanding the aforementioned loss of trees / woodland, the development will not affect any specially designated nature conservation sites. The ecological value of the retained surrounding woodland is, however, recognised for its high quality, providing habitats with high value for conservation. Accordingly, minimum buffer protection zones will be required between retained trees and the built development. Robust tree / woodland protection measures during construction phase of the development will be required.
- 3.5.25 Public open space within the development confines will be limited. Public access into the adjacent woodland should be appropriately managed as part of a holistic Woodland Management Plan.
- 3.5.26 A replacement tree and shrub planting scheme across the site will be required to help mitigate against the loss of trees / woodland.
- 3.5.27 It is accepted that the development is unlikely to affect the conservation status of Otters, Great Crested Newts, Bats or Reptiles. No further survey work is, therefore, required in this regard. However, on account of the highly protected status of Reptiles and Great Crested Newts, further precautionary methodology during construction phase of the development and beyond is considered justified, in the form of adoption of Reasonable Avoidance Measures (RAM's).
- 3.5.28 Badgers are known to be present in the area. On account of their mobile habitat and protected status, including their setts, (under the terms of the Protection of Badgers Act 1992), a pre-construction Badger Activity Survey is required, to inform the need or otherwise of a Method Statement, detailing measures to be taken to avoid harm to Badgers and their setts. It should be acknowledged that a License may be required from Natural England to implement an approved Method Statement; independent from the planning process.
- 3.5.29 In view of the recognised presence of invasive plant species on site, a Method Statement is required to ensure appropriate control / eradication of species during the course of development.
- 3.5.30 All additional surveys and Method Statement's shall be undertaken by a suitably qualified ecologist.
- 3.5.31 All birds and their eggs are protected under the terms of the Wildlife and Countryside Act 1981 (as amended). Accordingly, no tree felling or vegetation clearance required to facilitate the development, should be permitted during the optimum bird nesting season of between March and August, unless the absence of nesting birds is established beforehand.
- 3.5.32 Consequently, in accordance with this independent review, no ecological objection is offered against the proposed development; subject to all surveys and protection / mitigation methodology to be secured through application of appropriately worded conditions.

3.5.32 Drainage

Appropriate drainage methodology is required to be implemented, with foul and surface water to be drained on separate systems. Surface water drainage shall be achieved in accordance with the non-statutory Technical Standards for Sustainable Drainage Systems (March 2015); to be secured by condition.

3.5.34 Highways

Policy 10 requires that road safety and the safe, efficient and convenient movement of all highway users is not prejudiced, and that appropriate provision is made for off street servicing and parking in accordance with the Council's adopted standards.

3.5.35 A Highways and Transport Technical Note (TTN) has been submitted in support of the application. The proposal is accepted as sufficiently modest so as not to warrant a more detailed formal assessment of associated transport impacts on the wider highway network.

3.5.36 Access to the site is by means of a private access road that currently serves Moorthorpe Cottage and 4 other dwellings. The Council's highway's consultant expressed initial concern at the restricted width of the access road. Whilst a single passing point is proposed adjacent to plot no. 1, no other passing points are achievable, on account of the limited width of the access road and third party ownership of land either side. Width of the road is mutually accepted as averaging a circa 4.8m with of hard surface along its length from Park Road / Printshop Lane. Variations in width include circa 3.7m between the gate posts at the point of access with Park Road / Printshop Lane up to a maximum of 5m with reduction of between 4.4m and 4.2m. The Manual for Streets publication advocates a minimum width of 4.1m for 2 cars to pass side by side on a straight road. It is accepted that the majority of vehicles using the track will be private cars. A maximum increase of 3 vehicles per hour at peak times is anticipated by the TTN, amounting to average peak hour flows of 1 vehicle every 8.6 minutes along the access road; an increase that is considered to be manageable, particularly in the context of the site allocation and acceptable principle of residential development. Whilst the position is accepted by the Highways consultee, additional concern has been expressed as to the potential for larger vehicle conflict. Such conflict is, however, likely to be sufficiently infrequent to avoid excessive conflict.

3.5.37 In order to support pedestrian safety, a delineated footway is recommended along the length of the access road. The footway will form a shared surface with motor vehicles.

3.5.38 Submitted tracking details demonstrate appropriate 3 axle refuse manoeuvrability within the site.

3.5.39 A service verge should be included within the new internal road, in the form of a 2m strip to accommodate all services, to facilitate eventual adoption. An

800mm service strip would be deemed acceptable in the event of it hosting only street lighting columns.

3.5.40 Although off-street parking will be fully assessed a *Reserved Matters* stage, the proposed layout offers appropriate provision in the form of driveways and internal or detached garages.

3.5.41 A Construction Management Statement will be required to safeguard highway users and residential amenity alike, during construction phase of the development.

3.5.42 Consequently, no highway objection is offered against the proposed development; subject to the aforementioned outstanding matters being secured through application of appropriately worded conditions.

3.5.43 Design / Heritage

Policy 11 requires a good standard of design and will be expected to enhance and reinforce the established character of the locality and demonstrate an understanding of the wider context towards making a positive contribution to the local area.

3.5.44 Policy 39 requires development with the potential to affect designated or non-designated heritage assets to sustain or enhance the significance of the asset.

3.5.45 A full design assessment will be undertaken at *Reserved Matters* stage, relative to the built form of the dwellings, landscaping and impact on character and appearance. The Grade II listed property 'Woodlands' and Grade II listed Whitehall Park are located in proximity to the application site, to the north and south respectively. Impact on the designated heritage assets, therefore, needs to be considered. Woodlands lies physically separate to the application site, visually separated by mature trees. The proposal, notwithstanding the absence of scale and design details, is accepted as not unduly impacting on any vista into or out of the property. These same principles apply to the setting of Whitehall Park which is physically and visually separated by mature trees to the south of the application site. Accordingly, the development would not have any adverse impact on the designated heritage assets. Moreover, the assessment is relative to the accepted principle of residential development by virtue of the site allocation. A more detailed heritage appraisal will, however, be undertaken at *Reserved Matters* stage; supplemented by submission of a Heritage Impact Assessment to be secured by condition.

3.5.46 Other Matters

During assessment of the application, representation was received confirming third party ownership of the private access road ie. land outside of the applicant's ownership. Consequently, a Certificate B declaration has been served on each alternative owner; ensuring the correct procedural planning process has been followed. Members are advised in this regard that ownership of the access track is not fundamental to the determination of the

application. Any right of access to be considered in conjunction with this proposed residential development is, therefore, a private legal matter independent from the planning process.

3.5.47 Summary

This report assesses the full planning application for the residential development of land at Moorthorpe Cottage, Darwen. In considering the proposal, a wide range of material considerations have been taken into account to inform a balanced recommendation.

4.0 **RECOMMENDATION**

4.1 **Approve subject to:**

- (i) Delegated authority is given to the Director for Growth and Development to approve planning permission, subject to an agreement under Section 106 of the Town & Country Planning Act 1990, relating to the payment of £35,154; broken down as follows:

- £1406 per unit towards Green Infrastructure in the area (details of where to be spent to be confirmed) and
- £2500 per unit towards provision of affordable housing in the borough.

- (ii) Conditions which relate to the following matters:

- Application for approval of all reserved matters must be made not later than the expiration of three years beginning with the date of this permission. The development hereby permitted shall be begun not later than the expiration of two years from the date of the approval of the last of the reserved matters to be approved. Details of the following matters (subsequently referred to as the reserved matters) 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) Scale
- Submission of external walling and roofing materials
- Submission of boundary treatments
- Submission of Arboricultural Method Statement and of tree protection measures
- Submission of Woodland Management Plan
- Retention of G6 'overstory' trees
- Hand tool excavation of tree T34, supervised by an Arboricultural Consultant to assess extent of root proliferation to inform decision to retain or remove
- Submission of a landscaping scheme to include compensatory tree planting
- Submission of a Reasonable Avoidance Measures scheme relative to preservation of reptiles and Great Crested Newts
- Submission of a Badger activity survey
- Submission of a Control / Eradication Method Statement for management of invasive species

- No tree felling or vegetation clearance between March and August, unless the absence of nesting birds has been established
- If construction of the development has not commenced within two years of the date of submitted Extended Phase 1 Habitat Survey (Pennine Ecological – December 2014), an updated Ecology Report shall be submitted to and approved in writing by the Local Planning Authority. Any required mitigation shall inform the Biodiversity Enhancement Strategy and landscaping strategy for the development
- Foul and surface water to be drained on separate systems
- Submission of a sustainable urban drainage system (SUDS) and management plan to cater for surface water
- Submission of Heritage Impact Assessment
- Submission of a delineated footway scheme along the access road
- Submission of management and maintenance details for new highway infrastructure within the development
- Submission of highway infrastructure engineering details including drainage, street lighting and street construction
- Submission of a scheme delineating a service verge
- Submission of a Construction Management Statement
- Visibility splays not to be obstructed by any building, wall, fence, tree, shrub or other device exceeding 1m above crown level of the adjacent highway
- Contaminated land - submission of detailed proposals for site investigation
- Contaminated land – submission of validation report demonstration effective remediation
- Unexpected contamination
- Provision of dedicated motor vehicle charging points
- Submission of dust suppression scheme
- Limited hours of construction:
 - 08:00 to 18:00 Mondays to Fridays
 - 09:00 to 13:00 Saturdays
 - Not at all on Sundays and Bank Holidays
- Submission of a Construction Management Plan
- Permitted Development Rights to be removed
- Development in accordance with submitted details / drawing nos.

5.0 PLANNING HISTORY

5.1 The following historic planning application is of relevance to the proposal:

10/16/1349 – Approval of a single dwelling.

6.0 CONSULTATIONS

6.1 Arboricultural consultee: Urban Green

No objection subject to tree protection measures; retention of 'overstory' woodland group G6; hand tool excavation of root protection area to tree T3 and no tree felling during bird nesting season

- 6.2 Ecology consultee: GMEU
No objection subject to reasonable avoidance measures for reptiles; Badger activity survey; invasive species management methodology.
- 6.3 Drainage
No objection subject to foul and surface water drainage schemes.
- 6.4 United Utilities
No objection subject to foul and surface water drainage schemes.
- 6.5 Public Protection
No objection subject to:
- 6.5.1 *Amenity*
Recommended 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.
 - Contaminated land
- 6.5.2 *Air Quality*
- Provision of a dedicated electric vehicle charging point at all dwellings.
 - Limitation of gas powered boiler types to control emissions.
- 6.6 Highways Authority
No objection subject to;
- Submission of Construction Method Statement.
 - Delineation of footway and provision of service maintenance strip
- 6.7 Strategic Housing
No objection in recognition of the proposal contributing towards the Council's housing offer and growth strategy; subject to Section 106 contribution towards affordable housing and GI.
- 6.8 Environmental Services
No objection
- 6.9 Public consultation has taken place, with 42 letters posted to neighbouring addresses and display of three site notices on 17th November 2018. In response, 47 representations were received which are shown within the summary below.

6 CONTACT OFFICER: Nick Blackledge, Planning Officer – Development Management.

7 DATE PREPARED: 8th May 2019.

8 SUMMARY OF REPRESENTATIONS

Objection Mrs Lynda Ahmed, 14 Chestnut Grove, Darwen Rec – 18/01/2019

- > Following your letter sent on the 10/12/2018 I write to register my
 - > objections to this planning application for the following reasons and in order of concern and is therefore addressed in the main on planning grounds/ and highways.
 - >
 - > 1) Access to the proposed application is totally unsuitable due to safety reasons...the road at the side of my house measures only 13ft 2 inches is single width with no ability for passing cars.
 - > The is a 90degree bend , a blind bend which is totally unacceptable on safety grounds...inability to see oncoming vehicles, inability to see children playing/people walking up the rd,inability to see any small service vehicles coming up the said drive.
 - > The entrance to the drive is is both narrower than stated and is unsafe due to the posts on either side.
 - > The road is in an unfit state of repair and safety... Surely of an unacceptable standard for the highways authority.
 - > Stuart Hammond from the cleansing depart should refuse this planning application due to the size and safety of these refuse wagons not being able to serve this development....as incorrectly stated ..point 9... The refuse wagons are not allowed up the said rd due to safety and accessibility ... Without implicit consent they use Chestnut Grove...a private road to ...to serve these customers who bring their bins down to the top of park rd and and refuse men move them through a hedge onto our drive to their wagons until two weeks ago I used to take all these bins back!
 - > Service vehicles, delivery vans, utilities etc would find it difficult and unsafe to serve this proposed site ...lane only wide enough for one vehicle at a time .
 - > Emergency vehicles especially a fire engine would be unable to serve this development due to inability to turn the acute bend...it would have to be shunted up.
 - > The services in place at present are ancient and at times ineffective ...drains for sewerage are absolutely not suitable being built over 100 yrs ago to serve only 5 properties. Surface water regularly comes off the proposed land through my garden and down chestnut grove due to ineffective drains and drainage of applicants lawn.
 - > Other services eg gas electricity and water would need major development if it was to serve 9houses.
 - > Up the proposed drive and of course my drive chestnut grove there is no street lighting and no mention of any street lighting in the plan...surely safety must be an issue.
 - > The access to this drive is via a small rd with poor visibility and rd surface...bearing in mind there are two schools yards away from this entrance ...one school is served by taxis which use this unadopted highway...a safety issue for the children and care givers.
 - > There is of course a tree preservation order on most of these trees to safeguard the value that trees play in ecology.
 - > As you can see there are many reasons why this planning application should be refused...access and safety being the main issues.
 - > NB. Within this planning statement...there is reference to the use of Chestnut Grove/ my garden being used for access... May I suggest to you that this is a private road, moreover it is a private garden which you will find is not for anyone to use as access .
 - > I trust that you will read and digest my objections and comments and realise these are strong reasons to reject planning application in its entirety .
-

Objection Jonathan Ashton, 12 Chestnut Grove, Darwen, BB3 2NQ

Good Evening,

I have received notification of amendments made to planning application 10/18/1153.

Despite the amendments I still wish to object with the reasons outlined in my original objection that can be found below.

Kind Regards

Jonathan Ashton

12 Chestnut Grove

BB3 2NQ

Sent from my iPhone

Good Evening,

I would like to place on record my objections to the planning application ref - 10/18/1153 on the following grounds:

In the documentation it states that the access road is wide enough for a car to pass a large vehicle such as a bin wagon. This is wholly inaccurate, two cars cannot pass safely without encroaching onto private land on either side of the road. In fact the bin wagon does not use the access road due to this and the bins from the nearby properties to Moorthorpe Cottage are brought down the road and left on the roadway causing an obstruction. The bins are emptied outside my house on Chestnut Grove, and a further 9 bins, the obstruction caused to the roadway and the additional noise and disturbance would be unacceptable. I'm sure the council can verify that this road is not used or on a bin wagon route.

There are also no feasible passing points on the access road that are not private driveways and this is unacceptable for a road of that length.

The lack of lighting on the road and it's narrow nature would also present a significant hazard to any pedestrians on the road during hours of darkness.

If cars attempted to pass they would pull off the designated roadway onto private land that the mains sewer runs down, over the years there have been numerous occasions where this sewer has overflowed or been blocked by damage / tree roots. The repair works have been funded by local residents, and I believe a further 9 properties would create significant additional use and issues which in turn could create significant environmental health issues.

The new property that has been built has also had to utilise a tractor and trailer to get materials to site due to large vehicles being unable to make the tight right hand turn that borders 14 Chestnut Grove. During the construction phase the additional traffic, noise and general nuisance would create significant disturbance to all residents and would also badly damage the road surface especially on this corner and with the additional traffic generated following the build would create disturbance to

a very quiet area. The road is a private road and all repairs funded by residents the additional use would have unacceptable financial implications on the residents.

The area is also surrounded by trees, many of which have TPOs, and I would be unhappy for any to be affected or damaged during the build.

To summarize, I object on the grounds of;
Severely inadequate access / passing points / turning points
Noise and disturbance to existing residents
Potential loss / damage of trees
Environmental / sewerage concerns.

Kind Regards
Jonathan Ashton

Objection Mrs J.M Johnston Rec – 21/01/2019

Dear Mr Blackledge

With reference to the amended version of this application (ref your letter dated 16 January 2019) I wish to make the following comments.

The site is an area of grazing land and woodland which adjoins Darwen Moor, and as such provides a valuable habitat for many species of native flora and fauna including foxes, deer, bats and hedgehogs, all of which I frequently see in my garden. It is also a nesting site for birds. It is an area of unique beauty, and should not be spoiled. Local people have worked as a group for many years to keep this part of Darwen as lovely as possible. All generations - elderly people, parents and children - have been involved, and it would be a shame to lose this. Why should we as a community allow one person to desecrate this beautiful area of Darwen after years and years of hard work to maintain its natural beauty?

Objection Mr C Royle, 10 Chestnut Grove, Darwen Rec – 28/05/2019

Dear Planning,

Regarding the Details of Planning Application (Amendment) I would like to confirm after eventually finding the amendments on your web site that I continue to object to this application in its entirety. Also after having more time to consider this application as we had limited time over the Christmas Holiday I believe that Blackburn's own ecology policy is CS15 and point 3 states that general habitats which may support species of principal importance either for shelter, breeding or feeding purposes (both natural and built features), will be protected from development, in accordance with the Environmental Strategy set out in Policy CS13. This is woodland with deer, rabbits, badgers and other animals and this policy should be considered carefully with regards to this application. Also has the applicant completed the correct ownership certificate of the road or is this the amendment as it is somewhat confusing to those of us not up on Planning. Finally I would consider that although the applicant does have access on the Private Road the proposed properties will not and this would be a civil matter not planning.

Objection Mr & Mrs Glynn, Montrose, Whitehall Road, Darwen Rec – 28/01/2019

Additionally this track is narrow, unsuitable for two vehicles passing, with 3 blind spots. Also the nature of the tight turn, especially where the drive meets Moorthorpe House, access by longer vehicles is impossible. This track is bordered by private land with large TPO trees either side and is totally unsuitable for further vehicles.

3. 3.5/3.6 of the planning statement mentions:

There are no public rights of way on the site although a public footpath is located to the south of the woodland strip to the south. SSSI known as the West Pennine Moors is located to the west of the site. **It is possible for the proposed development to connect to the moors via a dedicated footpath.**

The red edge of the plan does not encompass a “dedicated footpath” cutting through the ancient woodland to the south of the proposed development. The planning statement advocates taking care of the ancient woodland and its diversity, cutting a footpath through it is a contradiction and would be a travesty. The red edge of the plan stops before any “possible footpath” and no footpath is shown on any of the plans. I hope the council show real commitment to protecting the woodland and request the removal of the suggestion of any footpath linking to the moors from any development. The ecology of the area is diverse with many TPOs and designated originally as an area of “special landscape” and needs protecting.

4. Additionally, Japanese Knotweed is present, very, very close to the applicant’s land, close to the start of the public footpath to the moors, at the South of the plan. Any footpath would risk spreading this invasive species into the woodland if it hasn’t spread already onto the applicant’s land.
5. I also question the electricity supply which runs through the woodlands, via pylons overground, down to properties on/near the applicant’s land. If these powerlines are to be used to support any development I suspect they will have to be increased and buried, again disrupting the natural habitat.

6. The ecological report only covers the time the site was visited, the area is regularly used by Roe Deer, bats are plentiful and quite possibly roosting on site (a full bat survey should be completed, before any further consideration. Bat activity is curtailed in the winter months and would need to be surveyed when active again in late spring/early summer). Also the woodland has a large display of native bluebells in the spring.

Conclusion

- No public highway to the proposed development, majority of track not owned solely by applicant.
- Access to site is not of an adoptable standard and unsuitable for further vehicles. The Highway Survey is inaccurate in parts, with the access lane narrow with 3 blind spots and dangerous and unsuitable for larger service vehicles.
- Planning statement suggests a possible footpath joining development to public footpath at the south. This isn't incorporated into any of the red edged boundary and completely at odds with the applicant's wish to preserve the integrity of the remaining ancient woodland.
- Presence of Japanese Knotweed nearby a risk of contamination onto site, if not already on the land edged in blue on plan (even more so if a footpath is built).
- Presence of bat species and the need to establish whether bats are roosting on site. Protection of a unique area designated originally as a "special landscape" with many TPOs.

We request that consideration is given to all the points above and the planning application is refused on the above grounds.

Objection Mark & Charlotte Taylor, Dunkeld House, Whitehall Road, Darwen Rec – 30/01/2019

Dear Sir, This letter is to further object to the amendment to the proposed "development" of Moorthorpe land. Nine houses? where is the space? There is barely space for one. Access is none existent and Moorthorpe Drive is totally impractical. If there are nine, four bedroom houses, how many cars will that generate? I would estimate around three per house, and that is before visitors ect. Light pollution and noise. When you look at the the slickly produced planning application you would think they were doing us a favour. The land also has a very steep incline which is not apparent when viewing on the page. All the people from planning need to physically view this land to realise its folly.

Thank you

Objection Joanne Mackey, Lynfield, Park Road, Darwen Rec – 30/01/2019

Re: amended plans

Thank you for your correspondence regarding the amended plans.

My position has not changed as the only amendment is that you have now included the road which does not belong to the applicant.

As co owner of this road I am legally responsible for its maintenance and therefore have the right to refuse access to the heavy plant and machinery that a build of this size will require, I do not give my consent either to this road being excavated to install the services these properties will require.

All my previous objections still stand and I object to this proposal in its entirety.

Objection Judith Wright, The Greg, Whitehall Road, Darwen Rec – 30/01/2019

Ref 16/18/1153 and amended planning
application re. land adjoining Moorhosp
Cottage. 27.1.19

Mr. W. Blackledge,
Growth and Development Dept.
Blackburn w. Darwen Town Hall
Blackburn
BB1 7DY

Dear Mr. Blackledge, I submit my objections to the

above planning application.

The private road now designated for access is quite unsuitable for heavy traffic. It is a single track lane too narrow for two vehicles to pass, there are no passing places and has a sharp, blind corner; refuse trucks must reverse up part of the drive and get no further; emergency vehicles answering a call from the proposed development could not reach their destination.

Furthermore, we must protect our shrinking green areas and biodiversity. The land under consideration has fine mature trees; is the area not covered by a T.P.O? The whole area is a haven for wildlife - deer, badgers and bats would not survive major disturbance, noise and human activity. The same goes for a wealth of

bird life = jays, a resident pair of crows, redpolls, nuthatches, goldfinches, wrens, siskins, greenfinches, woodpeckers, tawny owls, long-tailed tits, coal tits, blue tits, great tits to name but a few.

Lastly, part of the proposed site would mean the disturbance to, if not the loss of, extensive carpets of native bluebells. Are they not protected by the Wildlife and Countryside Act (1981)?

I hope the application will be denied

Objection Victoria & Robert Eyre, Parkland, Whitehall Road, Darwen Rec – 30/01/2019

Regarding Blackburn with Darwen outline Planning Application 10/18/1153 amendment dated 15th January 2019

To whom it may concern,

This is a letter of objection to the outline Planning Application 10/18/1153 land adjoining Moorthorpe Cottage BB3 2LQ amendment dated 15th January 2019.

The amendment has not made any changes which change our objections listed below so we still object to the outlined plan amendment.

We purchased the property Parkland on Whitehall road in October 2016, this purchase was based on the comfort that we would never be overlooked due to Whitehall park being in front of us to the south and the woodland at the back of us to the north. There was no information on the return of searches from our solicitors which suggested this land to the rear of us could be built on. The development provisional plan completely breaks up what is a natural habitat for all kinds of wildlife species.

This proposed development will clearly cause loss of privacy as the proposed houses will be in line with the end of our back garden and in the winter months when the leaves are shed visibility to our back garden and vice versa will be present.

Light pollution to the rear of our property may also be an issue throughout the winter months

It appears for the character of the area at present that the developer is trying to maximise the number of houses on the land without any thought for appearance, disturbance and the wildlife which lives there.

The development looks completely out of keeping when compared to the existing houses on Whitehall road and Chesnut Grove.

The woodland is awash with bats, owls and deer to name but a few, to put a housing development in the middle of this will only have a negative effect on this wildlife, it will take the shelter away from the deer in Winter, it will create more artificial light at night which will have a negative effect on owls and bats and it will no doubt take the roosting areas away from bats which are ever present in woods.

Reading through the, 'Moorthorpe Cottage Tree Survey and Constraints report' it clearly states in section 3.8 that all trees are subject to a Tree Preservation order within the proposed development, yet further down in the document in section 5.17 it states the area of trees Group G5 could be a candidate for removal, how is this when these trees are clearly covered by a TPO?

There is a fear that the narrow woodland (W3 and G5 Drawing 1 Tree Constraints plan) between the rear of our property and the open grass land in the proposed development will be compromised and possible trees felled which shouldn't be as they are covered by a TPO. This will have a negative effect on the general surroundings of Whitehall road and the surrounding existing properties as it is the trees and park which make the area so beautiful.

In summary the objection to the proposed development is;

- Out of keeping with surrounding land, buildings and properties
- It will have an adverse effect on all sorts of wildlife and plant life
- It will affect the privacy and will overlook residents on Whitehall road
- The developer will inevitably remove trees which are protected under the TPO in areas around the perimeter of the proposed development
- It will cause light and noise pollution to the area

We believe a housing development in the middle of a wood on the edge of Darwen Moors is not something which should be approved and would be irresponsible to do so, due to the points made above,

Objection Mrs B A Starbuck, Belthorpe, Park Road, Whitehall, Darwen, BB3 2LQ

Objection to Planning Application Adjoining My Property
Ref 10/18/1153

Re Amendment 16th January 2019

Dear Sir,

I find the fact that the initial outline plan did not include the correct detail on the proposed access to the development shows a level of incompetence on behalf of P Wilson & Company. In addition on the Planning portal they state that Woodlands is a Residential Home. It has not been a residential home for over 12 years. It is now a school. The company show a lack of attention to detail in these matters and my points raised below reiterate that.

My objection to the proposed development remains the same as stated in my previous letter. **'The access to the proposed development is totally unsuitable. The drive is a single track Private Road with no street lighting, pavement or passing place. The road is Privately owned & maintained by the residents that share the drive. At the entrance to Moorthorpe Drive there are 2 stone gate posts that are less than 3.5m apart. '**

There is no reference on the amendment on the suitability of the access and indeed how large vehicles will be able to manoeuvre safely, pass other vehicles and not damage shrubs and trees to each side of the drive. They would also be driving over century old drains that are fragile in their current state.

I would like to see a diagram of how a 12m Rigid delivery vehicle can negotiate the Private Road through the gate posts and round the 90deg bend at the top.

There is a 'blind corner' towards the top of the drive just before the gate posts to Moorthorpe. Here the drive becomes even narrower with my driveway and the entrance to Moorthorpe Grange coming straight off it. Another blind spot for traffic passing. There is still no street lighting or pavement.

The drains from Moorthorpe, Belthorpe & Moorthorpe Cottage barely cope with the quantity of waste & rainwater now – indeed when there is a downpour the drains overflow onto and down Moorthorpe Drive.

The development would bring an increase in traffic & pedestrians that would far exceed a 'safe' environment & access and would potentially put myself & my family at risk. The increase in pollution & noise from the cars and service vehicles to & from the proposed development will have a major detrimental impact on the existing residents & wildlife in the immediate Whitehall area.

I whole heartedly am against the outline plan of the proposed development and the amendment and as co owner of Moorthorpe Drive – a Private Road am seeking legal advice.

Objection The Greg, Whitehall Road, Darwen Rec – 30/01/2019

BB1 757
Dear Mr. Blackledge, I submit my objections to the above planning application. The private road now designate for access is quite unsuitable for heavy traffic. It is a single track lane too narrow for two vehicles to pass, there are no passing places and has a sharp, blind corner; refuse trucks must reverse up part of the drive and get no further; emergency vehicles answering a call from the proposed development

could not^u reach their destination.

Furthermore, we must protect our shrinking green areas and biodiversity. The land under consideration has fine mature trees; is the area not covered by a T.P.O? The whole area is a haven for wildlife - deer, badgers and bats would not survive major disturbance, noise and human activity. The same goes for a wealth of

bird life = jays, a resident pair of crows, rooks, nuthatches, goldfinches, wrens, siskins, greenfinches, woodpeckers, tawny owls, long-tailed tits, coal tits, blue tits, great tits to name but a few.

Lastly, part of the proposed site would mean the disturbance to, if not the loss of, extensive carpets of native bluebells. Are they not protected by the Wildlife and Countryside Act (1981)?

I hope the application will be denied

I hope the application will be denied

Objection Mr & Mrs Perricone, Werneth Brae, Whitehall Road, Darwen Rec – 30/01/2019

Dear Mr Blackledge

Below are my objections and concerns regarding this building application. We want to object to all five of the amendments, taking into consideration comments below.

Access

Access on to and off the main straight drive way leading to Moorthorpe Cottage comes off a sharp corner onto Ross Street , this being a congested road serving Ashleigh School. Traffic surveys supporting this application do not reflect this. To access the main driveway to Moorthorpe Cottage off Ross Street there are three small tracks which converge at the two stone gate posts at the bottom of the drive enclosing a small grass triangle of TPO protected trees? The track for Print Shop then to the gate posts is only 3.3 meters wide and unsuitable for motor vehicles. The exit/entrance between the two stone posts and adjoining walls form a blind junction with the Print Shop track running across it.

The main drive way already services six large houses all with the capacity to park or garage four cars, the drive being a single track with no passing areas and the land either side being privately owned and bordered by large TPO trees. The narrowest point is 3.20 meters wide with the widest being 4.20 wide. Where the drive meets Moorthorpe House it turns sharp right at 90 degrees, thus any vehicle larger than six meters cannot access this, which is also a blind corner.

Servicing Vehicles and Emergency Services.

The refuse wagon contrary to what is stated in the application cannot access the drive way in its full length in a forward direction as it cannot turn round, it has to reverse up the drive, it frequently unseats the header stones on the stone pillars at the drives entrance. When the wagon reaches the right hand 90 degree turn at the top of the drive, it cannot access any further up. The Fire Brigade and Ambulance services can access the drive but can go no further than Moorthorpe House, they cannot turn at the top of the drive as there is no space.

Environment and Ecology.

The area of land proposed for building is an area of natural beauty and supports a diverse ecology. This includes, Deer, Bats , Owls, Badgers, Woodpeckers and a wide range of flora and fauna. It has as recently as 2012 had an extensive ecological and environmental improvement. There are many TPO trees. Losing this to housing would be a massive blow to the local environment and devastating to wildlife. There are not many stunning natural habitats in the Borough, it seems criminal to destroy this.

Incorrect Application Statements

Point 4.8 of the planning statement is incorrect; all access will be via the main drive from the Print Shop track. Point 9 and point 18 of the Highways and Technical Notes 1. are incorrect. A waste disposal wagon cannot be passed by a vehicle whilst on the drive, it cannot access Moorthorpe Cottage, it is not safe for pedestrians and cars to be on the driveway together.

Objection Mr D Duxbury, Inglewood, Whitehall Road, Darwen Rec – 30/01/2019

I am writing with regard to the above application with my objections and concerns.

Environment and Ecology

The area proposed is an area of natural beauty and supports a diverse natural habitat. There are many TPO trees which provide a habitat for Deer, badgers, Bats, Owls and many birds. The ecology system would be compromised and the impact to the environment devastating.

Access

There are many access issues on and off the main driveway which would impact on service vehicles and emergency services as well as the community and safety.

Conclusion

Access, drainage and environmental concerns highlight the inadequate nature of this application.

Objection Mr Bentley, Windy Knowe, Whitehall Road, Darwen Rec – 30/01/2019

Dear Sirs

I am writing to object to the amended plan to the original planning application for 9 dwellings at land adjoining Moorthrop Cottage you ref 10/18/1153

The amended plan now shows access from the bottom of Moorthrop Drive, but this is a private road owned by three residents on the drive.

Also the road is a single track with no lighting or pavements which would not satisfy

adoptable standards.

Has pointed out in my original objection this area to be developed is an area of special landscape with a large number of mature trees, and should not be intruded into.

Objection Richard Cross, Lynross, Ross Street, Darwen Rec – 31/01/2019

Dear Sir,

Re; Planning application 10/18/1153 Land adjacent to Moorethorpe Cottage

Below are my concerns and objections to the above application

1. Access from the main driveway onto Ross street is via a complex junction of narrow tracks including print shop track. It makes a blind junction with the print shop track.
2. Access at the bottom of the main drive gate posts is only 3 meters wide.
3. The main drive is only 4.0 meters wide.
4. Two cars cannot pass side by side on any part of the drive way.
5. There are no pavements, street lighting, gullies or gutters on any part of the drive.

6. Refuse trucks cannot turn off the main drive way at Moorethorpe House as the side drive to Moorethorpe Cottage and Belthorpe turns at virtual right angle to the main drive. Refuse trucks cannot be passed by any other person/vehicle whilst on the main drive way.

8. Emergency vehicles cannot turn off the main drive way onto the drive leading to Moorethorpe Cottage.

9. The side drive off the main drive to Moorethorpe Cottage is a blind corner/junction.

10. Moorethorpe Cottage does not own the whole drive between Moorethorpe House and Moorethorpe Cottage, Belthorpe owns half of it. see enclosed map.

11. Numerous blind driveways enter onto the main drive way.

12. More appropriate entrance to this development is at the top of Whitehall Rd.

Objection Lynda Ahmed Rec – 04/02/2019

Once again I write responding to various communication you have had with me and also the residents association.

Just to confirm I wholly object to this outline planning application /and amendments on the grounds of access, in the main ...safety...in your planning portal it gives woodlands as a home for the elderly..may I correct you in that it is a school for children who have been excluded from mainstream school. 32 children and their teachers and their taxis..use this junction road 5 days per week.. I hope you will take our objections seriously Regards Mrs Lynda Ahmed

Objection Janet Aspden, 1 Crescent Road, Surrey Rec – 05/02/2019

re: **Amended Application 10/18/1153**

Applicant Ms G Lomax

The Erection of 9 Dwellings with Detached Garages on land Adjoining Moorthorpe Cottage, Park Road, Darwen BB3 2LQ

I am the owner of the lower part of the drive at Moorthorpe, Whitehall, Darwen and the land either side of the lower part of the drive. (H M Land Registry title no. LAN 123805.)

I note that the amendment to this application shifts access to the land the subject of the application from Chestnut Grove to the drive at Moorthorpe.

The application states "The site is located off Park Road, down a private access road, the road is owned by the Applicant and 3 other owners. I am informed that the Applicant has rights of way over those parts of the access road that are not owned by the Applicant."

The above statement is incorrect, in so far as it relates to the land which is the subject of this application. There are no access rights along Moorthorpe Drive, referred to as the access road, to the parcel of land for which planning permission is sought. This can clearly be seen from the title to the Applicant's property (LAN29609).

Accordingly, it appears that this application is fundamentally flawed.

Access matters apart, my concerns in respect of this application are as follows:-

1. At present, access along the drive is to five properties. Even the level of traffic which these properties engender gives rise to problems:-

- a. Vehicles speed down the drive and straight through the gateposts. Vehicles passing at ninety degrees at the foot of the drive to and from Print Shop travel at a similar speed. There is the danger of collisions between vehicles and also a danger to pedestrians because the track to and from Print Shop is a popular footpath leading to the Moors and is also used by horse riders and bicyclists.
- b. Council vehicles, dustbin lorries and some delivery vehicles have difficulty gaining access along the drive due to its narrow width and the need to drive around narrow sharp corners; they use Chestnut Grove instead.
- c. There are no passing place on the drive and with a substantially greater number of vehicles travelling to and fro, it can reasonably be expected that vehicles will drive onto the verges to allow mutual passage, thereby trespassing on the land either side of the drive. This can also be expected to impact on tree roots - see below.

If permission were to be granted, it would seem that Chestnut Grove would still be used for access, and thus this application should take in the interests of the owners of Chestnut Grove.

2. In building any properties, heavy vehicles carrying materials can be expected to cause damage to the fabric of the drive which was constructed for horses and carriages, always assuming that they are able to squeeze through the gate posts in any event. Similarly, regular use by significantly more vehicles can be expected to cause damage and give rise to the need for regular maintenance in respect of the drive for which those having access have a shared responsibility.

It would be unreasonable to add almost double the existing number of properties, and add probably at least three times the existing number of private motor vehicles without there being a detailed maintenance agreement in force. Alternatively, if the drive is to be adopted, then it would have to meet adoption requirements. This would seem to be unlikely for the reason below.

3. There are protected trees running along either side of the drive and their canopy covers the width of the drive. Construction of a pavement for pedestrians, widening the drive and the installation of passing places appear to be ruled out due to damage which can be caused to the tree roots whether by actual damage or by squashing the soil thereby depriving the roots of water and oxygen. As mentioned above, the verges are not in the ownership of the Applicant.
4. In addition to maintenance of the drive, the adequacy of sewers and any other water drainage must be considered with specific maintenance agreements in force.

For the avoidance of doubt, I have received no Notification from the Local Planning Authority detailing this application. Nor have I received the same from P Wilson & Company even though I have requested it by email.

Objection Mr C Royle, 10 Chestnut Grove, Darwen Rec – 14/02/2019

Dear Mr Kelly,

Please find listed below comments with regards to planning application of the erection of 9 dwellings at land adjoining Moorthorpe Cottage, Off Park Road Darwen, BB3 2LQ. I am not sure why after sending back the original objection in early January why you now need a new objection but here you are.

Firstly the Private Road which is proposed as access to the 9 dwellings is only narrow and it is not possible for cars to pass safely as there is privately owned dense woodland and kerbed edge bordering the road. Large Vehicles especially the Council Refuse Vehicle do not use this road as stated as they cannot safely get through the gate posts at the bottom which are only 3.5 Mtrs wide not 4.8 Mtrs wide as stated and indeed the road only widens to 3.65 Mtrs. Instead they come up Chestnut Grove and the bins are brought across through a gap in a bush onto Chestnut Grove. On reading Chapter 2 core policies page 13 Policy 10 i believe you state that Development will be permitted provided it has been demonstrated that road safety and the safe, efficient and convenient movement of all highway users (including refuse collection vehicles, the emergency services, cyclists and pedestrians) is not prejudiced.

I would also like to advise that recently on two occasions the top of one of the gate posts have been knocked off by only a relatively small commercial vehicle which again confirms access is difficult and unsafe. Had any pedestrian been close by they would have been killed. As far as i am aware in accordance with the relevant guidelines. The general rule of thumb is that development of more than 5 units should be served by a road that satisfies adoptable standard. General dimensions are Residential Street-Single carriageways shall be 5.5 m wide (2 x 2.75 m wide lanes) with an optional 2mtr wide verge and a 2mtr wide footway on each side. The applicant should be able to demonstrate this can be achievable but as the Road is Privately owned by 3 residents and the applicant only as access whilst a civil matter not planning the applicant does not have a right to access the proposed properties.

The private road at the top then turns at 90 degrees and at this point cars coming down from Moorthorpe Cottages have a blind spot which is unsafe for both drivers and pedestrians and the lack of any lighting makes it unsafe and dangerous. The house currently being built with the agreement of Lynfield the bungalow on the left at the top of the road let building supplies be dropped onto his garden and taken round to the house by smaller vehicles as it was impossible for these vehicles to make the 90 degree turn so how can access be made to develop 9 dwellings. A Fire engine would struggle to get around this corner which must be considered from a safety point of view.

The junction at the bottom of the Private Road is not safe especially when school children are being dropped off at Ashleigh School and cars are left unattended on the bend and side road close to the entrance. There is also a lot of traffic going through the entrance to the right of the Private Road which go up to the Special Needs School and access is often in front of the Private Road then a left turn made up Holly Tree Close. There will be a large impact on traffic in the Queens Road /Whitehall/Park Road area with traffic exiting and joining the A666 affecting especially during school times. Highway safety would be compromised greatly. I should mention at this stage that on maps issued by Blackburn with Darwen Council the property which is now a school behind Chestnut Grove which uses the access down Holly Tree Close is down as a nursing Home. This School currently has

over 30 pupils who are dropped off Monday to Friday along with over a dozen members of staff.

Noise and pollution of large vehicles must be taken into consideration if building was to go ahead and also the continuous traffic caused by what could be more than 50 cars per day not including delivery/service vehicles.(if they can get up)

Surface water is already a problem from Moorthorpe Cottages as it comes directly into the garden at No 14 Chestnut Grove and finds its way coming down Chestnut Grove. We also currently have problems with sewage as the sewage overflows from the man hole cover on the land just in front of No 14s garden wall and makes its way down Chestnut Grove. This constantly needs rodding and has tree roots pushing up the cover. The drains in this area are over 100 years old and are not adequate now for the four properties.

Environmentally there are many trees in the meadow which are subject to TPOs and this area was originally designated as an area of special landscape and as such the proposal could be contrary to your Policy New Residential Development of the Local Plan in that the proposal will detrimentally affect the character of the area. Impact on trees must be dealt with now and not left to condition. Arboriculture Officers should have the information needed to carefully consider the impacts. There is a need for a detailed landscaping scheme now and not as Reserved Matters due to the character of the site and this cannot and should not be deferred.

The land has a lot of wildlife including deer ,badger sets and is full of bluebells. The woodlands are governed by regulations in relation to destruction or re-shaping of trees that have been providing wood, shelter, shade, oxygen and a habitat for wildlife for hundreds of years. It will not be possible for these trees to regenerate themselves as they have done over many decades if this planning is approved denying our future generations the beauty of this Woodland area. Indeed Blackburn's own ecology policy is CS15 and point 3 states "General habitats which may support species of principal importance either for shelter, breeding or feeding purposes(both natural and built features) ,will be protected from development ,in accordance with the Environmental Strategy set out in policy CS13. I would expect the Council to take care when considering this policy in respect of the application.

The Governments latest consultation (ended January 2019) guidelines not just loss of ecologic value but rather developments to deliver a "biodiversity net gain necessary for developments when granting planning permission. Biodiversity net gain is an approach which aims to leave the natural environment in a measurably better state than before hand. Therefore this must be considered strongly at the outline planning stage.

Can you please consider all my points some which may not be applicable as I know there are only certain issues you take into account and refuse this application on the above grounds where necessary.

Objection Lynda Ahmed Rec – 15/02/2019

Dear Mr Blackledge I write to you again after looking at the local plan for Blackburn and Darwen, within the Accessibility and Transport policy "that development will only be permitted provided it has been demonstrated that road safety and the safe efficient movement of all highway users including refuse collections, pedestrians, cyclists and emergency vehicles are not prejudiced"well quite clearly this planning application bears no resemblance in terms of access/safety to your local plan policy.

I must state that this whole planning application is certainly objected to on the grounds of access and safety.

Objection Diane Hartley, 8 Chestnut Grove, Darwen Rec – 18/02/2019

RE: PLANNING APPLICATION 10/18/1153

Dear Mr Prescott,

I am writing to state my objections to the above planning application for 9 dwellings with detached garages on land adjoining Moorthorpe Cottage, Park Road, Darwen.

I object on the following grounds:-

- Access to the site is from a private road which runs parallel to Chestnut Grove. This road has two stone pillars at the entrance to it. The tops of the pillars overhang and restrict the width of the access. This is measured at 3.5m and is not sufficient for heavy goods vehicles or large construction vehicles. The road itself widens to approximately 3.7m, not the 4.8m as stated. Both sides of the road are lined with woodland, shrubs and decaying leaves, which due to the nature of the tree canopy, are never completely cleared no matter what the time of year. This leaves the road slippery and muddy at the edges. The road is already in a very poor state with potholes and large areas of tarmac worn away. I would also like to point out that as the road is narrow, there is insufficient room for a large vehicle or lorry and a car to pass side by side at any point on this road, as is stated in point 9 of the Highways and Technical Note Part 1. Neither are there any passing points on the road. Indeed, the weekly council refuse vehicle does not use this road to empty the bins of residents who already live there. Instead the residents leave their bins outside number 14 Chestnut Grove and they are pulled across the grass verge and emptied by the refuse collectors and left. If this road was easily accessible, why is Chestnut Grove being used? At the top of the road there is a 90° turn to the right which makes it very difficult, if not impossible, for large or long commercial vehicles to make this bend. This would also be the case for emergency vehicles such as fire appliances. The development would create a significant increase in traffic, and whilst the majority of the road is straight, there are no pavements or street lighting. This would increase the danger for

pedestrians which include children who walk along it to get to school.

- Ashleigh Primary School is very close to the entrance of the road. Traffic increases at the beginning of the school day and particularly at the end when most parents are waiting to collect children at the same time. I notice from the traffic survey carried out on 21/09/18 that 3.30pm, the end of the school day, was not included and would have indicated a more substantial increase in traffic and a significant amount of parked cars along Ross Street, Park Road and the surrounding streets. Also, because of the geography of the area, heavy goods vehicles would only be able to access the road from Park Road (which joins the A666, marked D), rather than travelling along Queens Road, right onto Park Road (marked A) and turning left through the stone pillars (this would not be possible due to the sharp and narrow turn).
 - In the Planning Statement, it states "All access will be via the existing drive off Chestnut Grove" (4.8) and "This will provide adequate visibility at the site entrance and the existing access road on Chestnut Grove is adequate to service 9 residential units" (6.1.3.3). This is not the case. There is no access to the site from Chestnut Grove. Chestnut Grove and Holly Tree Close are private roads which were recently resurfaced by the residents at their own cost.
 - The whole area marked for development as well as the area including Chestnut Grove and Holly Tree Close has a blanket TPO on them. As residents we were informed a number of years ago by the council about this, and reminded that we were not allowed to fell or cut back any of the trees. We have adhered to this, in fact this is one of the reasons we chose to live in this woodland area. Therefore I strongly object to the impact this development would have on the environment and on the number of trees that would have to be felled to accommodate it. This would affect local wildlife and I am sure would impact on the deer that we see in the woodland opposite Chestnut Grove, which clearly come down from the site area.
 - We are aware of more than one instance of the drains being blocked on the road and raw sewage running down the surface. A further housing development would increase the environmental health hazard and I would also question the viability of services to this site.
 - As referred to in the Lancashire Evening Telegraph, Blackburn with Darwen has already exceeded government and local targets on the number of houses needed to be built in the borough <https://www.lancashiretelegraph.co.uk/news/17326913.blackburn-with-darwen-borough-housing-starts-and-sales-on-the-rise/>. Therefore there is no need for further developments in this area.
-

REPORT OF THE DIRECTOR

Plan No: 10/19/0196

Proposed development: Variation/Removal of Conditions: Removal of Conditions No's 1 (temporary 12 month use) and 6 (prior notification of internment dates), and variation of Condition Nos. 2, 3, 4 & 5 to remove reference to 'temporary'; pursuant to planning application 10/17/1428.

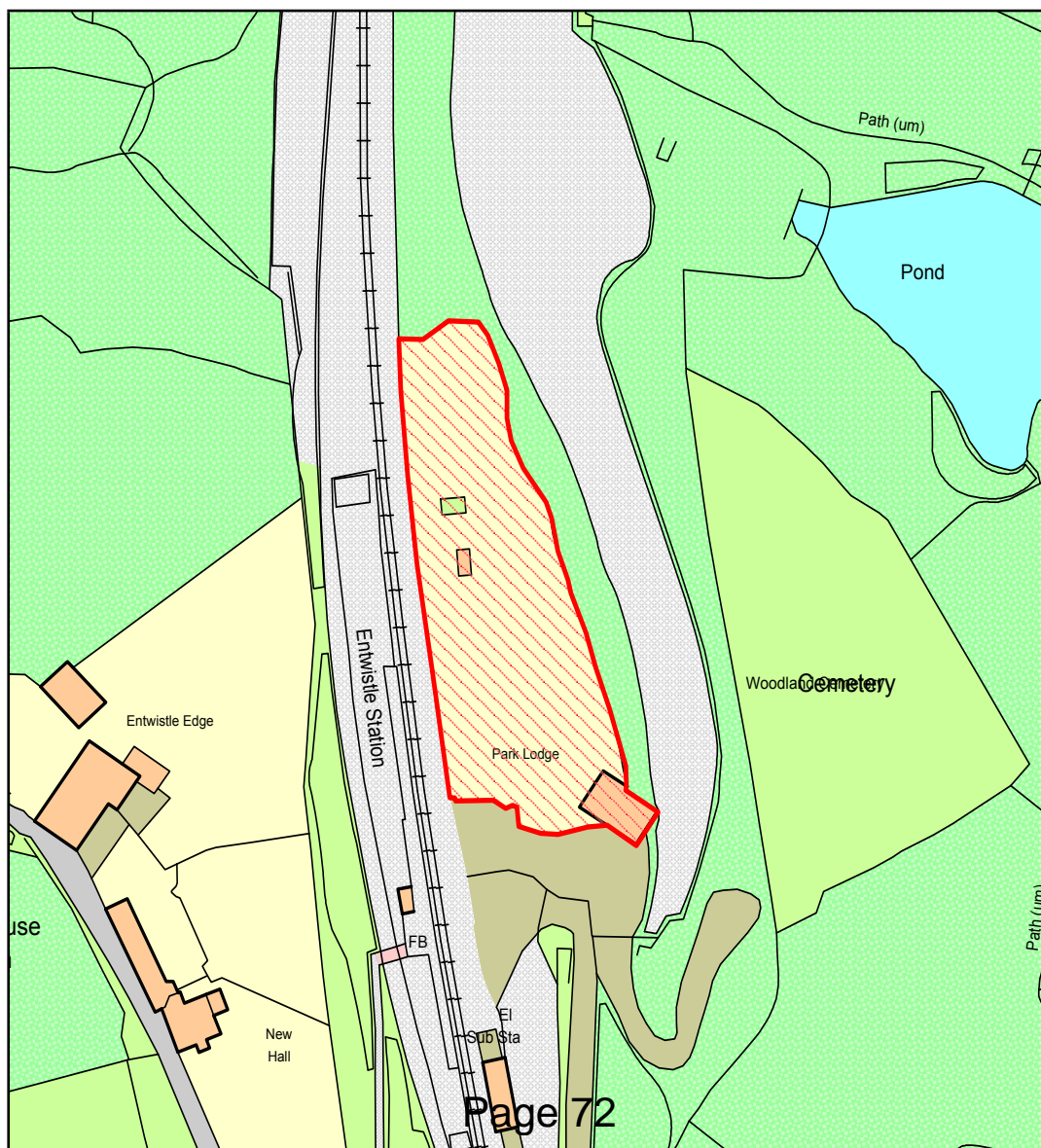
Site address:

**West Pennine Remembrance Park
Park Lodge
Entwistle Hall Lane
Edgworth
Bolton
BL7 0LR**

Applicant: Mr Christopher Gore

Ward: West Pennine

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



1.0 SUMMARY OF RECOMMENDATION

- 1.1 **Approve;** subject to conditions set out in paragraph 4.1 of this report.

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

- 2.1 The application is submitted under Section 73a of the Town and Country Planning Act 1990. It seeks to amend the original permission granted retrospectively for *Additional use of part of Woodland Cemetery for keeping / breeding of dogs. Retention of 3 no. related kennel buildings together with erection of 2 no. additional kennel buildings*, in March 2018 (ref. 10/17/1428), by way of removing the following conditions (nos. 1 & 6):

1. *The use hereby approved shall cease and the dog kennels shall be removed on or before 15th March 2019.*

REASON: In order that the effect of the development upon the amenities of the surrounding area can be assessed during this period, and that any future application can be decided on this assessment, in accordance with the National Planning Policy Framework and Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

6. *Written notification of an interment service shall be provided to the Local Planning Authority no later than 7 days prior to the service.*

REASON: In order to allow the Council the opportunity to assess the impact of the approved use during an interment service, to ensure appropriate safeguarding of the amenity of the surrounding area, in accordance within the National Planning Policy Framework and Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

A variation to the following conditions (nos 2, 3, 4 & 5) is also proposed to remove reference to 'temporary':

2. *Within 2 months of the date of this decision, the acoustic fence hereby approved shall be erected and retained for the duration of the temporary use period.*

REASON: In order to safeguard the amenity of the surrounding area, in accordance within the National Planning Policy Framework and Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

3. *Within 2 months of the date of this decision, the noise mitigation measures identified at paragraph 8.2 of the Supporting Statement shall be incorporated into the dog kennels hereby approved and retained for the duration of the temporary use.*

REASON: In order to safeguard the amenity of the surrounding area, in accordance within the National Planning Policy Framework and Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

4. The visually restrictive netting enclosure between the Paddock Area and the adjacent railway platform shall be retained for the duration of the temporary use hereby approved.

REASON: In order to safeguard the amenity of the surrounding area, in accordance within the National Planning Policy Framework and Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

5. Throughout the duration of the temporary use hereby approved, no more than 6 dogs shall be exercised at any one time within the Paddock Area. Exercise shall, at all times, be under the supervision of the Kennel Operators.

REASON: In order to safeguard the amenity of the surrounding area, in accordance within the National Planning Policy Framework and Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

- 2.2 The dog breeding use was commenced and kennels erected in May 2016 by full-time residents of Park Lodge; a building situated within the wider woodland park cemetery known as West Pennine Remembrance Park. The breeding activity relates to the commercial breeding of German Shepherd dogs which are supplied on an accredited basis to various police forces throughout the country. The dogs are kept exclusively in the kennels and not in the Park Lodge building.
- 2.3 Following the intervention of the Council's Planning Enforcement Team, in response to complaints from local residents alleging disturbance from barking dogs, authorisation was granted to take enforcement action by the Planning and Highway's Committee in July 2017. During the Member's site visit at that time, discussions were held with the applicant about the business. Enforcement action was subsequently held in abeyance pending pre-application advice offered as to the likelihood of regularising the use. The original application was submitted following receipt of the pre-application advice; notwithstanding the acknowledged issues it highlighted, particularly with regard to addressing noise disturbance.
- 2.4 At the time of the original submission, a total of 10 German Shepherd's were kept on site; consisting of 4no breeding bitches (aged 3-5 years), 5no adolescent bitches (aged 1 -2 years) and 1no. stud dog (aged 4).
- 2.5 The dog breeding programme is an accredited scheme certified by The Kennel Club; evidence of which has been provided. The programme requires bitches between the ages of 2 – 8 years. They are restricted to one litter per year – capped at 4 litters in a lifetime. In order to maintain a continuous breeding programme, certain puppies are retained and developed through to adolescence (6 months – 2 years), as part of the progressive breeding stock.
- 2.6 As a general principle, the successfully assessed puppies are taken at the age of 8 weeks by various Police Force Dog Units for further development and specialised training with 'retired' breeding bitches being re-homed in strict accordance with Kennel Club criteria. The specialist dog police dog breeding programme has historically been provided by each Force but recent financial

restraint has led to either the closure or scaling-down of in-house breeding and the resultant reliance on out-sourcing to specialist breeders.

- 2.7 The 5no. kennels provide for the age cycle development of dogs from puppies through to adolescence to breeding bitches with capacity for both whelping and medical isolation when required.
- 2.8 The key issues addressed in assessment of the original proposal were:
- Principle of the development, in the context of its Green Belt location
 - Noise impact on the Woodland Cemetery and nearby residential uses
 - Accessibility and transportation
 - Design
- 2.9 The principle of the proposal was established as acceptable through the original application process; insofar as the development was not considered to be inappropriate development within the Green Belt, on account of the sites brownfield status. The key assessment originally was the noise impact from barking dogs, in recognition of the potentially harmful impact to the surroundings; particularly the tranquillity of the Remembrance Park and nearby dwellings. The proposal was considered in this context and proportionate weight was applied to the likely effectiveness of the proposed noise mitigation. Given the absence of sufficient evidence that noise from the proposal will not prove excessively harmful to the surroundings and evidence to the contrary it was considered reasonable to apply a temporary 12 months permission, to allow the Council the opportunity to monitor the use over this period to establish whether or not generated noise was harmful to the surroundings and whether a permanent permission could, therefore, be supported. A condition requiring prior notification to the Authority of interment services was also applied, to allow an officer presence on site to monitor noise from the kennels during the most noise sensitive times, as a result of heightened nearby presence. Accordingly, a council officer attended on the following dates:
- 9th April 2018
 - 18th April 2018
 - 26th April 2018
 - 27th April 2018
 - 19th July 2018
 - 31st January 2019
 - 12th February 2019
 - 28th February 2019

The officer did not encounter excessive noise levels from within the application site on any of these visits. Noise witnessed was deemed to be very minor and barely audible from the nearest noise sensitive uses; considered to be the Remembrance Park and nearest residential properties. Consequently, the proposal is considered evidentially acceptable, in that it will not expose persons attending the Remembrance Park or local residents to excessive noise disturbance from barking dogs.

- 2.10 The proposal is otherwise deemed acceptable in terms of design and accessibility / transport; in accordance with The Framework, the Council's Core Strategy and Local Plan Part 2 policies; as per the original assessment.

3.0 RATIONALE

3.1 Site and Surroundings

- 3.1.1 The application site of 0.25 hectares accommodates an open paddock area and Park Lodge building. It is situated to the east of the Blackburn to Bolton railway line and to the west of the operational woodland cemetery. The confines of the application site and the cemetery are collectively known as the West Pennine Remembrance Park. The Park is privately owned and offers a choice of final resting ground for burial, interment or scattering of ashes. It is recognised as a place offering a scenic environment for remembrance and peaceful reflection.
- 3.1.2 The application site is defined by a mature tree belt along its eastern length, which separates it from the Woodland Cemetery and a tree belt to west, which lines the edge of the railway embankment. The site is accessed from Entwistle Hall Lane, to the east of the railway bridge.
- 3.1.3 The Remembrance Park lies outside of the urban boundary and is located with an area of open countryside designated as Green Belt; in accordance with the Site Allocations Map of the adopted Local Plan Part 2.
- 3.1.4 The application site does not provide for public access and, in this sense, is detached from the Woodland Cemetery. The site is also recognised as former railway goods sidings and, as such, features ground conditions that are stone based and unsuitable for future expansion of the established cemetery area.

3.2 Proposed Development

- 3.2.1 Removal of and variation to conditions applied to the original permission granted retrospectively for the: *Additional use of part of Woodland Cemetery for keeping / breeding of dogs. Retention of 3 no. related kennel buildings together with erection of 2 no. additional kennel buildings* in March 2018 (ref. 10/17/1428); as set out in paragraph 2.1.

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, the adopted Local Plan Part 2 – Site Allocations and Development Management Policies and the Darwen Town Centre Conservation Area SPD. In determining the current proposal the following are considered to be the most relevant policies:

3.3.3 Core Strategy

- CS1 – A Targeted Growth Strategy
- CS11 – Facilities and Services
- CS14 – The Green Belt
- CS16 – Form and Design of New Development
- CS18 – The Borough's Landscapes

3.3.4 Local Plan Part 2

- Policy 3 – The 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 41 – Landscape

3.4 **Other Material Planning Considerations**

3.4.1 National Planning Policy Framework (The Framework).

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

3.4.2 Consistent with Local Plan Part 2 Policy3; Chapter 13 of The Framework sets out the principles of the protection of Green Belt. Paragraph 123 of the superseded Framework, against which the original proposal was assessed, emphasised that decision making should identify and protect areas of tranquillity. The current Framework (February 2019) references tranquillity only in the context of Local Green Space designation, which is not applicable to the current assessment.

3.5 **Assessment**

3.5.1 Notwithstanding the original full assessment, Members are advised that assessment of this application is limited to the impact of noise generated from barking dogs and the extent of its impact on the Remembrance Park and local residents; in order to consider the merits of supporting a permanent use of the site.

3.5.2 Over a 12 months period, a Council Planning Enforcement officer has attended the site during interment services, on the aforementioned dates set out in paragraph 2.9. Audible noise levels on each occasion were considered to be sufficiently minor so as to considered non impactful on attendees of the Remembrance Park or on residential amenity.

- 3.5.3 The Council's Public Protection consultee has previously visited the site, in response to complaints from local residents. Although insufficient evidence has been obtained to support statutory noise nuisance action, under the provisions of the Environmental Protection Act 1990, the consultation response to this application has expressed concern that the evidence currently available does not support a permanent use. This position is founded on the inability to undertake a full assessment of the proposal, on account that two of the approved kennels are yet to be erected and another is not currently used for housing dogs. The applicant has provided a rebuttal citing that the purpose of the monitoring was based, principally, upon the number of dogs kept at the site, together with the noise mitigations and management conditions set out in paragraph 2.1, rather than the actual number of kennel buildings, since it is the dogs that generate the noise and not the kennels buildings.
- 3.5.4 In this context, the Noise Assessment undertaken at the time of the original application should be acknowledged. The assessment was based on an identified occupancy of 19 dogs. The applicant asserts that occupancy levels of the kennels has been between the range of 17 – 20 dogs throughout the 12 month monitoring period; consistent with the applicants license for 20 dogs. Although dog numbers were lower at the time of an officer site inspection for the purpose of this current application, it is not contested that numbers have generally fallen below the 17 – 20 range during the monitoring period.
- 3.5.5 It should also be recognised that assessment of 'dog noise' is difficult to quantify; in the absence of any definitive guidance on the subject. For this reason, the 12 month monitoring period was considered appropriate.
- 3.5.6 A recent planning appeal decision is also of interest to this assessment. It relates to dog boarding kennels in Hampshire, in which the Inspector commented that, *if 20 dogs bark in unison, they would only be slightly louder than ten dogs barking in unison, not twice as loud as one might assume* (extracted from DCS No. 400-020-838).
- 3.5.7 Taking into account all of the aforementioned and having due regard to the merits of the police dog training programme that was afforded weight in support of the original permission, it is considered, on balance, that a permanent use of the site should be supported, through removal and variation of the stated conditions. It is also considered prudent and reasonable to apply further conditions; limiting occupancy of the kennels to a maximum of 20 dogs and to restrict the use to police dog training only.
- 3.5.8 It should also be reinforced that a permanent planning permission does not affect noise protection rights afforded by the statutory provisions of the Environmental Protection Act 1990.
- 3.5.9 Summary
This report assesses the Section 73a planning application for the removal / variation of the aforementioned conditions applied to the proposed breeding use / kennels. In considering the proposal, the principle material

consideration of noise impact has been taken into proportionate account, to inform a balanced recommendation.

4.0 RECOMMENDATION

4.1 **Approve** – Subject to removal of condition nos. 1 & 6; variation of condition nos. 2, 3, 4 & 5 (as set out above); reinstatement of conditions 7, 8 & 9; as follows:

- The Paddock Area shall not be used for the exercise of dogs at any time during an interment service.
- Exercise of dogs shall only take place within the Paddock Area between the hours of 07:00 hours and 22:30 hours daily.
- This consent relates to the submitted details marked received on 24th November 2017, including the Supporting Written Statement, Noise Assessment and drawings numbered P1738/17/01 and P1738/17/02; and Application of the following additional conditions:
 - Restricting occupancy of the kennels to a maximum of 20 dogs
 - Limiting use of the kennels to police dog breeding.

5.0 PLANNING HISTORY

5.1 The following planning applications relate to the application site:

- 10/99/0123: Change of use to Woodland Cemetery.
- 10/11/1211: Improvements and extension of existing Reception Building.
- 10/14/0731: Change of use of Reception Building to include residential accommodation for park overseers.
- 10/17/1428: Retrospective application for additional use of part of Woodland Cemetery for keeping / breeding of dogs. Retention of 3 no. related kennel buildings together with erection of 2 no. additional kennel buildings.

6.0 CONSULTATIONS

6.1 Public Protection

Concern expressed that the available evidence does not support a permanent use. Recommended conditions in the event of an approval;

- Restricting occupancy of the kennels to a maximum of 20 dogs
- Limiting use of the kennels to police dog breeding.

6.2 Turton Parish Council

Objection to the noise levels and consequential disturbance to the tranquillity of the Remembrance Park.

6.3 Public consultation has taken place, by display of three site notices. One representation was received which is shown within the summary below.

7.0 CONTACT OFFICER: Nick Blackledge, Planner Officer - Development Management.

8.0 DATE PREPARED: 9th May 2019.