

PLANNING AND HIGHWAYS COMMITTEE

Thursday, 15 September 2022

PRESENT – Councillors, David Smith (Chair), Akhtar, Casey, Khan, Browne, Marrow, Desai, Liddle, Imtiaz, McCaughran and Hussain (substitute for Mahmood).

OFFICERS – Gavin Prescott, Rabia Sagir, Shannon Gardiner

RESOLUTIONS

THE COMMITTEE HELD A MINUTES SILENCE FOR HER MAJESTY THE QUEEN

27 Welcome and Apologies

The Chair welcomed everyone to the meeting.

Apologies were received by Cllr Quesir Mahmood who was substituted by Cllr Mahfooz Hussain, Cllr Jacque Slater and Cllr Jon Baldwin

28 Minutes of the Previous Meeting

RESOLVED – That the minutes of the previous meeting held on 18th August 2022 be confirmed and signed as a correct record.

29 Declaration of Interest

RESOLVED – There were no Declarations of Interest received

30 Planning Applications for Determinations

The Committee considered reports of the Strategic Director of Place detailing the planning applications.

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

31 Planning Application 10/22/0067

Supplement Report:

Applicant – Inceptum2 Management Limited

Location and Proposed Development – Land on Corner of Carl Fogarty Way and Thornley Avenue

Full Planning Application (Regulation 4) for Construction of industrial units, use class B2, B8, E(g) iii including trade counter

Decision under Town and Country Planning Acts and Regulations –

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

32 **Planning Application 10/22/0413**

This application was deferred

Applicant – Ms Patricia Da Silva

Location and Proposed Development – Land at Ellerslie, Bury Fold Lane, Darwen, BB3 2QG

Full Planning (Minor) Application: Proposed erection of 6 new detached dwellings and associated works including access arrangements, internal road, driveways and landscaping.

Decision under Town and Country Planning Acts and Regulations –

RESOLVED – Paragraph 3.5.31 relates to the proposed access to the application site, and refers to off-site highway works relating to the widening of a limited section of Bury Fold Lane. Since the publication of the main report, negotiations have been ongoing between officers and the applicant's agent to come to an agreement as to what works are acceptable. As this is such a fundamental material consideration relating to the proposed development, Members are advised that the application is **DEFERRED** to the next available meeting to allow the negotiations to continue to a positive conclusion.

33 **Planning Application 10/22/0647**

Applicant – Homewood Properties

Location and Proposed Development – PalmTree Islamic School (Former Montague Health Centre), Oakenhurst Road, Blackburn, BB2 1SN

Variation of Condition No 2 pursuant to planning application 10/19/0706 "Demolition of Former Health Centre and construction of 5 storey Apartment Block consisting of 76 no, 1 and 2 bedroom apartments with associated car parking" to amend internal layout and external appearance

Decision under Town and Country Planning Acts and Regulations –

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

Deed of Variation to the Section 106 Agreement of the 1990 Town and Country Planning Act, dated 28th September 2020, relating to the provision of formal/signed contracts for the lease of a percentage of the apartments as per the submitted details under planning application 10/19/0706, or as otherwise agreed with the Local Planning Authority and details of their full marketing plan, lettings policy, management and maintenance plans to the satisfaction of the Local Planning Authority. Should the Deed of Variation to the S106 agreement not be completed within 6 months of the date of this resolution, the Strategic Director of Growth & Development will have delegated powers to refuse the application

34 Tree Preservation Order – 17 Beardwood Brow, Blackburn 2022 (ref: BWD2)

Tree Preservation Order – 17 Beardwood Brow, Blackburn

The Committee were requested to endorse the actions of the Council's Arboricultural Officer/Planning Manager (Development Management) in making and serving 17 Beardwood Brow, Blackburn 2022 Tree Preservation Order (TPO) (ref: BWD2) and also to request that the Committee confirm 17 Beardwood Brow, Blackburn 2022 Tree Preservation Order (TPO) (ref: BWD1) without modification.

A formal pre-application enquiry was submitted on 5th May 2022 by the owner of No.19 Beardwood Brow, Blackburn to erect a new dwelling and two off-street car parking spaces on land adjacent to No.19 (ref: BL\2022\ENQ\09930). During the assessment of this enquiry with the Council's Arboricultural officer, it became apparent that the Sycamore tree situated within the front garden (north-west boundary of No.17) would have to be removed to allow access to the site. The Council's Arboricultural officer visited the site on the 27th May 2022, to ascertain whether the tree was worthy of protection.

The Arboricultural officer subsequently carried out a Tree Evaluation Method for Preservation Orders (TEMPO), which was undertaken on the 27th May 2022. The assessment gave the tree a very high score, which fully warranted a TPO.

The tree is a Sycamore tree twinned stemmed at the base, and although a thorough inspection was not undertaken there did not appear to be a reason for concern and the canopy looked very healthy and full. This tree is situated on the edge of the garden, and is a large tree that is noticeable along Beardwood Brow giving it amenity value to the road users. As such, a visual tree assessment called TEMPO was used to determine if the tree merited statutory protection by a way of a TPO. The tree scored 15 which more than merits a TPO.

RESOLVED –

- That the actions of the Arborist and Planning Manager(Development Management) in making and 17 Beardwood Brow, Blackburn 2022 Tree Preservation Order (TPO) be endorsed.
- 17 Beardwood Brow, Blackburn 2022 Tree Preservation Order (TPO) (ref: BWD2) is confirmed without modification

35 Tree Preservation Order – Bradgate, Oldfield Avenue, Darwen BB3 1QY 2022 (ref: BWD1)

Tree Preservation Order – Bradgate, 16 Oldfield Avenue, Darwen

*Speakers – Mr S Boott (Objector)
Mr S Draper (Objector)*

The Committee were requested to endorse the actions of the Council's Arboricultural Officer/Planning Manager (Development Management) in making and serving the Bradgate, 16 Oldfield Avenue, Darwen BB3 1QY 2022 Tree Preservation Order (TPO) (ref: BWD1) and to request that the Committee confirm Bradgate, 16 Oldfield Avenue, Darwen BB3 1QY 2022 Tree Preservation Order (TPO) (ref: BWD1) without modification.

On the 6th June 2022, an email from a resident on Oldfield Avenue, was received stating that the owner of Bradgate had informed them that the Pine tree was to be felled sometime in the week commencing 6th June 2022, and that it would be a great shame to lose such a tree. The Council's Arboricultural officer visited the site to ascertain whether the tree was worthy of protection.

The Arboricultural officer subsequently carried out a Tree Evaluation Method for Preservation Orders (TEMPO), which was undertaken on the 7th June 2022. The assessment gave the tree a very high score, which fully warranted a TPO.

The emergency TPO was served on the landowner/freeholder on the 7th June 2022. The tree is a mature Pine, growing on the side of the drive to the property known as Bradgate. A full inspection was not undertaken although the tree appeared to be in good condition with no obvious signs of any defects that would cause concern. The tree looked to be a significant example of its species. The street is highly tree covered, but as the only Pine Tree on Oldfield Avenue, and due to the size, location and condition of the tree, it is still highly visible and it would be very regrettable if it was lost. A TEMPO assessment was used to determine if the tree merited statutory protection by way of a TPO. The tree scored a high score of 17 which more than merits a TPO.

RESOLVED –

- That the actions of the Arborist and Planning Manager (Development Management) in making and serving Bradgate, 16 Oldfield Avenue, Darwen BB3 1QY 2022 Tree Preservation Order be endorsed.
- That the Bradgate, 16 Oldfield Avenue, Darwen BB3 1QY 2022 Tree Preservation Order (ref: BWD1) is confirmed without modification.

36 Tree Preservation Order – 37 Alexandra Road, Blackburn 2022 (ref: BWD3)

Tree Preservation Order – 37 Alexandra Road, Blackburn

Speaker – Carolanne Connolly

The Committee was requested to endorse the actions of the Council's Arboricultural Officer/Planning Manager (Development Management) in making and serving 37 Alexandra Road, Blackburn 2022 Tree Preservation Order (TPO) (ref: BWD3) and to request that the Committee confirm 37 Alexandra Road, Blackburn 2022 Tree Preservation Order (TPO) (ref: BWD3) without modification.

On the 18th May 2022, a formal "Notice of intent to undertake works in a conservation area" was submitted by the owner of No.37 Alexandra Road, Blackburn, Mr Steven Derbyshire, to fell 2no sycamore trees within the rear garden of the property (ref: 10/22/0468). The Council's Arboricultural officer visited the site on the 10th June 2022, to ascertain whether the trees were worthy of protection, and then submitted their formal response to the local planning authority on the 21st June 2022.

The Arboricultural officer subsequently carried out a Tree Evaluation Method for Preservation Orders (TEMPO), which was undertaken on the 10th June 2022. The assessment gave the tree a very high score, which fully warrants a TPO.

The emergency TPO was served on the landowner/freeholder on the 22nd June 2022. The two sycamore trees are very large and the owner of the property is concerned they may fall onto the house. If the health and stability of the trees are in question then a professional health and safety inspection report would need to be submitted that provides evidence that these trees are at risk. From the site visit undertaken by the Arboricultural Officer, both trees looked to be in good health with vigorous canopies that can be seen above the properties and also from the opposite Leopold Road. One tree has a large stem that has grown at an angle towards the property, but has then straighten itself back up. The other tree is densely covered in ivy hindering a full inspection of the trunk.

It is fully appreciated both trees are large and dominate the rear garden, and for this reason there would be no objection to reduction work on the trees, but it is considered there are no reasons to justify warranting their removal. The ivy on the tree should be removed to allow a thorough inspection and the canopies reduced back from the house by approximately 3 metres. A reduction in height would also be considered to help appease the applicants concerns.

Subsequently, on the 27th June 2022, the local planning authority objected to the notice to fell the trees. As such, a visual tree assessment called TEMPO was used to determine if the trees merited statutory protection by a way of a TPO. The trees scored 16 which more than merits a TPO.

RESOLVED -

- That the actions of the Arborist and Planning Manager(Development Management) in making and 37 Alexandra Road, Blackburn 2022 Tree Preservation Order (TPO) be endorsed.
- 37 Alexandra Road, Blackburn 2022 Tree Preservation Order (TPO) (ref: BWD3) is confirmed without modification

37 FORESTRY COMMISSION – AMENDED RESTOCKING NOTICE, LAND TO THE SOUTH WEST OF MANOR ROAD, DARWEN

The Members of the Committee received an update on the latest action taken by the Forestry Commission (FC) with regards to the unauthorised felling of trees within a woodland on land to the south west of Manor Road, Darwen.

Restocking Notices are served under Section 17A of the Forestry Act 1967 when the Forestry Commission believes that trees have been felled illegally (without the authority of a felling licence where one was required) by someone with an interest in the land – typically the freeholder or tenant. The Restocking Notice places a duty on that individual to restock the land with trees. Failure to comply with a Restocking Notice allows the Forestry Commission to serve an Enforcement Notice, which places a similar duty on the individual. Failure to comply with an Enforcement Notice is an offence carrying an unlimited value fine upon conviction in a magistrate’s court.

In May 2018, the landowner felled around 70 trees without permission, and the FC were informed, who confirmed the landowner had breached national guidelines requiring a licence to fell more than five cubic metres of timber. As such, the FC issued a Restocking Notice on the 27th September 2018, under the said Act, requiring the affected area to be restocked with broadleaf species to achieve no less than 1,100 equally spaced stems per hectare. In this particular case, this equates to 957 trees at the site [ref: RN11/18-19]. The FC at the time declined to name the landowner.

On the 22nd August 2022, the FC informed the Council that they have served an amended Restocking Notice after the Minister considered a report submitted to the Reference Committee to modify the Notice RN11/18-19. The amended notice now incorporates natural regeneration and excludes a small area on the eastern edge of the site. The open space element has increased from 10% to 20%, and the FC expects a portion of this to facilitate the path that runs through the site. Figure 1 is an extract from the map originally served on the landowner in September 2018, and is an extract from the map attached to the amended notice.

The Restocking Notice is dated 5th September 2022, and requires that the restocking specified in the Notice, is carried out by the 30th June 2023, and the 3 trees maintained for a period of 10 years from the tree planting or regeneration having occurred. The revised Restocking Notice now requires in relation to the land edged, the area to be restocked with broadleaf species to achieve no less than 1,100 equally spaced stems per hectare, which equates to 894 trees at this site. If natural restocking fails to provide restocking, planting will be necessary to secure the restocking.

The FC will not accept Ash trees as a species in the restocking mixture, due to the threat Chalara Fraxinea (ash dieback) poses to the long term viability of the species. Any trees which fail, die or are otherwise lost during the 10 year period, must be replaced by the 30th June the following year.

RESOLVED – That the report be noted.

38 Planning Service Performance (Development Management)

Members were informed of the Planning Service’s current performance in processing planning applications, which followed the Secretary of State for Communities and Local Government publishing a document in December 2020 “Improving planning performance Criteria for designation (updated 2020)”.

In the Planning for the Future White Paper, published in August 2020, the government set out their plan to transform the planning system, and decision making is a central part of this process. The report provided Blackburn With Darwen Borough Council's (BwDBC) performance for the 2 preceding years ending June 2022.

RESOLVED – That the Planning Department be thanked and that the report be noted.

39 NATIONAL PLANNING PERFORMANCE TABLES

The Members were presented with an update on the recently published National Planning Performance Tables.

A report was presented to the 16th August 2018 Committee meeting, informing the Members of the Planning Service's current performance in processing planning applications which followed the Secretary of State for Communities and Local Government publishing a document in November 2016 "Improving Planning Performance – Criteria for Designation". This set out the criteria the Government intend to use for designating a Local Planning Authority as underperforming and the thresholds that Authorities will be assessed against in the designation rounds which started in the first quarter of 2017/18. In addition, a report was presented to the Committee meeting on the 18th October 2018, in relation to the national performance tables. The government document has been updated in December 2020, and this report is related to the current performance data reported against the updated thresholds and assessment period.

The latest national planning performance statistics were published on the 21st July 2022, by the Government (up to March 2022). The figures up to June 2022 will not be published until later in the autumn. The figures show extracts from the majors and non-majors tables, and are a fantastic example of how far Blackburn With Darwen Borough Council (BwDBC) are continuing to perform since the Planning Service introduced the Improvement Plan in the autumn of 2015.

In the autumn of 2015, BwDBC were ranked 234th out of 336 local planning authorities relating to the determination of major planning applications within 13 weeks and agreed extensions of time (68.4%). The current figures published for the quarter ending March 2022, BwDBC ranking has now rose to 87th place with a performance of 95.3%, a significant improvement. The target set by the Government for the 2 preceding years is 60%. Within the Departmental Business Plan 2019-23, the target is 80%.

There are 58 Unitary local authorities in England and BwDC are placed 12th out of the unitary authorities. With regards to unitary authorities of similar size in population terms i.e. 200,000, BwDBC are placed 6th and with regards to the north-west authorities, BwDBC are placed 12th out of 15.

During the same period in 2015 with regards to non-majors applications (i.e. within 8 weeks and agreed extensions of time), BwDBC were ranked 332 out of 336 local planning authorities (39%). The current figures published for the quarter ending March 2022, BwDBC ranking has now rose to 52nd place with a performance of 95.9%, and another continued excellent performance. The

target set by the Government for the preceding 2 years is 70%. Within the Departmental Business Plan 2019-23, the target is 90%.

There are 58 Unitary local authorities in England and BwDC are placed 5th out of the unitary authorities: With regards to the North West authorities, BwDBC are placed 8.

Whilst the Council is currently meeting the Government's thresholds we must always remain mindful of performance targets as failure to meet the thresholds will see the Local Planning Authority being categorised as underperforming. If the Council were to be designated for poor performance, not only would there be reputational damage and a loss of confidence in the Local Planning Authority, but applicants would be able to by-pass the Council and submit applications directly to the Planning Inspectorate for determination. This would be detrimental to the interests of local democracy. Therefore, it is important that the Council retains sufficient resources to enable the targets to be met and exercises caution in the refusal of major planning applications, ensuring that reasons for refusal can be robustly defended in any subsequent planning appeal.

RESOLVED – That the Planning Department be thanked for their hard work and that the report be noted.

40 APPEALS MONITORING REPORT

The Members were updated on the recently decided appeals since the last monitoring report presented to the Committee in December 2021. There were 14 appeals in total were determined during the period 3rd December 2021 to 26th August 2022. 14 appeals were dismissed, and 0 appeals were allowed

With regards to the national performance benchmarking in terms of appeals allowed against the number of applications determined, Blackburn with Darwen Borough Council are performing well. The latest published figures by the Ministry of Housing, Communities & Local Government for the period April 2019 to March 2021 (appeal decisions up to December 2021), show the Council in 19th place out of 330 local planning authorities

There are 58 Unitary local authorities in England and Blackburn with Darwen Borough Council are placed 2nd out of the unitary authorities.

RESOLVED – That the Planning Department be thanked and the report be noted.

41 Diversion of Public Footpath 5 Eccleshill (part)

A report was submitted to to seek Committee approval for a public path order under the Highways Act 1980, Section 119 to divert part of Public Footpath 5, Eccleshill.

Each year public rights of way officers survey a random 10% sample of the PROW network to give an indication of the current state of the network. Several years ago FP5 Eccleshill was surveyed as part of this process and officers identified an obstruction of the route by gates at the entrance to Pottery Farm off Roman Road.

The then owner of the farm when approached by officers regarding this obstruction insisted that the definitive line of the footpath was not through the farmyard but around an outbuilding joining Roman Road through the gap between the farm and Eccleshill Cottages.

There then ensued a lengthy dialogue with the owner concerning the line of the footpath which was still unresolved when the farm changed hands in 2015.

During the dialogue with the previous owner a concessionary route was waymarked on the route around the farm which, although substandard in places, kept the route open for the public.

When the farm changed ownership in 2015 negotiations recommenced with the new owner who had bought the farm with the knowledge of the ongoing dispute. These negotiations culminated with the new owner accepting the council's position and, as a result, the Council received an application on the 12th January 2021 from the current owner of Pottery Farm

The initial application sought to formalise the concessionary route but, as mentioned above, this was substandard in places with no scope for improvement.

In addition, the new owner keeps and breeds alpacas which means that both the Definitive route and the proposed diversion were subject to significant limitations, i.e. gates and stiles, in order to control the stock within enclosures.

After further discussions the diversion route which is the subject of this report was agreed by all parties. This route is away from the area containing the alpacas which means there is less need for limitations on the route. The applicant has confirmed that the new path will be provided to a standard that is to the satisfaction of the Highway Authority.

This report seeks to address those matters, namely the application for the public path order to divert part of the path as shown on the plan. It seeks to advise members of the Committee of the outcome of non-statutory consultations, and an assessment against the relevant legislative criteria, thus enabling them to consider whether, or not to promote the Order requested.

RESOLVED – Promote the Order and authorise the Director of HR, Legal & Governance to progress the necessary legal orders.

42 **ENFORCEMENT UPDATE**

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

RESOLVED – That the report be noted.

Signed:

Date:

Chair of the meeting
at which the minutes were confirmed