

Public Document Pack

Planning and Highways Committee

Thursday, 17th December 2020

6.30 pm

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Date Published: Wednesday, 09 December 2020
Denise Park, Chief Executive

PLANNING AND HIGHWAYS COMMITTEE

Thursday, 19 November 2020

PRESENT – Councillors, David Smith (Chair), Akhtar, Casey, Khan, Khonat, Hardman, Slater, Jan-Virmani, Oates, Riley, Browne, Harling and Marrow.

OFFICERS – Gavin Prescott, Safina Alam, Michael Green, Paul Withington and Shannon Gardiner

RESOLUTIONS

27 Welcome and Apologies

The Chair welcome everyone to the virtual meeting.

There were no apologies received.

28 Minutes of the Previous Meeting

RESOLVED – That the minutes of the previous meeting held on 15th October 2020 be confirmed and signed as a correct record.

29 Declaration of Interest

RESOLVED – There were no Declarations of Interest received.

30 Planning Applications for Determination

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

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

30.1 Planning Application 19/1229

Speaker – Mr R Maudsley (Agent)

Applicant - PHG Contracting Limited

Location and Proposed Development – HGV Garage to the rear of Perseverance Mill, Industry Street Darwen BB3 3DQ

Full Planning Application for Change of Use from HGV yard and garage to PHG Contracting Yard with associated workshop/store building and offices (Use Class B2/B8).

Decision under Town and Country Planning Acts and Regulations –

RESOLVED – Approved subject to the conditions highlighted in the Director’s Report

30.2 Planning Application 20/0415

Speaker – (Cllr) John Slater

Applicant – Mr G Bird

Location and Proposed Development – 8 Church Street Darwen BB3 2RE

Alterations to front elevations including change of window frames. Internal alterations to fit out pub/restaurant, new door opening to accommodate entrance to the rear. Alterations to rear yard to form outdoor decking/lighting and seating along with a bin storage area.

Decision under Town and Country Planning Acts and Regulations –

RESOLVED – Approved subject to the conditions highlighted in the Director's Report

30.3 Planning Application 20/0453

Speaker – Mr Chris Weetman (Agent)

Applicant – Mr Simeon Stuttard

Location and Proposed Development – The Arches Cafe, 581-583 Preston Old Road Blackburn BB2 5HD

Variation/Removal of Condition/Minor Material Amendment for Variation of Conditions pursuant to planning application 10/18/0417; no. 1 (Amend Approved Drawings) to seek retrospective permission for the raised decking and fencing to the front of the premises; No. 3 (Hours of Opening) to amend the opening hours so that the premises will not open to the public outside the following hours: Monday to Saturday 08:00 to 18:00 hours and on Sundays and Bank Holidays: 10:00-19:00 hours; and removal/ variation of condition no. 6 restricting no more than 8 people at any one time to allow 12-16 seats (3-4 tables) externally.

Decision under Town and Country Planning Acts and Regulations –

RESOLVED – That the Committee approved the split decision subject to the conditions highlighted in the Director's report and the Update report on the following grounds:

- Allow the variation of condition 1 relating to the approved plans to allow the retention of the boundary fencing and raised decking;
- Allow the proposed variation Condition No.3 relating to the opening hours Monday to Saturday for a temporary two-year period;
- Allow the variation proposed to the Sunday opening hours for a temporary two-year period;
- Add the following condition restricting the use of the outside seating area to the existing opening times:

The outside seating area shall not be used outside the hours of Monday to Saturday 08:00 - 16:00 and, Sundays and Bank Holidays 10:00 - 18:00.

REASON: To protect the amenities of the occupants of nearby residential properties in accordance with Policy 8 of the Blackburn with Darwen Local Plan Part 2.

- Refuse the removal of Condition 6.

30.4 Planning Application 20/0459

*Speaker – Mr Joseph Parkins (Agent)
(Cllr) John Slater*

Applicant – Mr Dominic Holmes

Location and Proposed Development – 1A Church Bank Street Vacant Land to NE (side) of Cin Cin Darwen BB3 3HA

Change of Use of Vacant land to A4 use Classification including erection of pergola, shipping container and other associated alterations

Decision under Town and Country Planning Acts and Regulations –

RESOLVED – Approved subject to the conditions highlighted in the Director's Report and the amended conditions in the Update Report.

30.5 Planning Application 20/0464

Applicant – Mr John Czutkwona

Location and Proposed Development - Wayoh Barn Blackburn Road Edgworth Bolton BL7 0PZ

Approval of Reserved Matters for appearance, landscaping, layout and scale for 5no. dwellings, pursuant to outline permission 10/18/0183.

Decision under Town and Country Planning Acts and Regulations –

RESOLVED – Approved subject to the conditions highlighted in the Director's Report and Update Report

31 Petition regarding Full Planning Application for the proposed erection of four number dwelling houses, made up of two semi-detached properties on vacant land off Accrington Road, Blackburn

To inform Members of the receipt of the petition received relating to Full Planning Application for the proposed erection of four number dwelling houses, made up of two semi-detached properties on vacant land off Accrington Road, Blackburn.

One petition containing 33 names and addresses objecting to the proposed development was received on 05th November 2020. The reasons against the proposal are as follows;

- Highway safety concerns as a result of the increase the volumes of traffic and increased parking requirements;

- Loss of on-street parking for local residents;
- The potential for disruptions during the construction phase;
- Safety concerns may arise for children given losses of open space;
- The thought of the proposal is causing worry for residents.

Members were informed that the Planning Application had since been withdrawn.

RESOLVED – That the petition be noted.

32 Swan Farm Close - Claim Footpath Rights

A report was submitted to Members for a decision on an application to add a Public Footpath to the Definitive Map and Statement via a Definitive Map Modification Order (DMMO) at Swan Farm Close, Lower Darwen.

The application route was not recorded on the Definitive Map (the legal record of Public Rights of Way) as a Public Footpath. In 2015, the Council received an application for a Definitive Map Modification Order to add the route of the footpath to the Definitive map and statement. The applicant believes that the route is incorrectly recorded on the Definitive Map and that it is historically a footpath. The applicant has submitted a quantity of historical documentary evidence along with a written submission. The application was further supported by a quantity of user evidence.

The Council has a duty to process the application and determine whether or not sufficient evidence exists to ‘make’ a DMMO, or if the application should be refused.

RESOLVED - To Promote the Definitive Map Modification Order (DMMO) at Swan Farm Close, Lower Darwen and support the application.

Signed:

Date:

Chair of the meeting
at which the minutes were confirmed

DECLARATIONS OF INTEREST IN ITEMS ON THIS AGENDA

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

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

MEETING: **PLANNING AND HIGHWAYS COMMITTEE**

DATE:

AGENDA ITEM NO.:

DESCRIPTION (BRIEF):

NATURE OF INTEREST:

DISCLOSABLE PECUNIARY/OTHER (delete as appropriate)

SIGNED :

PRINT NAME:

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

Material Consideration

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

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

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

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

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

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

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

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

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

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

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

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

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

Reasons for Decision

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

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



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: 17/12/2020

Application No	Applicant	Site Address	Ward
Application Type			
10/20/0784			
Mr Dominic Holmes Cin Cin 1A Church Bank Street Darwen BB3 3HA		Cin Cin 1A Church Bank Street Darwen BB3 3HA	Darwen East
Full Planning Application (Retrospective) for Regularisation of door and retractable canopy to side elevation (retrospective)			

RECOMMENDATION: Permits

10/20/0828			
Doctor Imran Ali 29 Briony Avenue Hale WA15 8PY		3 Vincent Court Blackburn BB2 4LD	Blackburn South & Lower Darwen Ewood
Full Planning Application for Erection of single storey extension to the side of the existing property to form supported living space. New detached outbuilding to the rear to form gym for service user use.			

RECOMMENDATION: Permits

REPORT OF THE DIRECTOR

Plan No: 10/20/0784

Proposed development: Full Planning Application (Retrospective) for Regularisation of door and retractable canopy to side elevation

Site address:

**Cin Cin
1A Church Bank Street
Darwen
BB3 3HA**

Applicant: Mr Dominic Holmes

Ward: Darwen East

**Councillors: Jane Oates
Paul Browne
Roy Davies**



1.0 SUMMARY OF RECOMMENDATION

1.1 APPROVE – subject to the conditions detailed within section 4.1 of this report

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

2.1.1 This application is before the Committee due to the public interest in the case, including the receipt of 3 letters of objection, in accordance with the Chair Referral Process as part of the Scheme of Delegation.

2.1.2 The retrospective development assimilates appropriately with the host building and would amount to less than substantial harm to the Darwen Town Centre conservation area within which the premises is positioned. The proposal is also consistent with economic and environmental objectives of sustaining viable town centres with regard to the protection and expansion of the leisure offer and development of an evening economy.

2.1.3 Accordingly, the proposal is consistent with the Borough's overarching growth strategy. It 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 located off Church Bank Street in the centre of the Darwen Town Centre Conservation Area, which was originally designated in 1996 and extended in 2005. The character of the area is principally made-up of commercial properties; primarily retail and leisure with shops, pubs, bars and restaurants. Towards the eastern end of Church Street is St. Peter's Church and beyond that at the eastern and northern edge of the conservation area the character changes and becomes largely domestic with stone fronted terraced houses laid out in a recognisable grid pattern.

3.1.2 1A Church Bank Street is a two-storey, stone constructed property dating from the late C19. The property is in use as a drinking establishment. The principle elevation fronts Church Bank Street and incorporates the main entrance and bi-folding doors at ground level and a large window detail with patio doors and glass balustrade detail at first floor. The existing openings are framed in anthracite coloured, powder coated aluminium. The exposed side elevation is faced with coloured render and has three windows at first floor level and a door at ground floor level that provides access for staff to the rear of the bar.

3.2 Proposed Development

- 3.2.1 Retrospective planning permission is sought for the erection of a retractable canopy and the insertion of a new glazed door to the side elevation. The door is constructed with anthracite powder coated frame to match the other openings within the building.



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
- CS16 – Form and Design of New Development
- CS17 – Built and Cultural Heritage

3.3.4 Local Plan Part 2

- Policy 8 – Development and People
- Policy 10 – Accessibility and Transport
- Policy 11 – Design
- Policy 39 – Heritage

3.4 Other Material Planning Considerations

3.4.1 National Planning Policy Framework (The Framework)- 2019

- Section 2: Achieving sustainable development
- Section 6: Building a strong, competitive economy
- Section 7: Ensuring the vitality of town centres
- Section 12: Achieving well-designed places
- Section 16: Conserving and enhancing the historic environment

3.4.2 Darwen Town Centre Conservation Area Appraisal

3.5 Assessment

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

- Principle of the development
- Amenity impacts
- Design impacts
- Heritage impacts
- Highway impacts

3.5.2 Principle

As a site located within the Inner Urban Area of Darwen and Darwen Town Centre, designated as a Primary Shopping Area, the proposal is consistent with the Policies CS1 and CS16 of the Development Plan which state that the urban area is the preferred location for new development.

3.5.3 Policy 26 supports development involving main town centres uses within the town centres. Restaurants and cafes are defined as such in the Development Plan Glossary, which is consistent with the definitions offered for such uses in The Framework. Furthermore, Policy 26 supports protection and expansion of the leisure offer within town centres and development of an evening economy, including restaurants and cafes.

3.5.4 Accordingly, given the proposals are intended to support the existing authorised commercial use of the building, the principle of the development is supported, in accordance with policies CS1, 1 and 26 of the Development

Plan. It is also consistent with The Framework's economic and environmental objectives of sustaining viable town centres.

3.5.5 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, vibration, odour, light, dust, other pollution or nuisance, privacy / overlooking, and the relationship between buildings.

3.5.6 The proposal poses no undue concerns with reference to privacy / overlooking or relationship between buildings.

3.5.7 The most significant element for Members to consider relates to the insertion of the new door opening within the side wall of the building and the potentially adverse impact of this upon the amenity of surrounding commercial and residential uses due to noise.

3.5.8 Objections to the scheme are set out in full within section 9 of this report. They originate from both commercial and residential premises and principally raise concerns with noise/music emanating from the building due to the side door being left open.

3.5.9 The Council's Head of Public Protection has appraised the application and advised that the main consideration is the potential for noise emanating from the new door opening to conflict with the amenity of surrounding uses that include residential properties. It is advised that;

"The music noise level needs to be controlled to minimise loss of amenity at premises in the locality. The approved opening hours extend to 02:00 hours at the weekends when local residents can be expected to be sleeping. The Cin Cin is a small bar which restricts the practicability of noise control measures that would normally be considered, most notably sound proofed double doors at entrance/exit doorways to contain noise within the bar. I understand that the additional door, which is the subject of this application, has been installed to facilitate a one-way system within this small bar to assist with customer distancing essential for Covid secure business operation. I recommend that the music noise level in the bar is restricted to a background level to ensure that amenity is preserved in the locality."

3.5.10 Two planning conditions have been suggested by the Public Protection team in order to preserve the amenity of surrounding uses and to directly address concerns set out within the public objections;

- The door must be kept closed except when in use to enter/exit the bar. It must be fitted with a suitable door closer device to ensure that it closes promptly after use.

- Music played at the ground floor bar shall be restricted to background levels and must not exceed 60dB LAeq (1minute).

3.5.11 These matters have been raised with the applicant's agent who has offered agreement to the introduction of a door closure mechanism, subject to the revised wording of the condition as set out within section 4.1 of this report. As such, that element is agreed.

3.5.12 Conversely, the applicant has indicated that they are unwilling to accept the condition to limit background music volume within the bar as they believe that the condition is unreasonable and would not meet the test for planning conditions set out within the national planning practice guidance (NPPG). The justification for this position includes;

- The extant planning permission for the bar (10/15/1552) does not include any condition to restrict noise emanating from the bar. There are several existing regularised openings at the premises, which were clearly depicted on the plans for 10/15/1552; the approved plans included one door, two velux windows and two windows that would all be in closer proximity to residential dwellings than the door that is the subject of this retrospective application. The retrospective door would therefore not significantly affect noise.
- Planning approval 10/15/1552 included zero conditions relating to noise mitigation, only to opening hours. I would emphasise that this application relates only to provision of a door, not to the use of the premises as a bar.
- Paragraph 55 of the NPPF states "planning conditions should be kept to a minimum and only imposed where they..." meet the 6 tests, as set out in the NPPG. Paragraph 005 (reference ID 21a-005-20190723) of the NPPG states that "any condition that fails to meet one of the six tests should not be used."

3.5.13 Members are advised that the agent's response has validity. Furthermore, given the acceptance of a door closure mechanism condition and the additional controls available through the Council's licensing of the premises and statutory noise nuisance legislation it can be considered that adequate controls will be in place to safeguard amenity standards.

3.5.14 Accordingly, subject to the suggested condition regarding door closure, as detailed in section 4.1 of this report, compliance with Policy 8 is achieved.

3.5.15 Design / Heritage

Policy 11 requires a good standard of design that should 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. Policy 39 requires development with the potential to affect designated or non-designated heritage assets to sustain or enhance the significance of the asset. In this context, the proposal is supported by submission of a Heritage Statement.

3.5.16 The principle statutory duty under the Planning (Listed Building and Conservation Areas) Act 1990 is to preserve the special character of heritage assets, including their setting. With reference to Conservation Areas, LPA's should pay special attention to the desirability of preserving or enhancing the character or appearance of that area and consider the impacts on character and appearance (which includes its setting) separately. Development proposals need to satisfy both aspects (to preserve or enhance) to be acceptable.

3.5.17 The Framework includes direction that LPA's should take account of;

- The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- The desirability of new development making a positive contribution to local character and distinctiveness.

P.193 states that when considering the impact of proposals on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be applied. This is irrespective of whether any harm is identified as being substantial, total loss or less than substantial harm to its significance.

P.196 identifies that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

3.5.18 *Policy CS16: Form and Design of New Development* requires new development to be of a high standard of design, and to respect and reinforce local character. Particular attention must be paid to all of the following:

- i. Character
- ii. Townscape
- iii. Public realm
- iv. Movement and legibility
- v. Sustainability
- vi. Diversity
- vii. Colour

Development in prominent locations, in areas of major change and on transport gateways will be required to demonstrate particularly high standards of design.

3.5.19 The application is supported by a heritage statement. The submission advises that;

“The proposed design has taken reference from the wider context and will make a positive contribution to the area. The character in the immediate vicinity of the application site has been somewhat compromised and the proposal will help to create a sense of identity for Church Bank street. The development is proportionate and respects local scale. The development is hence compliant with Policy 11 of the Local Plan.

The development improves the distinctiveness of the immediate vicinity whilst preserving the character of the Conservation Area (CA) and enhancing the locality. There will be no harm to any listed building or building that makes a positive contribution to the Conservation Area, thus the proposal accord with Policy 39.

The applicant has demonstrated an ambition to invest in creating a high quality environment to positively contribute to the locality and there are few other high end bars within Darwen Town Centre therefore the proposal would represent the optimum use of the site (NPPF 196). Any perceived harm to any heritage Assets could not be considered as ‘substantial’; therefore, even if Council officers were of the opinion that the proposal could cause harm to a heritage asset, the proposal should be considered in the context of policy 196 of the NPPF.

The proposed development will “preserve and enhance the significance of the Conservation Area” and will make a positive contribution to local character and distinctiveness, hence according with 192(a & c) of the NPPF. The proposal comprises sustainable development and should be approved without delay (NPPF 38).”

3.5.20 The submitted details have been reviewed by the Council’s Heritage and Conservation consultee, who offered the following comments:

“The application is a retrospective application for the erection of a retractable canopy and the insertion of a new door to the side elevation that overlooks Bath Street, a street that is now primarily used as a service area for the adjoining businesses and runs parallel to a row of terraced houses along Victoria Street. This east-facing elevation of the property is fairly plain with few features and little historical interest.

The application however fails to explain the reason for the changes. The heritage statement is rather limited and does not provide any assessment of how the proposal will affect the conservation area or if there is harm, how this will be mitigated.

Although I have not seen the awning open, because of its location (on the side of the property) I do not feel the changes to the building, including the new doorway, necessarily affect the character or appearance of the building or the

wider CA. In this respect the significance of the Darwen Town Centre CA remains un-harmed.

I feel the proposal meets the statutory duty to preserve required by the Planning (Listed Building and Conservation Areas) Act 1990, and conforms to the planning guidance contained in Chapter 16 of the NPPF and the Blackburn with Darwen Borough Council Core Strategy.”

3.5.21 Accordingly, it is considered that the retrospective additions assimilate appropriately with the host building and less than substantial harm to the Darwen Town Centre conservation area has been identified. Compliance with local plan policies 11, 39 & CS16 and chapter 16 of the NPPF is therefore achieved.

3.5.22 Highways:

Policy 10 of the Local Plan Part 2 deals with accessibility and transport issues. Amongst other considerations, development will be permitted by Policy 10 where it has been demonstrated that the safe, efficient and convenient movement of highway users is not compromised

3.5.23 The new door opening fronts a section of back street that serves the rear of properties on Bridge Street. The awning is retractable, though when unfurled it will over-sail the back street at a height of circa 2.8m.

3.5.24 The public objections, as set out at section 9.0 of this report, include issues relating to the blocking of the back street by bins, tables, chairs and privacy screen. Those concerns are noted, though Members are advised that given the objects are not fixed, then they do not amount to development and are not elements under consideration within this application. Rather they are issues for management by the local highway authority separate to any assessment here. The following site photograph shows the back street in question.



3.5.25 The Council's highway officer has offered no objection to the application subject to the new door opening inwards and the awning's height not exceeding 2.1m above ground level in order to avoid any obstruction of movement of pedestrians or vehicles along the back street.

3.5.26 Members are advised that the proposals are consistent with the requirements set out by the highway officer and on that basis compliance with Policy 10 of the Local Plan is achieved.

3.5.27 Summary

This report assesses the full range of material issues affecting this planning application to inform a balanced recommendation that demonstrates compliance with the Development Plan and The Framework.

4 RECOMMENDATION

4.1 Approve, subject to a condition relating to the following matter:

1. Within 2 months of the date of this approval a self-closing mechanism shall be installed to the new side door, as detailed on drawing CC4.20-X202, received 24th August 2020. The mechanism shall thereafter be retained
REASON: To safeguard the amenity of surrounding uses and the area generally, in accordance with the requirements of Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2

2. Unless explicitly required by condition within this consent, the development hereby permitted shall be carried out in complete accordance with the proposals as detailed on drawings:
Plans and Elevations: CC4.20-X202, received 24th August 2020

REASON: For the avoidance of doubt and to clarify which plans are relevant to the consent.

5 PLANNING HISTORY

5.1 10/20/0459 – Full Planning Application: Change of Use of Vacant land to A4 use Classification including erection of pergola, shipping container and other associated alterations (Approved November 2020)

5.2 10/20/0608 – Certificate of Lawfulness: Temporary use of the land for outdoor drinking area (Approved August 2020)

5.3 10/15/1152 – Full Planning Application: Change of use from Office (B1) and Residential (C3) to drinking establishment (A4) involving modifications to front facade and internal alterations (Approved March 2016)

6 CONSULTATIONS

6.1 Heritage & Conservation

Subject to obtaining satisfactory details of the awning, I feel the proposal meets the statutory duty to preserve required by the Planning (Listed Building and Conservation Areas) Act 1990, and conforms to the planning guidance contained in Chapter 16 of the NPPF and the Blackburn with Darwen Borough Council Core Strategy.

6.2 Public Protection

No objection subject to the following conditions:

- Music played at the ground floor bar shall be restricted to background levels and must not exceed 60dB LAeq (1minute).
- The door must be kept closed except when in use to enter/exit the bar. It must be fitted with a suitable door closer device to ensure that it closes promptly after use.

6.2 Environmental Services

No objection

6.3 Public Consultation

In accordance with the provisions of the Procedure Order, 8 neighbouring premises have been consulted by letter, a site notice displayed and press notice issued. 3 letters of objection have been received and are set out within section 9 of this report.

6.4 Highways:

No objection subject to confirmation that the new door opens inwards and the retractable awning has a height no lower than 2.1m above ground level

7 CONTACT OFFICER: Martin Kenny, Principal Planning Officer – Development Management.

8 DATE PREPARED: 4th December 2020.

9 SUMMARY OF REPRESENTATIONS

Objection Mr & Mrs Arnold. Rec- 09/09/20

Application Reference CIN CIN 1A CHURCH BANK ST 10/20/0784

I forwarded the email below early July and like to include it as part of the objection to the above proposal

As a retrospective application has now been made with regards to the above I wish to object for the following reasons.

It has added to the noise issue and had a negative impact on the residentials on Bath St as it has shifted the activity which was once at the front of the bar now down the back alley and noise even closer to our building.

Tables and chairs are being placed down there encouraging gatherings down the alley, attached to the wall is also a wind out canopy for shelter which has contributed to the issue and has been there for quite some time now the highway being used as an extension of the bar (although with the newly installed ballards they could use the space at the front of the bar instead).

The tenants in the shops which need access to their business at all hours and especially during working hrs are unable to access the alley to load and off load stock as it is permanently blocked by Cin Cin either having table and chairs out or using it as a parking space. Although he could easily use the car park which he owns and has no reason to park a vehicle down there but chooses to do so.

The bins which are kept in the alley and are being emptied in the early hours of the morning 2am onwards this is causing issues as one of the residentials bedroom is above were these bin are left not only by Cin Cin but also by the Artisan. My tenant politely asked the manager at the Artisan if possible to leave it until the morning to empty the bottle bins his response was to swear at her instead and tell her to go away.

Can you also please take into account that Cin Cin and artisan both have large bins which need to be housed somewhere and not just left in the road. Not only do they look unsightly but are a health and safety issue on a regular basis bottles are taken out and smashed in the road by kids which hang around the area and have been caught trying to set them on fire on various occasions. We have provided housing for the bins for our residentials and commercial properties which were included in our plans and these bins are kept within the property yards, can a similar solution be sought or encouraged. |

Objection – Lee Arnold. Rec – 15/09/20

Following on from previous emails in the week and conversations.

This is Saturday 12th September at 10am. My tenants are unable to access the back alley. I'm still not clear why these tables and chairs can't be at the front entrance of the Cin Cin bar or on the space which was the car park that Mr Holmes owns? Why would you block this alley and make it difficult for other businesses around you??

This is the situation when the bar is open and there is a bigger screen which goes up later in the day as per attached photos, this has been purposely built to fit from wall to wall. Can be seen on the pictures attached. The only way to access the alley when this is in place is to enter through cin cin and via the cut out door in it. When this doorway first appeared it was reported to Martin Kenny and planning enforcement and his reply was he couldn't foresee why this would cause any access issues. Now that we have an issue of a completely blocked road it needs addressing as soon as possible. This is not acceptable

The ladies in the boutique were unable to unload this morning's stock which has been in their car since yesterday evening. She was unable to gain access to unload last night because of the situation (as per attached photos). I'm out of suggestions for them. We now face a very real threat of our tenants looking for alternative business premises due to their growing frustration of this ridiculous situation.

Mr Holmes is unapproachable with regards to this and has verbally abused myself and the ladies running the boutique on separate occasions. Other than ringing 101 to see whether the police can ask him to unblock the access, I really don't know what else to do. We raised this at the beginning when the door initially appeared out of the blue. We expressed concerns that by temporarily allowing this door way that this would happen. We are now in the situation that we are unable to contact anyone at the weekend, we are extremely upset that although we tried to prevent this early on and give you fair warning of his intentions you still allowed it to get to this position

Hope this can be resolved soon.



Objection – Edwin Ainsworth Ltd Funeral Directors, Church Bank Street, Darwen. Rec-15/09/20

With regards to the doors that have been fitted on the side elevation of the Cin Cin Bar .

When you came to a site visit to the Cin Cin Bar, it was said that no outside music would be played and the double doors that he has installed would be shut, so internal music would not travel.

This over the last couple of months has been a complete Joke... the music is loud and these doors are kept open constantly. (no matter what he says). At times it's very unpleasant and we have had to apologise to the families that we have been dealing with.

I realise, it's highly unlikely that you are going to tell him to brick it up and just use his front door, but, even if he says he will shut the doors and keep them closed at certain times, this will not happen.

I will have to keep apologising to our families and hope that I don't lose too many of them because of this issue.

If his operation was kept indoors completely, then we would not be having this issue again.

REPORT OF THE DIRECTOR

Plan No: 10/20/0828

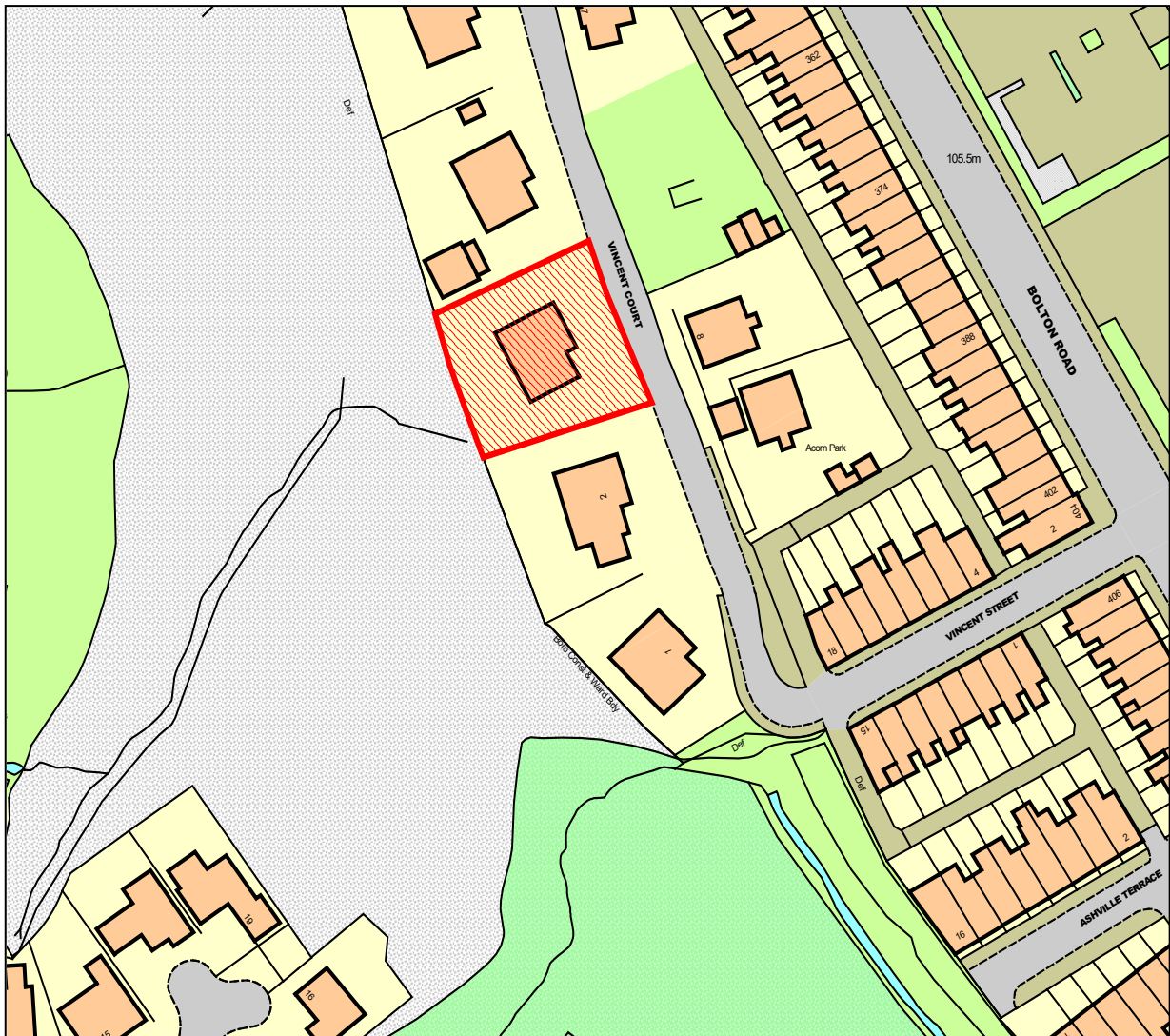
Proposed development: Full Planning Application for Erection of single storey extension to the side of the existing property to form supported living space. New detached outbuilding to the rear to form gym for service user use.

**Site address:
3 Vincent Court
Blackburn
BB2 4LD**

Applicant: Doctor Imran Ali

Ward: Ewood

**Councillor Maureen Bateson
Councillor Jim Casey**



1.0 SUMMARY OF RECOMMENDATION

- 1.1 The proposed development is recommended to be granted planning permission for the reasons as stated in Paragraph 4.1.

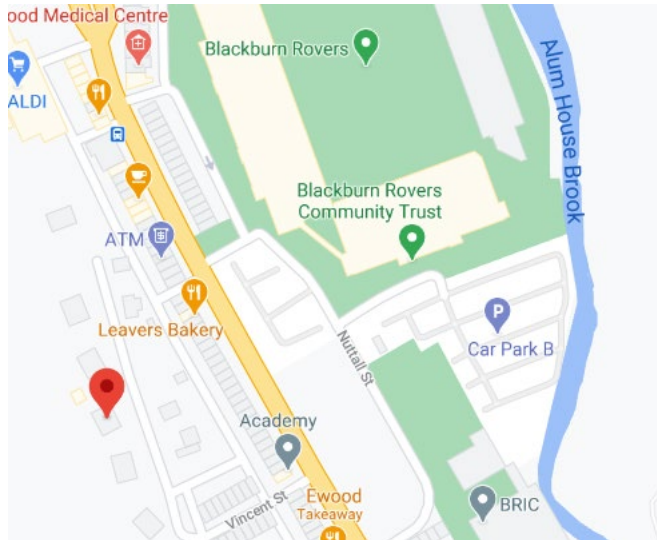
2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

- 2.1 This application is presented to the Committee in accordance with the Scheme of Delegation following the receipt of a petition signed by six residents. A summary of the comments is provided at Paragraph 6.1 below. The proposed development has been publicised through letters to residents of adjoining properties. No other letters of objection have been received.
- 2.2 Planning permission was refused on 20th May 2020 for a single storey extension to each side of the existing property to form two separate self-contained supported living spaces and a new detached outbuilding to the rear to form gym for service user use (10/20/0337). There were six reasons for refusal:
- The proposed side extensions, by virtue of their design, layout and purpose, would result in the host dwelling no longer being in compliance with the criteria set out for Class C3 of the Use Classes Order 1987 (as amended) (i.e. the property would cater for more than the permitted maximum of 6 residents).
 - The proposed extensions and their use, by virtue of them not qualifying as permitted development, fail to demonstrate their role within the Council's strategic approach to commissioning new services and facilities.
 - The proposed development, by virtue of its scale and use, increases the intensity of use on the site and introduces into the setting a mode of living incongruous to the context in which it is set.
 - The proposed development, by virtue of the layout of fencing and gates, fails to demonstrate how it can meet its own servicing requirements in terms of bin storage.
 - The fencing proposed for the front curtilage of the south annex, by virtue of its design, height, materials and location, fails to understand the open front gardens characteristic of Vincent Court to the detriment of visual amenity.
 - The proposed development, by virtue of substandard-sized parking spaces and intrusion into the service strip, fails to adequately provide for parking within the curtilage.
- 2.3 The key issues to be addressed in determining this application are:
- How the reasons for refusal of planning application 10/20/0337 have been addressed
 - Materiality
 - Detached outbuilding

3.0 RATIONALE

3.1 Site and Surroundings

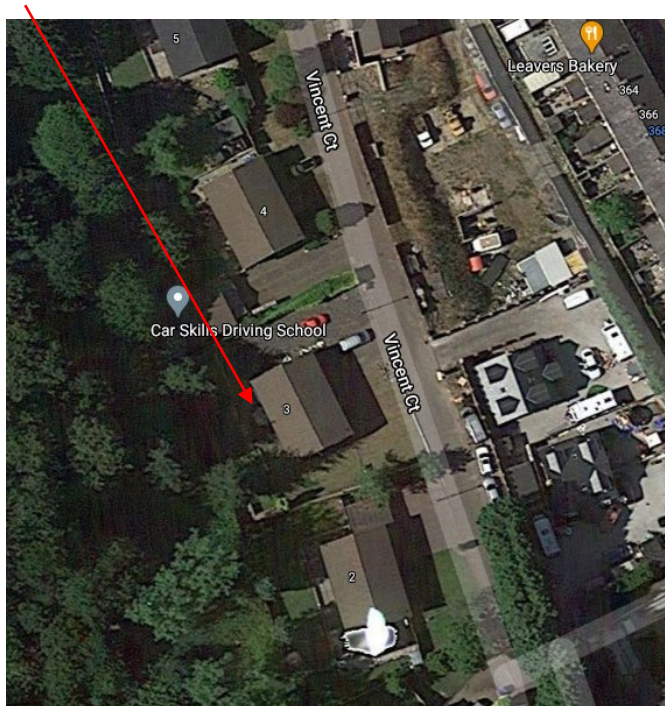
3.1.1 The site of the proposed development is located in a cul-de-sac of modern detached dwellings to the east of Fernhurst Woods, and behind the A666 opposite Ewood Park.



(Google maps)

3.1.2 The dwelling is located within a row of detached dwellings, each being centrally located within their plot with garden curtilage to the sides as well as to the front and rear of the dwellings.

Application site:



(Google)

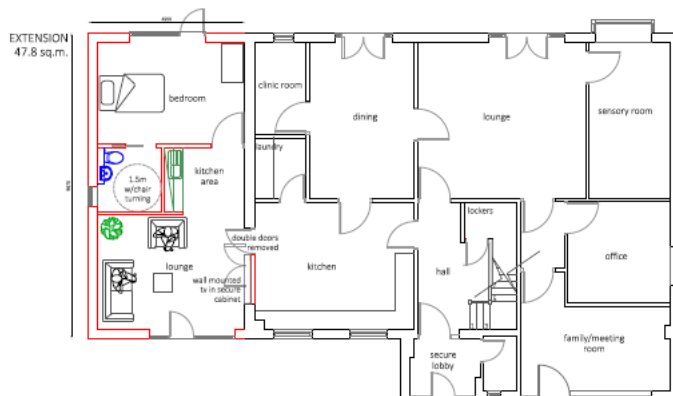
3.1.3 The application site is characterised by an open frontage, common to the properties on the west side of Vincent Court. There is a stretch of garden either side of the dwelling, with the rear garden being tiered.

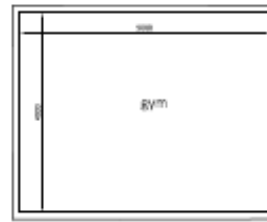
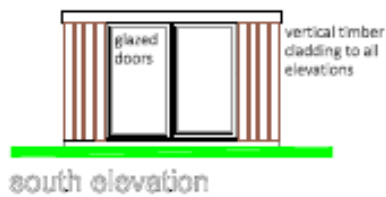


Case Officer site photos

3.2 Proposed Development

3.2.1 The proposed development is comprised of two components: the single storey side extension and the detached rear outbuilding to form a gym.





plan

3.3 Development Plan

3.3.1 Blackburn with Darwen Borough Local Plan Part 2 – Site Allocations and Development Management Policies (December 2015)

- Policy 8: “Development & People”
- Policy 10: “Accessibility & Transport”
- Policy 11: “Design”
- Policy 47: “The Effect of Development on Public Services”

3.3.2 Residential Design Guide Supplementary Planning Document Revised Edition (September 2012)

- RES E5: “Over Development”
- RES E8: “Single Storey Side Extensions”
- RES E19: “Extensions and Parking”

3.4 Other Material Planning Considerations

3.4.1 National Planning Policy Framework (NPPF) (February 2019):

- Section 12: “Achieving Well-Designed Places”
- Section 8: “Promoting Healthy and Safe Communities”

3.5 Assessment

3.5.1 Use Class Considerations (addressing Refusal Reason 1)

3.5.2 No. 3 Vincent Court has been identified in this and the two previous planning applications as the former dwelling house and its curtilage – the red edge being the same in both cases and encompassing the land up to its boundaries with Nos. 2 and 4 Vincent Court either side of the property, the highway to the front, and open land to the rear.

3.5.3 On 17th October 2019, a Lawful Development Certificate was issued in respect of the former dwelling undergoing a change of use to C3(b): “Up to six people living together as a single household and receiving care e.g. supported

housing schemes such as those for people with learning disabilities or mental health problems” (10/19/0827). That proposal was specifically for 5 persons with mental health requirements living together as a single household and receiving care. The approval was based on:

- Five people living together as a single household.
- The service providing accommodation for residents who have formal diagnosis of Moderate to Severe Autism, Learning Disability or Mental Health Problems and who require personal and social care and support. Support staff will have been trained to manage the needs and complexities of the residents.
- The service providing shared living, dining and kitchen area, ensuring that the residents will share at least one meal a day together. The care provided including 24hr staffing of day and night shifts with a mix of skills, support workers, activity and co-ordinators, as well as a senior management team who will be qualified in supporting and meeting the needs of the residents. Access will be available to a Psychologist and Occupational Therapist who have specialist knowledge of the service users and their needs.

3.5.4 The refusal of application 10/20/0337 was based on introducing another two residents into the site through building a self-contained annex onto either side elevation, with no internal access between the annexes and the main house, and front and rear fencing that – in effect – introduced two separate curtilage areas associated specifically with each of the units.

3.5.5 It was considered that the proposals materially affected the C3(b) planning unit. With the increase of the service provided to seven bed spaces, and with not all residents living together as a single family unit, there had been a material change to the planning unit not provided for under the Lawful Development Certificate previously issued. No. 3 Vincent Court would not therefore be able to operate as a C3 residential dwelling.

3.5.6 This application is considered to have addressed the first reason for the refusal of 10/20/0337. One extension has been removed, and the remaining extension – whilst being able to provide some separate space – is linked to the main house and enables the occupant to integrate with the other residents.

3.5.7 Crucially, whilst 10/20/0337 specified 5 persons living together as a family, since the development proposed now only provides for one additional person, the whole planning unit that is 3 Vincent Court can be considered to remain qualified to function as a C3(b) unit of no more than 6 persons living together as a single family entity. The proposed extension therefore does not nullify the Lawful Development Certificate issued under 10/19/0827.

3.5.8 The Purpose of the Extension (addressing Refusal Reason 2)

3.5.9 The NPPF requires planning decisions to take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community (Paragraph 92b).

3.5.10 The removal by this application of health and social care provision beyond that allowed under permitted development removes the requirement for the applicant to provide a statement as to the relevance of the proposals to the provision of mental health facilities within Blackburn with Darwen. One additional person in an ancillary unit enables No. 3 Vincent Court to retain its function as C3(b) use.

3.5.11 Development is required by the Local Plan 2 to understand the wider context (Policy 11 Local Plan 2) which includes contributing positively to the overall character of the area (Policy 8). The proposal achieves this. The continued living together as a family in the main house and the accessibility of the occupant of the ancillary unit to this life together accords with the residential context of the area. The second reason for refusal is considered to be adequately addressed.

3.5.12 Side Extension – Design and Layout Considerations (addressing Refusal Reasons 3-6)

3.5.13 The proposed design of the side extension is considered to meet the Council's Residential Design Guide (RES E8 and E5) and Local Plan 2 Policies 11 and 10.

- The extension in terms of scale, height (3.0 metres to the eaves, 5.3 metres to the ridge) and massing is considered to be subordinate to the original dwelling.
- The roof is dual pitch and materials for both roof and walls are considered to complement the original materials.
- Access to the rear of the property is maintained. The removal of the fencing from around the extension ensures a route is provided for bins to be moved from the front to the rear of the property.
- In addition, the removal of a secure curtilage area in front of the annex is considered to demonstrate an understanding of the context of the development. The visual amenity of the setting is therefore secured.
- The proposed parking is considered to meet the Council's adopted parking standards. The removal of the extension from the north gable elevation facilitates the continuation of existing parking arrangements.

3.5.14 It is therefore considered that the design and layout modifications made in this application have addressed reasons 3 to 6 of the refusal of 10/20/0337.

3.5.15 Materiality Considerations

3.5.16 The use of the host dwelling as a C3(b) dwelling has been previously established through the issuing of a Certificate of Lawful Development. A Certificate of Lawfulness is a specific type of application made under the

Town and Country Planning Act 1990. It essentially asks for a formal determination from the Council as to whether or not a use can proceed without the need for planning permission. The use of No. 3 Vincent Court specifically for 5 persons with mental health requirements living together as a single household and receiving care is therefore an approved use. Use Class C3(b) permits up to 6 to be resident.

- 3.5.17 A Certificate of Lawfulness is determined on legal grounds rather than planning merits. As such, the Council's constitution does not make any provision for such applications to be determined either under the Scheme of Delegation or brought before the Council's Planning Committee for determination.
- 3.5.18 As uses established through a Certificate of Lawfulness are not subject to Council control in terms of occupancy, bed spaces provided become available to remote authorities. The key implication in all this is that people with complex needs are brought into the borough placing additional strain on already pressurised local public services.
- 3.5.19 Officers from the Council's planning department have been working with colleagues in adult (and children's) services to better understand the nature of care homes and the issues that exist within the sector. As a result, and whilst every application must be determined on its own merits, the Council is now of the opinion that even within Use Class C3, a change from being a family dwelling-house to being a house for a small group of people living together as a single family can be accompanied by a material change in the property. The inclusion of a sensory room and a clinic room would suggest a material change, in that these provisions would normally be found in a normal C3 dwelling-house and might indicate that a change of use from C3 to C2 had been undertaken.
- 3.5.20 The assessment of this application is not seeking to review the decision to grant a Certificate of Lawful Development under 10/19/0827. However, Policy 47 requires development that would provide accommodation for users of publicly-provided services, including mental health services, to work within the Council's commissioning strategies to ensure that the service delivered is required by the Borough and that it does not lead to an increase in the level of demand upon the Council's limited resources. The full planning application for the extension to No. 3 Vincent Court provides an opportunity to ensure that Policy 47 is adhered to through ensuring the facility is available to those ordinarily resident within the Borough.
- 3.5.21 It is therefore recommended that a condition be attached to this proposed planning approval requiring the approved facilities at Vincent Court being geared towards their use by people either within the Borough or being supported by the Borough but living elsewhere on account of facilities not currently being available to them within Blackburn with Darwen.

3.5.22 Detached Outbuilding

3.5.23 The proposed detached outbuilding is set to the rear of the property. Its scale at a height of 2.5 metres and a footprint of 5.3 metres x 4.3 metres is acceptable. The timber material is not considered brilliant; but given that other properties have timber fences separating the front from the back curtilage, the material is consistent with uses elsewhere in the context. Moreover, if the property were to remain in C3 usage, it is likely that the outbuilding would be permitted development. As it is, the outbuilding is considered to be in accordance with Policy 11 of the Local Plan 2.

4.0 RECOMMENDATION

- 4.1 It is recommended that the Planning and Highways Committee approve the application subject to conditions which relate to the following matters:
- Development to commence within 3 years
 - Development is conditional upon the facilities being available to residents from within the Borough
 - Materials to match those used in the original dwelling

5.0 PLANNING HISTORY

- 5.1 10/20/0337 - a single storey extension to each side of the existing property to form two separate self-contained supported living spaces and a new detached outbuilding to the rear to form gym for service user use. Refused under delegated powers 20/05/2020.
- 5.2 10/19/00827 – Change of use to C3(b) specifically for 5 persons with mental health requirements living together as a single household and receiving care (Lawful Development Certificate – proposed). Granted under delegated powers 17th October 2019.
- 5.3 10/09/0965 – Single storey side and rear extensions. Balcony over side extension. Alterations to front porch and new boundary wall. Approved under delegated powers 23rd October 2009.

6.0 CONSULTATIONS

- 6.1 Two neighbouring properties were consulted. One petition was received containing six signatures. Comments can be summarised as follows:
- Parking restrictions only enforced on football match days at Ewood Park with problems of access and manoeuvring.
 - The business at 3 Vincent Court will have repercussions on parking issues and traffic.
 - Bin collection issues.

There is some uncertainty as to whether the petition is against the proposed development or against the traffic problems experienced by Vincent Court

residents, since the applicant's name and address also appears on the petition. The full petition is contained in Section 9.

6.2 Housing Standards.

- There is no information on kitchen provisions (cooker/ refrigerator / cupboard space) within the kitchen area of each self-contained unit other than a sink and drainer unit shown on the plans.
- The kitchen area appears to be small and does not have any proposed mechanical ventilation provision.
- There are no refuse bins or bin stores indicated to be provided as part of the plans.
- All works carried out will require full building regulation approval and advice should be sought from Pennine Lancashire Building Control or a appointed inspector along with Lancashire Fire and Rescue in relation to fire safety requirements.

6.3 Adult Social Services.

- Unhappy with the proposal but would be supportive of the condition (to ensure facilities are available to residents of the Borough). But would the condition be enforceable.

7.0 CONTACT OFFICER: John Wilson, Planner Tel: 01254 585585

8.0 DATE PREPARED: 25th November 2020

9.0 SUMMARY OF REPRESENTATIONS

Objection – Vincent Court Residents. Rec – 28/09/20

Dear Council Planning Manager,

FAO Case worker John Wilson - Re: Planning Application reference 10/20/0828

I am writing on behalf of the residents of Vincent Court, Blackburn in response to the planning application reference 10/20/0828 for the 'Erection of a single storey extensions to each side of the existing property and the building of a new detached outbuilding at the rear for use as a gymnasium at the property 3 Vincent Court, Blackburn, BB2 4LD'.

The street to which this application applies, is in close proximity to the Blackburn Rovers football ground. The road Vincent Court is a short and narrow cul-de-sac beginning at the end of Vincent Street connecting with a sharp narrow bend to the right. This short cul de sac street provides access to seven properties with a turning circle at the end.

The parking on Vincent Court is currently restricted to 'Permit Holder Parking Only' with single yellow line throughout the street and turning circle. Unfortunately despite this being signposted as a year-round parking restriction, we have been informed by the council and traffic patrolling officers that the parking restrictions are only currently enforced exclusively on Blackburn Rovers match days. As a result of these restrictions not being fully enforced, there are regularly unauthorised, non-permit holder vehicles and trailers parked poorly along the accessing bend to Vincent Court and along the street and turning circle resulting in the residents of this street enduring many problems with access to their respective properties and on being restricted from freely driving in or out of the street due to obstructions caused by offending vehicles.

As well as resident access, the council bin collection have also been affected on countless occasions leaving the residents with no choice but to 'make do' with additional refuse sacks when missed collections are reported to the council due to having no capacity for repeat bin collections until the usual next collection date a month later. With problematic access already evident for residents and refuse trucks, we especially have grave concerns about potential future access problems for emergency service vehicles if the need ever arose which could put the lives of residents at risk.

This street falls under council tax valuation band F and is primarily a residential street, however the property at 3 Vincent Court to which this planning application pertains, intends to be developed and operate as a business providing care and supported living for particular service users.

As residents of this street our main concern with the application is that the proposed development and use of the planning applicant's property as a business will have further subsequent repercussions on parking issues and traffic along the narrow street. Some of the

residents have already previously discussed with the council about existing parking and access problems and this development will potentially increase this traffic footfall due to increased expected vehicle access for visitors/workers/service users which would further impact on an already challenging resident access and parking situation. Prior to this planning application, we as the local residents were already in discussion about requesting council intervention for more stringent parking restrictions on the street. However this planning application has given us the opportunity and platform to discuss our existing traffic problems and issues and the potential for further worsening with the proposed business development. Otherwise we the current residents have no objections to the actual proposed building work planned to this property.

All of the properties accessed from Vincent Court currently have adequate off-road parking and have limited need for street parking and so we kindly request as a solution and counterproposal that the parking restrictions on the whole street including the accessing bend and the turning circle be considered for change and intensification from 'Permit Holder Only' to double yellow lines with year-round enforcement from traffic patrolling officers. This will provide the reassurance to residents of Vincent Court of having free access to their respective properties and for unrestricted access to council refuse vehicles and more importantly emergency services if required. This will also alleviate any resident's concerns regarding further contribution to access problems caused by the inevitable increase in traffic and street parked cars as a result of the proposed property developments and business plans at number 3 Vincent court.

In summary, we would greatly appreciate your understanding and assistance in strongly considering year round enforced restricted parking along the whole of Vincent Court as a solution for existing residential access and parking problems as well as in response to the likely expected increase in traffic problems with the proposed developments and business intentions of the property at 3 Vincent Court. We the residents strongly feel that addressing the current access and parking problems as discussed should be considered high priority and a condition and prerequisite to any approval for further developments on the street. After recent local resident discussions about this issue this proposed plan is supported by all residents and the planning applicant themselves as listed below.

DEPARTMENT OF GROWTH & DEVELOPMENT
ORIGINATING SECTION: PLANNING SERVICE (DEVELOPMENT
MANAGEMENT)

REPORT TO: Planning & Highways Committee

DATE: 17th December 2020

TITLE: Planning Advisory Note - Approach for determining applications relating to properties being used as Children's residential and supported accommodation.

WARDS: All **COUNCILLORS:** All

1. PURPOSE OF THE REPORT

- 1.1 To set out the intended approach for the determination of planning applications relating to the proposed change of use of properties as residential children's homes.
- 1.2 To explain the reasoning behind the intended approach and invite the comments of the committee.

2. BACKGROUND

- 2.1 Members will be aware that there have been an increasing number of Certificate of Lawfulness applications to use properties as residential children's homes. Where a certificate is granted, the Council has no control over the occupancy of that home. As a result, many such homes have the potential of being used to accommodate children from outside of the Blackburn With Darwen area. This is placing a strain on local public sector resources to the detriment of local service delivery, and can make it more difficult for the Council to accommodate local, looked-after children within Blackburn With Darwen.
- 2.2 The majority of the Certificate of Lawfulness applications received all relate to residential properties falling within Use Class C3 "Dwellinghouses" of the Town and Country Planning (Use Classes Order) 1987 (as amended). Case law has established that a residential children's home falls within Class C2 "Residential Institutions" of the same Order. Section 55 of the 1990 Town and Country Planning Act, states that a material change of use constitutes development. There is no provision in the Town and Country Planning (General Permitted Development) Order 2015 (as amended) to permit a change from C3 to C2.

- 2.3 The Development Management Team have recently dealt with Certificate of Lawfulness applications at properties on Eden Park, Vincent Court and Aintree Drive in the borough. Until recently, officers have judged that the change of use from a house to a children's home is not material, which in nature does not constitute development, and therefore does not require planning permission. However, in recent months new information has come to light, with the approach being taken by Blackpool Borough Council, in the form of case law, and the advice they received from Counsel. In addition, the Development Management Team has been working closely with Children's Services to better understand the nature of a children's home use.
- 2.4. It is now considered that the change of use from a house to a children's home is material and is therefore development requiring planning permission for the following reasons:
- Change in the character of the use based on the day-to-day activity, operations and physical layout;
 - Impact of the proposal – the uncontrolled loss of family homes is a material planning consideration; case law has established that increased strain on local public sector resources can be accepted as an indicator of a material change of use;
- 2.5 It is accepted that not all looked-after children will place strains on the Council's services, however because the Council cannot place any controls on a Certificate of Lawfulness, these factors must all be taken into account when assessing such applications.
- 2.6. The Development Management Team following consultation with Children's Services have produced a Planning Advisory Note, which is intended to inform and assist applicants seeking planning permission for the development of or the change of use of an existing building to a children's care home. A draft copy of the Note is attached to this report.

3. RATIONALE

- 3.1 The Council's aim is to ensure that good quality accommodation is available in appropriate premises and locations within the borough to meet the needs of looked-after children within the care of the Council. At the same time, it is imperative that there is no undue harmful impact towards the character and amenities of local neighbourhoods.
- 3.2 Policy 47 "The Effect of Development on Public Services" of the adopted Blackburn With Darwen Borough Local Plan (Site Allocations and Development Management Policies) (December 2015), sets out how the local planning authority will manage development in line with the following objectives:

- To ensure that planning decisions as far as possible support the commissioning strategy for facilities and services;
- To assist in managing demand for support services so as to ensure that appropriate levels of service to existing users within Blackburn With Darwen can be maintained; and
- To assist in improving Blackburn With Darwen's overall offer, and perceptions of its offer, by reducing levels of crime, anti-social behaviour and the perceived threat of these.

3.3 The Planning Advisory Note whilst not being a formal Supplementary Planning Document, is still a material planning consideration linked with Policy 47. The Note will provide clarification and information on the Council's approach to dealing with planning applications for children's care homes.

4. KEY ISSUES

4.1 The fundamental issues that the Note is focussed on with regards to new children's care homes are:

- Ensure that new homes are established in appropriate premises and in suitable locations;
- Establish a priority for local children to ensure that the Council can meet the needs of the local community within the local area;
- Reduce the concentration of specialist uses within any particular area of the borough;
- Safeguard the children in care and at same time ensuring the amenities of local communities are not affected by ensuring premises adhere to the provisions of a robust Management Plan.

4.2 The Note focusses on the main planning considerations and process with regards to new children's care homes. These are set out as follows:

- What are the material planning considerations?
- Relevant planning policy, guidance and information
- Specific advice – what properties are considered appropriate; car parking; how to demonstrate local need; what to include in the Management Plan; what changes can you expect to make to the property; mechanism to meet local need e.g. Section 106 Agreements;
- Details of the pre-application advisory service.

5. POLICY IMPLICATIONS

5.1 The Planning Advisory Notice is an informal planning document linked to Policy 47 of the Local Plan Part 2.

6. FINANCIAL IMPLICATIONS

6.1 None.

7. LEGAL IMPLICATIONS

7.1 None.

8. RESOURCE IMPLICATIONS

8.1 None.

9. EQUALITY IMPLICATIONS

9.1 None.

10. CONSULTATIONS

10.1 The Draft Advice Note has been presented to the Executive Members for Growth & Development and Children's Services.

11. RECOMMENDATION

11.1 (i) That the Committee note the issues described in the report.

(ii) That the Committee endorse and approve the proposed Planning Advisory Note, to be used as a material planning consideration in the determination of any new applications for children's care homes, and the Note to be published on the relevant planning and Children/Young people web pages.

Contact Officer: Gavin Prescott, Planning Manager
(Development Management)
Date: 3rd December 2020
Background Papers: None

Blackburn with Darwen Children's Residential and Supported Accommodation- Planning Advice Note

December 2020



BLACKBURN
with
DARWEN
BOROUGH COUNCIL



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Purpose of the advice note

This advice note is intended to inform and assist applicants seeking planning permission for the development of or change of use of an existing building to a children's residential and supported accommodation.

The advice note is intended to offer clarification and information and so will not be taken through a formal consultation process. Nevertheless, it will be a material planning consideration in the assessment of planning applications.

Aims and Objectives

The Council's **aim** is to ensure that good quality accommodation is available in appropriate premises and locations within the borough to meet the needs of looked-after children within the care of Blackburn with Darwen Borough Council, without causing undue harm to the character and amenities of local neighbourhoods.

In light of the specific issues in Blackburn with Darwen as set out above, the Council has identified the following principal **objectives**:

- Ensure that new children's homes are established in appropriate premises and in suitable locations;
- Establish a priority for local children to ensure that the Council can meet the needs of the existing community within the local area;
- Prevent an undue concentration of specialist uses in any particular area of the borough in order to safeguard the local character and amenity;
- Safeguard the children in care and the interests of local communities by requiring premises to be operated in accordance with a robust Management Plan.

Children's care in Blackburn with Darwen – a planning perspective

Within the past 3 years, there has been an increasing number of Certificate of Lawfulness for the proposed use of dwelling houses as children's residential and supported accommodation -for children and young people being submitted to Blackburn With Darwen Borough Council. The availability of relatively large properties within the borough at reasonable prices are understood to be a key driver behind this trend.

As uses established through a Certificate of Lawfulness are not subject to Council controls in terms of occupancy, so these children's residential and supported accommodation could elect to accommodate children and young people placed by other authorities. This has two key implications:

- Vulnerable children with complex needs are brought into the borough placing additional strain on already pressurised local public services; and
- Blackburn With Darwen Borough Council needs to manage its local accommodation to meet the needs within the borough.

A Certificate of Lawfulness for a Proposed Use is granted when the Council judges that the proposed use is not materially different in planning terms from the existing lawful use of a building. Many factors must be taken into account when considering materiality.

Officers from the Council's Planning (Development Management) Service have worked closely with colleagues in Public Protection, Public Health and Children's Services to better understand the nature of children's residential and supported accommodation and the issues that exist within the sector.

As a result of these discussions, notwithstanding the fact that every application must be determined on its own merits, the Council is now of the opinion that a change of use from a dwelling house to a children's residential or supported accommodation will generally be material for the following reasons:

- Change in the character of the use as a result of increased day-to-day activity;
- Change in the character of the use as a result of the necessary form of operation of the premises;
- Change in the character of the use as a result of typical physical alterations to the property;
- Impact of the proposal in terms of the loss of family dwellings;
- Impact of the proposal on local public service delivery;
- Impact of the proposal on the Council's ability to meet its own housing needs for looked-after children.

By requiring operators to apply for planning permission for the creation of children's residential and supported accommodation, the Council is able to ensure that such provision is established in appropriate properties in suitable locations. It also gives the Council the ability to ensure that children's home provision in the Blackburn With Darwen area gives priority to local children, enabling the Council to meet our own needs in our own borough.

Relevant planning policy, guidance and information

National Planning Policy Framework (NPPF) (published February 2019):

Paragraphs 59, 60 and 61 relate to the delivery of a sufficient supply of homes.

Paragraph 59 makes it clear that in order to support the Government's objective of significantly boosting the supply of homes.....the needs of groups with specific housing requirements are addressed.

Paragraph 60 explains how housing need in an area should be assessed and

understood, and paragraph 61 advocates planning policies that reflect the needs of particular groups in the community.

Blackburn With Darwen Borough Council Core Strategy Part 1 (adopted January 2011)

This document sets out the spatial strategy for Blackburn With Darwen setting out the priorities for the future planning and development of the borough, in terms of how much and what types of development there should be, where it should be focused, when it is likely to take place, and how it will be delivered. A number of strategic objectives are identified, and notwithstanding the fact there are no specific policies relating to children's residential and supported accommodation provision in the Strategy, the vision for Blackburn With Darwen includes the aim to promote the development of mixed communities, together with increasing the levels of demand both for existing housing stock and for new development in inner urban areas.

With this vision in mind, the Core Strategy sets out a number of objectives, including the need to create sustainable neighbourhoods, increasing the local environmental quality, whilst at the same time increasing the number of houses with access to local jobs and services. Policy CS9 "Existing Housing Stock" is fundamental towards this objective, aiming to support strong communities by ensuring the overall stock of existing and new housing will provide a balanced quantity and mix to meet the needs of existing resident, and attract new residents to the borough.

Retention and repair of traditional housing will form part of the approach to transforming neighbourhoods, whilst focusing regeneration and improvement in a number of neighbourhoods. Policy CS20 "Cleaner, Safer, Greener", is also relevant in general terms, as it focusses on a better quality of life for existing and future residents by prioritising community cohesion, improving the economic performance of neighbourhoods, supporting a more cleaner, healthy and safer environment, which will improve the quality of life for all the local communities.

Blackburn With Darwen Borough Local Plan Part 2 "Site Allocations and Development Management Policies" (adopted December 2015)

Policy 47 relates managing development in line with the following objectives:

- To ensure that planning decisions as far as possible support the commissioning strategy for facilities and services;
- To assist in managing demand for support services so as to ensure that appropriate levels of service to existing users within Blackburn With Darwen can be maintained; and
- To assist in improving Blackburn With Darwen's overall offer, and perceptions of its offer, by reducing levels crime, anti-social behaviour and the perceived threat of these.

Policy 47. The Effect of Development on Public Services

1. Development will be granted planning permission provided that infrastructure, facilities and services exist, or can be provided via the development, which will allow the development to proceed without an unacceptable adverse impact on existing provision.
2. Development likely to cater or provide accommodation for users of publicly-provided support services, including but not limited to mental health services, substance misuse treatment and adult social care, will only be permitted where it is clearly demonstrated that:
 - i) a need for the development exists arising from the requirements of people already ordinarily resident in Blackburn with Darwen or of Blackburn with Darwen service users currently receiving service outside the authority area;
 - ii) where the development consists of a facility directly providing a support service, the nature and scale of the facility is in line with the Council's commissioning strategies, such that resources are likely to be available to refer individuals to the facility and it can be reasonably expected that people already ordinarily resident in Blackburn with Darwen, or Blackburn with Darwen service users currently receiving service outside the authority area will be the principal users of the facility; and
 - iii) the development will not lead to an increase in the level of demand for any publicly-provided support service, to an extent that is likely to result in a deterioration of the level of service available to existing users.

The Council and its partners are keen to focus on meeting local needs in the first instance, and to ensure that the proportion of their overall resources that need to be directed towards providing support service is kept under control.

Supplementary Planning Guidance Note – Residential Institutions

Further guidance on planning policies and proposals that expand upon or provide further detail to higher-level policy documents such as the core strategy and the saved local plan. The development of specialist need children's residential and supported accommodation including children's will be in appropriate premises and locations subject to:

- The proposal should be located within a Primary Residential Area or other appropriate locality offering an acceptable level of residential amenity;
- The design of any building, extension or alterations will be expected to be in character with and complement existing neighbouring development and/or the existing building;
- The property should be large enough to provide the facilities required by

the registration authorities (cooking facilities, bathrooms, dining and communal facilities) without the need for any substantial extensions which would have a detrimental effect on the area, the amenity or neighbouring properties or the character of the property or locality;

- The conversion of a terraced house or one of a pair of semi-detached houses or a detached property closely abutting or linked to its neighbours will be considered unsuitable;
- The premises should be located near to , or enjoy safe and convenient access to facilities such as shops and public transport; There should be adequate, convenient and accessible parking space within the curtilage to comply with the Council's adopted parking standards without adverse effect on neighbouring properties or the character of the locality;
- The property must have open garden areas (or areas capable of conversion to garden or open space use) which are suitable and sufficiently attractive for use by residents.

Local Plan Review

Blackburn With Darwen Borough Council is reviewing their current adopted local plans, specifically, the Core Strategy (adopted 2011) and the Site Allocations and Development Management policies (adopted 2015). The Local Plan review will lead to a new local plan to replace the existing adopted plans, and will cover the period 2018 to 2037.

A draft Local Plan is scheduled to be consulted on under Regulation 18 in January 2021 with further subsequent consultation on the plan at Publication stage (Regulation 19) with a view to submitting the plan for examination in January 2022.

Specific Advice

What kind of property should I look for?

In general, the following types of property are considered to be appropriate as follows:

- Terraced properties – are generally only suitable for accommodating one child;
- Semi-detached properties – are typically only suitable for accommodating up to two children;
- Detached properties – can be used to accommodate one or two children but become necessary for proposals seeking to accommodate three children or more, subject to the material planning considerations.

What about car parking?

It is recognised that children's residential and supported accommodation require more car parking than dwelling houses of a comparable size. This is because of the number of staff members who are likely to be working at the property at any one time, but also because of the potential for visits from other professional support workers.

On this basis, proposals for children's residential and supported accommodation will only be supported where adequate car parking provision is available to meet the needs of the use. On-street parking provision will be taken into consideration where it is available and not subject to excessive pressure.

When considering parking availability, due regard will be given to the care ratio, the needs of the children accommodated, the operational model of the home, the nature of the surrounding area and the presence of any parking restrictions on-street. In essence, each proposal will be considered on its own particular merits.

How do I demonstrate a local need?

The Council's Children's Services Team is consulted on all planning applications for children's residential and supported accommodation. The team monitors demand and provision on a regular basis and so is able to advise on levels of local need. Before applying for planning permission for a children's residential and supported accommodation, applicants are strongly advised to consult the Council's Children's Commissioning Team: commissioning.team@blackburn.gov.uk for further information with regard to need.

What do I need to include in my Management Plan?

A Management Plan must be submitted with all applications for planning permission for a children's residential and supported accommodation use.

The following questions can be used as a guide to help prepare your management plan:

- How many children would be accommodated?
- What is the ratio of staff to children that is required, i.e. delivery model?
- What is the likely level of need of the children accommodated, i.e. is there a focus on complex needs?
- What is the likely shift pattern of staff, i.e. how many staff (management and care staff) would likely be at the premises at any one time and when would shift changes occur?
- What support officers would be likely to visit the property?

- How would visits be scheduled and would staff/support-worker meetings take place at the property?
- If residents are unable to participate in full-time, mainstream education, what educational support would be offered on-site?
- Would therapeutic care be offered on site?
- Would case reviews take place on or off-site?
- Are friends and relatives of residents able to visit at any one time?
- Will the property be OFSTED registered?
- Will the property be CQC registered?
- Will the property be registered on the relevant Council's Commissioning Framework?
- Are children ever left alone at the property?
- Under what circumstances are children allowed to leave the property?
- Would staff members be informed/aware if a child left the property?
- Is there a curfew?
- What would happen in the event of a breach of the curfew?
- What security provisions are proposed e.g. security and access controls on doors?
- Would CCTV be installed?
- How would local residents know how to raise a concern in the event of an issue?
- How will the service work with other professional and voluntary services in Blackburn With Darwen?

What other changes might I be expected to make to a property?

It is recognised that many children who require accommodation in a children's residential and supported accommodation may have suffered trauma or neglect of some kind. This can result in behavioural problems. Whilst such children undoubtedly deserve to live in a pleasant, caring and supporting residential environment, it is also important that the amenities of neighbours are appropriately protected. As such, the following measures may be required:

- Installation of sound-proofing to protect party walls;
- Prevent children from having access to balconies and any flat-roof areas;
- Provision of appropriate boundary treatments to garden areas;
- Installation of CCTV

How will Blackburn With Darwen Borough Council ensure that new children's residential and supported accommodation provision will meet local need?

A crucial aspect of the Council's Blackburn With Darwen Children's Sufficiency Statement strategy is the need to ensure that local children can be accommodated in the local area. This is important to enable them to maintain links with family and

friends, retain medical and other support services referrals as necessary, and to continue attending school wherever possible.

In order to ensure that new provision is available to meet the needs of local children, the Council will expect all applicants to enter into a Section 106 Legal Agreement before planning permission is granted.

What is a Section 106 Legal Agreement?

A legal agreement under the 1990 Town and Country Planning Act is between the applicant and the Council, however it also relates to the property in question i.e. it is the same as when planning permission is granted which relates to the land or property rather than a person. This means that any successors in title would be equally bound by the requirements of the agreement. The agreement would specify that the property in question can only be occupied on a residential basis by children either placed by Blackburn With Darwen Borough Council or with the written agreement of Blackburn With Darwen Children's Services Department.

The rationale behind this is to ensure that sufficient provision exists locally to meet the Council's needs, but also to provide enough flexibility for applicants to operate on a viable basis.

In considering placements from outside of the Blackburn With Darwen borough, the Council's Children's Services team will be mindful of the particular needs of the child and the nature of the service offered at the property in question. At all times the Council's decision making will be driven by the best interests of the child.

Blackburn With Darwen must be notified by the placing authority of any children placed in children's homes

The Council would be unlikely to support the placement of a child from a remote authority unless exceptional circumstances can be demonstrated. For example, a placement may be accepted where the child needs to be removed from their local area for their own safeguarding and they have relatives in Blackburn With Darwen.

What will happen when the local need is met?

It is acknowledged that the local need for children's residential and supported accommodation within the borough is dynamic, and will change over time. However, the local planning authority will be guided by colleagues in Children's Services who will monitor the level of provision locally against the level of need that is emerging. If the Council reaches a point where the new provision does not meet the strategic needs of the authority, applications for planning permission are likely to be refused in accordance with the relevant local planning policy. As such, applicants are strongly recommended to contact the Council for pre-application advice prior to submitting a formal planning application.

Further Information

Pre-Application Advisory Service

The Council offers a formal pre-application advisory service. Applicant's wishing to open a new children's residential and supported accommodation are strongly advised to take advantage of this service to establish the likelihood of obtaining planning permission for their proposal and to understand any specific requirements that may be necessary.

Details of this service can be found on this link:

<https://www.blackburn.gov.uk/planning/planning-permission-applications/planning-permission-application-advice/pre-application>

Public Consultation

As this document is not a supplementary planning document, and only an advice note, to provide clarification and information on the Council's approach to dealing with applications for children's residential and supported accommodation, no public consultation has been undertaken on its content.

Sustainability Appraisal

The adopted Core Strategy and Local Plan Part 2, have been subject to a sustainability appraisal. In addition, the emerging new local plan, will be subject to a sustainability appraisal prior to adoption. As such, no separate sustainability appraisal has been carried out for this advice note.

Habitat Regulations Assessment

Given the purpose, content and scope of this advice note, it is not considered to trigger a requirement for a Habitats Regulation Assessment (HRA).

Useful contacts

Planning Service (Development Management) – planning@blackburn.gov.uk
Children's Services - Commissioning.team@blackburn.gov.uk

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of the Local Government Act 1972.

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