

Public Document Pack

Planning and Highways Committee

Thursday, 15th September, 2022

6.30 pm

Meeting Room A, Blackburn Town Hall

AGENDA

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8. **Tree Preservation Order – 17 Beardwood Brow, Blackburn 2022 (ref: BWD2)**
To request that the Committee 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).
To request that the Committee confirm 17 Beardwood Brow, Blackburn 2022 Tree Preservation Order (TPO) (ref: BWD1) without modification.

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- To request that the Committee 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).
To request that the Committee confirm Bradgate, 16 Oldfield Avenue, Darwen BB3 1QY 2022 Tree Preservation Order (TPO) (ref: BWD1) without modification.
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- 10. Tree Preservation Order – 37 Alexandra Road,
Blackburn 2022 (ref: BWD3)**
- To request that the Committee 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).
To request that the Committee confirm 37 Alexandra Road, Blackburn 2022 Tree Preservation Order (TPO) (ref: BWD3) without modification.
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- 11. FORESTRY COMMISSION – AMENDED RESTOCKING
NOTICE, LAND TO THE SOUTH WEST OF MANOR
ROAD, DARWEN**

To present Members with 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.

FORESTRY COMMISSION – AMENDED RESTOCKING NOTICE, LAND TO THE SOUTH WEST OF MANOR ROAD, DARWEN 117 - 121

12. Planning Service Performance (Development Management)

To inform 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 December 2020 “Improving planning performance Criteria for designation (updated 2020)”.

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13. NATIONAL PLANNING PERFORMANCE TABLES

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

Report - National Planning Performance Tables 133 - 139

14. APPEALS MONITORING REPORT

To present Members with an update of recently decided appeals since the last monitoring report presented to the Committee in December 2021.

Appeals Monitoring Front Cover report 140 -
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15. Diversion of Public Footpath 5 Eccleshill (part)

The purpose of the report is to seek committee approval for a public path order under the Highways Act 1980, Section 119 to divert part of Public Footpath 5, Eccleshill

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PART 2 - THE PRESS AND PUBLIC MAYBE EXCLUDED DURING CONSIDERATION OF THE FOLLOWING ITEMS

16. ENFORCEMENT UPDATE

This report is to present to Members as an overview of Planning Enforcement matters. The list of cases included in this report are in the main a list of cases where formal enforcement action is being taken and is not a list of every case, complaint or enquiry being dealt with.

ENFORCEMENT UPDATE
15 September 2022 update report.pdf

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Date Published: Wednesday, 07 September 2022
Denise Park, Chief Executive

PLANNING AND HIGHWAYS COMMITTEE
Thursday, 18 August 2022

PRESENT – Councillors, Councillor David Smith (Chair), Akhtar, Casey, Khan, Baldwin, Desai, Liddle, Mahmood, McCaughran, Floyd (substitute for Imtiaz) and Slater (substitute for Marrow).

OFFICERS - Gavin Prescott (Planning Manager); Safina Alam (Highways); Michael Green (Legal) and Shannon Gardiner (Democratic Services).

RESOLUTIONS

23 **Welcome and Apologies**

The Chair welcomed everyone to the meeting.

Apologies were received from Cllr Jacquie Salter who was substituted by Cllr Derek Hardman, Cllr Sabahat Imtiaz who was substituted by Cllr Jackie Floyd, Cllr Paul Marrow who was substituted by Cllr Neil Slater and Cllr Paul Browne.

24 **Minutes of the Previous Meeting**

RESOLVED – That the minutes of the previous meeting held on 21st July 2022 be confirmed and signed as a correct record.

25 **Declaration of Interest**

RESOLVED – A Declaration of Interest was received from Cllr Quesir Mahmood in relation to agenda item 4.5 planning application 22/0682 as the applicant was his daughter.

26 **Planning Applications for Determination**

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.

26.1 **Planning Application 22/0038**

Applicant – Darwen Bars and Leisure

Location and Proposed Development – Warehouse at Hacking Street, Darwen, BB3 1AL

Full Planning Application for change of use from ware/distribution (use class B8) to Children’s play centre (use class E[d]) with external alterations.

Decision under Town and Country Planning Acts and Regulations –

RESOLVED – Approved subject to the conditions highlighted in the Directors Report

26.2 Planning Application 22/0419

Speaker – Mr Cleveland Forty

Applicant – Mr Cleveland Forty

Location and Proposed Development – Knowsley Farm, Knowsley Lane, Edgworth, Bolton, BL7 0JH

Construction and operation of a combined ground mounted solar PV array (7kW) and wind turbine (5.5kW) with a maximum tip height of 17.5m

Decision under Town and Country Planning Acts and Regulations –

RESOLVED – Approved subject to the conditions highlighted in the Directors Report

26.3 Planning Application 22/0430

Applicant – Mr Majid Anwar

Location and Proposed Development – 5 Chestnut Gardens, Blackburn, BB1 6PS

Full Planning Application for Extension to rear single storey and erection of a front porch. Alteration to rear garden levels and replacement party and side/rear boundary wall (retrospective)

Decision under Town and Country Planning Acts and Regulations –

RESOLVED – Approved subject to the conditions highlighted in the Directors Report

26.4 Planning Application 22/0509

Applicant – S Issa

Location and Proposed Development – Land and Properties North of Billinge End Road, Blackburn, BB2 6PY

Variation/Removal of Condition/Minor Material Amendment for Variation of Condition Nos 4 "Construction Method Statement", 10 "revised tree protection measures and working practices", 11 "revised landscaping scheme" and 23 "revised scheme relating to design of proposed housing (increase to ridge height; increase to depth of dwellings; increase to glazing on the ground and lower ground floors; relocation of access points and driveways to Plots 3-5"

pursuant to planning application 10/18/0396 "Residential development of 5 no. dwelling following demolition of existing buildings"

Decision under Town and Country Planning Acts and Regulations –

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

26.5 Planning Application 22/0682

Cllr Quesir Mahmood left the meeting due to a declaration of interest

Applicant – Ms Isma Mahmood

Location and Proposed Development – 27 Livingstone Road, Blackburn, BB2 6NF

Erection of porch and double and single storey rear extension and works to rear to raise garden level

Decision under Town and Country Planning Acts and Regulations –

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

Condition 5:

Prior to their construction, detailed plans of the retaining structures required to facilitate the raised garden levels hereby approved, together with structural engineers calculations (where relevant) and details of external finishes, shall have first been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in strict accordance with the agreed details and materials.

REASON: In order to agree the scope of those works, in the interests of visual amenity, and to comply with the requirements of Policy 11 of the Blackburn with Darwen Borough Council Local Plan Part 2, Site Allocations and Development Management Policies (Adopted 2015).

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 Growth & Development 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 STRATEGIC 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, Planning Manager (Development Management) – Ext 5694.

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

PLANNING APPLICATIONS FOR DETERMINATION Date: 15/09/2022

Application No	Applicant	Site Address	Ward
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10/22/0067

SUPPLEMENTAL REPORT

Inceptum2 Management Limited Unit 4 Lockside Office Park Lockside Road Preston PR2 2YS	Land on Corner of Carl Fogarty Way and Thornley Avenue Blackburn	Little Harwood & Whitebirk
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Full Planning Application (Regulation 4) for Construction of industrial units, use class B2, B8, E(g) iii including trade counter

RECOMMENDATION: Permits

10/22/0413

Ms Patricia da Silva Ellerslie, Bury Fold Lane Darwen BB3 2QG	Land at Ellerslie Bury Fold Lane Darwen BB3 2QG	Darwen South Whitehall
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Full Planning Application for Proposed erection of 6 new detached dwellings and associated works including access arrangements, internal road, driveways and landscaping.

RECOMMENDATION: Permits

10/22/0647

Homewood Properties C/o Agent	Palm Tree Islamic School (Former Montague Health Centre) Oakenhurst Road Blackburn BB2 1SN	Wensley Fold
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Variation/Removal of Condition/Minor Material Amendment for 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

RECOMMENDATION: Permits

SUPPLEMENTAL REPORT:

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

Site address:

**Land on Corner of Carl Fogarty Way and Thornley Avenue
Blackburn**

Applicant: Inceptum2 Management Limited

**Ward: Little Harwood & Whitebirk Councillors: Mustafa Desai
Sonia Khan
Abdul Patel**



1.0 SUMMARY OF RECOMMENDATION

1.1 **APPROVE** subject to the conditions set out within section 4 of this report

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

2.1 This application was originally before the May 25th 2022 Planning and Highways Committee, in accordance with the Scheme of Delegation, as the proposal fell under Regulation 4 of the Town and Country Planning Regulations 1992.

2.2 The May 2022 approval was subject to planning conditions and the completion of a section 111 agreement to secure a contribution towards off-site highway works. The legal agreement has yet to be completed and as a consequence the applicant is now seeking to address drainage issues in order to avoid the application of pre-commencement conditions, as the formal decision notice has not been released. On that basis this report should be considered a supplemental report to that previously considered by Members.

2.3 The proposal remains in accordance with the Council's development plan, which supports new commercial developments and associated works within the defined urban boundary, provided they constitute sustainable development and accord with the development plan when taken as a whole.

2.4 The proposal is also satisfactory from a technical point of view, with all issues relative to the assessment having been addressed through the application process, or capable of being controlled or mitigated through appropriately worded planning conditions.

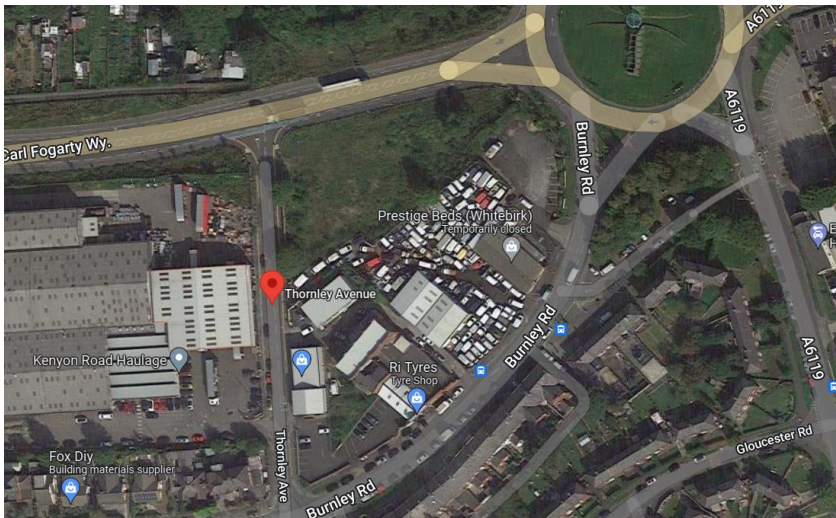
3.0 RATIONALE

3.1 Site and Surroundings

3.1.1 The application site is positioned within the urban boundary in a Primary Employment Area, as defined on the adopted policies map. The site is located to the south of Carl Fogarty Way at the junction of Thornley Avenue. Commercial and industrial uses bound the southern and eastern edge of the site and further to the west.

3.1.2 The site is irregular in shape, with a gross area of 0.32 hectares. Currently free from development, the site is predominantly covered with low grade vegetation. An existing gated vehicular access point links the land to Thornley Avenue.

3.1.3 Satellite image and site photographs:



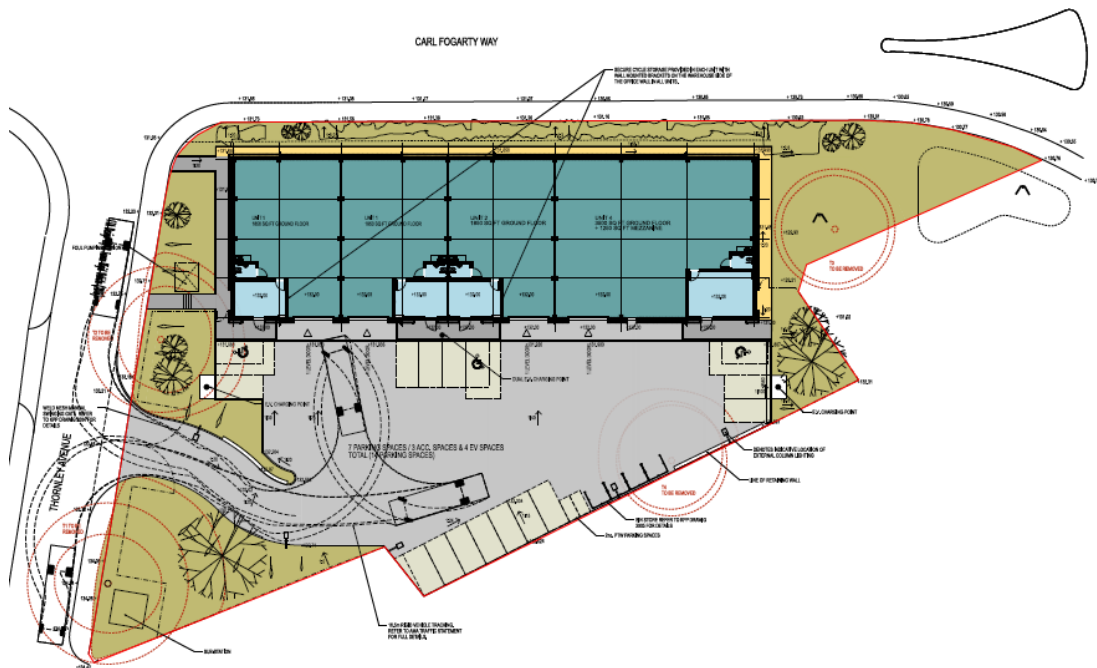
3.2 Proposed Development

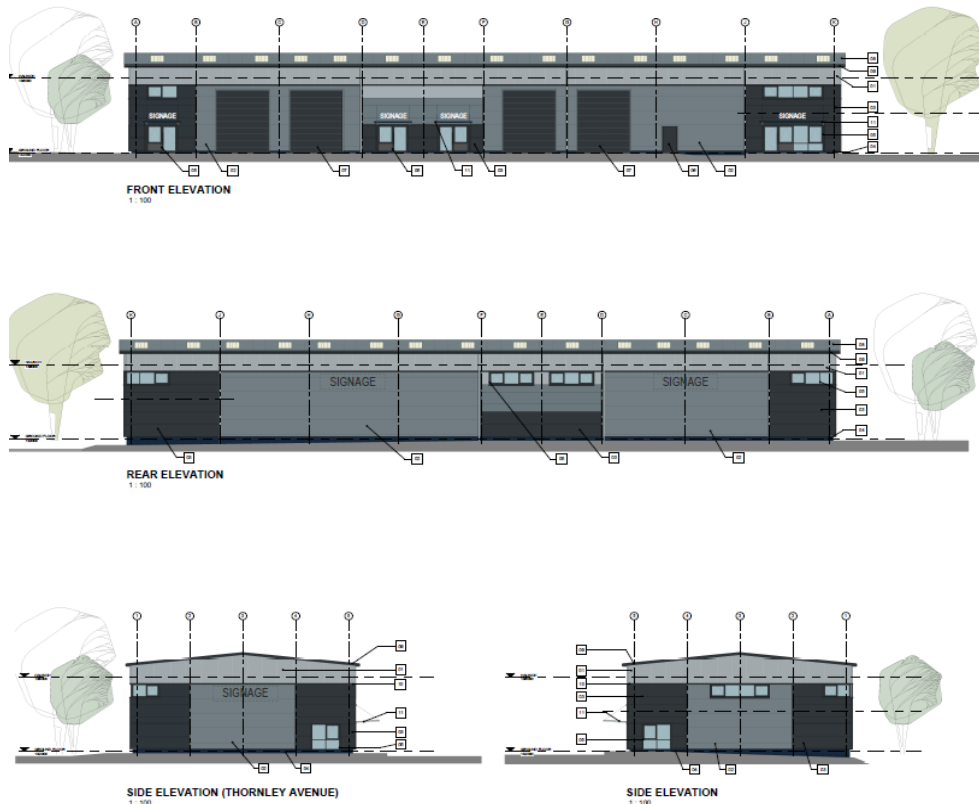
3.2.1 Full planning approval is sought for the redevelopment of the site to provide for a new two storey building with associated parking, servicing yard and new

vehicular access. The new building will accommodate 4no. commercial units with a cumulative floor area of 956m². As a speculative development the proposal seeks a flexible use arrangement supporting use classes B2, B8 and E(g)(iii).

3.2.2 The new building measures approximately 55m x 17.5m and is to be constructed with a pitched roof with a maximum ridge height of approximately 8m. The main walling will be a mix of grey coloured composite metal cladding, whilst the roof will be profiled metal roofing sheets. Detailing is to match. The new building will be massed towards the northern edge of the site, effectively shielding the new service yard and parking area from open views from Carl Fogarty Way. The development will be serviced by a replacement vehicular access/egress on to Thornley Avenue, with additional pedestrian links to Carl Fogarty Way. The scheme is complimented by areas of landscaping to the north, west and eastern periphery.

Extract from submitted amended site plan received 23rd August 2022:





Extract from submitted proposed elevations drawing received 19th January 2022:

3.3 Development Plan

3.3.1 Section 38 (6) of the Planning and Compulsory 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 adopted Core Strategy DPD (2011) and adopted Local Plan Part 2 – Site Allocations and the Development Management Policies (2015). The following policies are considered relevant in assessment of the proposed development;

3.3.3 Core Strategy

- Policy CS1 – A Targeted Growth Strategy
- Policy CS11 – Facilities and Services
- Policy CS16 – Form and Design of New Development
- Policy CS22 – Accessibility Strategy

3.3.4 Local Plan Part 2

- Policy 1 – The Urban Boundary
- Policy 7 – Sustainable and Viable Development
- Policy 8 – Development and People
- Policy 9 – Development and the Environment
- Policy 10 – Accessibility and Transport
- Policy 11 – Design

3.4 Other Material Planning Considerations

3.4.1 National Planning Policy Framework (NPPF) (July 2021)

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

- Section 2: Achieving Sustainable Development
- Section 6: Building a Strong, Competitive Economy
- Section 9: Promoting Sustainable Transport
- Section 12: Achieving Well-Designed Places

3.5 Assessment

3.5.1 Principle of Development

Policy 1 of the Local Plan and CS1 of the Core Strategy identifies the preferred location for all new development to be within the defined Urban Boundary, which the site is situated within.

3.5.2 The site is within a 'Primary Employment Area' as defined on the adopted policies map. Policy 4 indicates in such locations that planning permission will be granted for development falling within use classes B1, B2 and B8, providing there is no conflict with the overall function and developability of the area. Members should note that when allowing for the 2020 amendments to the Use Classes Order, which replaced use class B1 with sections of the newly formed class E(g), the current proposal remains consistent with Policy 4

3.5.3 In accordance with the presumption in favour of sustainable development detailed in the Framework, and Policy 7, development proposals should proceed without delay, unless impacts which significantly and demonstrably outweigh the benefits of the proposal are identified; subject to assessment of the following matters;

3.5.4 Flood Risk / Drainage:

The initial approval by Members at the May 2022 Planning and Highways Committee, was subject to two planning conditions relating to drainage. They were;

Prior to the commencement of development, details of a sustainable surface water drainage scheme and a foul water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The drainage schemes must include:

(i) An investigation of the hierarchy of drainage options in the National Planning Practice Guidance (or any subsequent amendment thereof). This

- investigation shall include evidence of an assessment of ground conditions and the potential for infiltration of surface water in accordance with BRE365;*
- (ii) A restricted rate of discharge of surface water agreed with the local planning authority (if it is agreed that infiltration is discounted by the investigations). In the event of surface water discharging to the public surface water sewer, the rate of discharge shall be restricted to 5 l/s;*
 - (iii) Levels of the proposed drainage systems including proposed ground and finished floor levels in AOD;*
 - (iv) Incorporate mitigation measures to manage the risk of sewer surcharge where applicable; and*
 - (v) Foul and surface water shall drain on separate systems.*

The approved schemes shall also be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage.

Prior to occupation of the proposed development, the drainage schemes shall be completed in accordance with the approved details and retained thereafter for the lifetime of the development.

REASON: To promote sustainable development, secure proper drainage and to manage the risk of flooding and pollution, in accordance with the requirements of Policy 9 of the Blackburn with Darwen Borough Local Plan Part 2.

Prior to occupation of the development a sustainable drainage management and maintenance plan for the lifetime of the development shall be submitted to the local planning authority and agreed in writing. The sustainable drainage management and maintenance plan shall include as a minimum:

- a. Arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a resident's management company; and*
- b. Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system to secure the operation of the surface water drainage scheme throughout its lifetime.*

The development shall subsequently be completed, maintained and managed in accordance with the approved plan.

REASON: To ensure that management arrangements are in place for the sustainable drainage system in order to manage the risk of flooding and pollution during the lifetime of the development, in accordance with the requirements of Policy 9 of the Blackburn with Darwen Borough Local Plan Part 2.

3.5.5 The applicant has since made progress on drainage design and is therefore seeking to avoid the above conditions. The applicant's drainage consultant has summarised the current proposals as follows;

- Previously the scheme went to planning on the basis of drawing reference '20327-100 (T1) Drainage Strategy' – This drawing proposed

an attenuated surface water (SW) system and a foul water (FW) package treatment plant which then pumped combined flows to the UU SW sewer located at the junction of Thornley Avenue and Carl Fogarty Way. There were some queries with UU, who ultimately accepted the SW discharge but not the FW.

- The drainage strategy now proposed is shown on drawing reference '20327-100 (T3) Drainage Strategy' – This drawing highlights a SW connection to the canal and a pumped FW connection to the UU FW sewer located adjacent Kenyons Haulage in Thornley Avenue.



- We have attached drawing 'H-068775-02-505 - C06 - Existing & Proposed Drainage Network System 3 - As Built - DCE Comments' which was the 'as-built' drawing from Capita for Carl Fogarty Way, which is where we obtained information for initial proposed drainage discharge and where we have noted one of the missing 'flood balancing pipes'. We intend to use one of these flood balancing pipes to convey our SW discharge to the canal
- Prior to formal submission of the revised details there has been dialogue with United Utilities, The Canal and River Trust and the Lead Local Flood Authority, who have been broadly supportive of the revised drainage strategy.

3.5.6 The Lead Local Flood Authority have offered no objection to the revised details, advising;

“The revised drainage proposals are acceptable, but it is recommended that the surface water crossing Council land to the canal should be conveyed in an underground pipe rather than flowing over surface. This would be subject to approval from the Canal and River Trust”.

3.5.7 The Canal and River Trust have offered no initial objection to the intention to discharge surface water in to the canal, advising;

“The Trust have been in discussion with the applicant in relation to accepting surface water drainage from the site to the canal, this is currently being reviewed under our mandatory process, but in principle these arrangements would be acceptable. This is subject to an agreement being reached with the applicant on accepting discharge to the canal and all related works being carried out in accordance with the Trust’s Third Party Works Code of Practice. This process would not prohibit planning permission from being granted, however if for any reason an agreement cannot be reached then alternative drainage arrangements would be required. We welcome that foul waste would be drained separately to the main sewer, we would not accept any new foul waste connections (treated or otherwise) into the canal”.

3.5.8 Consequently, the proposed surface water drainage proposals are considered to be satisfactory, subject to the third party agreements being obtained from the Canal and River Trust. That process is separate to the planning process and need not delay the planning decision making process.

3.5.9 United Utilities have reviewed the submitted revised drainage strategy and confirm the details are acceptable, and recommend the following conditions to be imposed:

The drainage for the development hereby approved, shall be carried out in accordance with principles set out in the submitted Foul & Surface Water Drainage Design Drawing 20327, Rev T3, dated 8th August 2022. No surface water will be permitted to drain directly or indirectly into the public sewer. Prior to occupation of the proposed development, the drainage schemes shall be completed in accordance with the approved details and retained thereafter for the lifetime of the development.

Reason: To ensure a satisfactory form of development and to prevent an undue increase in surface water run-off and to reduce the risk of flooding in accordance with Policy 9 of the adopted Blackburn With Darwen Borough Local Plan Part 2.

Prior to occupation of the development a sustainable drainage management and maintenance plan for the lifetime of the development shall be submitted to the local planning authority and agreed in writing. The sustainable drainage management and maintenance plan shall include as a minimum:

- a) *Arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a management company; and*
- b) *Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system to secure the operation of the surface water drainage scheme throughout its lifetime.*

The development shall subsequently be completed, maintained and managed in accordance with the approved plan.

REASON: To ensure that management arrangements are in place for the sustainable drainage system in order to manage the risk of flooding and pollution during the lifetime of the development in accordance with Policy 9 of the adopted Blackburn With Darwen Borough Local Plan Part 2.

3.5.10 Other Matters: The revised drainage solution has a knock-on effect to the foundation and retaining structure design. The impact of this is that the category C tree that previously abutted the eastern gable of the new building will be lost. Members are advised that the tree is self-seeded and its loss is adequately compensated by the submitted landscape proposals, which are controlled via condition 4 (as set out in section 4.1). On that basis the proposal remains consistent with the requirements of Policy 9.

4.0 RECOMMENDATION

4.1 Approve subject to;

(i) **Delegated authority is given to the Strategic Director of Growth and Development to approve planning permission, subject to an agreement under Section 111 of the Local Government Act 1972, relating to the payment of £12,000 towards off-site highway improvements; Payments are to be made prior to commencement of development, and**

(ii) **The following conditions;**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this planning permission.
REASON: Required to be imposed pursuant to Section 51 of the Planning and Compulsory Purchase Act 2004
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:

Amended Site Plan, 2297_2001 revision C, received 23rd August 2022
Proposed Elevations, 2297_2003, received 19th January 2022
Landscape Plan, PWP.579.001 revision 02, received 19th January 2022
Fencing and Gates, 2297_2004, received 19th January 2022
Bin Store, 2297_2005, received 19th January 2022.

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

3. The exterior of the dwellings hereby approved shall be constructed in accordance with the material schedule detailed on drawing no. 2297_2003, received 19th January 2022.

REASON: To ensure that the external appearance of the development is satisfactory; in accordance with Policy 11 of the Blackburn with Darwen Borough Local Plan Part 2 and the adopted Blackburn with Darwen Design Guide Supplementary Planning Document.

4. The development hereby approved shall be implemented in strict accordance with the landscaping scheme detailed on drawing PWP.579.001 revision 02, received 19th January 2022.

Trees and shrubs shall be planted on the site in accordance with the approved details during the first available planting season following completion of the works, and thereafter retained. Trees and shrubs dying or becoming diseased, removed, or being seriously damaged within five years of planting shall be replaced by trees and shrubs of similar size and species to those originally required to be planted during the first available planting season after the loss of the trees and / or shrubs.

REASON: To ensure that there is a well laid scheme of healthy trees and shrubs in the interests of amenity in accordance with Policies 9, 11 and 40 of the Blackburn with Darwen Borough Local Plan Part 2.

5. The drainage for the development hereby approved, shall be carried out in accordance with principles set out in the submitted Foul & Surface Water Drainage Design Drawing 20327, Rev T3, dated 8th August 2022. No surface water will be permitted to drain directly or indirectly into the public sewer. Prior to occupation of the proposed development, the drainage schemes shall be completed in accordance with the approved details and retained thereafter for the lifetime of the development.

REASON: To ensure a satisfactory form of development and to prevent an undue increase in surface water run-off and to reduce the risk of flooding in accordance with Policy 9 of the adopted Blackburn With Darwen Borough Local Plan Part 2.

6. Prior to occupation of the development a sustainable drainage management and maintenance plan for the lifetime of the development shall be submitted to the local planning authority and agreed in writing. The sustainable drainage management and maintenance plan shall include as a minimum:

- a) Arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a management company; and

- b) Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system to secure the operation of the surface water drainage scheme throughout its lifetime.

The development shall subsequently be completed, maintained and managed in accordance with the approved plan.

REASON: To ensure that management arrangements are in place for the sustainable drainage system in order to manage the risk of flooding and pollution during the lifetime of the development in accordance with Policy 9 of the adopted Blackburn With Darwen Borough Local Plan Part 2.

7. Should contamination be encountered unexpectedly during redevelopment, all works should cease, and the LPA should be immediately informed in writing. If unacceptable risks are identified, a remedial options appraisal and detailed remediation scheme should be presented, and agreed in writing by the LPA. No deviation shall be made from this scheme without the written express agreement of the LPA.

REASON: To protect the health of future occupiers of the site; in accordance with Policy 8 of the adopted Blackburn with Darwen Borough Council Local Plan Part 2.

8. Prior to commencement of the development hereby approved, a Construction Method Statement shall be submitted to, and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - I) the parking of vehicles of site operatives and visitors
 - II) loading and unloading of plant and materials
 - III) storage of plant and materials used in constructing the development
 - IV) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - V) wheel washing facilities
 - VI) measures to control the emission of dust and dirt during construction
 - VII) a scheme for recycling/disposing of waste resulting from demolition and construction works

REASON: In order to avoid the possibility of the public highway being affected by the deposit of mud/or loose materials which could create a potential hazard to road users, in order to protect the amenity of the occupiers of the adjacent properties, in order to protect the visual amenities of the locality and to comply with Policies 8 and 10 of the Blackburn with Darwen Borough Local Plan Part 2.

- 9 The removal of vegetation from the site shall be conducted outside the bird nesting season (March to August) or within 48 hours of a suitably qualified ecologist having confirmed the absence of any nests. If present, any nests must be protected from works until they are no longer in use.

REASON: To safeguard biodiversity interests, in accordance with the requirements of Policy 9 of the Blackburn with Darwen Borough Local Plan Part 2.

10 The use of the premises hereby approved shall be limited to between the hours 07:00 to 21:00, daily.

REASON: To ensure that noise from the development does not give rise to a loss of residential amenity to neighbouring residents, in accordance with Policy 8 of the Blackburn with Darwen Local Plan Part 2.

11. Notwithstanding the submitted details, no development shall occur until a revised site layout drawing has been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the following;

- Provision of PTW parking
- Relocation of pedestrian access route within the north west corner of the site
- Relocation of vehicular access gate a minimum of one car length in to the site.

The development shall be in accordance with the agreed details and thereafter retained.

REASON: In the interests of the safe, convenient and efficient movement of all highway users, in accordance with the requirements of Policy 10 of the Blackburn with Darwen Borough Local Plan Part 2.

12 The construction of the development hereby permitted shall only take place between the hours of 07:30 and 18:00 Monday to Friday, 07:30 to 13:00 on Saturdays and not at all on Sundays or Bank Holidays.

REASON: To protect the amenity of residents, in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

13. Prior to the commencement of development hereby approved, the developer must:

- a. submit proposals for additional gas monitoring, according with the gas generational potential of the site and end use, to the Local Planning Authority for written approval;
- b. once the proposals described at (a) have been approved by the Local Planning Authority, the additional gas monitoring shall be implemented and the findings submitted to the Local Planning Authority for approval, including an appropriate assessment of risks to both human health and the wider environment, from contaminants in, on or under the land (including ground gas); and
- c. if unacceptable risks are identified, a remedial options appraisal and detailed remediation scheme should be presented, along with an updated CSM. No deviation shall be made from this scheme without the written agreement from the Local Planning Authority.

REASON: To ensure that all reasonable steps have been taken to identify contamination at the site in accordance with Policy 8 of the adopted Blackburn with Darwen Borough Local Plan Part 2.

14 Prior to the occupation of the development hereby approved, two copies of a comprehensive Validation Report shall be submitted to and approved in writing by the Local Planning Authority. The Validation Report shall demonstrate effective remediation in accordance with the agreed remediation scheme and updated CSM. All the installed remediation must be retained for the duration of the approved use, and where necessary, the Local Planning Authority should be periodically informed in writing of any ongoing monitoring and decisions based thereon.

REASON: To ensure that all reasonable steps have been taken to identify contamination at the site, that the risks it presents have been appropriately assessed, and that the site can be made 'suitable for use', as such, does not pose a risk to future users of the site or the wider environment in accordance with Policy 8 of the adopted Blackburn with Darwen Borough Local Plan Part 2.

5.0 PLANNING HISTORY

10/88/2077 – Erection of showroom and new perimeter fence.

6.0 CONSULTATIONS

Public Consultation: A site notice has been displayed. No representations have been received.

Lead Local Flood Authority: The revised drainage proposals are acceptable, but it is recommended that the surface water crossing Council land to the canal should be conveyed in an underground pipe rather than flowing over surface. This would be subject to approval from the Canal and River Trust.

Canal and River Trust: We can advise that the Trust have been in discussion with the applicant in relation to accepting surface water drainage from the site to the canal, this is currently being reviewed under our mandatory process, but in principle these arrangements would be acceptable. This is subject to an agreement being reached with the applicant on accepting discharge to the canal and all related works being carried out in accordance with the Trust's Third Party Works Code of Practice. This process would not prohibit planning permission from being granted, however if for any reason an agreement cannot be reached then alternative drainage arrangements would be required. We welcome that foul waste would be drained separately to the main sewer, we would not accept any new foul waste connections (treated or otherwise) into the canal.

United Utilities:

United Utilities wish to make the following comments regarding the proposal detailed above.

DRAINAGE

Following our review of the submitted Drainage Strategy, we can confirm the proposals are acceptable in principle to United Utilities and therefore should planning permission be granted we request the following condition is attached to any subsequent Decision Notice:

CONDITION:

The drainage for the development hereby approved, shall be carried out in accordance with principles set out in the submitted Foul & Surface Water Drainage Design Drawing 20327, Rev T3 -Dated 08/08/2022 which was prepared by Dudleys. No surface water will be permitted to drain directly or indirectly into the public sewer. Prior to occupation of the proposed development, the drainage schemes shall be completed in accordance with the approved details and retained thereafter for the lifetime of the development.

Reason: To ensure a satisfactory form of development and to prevent an undue increase in surface water run-off and to reduce the risk of flooding.

The applicant can discuss any of the above with Developer Engineer, Ashleigh Bellerby, by email at wastewaterdeveloperservices@uuplc.co.uk.

Please note, United Utilities is not responsible for advising on rates of discharge to the local watercourse system. This is a matter for discussion with the Lead Local Flood Authority and / or the Environment Agency (if the watercourse is classified as main river).

If the applicant intends to offer wastewater assets forward for adoption by United Utilities, their proposed detailed design will be subject to a technical appraisal by our Developer Services team and must meet the requirements outlined in 'Sewers for Adoption and United Utilities' Asset Standards'. This is important as drainage design can be a key determining factor of site levels and layout.

Acceptance of a drainage strategy does not infer that a detailed drainage design will meet the requirements for a successful adoption application. We strongly recommend that no construction commences until the detailed drainage design, has been assessed and accepted in writing by United Utilities. Any work carried out prior to the technical assessment being approved is done entirely at the developer's own risk and could be subject to change.

Management and Maintenance of Sustainable Drainage Systems

Without effective management and maintenance, sustainable drainage systems can fail or become ineffective. As a provider of wastewater services, we believe we have a duty to advise the Local Planning Authority of this potential risk to ensure the longevity of the surface water drainage system and the service it provides to people. We also wish to minimise the risk of a sustainable drainage system having a detrimental impact on the public sewer network should the two systems interact. We therefore recommend the Local Planning Authority include a condition in their Decision Notice regarding a management and maintenance regime for any sustainable drainage system that is included as part of the proposed development. You may find the condition below a useful example.

Prior to occupation of the development a sustainable drainage management and maintenance plan for the lifetime of the development shall be submitted to the local planning authority and agreed in writing. The sustainable drainage management and maintenance plan shall include as a minimum:

- a. *Arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a resident's management company; and*
- b. *Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system to secure the operation of the surface water drainage scheme throughout its lifetime.*

The development shall subsequently be completed, maintained and managed in accordance with the approved plan.

Reason: To ensure that management arrangements are in place for the sustainable drainage system in order to manage the risk of flooding and pollution during the lifetime of the development.

Please note United Utilities cannot provide comment on the management and maintenance of an asset that is owned by a third party management and maintenance company. We would not be involved in the discharge of the management and maintenance condition in these circumstances.

WATER AND WASTEWATER SERVICES

If the applicant intends to receive water and/or wastewater services from United Utilities, they should visit our website or contact the Developer Services team for advice. This includes seeking confirmation of the required metering arrangements for the proposed development.

If the proposed development site benefits from existing water and wastewater connections, the applicant should not assume that the arrangements will be suitable for the new proposal.

In some circumstances we may require a compulsory meter is fitted. For detailed guidance on whether the development will require a compulsory meter please visit <https://www.unitedutilities.com/my-account/your-bill/our-household-charges-20212022/> and go to section 7.7 for compulsory metering.

If reinforcement of the water network is required to meet potential demand, this could be a significant project and the design and construction period should be accounted for.

To avoid any unnecessary costs and delays being incurred by the applicant or any subsequent developer, we strongly recommend the applicant seeks advice regarding water and wastewater services, and metering arrangements, at the earliest opportunity. Please see 'Contacts' section below.

UNITED UTILITIES PROPERTY, ASSETS AND INFRASTRUCTURE

Water pipelines

United Utilities will not allow building over or in close proximity to a water main.

Wastewater pipelines

United Utilities will not allow a new building to be erected over or in close proximity to a public sewer or any other wastewater pipeline. This will only be reviewed in exceptional circumstances. *Nb. Proposals to extend domestic properties either above, or in close proximity to a public sewer will be reviewed on a case by case basis by either by a building control professional or following a direct application to United Utilities (see our website for further details).*

Advice relating to both water and wastewater infrastructure

It is the applicant's responsibility to demonstrate the exact relationship between United Utilities' assets and the proposed development. Developer's should investigate the existence and the precise location of water and wastewater pipelines as soon as possible as this could significantly impact the preferred site layout and/or diversion of the asset(s) may be required. Where United Utilities' assets cross the proposed red line boundary, developers must contact our Developer Services team prior to commencing any works on site, including trial holes, groundworks or demolition.

Unless there is specific provision within the title of the property or an associated easement, any necessary disconnection or diversion of assets to accommodate development, will be at the applicant/developer's expense. In some circumstances, usually related to the size and nature of the assets impacted by proposals, developers may discover the cost of diversion is prohibitive in the context of their development scheme.

Any agreement to divert our underground assets will be subject to a diversion application, made directly to United Utilities. This is a separate matter to the determination of a planning application. We will not guarantee, or infer acceptance of a proposed diversion through the planning process (where diversion is indicated on submitted plans). In the event that a diversion application is submitted to United Utilities and subsequently rejected (either before or after the determination of a planning application), applicants should be aware that they may need to amend their proposed layout to accommodate United Utilities' assets.

Where United Utilities' assets exist, the level of cover to United Utilities pipelines and apparatus must not be compromised either during or after construction and there should be no additional load bearing capacity on pipelines without prior agreement from United Utilities. This would include earth movement and the transport and position of construction equipment and vehicles.

Any construction activities in the vicinity of United Utilities' assets must comply with national building and construction standards and where applicable, our 'Standard Conditions for Works Adjacent to Pipelines'. This includes United Utilities' assets which may be located outside the applicant's red line boundary.

The applicant or developer should contact our Developer Services team for advice if their proposal is in the vicinity of water or wastewater pipelines and apparatus. It is their responsibility to ensure that United Utilities' required access is provided within their layout and that our infrastructure is appropriately protected. The developer would be liable for the cost of any damage to United Utilities' assets resulting from their activity. Please see 'Contacts' section below.

Property Searches (for asset maps):

A number of providers offer a paid for mapping service including United Utilities. For more information, or to purchase a sewer and water plan from United Utilities, please visit <https://www.unitedutilities.com/property-searches/>

Water and sewer records can be viewed for free at our Warrington Head Office by calling 0370 751 0101. Appointments must be made in advance. Public sewer records can be viewed at local authority offices. Arrangements should be made directly with the local authority.

The position of the underground apparatus shown on asset maps is approximate only and is given in accordance with the best information currently available. United Utilities Water will not accept liability for any loss or damage caused by the actual position being different from those shown on the map.

We request that a copy of this letter is made available to the applicant.

Yours faithfully

The Planning, Landscape and Ecology Team

7.0 CONTACT OFFICER: Martin Kenny, Principal Planner

8.0 DATE PREPARED: 2nd September 2022.

REPORT OF THE STRATEGIC DIRECTOR

Plan No: 10/22/0413

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

**Site address:
Land at Ellerslie
Bury Fold Lane
Darwen
BB3 2QG**

Applicant: Ms Patricia da Silva

Ward: Darwen South

**Councillor Kevin Connor
Councillor Lilian Slaton
Councillor Andrew Walker**



1.0 SUMMARY OF RECOMMENDATION

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

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

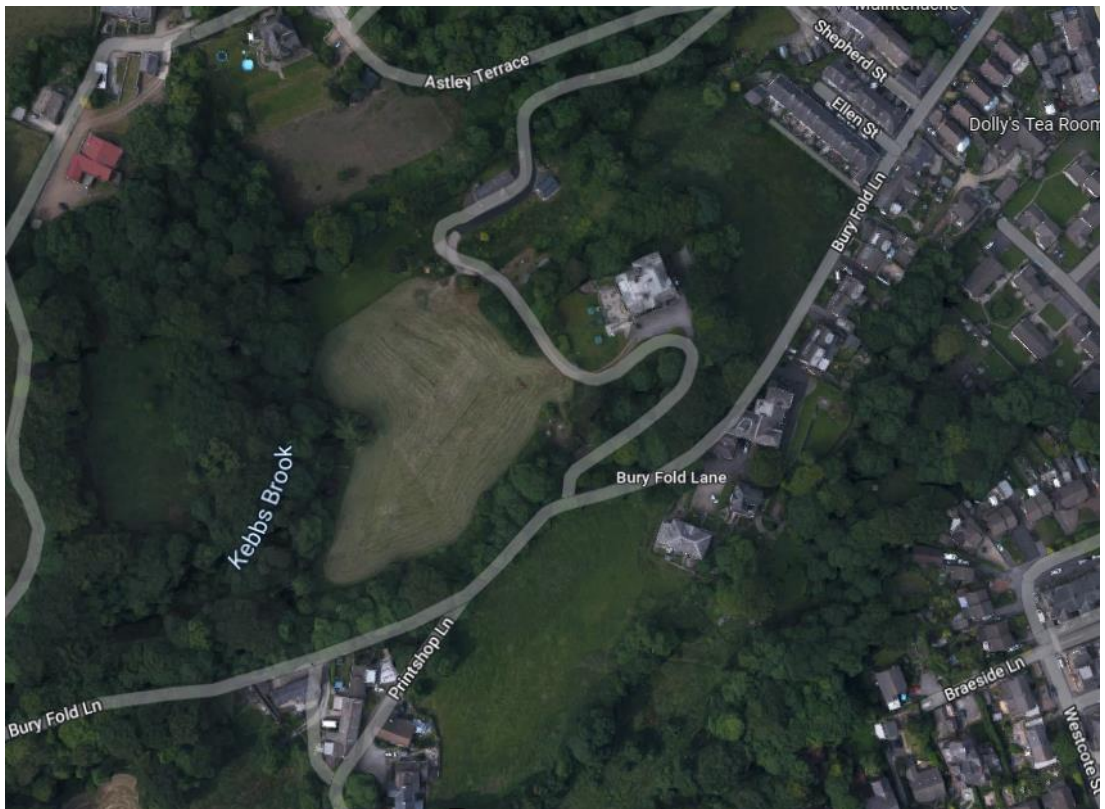
- 2.1 The proposal represents a minor planning application seeking full planning permission, and is presented to the Committee through the Chair Referral process of the adopted Scheme of Delegation. Members are advised that permission was previously granted by Committee for the erection of 18no. dwellings and associated works at a wider site which includes the current application site (the site), on 17th January 2020 - Reserved Matters pursuant to Outline permission granted in 2016. Although this permission has now expired, and cannot be implemented, as one granted within the current Development Plan period, it forms an important material consideration in assessment of this application.
- 2.2 Assessment of the application finds that the proposal corresponds with the Council's overarching housing growth strategy, as set out in the Core Strategy and Local Plan Part 2. It suitably demonstrates the ability to deliver a high quality housing development, consistent with the sites allocation as a '*Development Opportunities (small scale residential)*' site. It would also make an important contribution towards the Council's housing delivery targets and it will add to the vitality and variety of the local housing market.
- 2.3 The application is also acceptable 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 relates to grounds within the confines of and to the west of Ellerslie House. Ellerslie House is a large, impressive detached mid-19th Century dwelling located to and accessed from the north west of Bury Fold Lane. The site lies within the south eastern edge of Darwen's urban boundary and is bounded by housing to the east and open countryside to the north, south and west. Mature woodland envelops the site and there is a watercourse known as Kebbs Brook to the north. The site is accessed from the A666 Bolton Road via Bury Fold Lane. Grade II Listed Buildings 5 & 6 Bury Fold are located to the south, on the opposite side of Bury Fold Lane. Land levels rise moderately from east to west.

3.1.2 The site is defined by the red edge Location Plan (MKW Architecture, Feb 2022) and Google Aerial imagery, as extracted below.

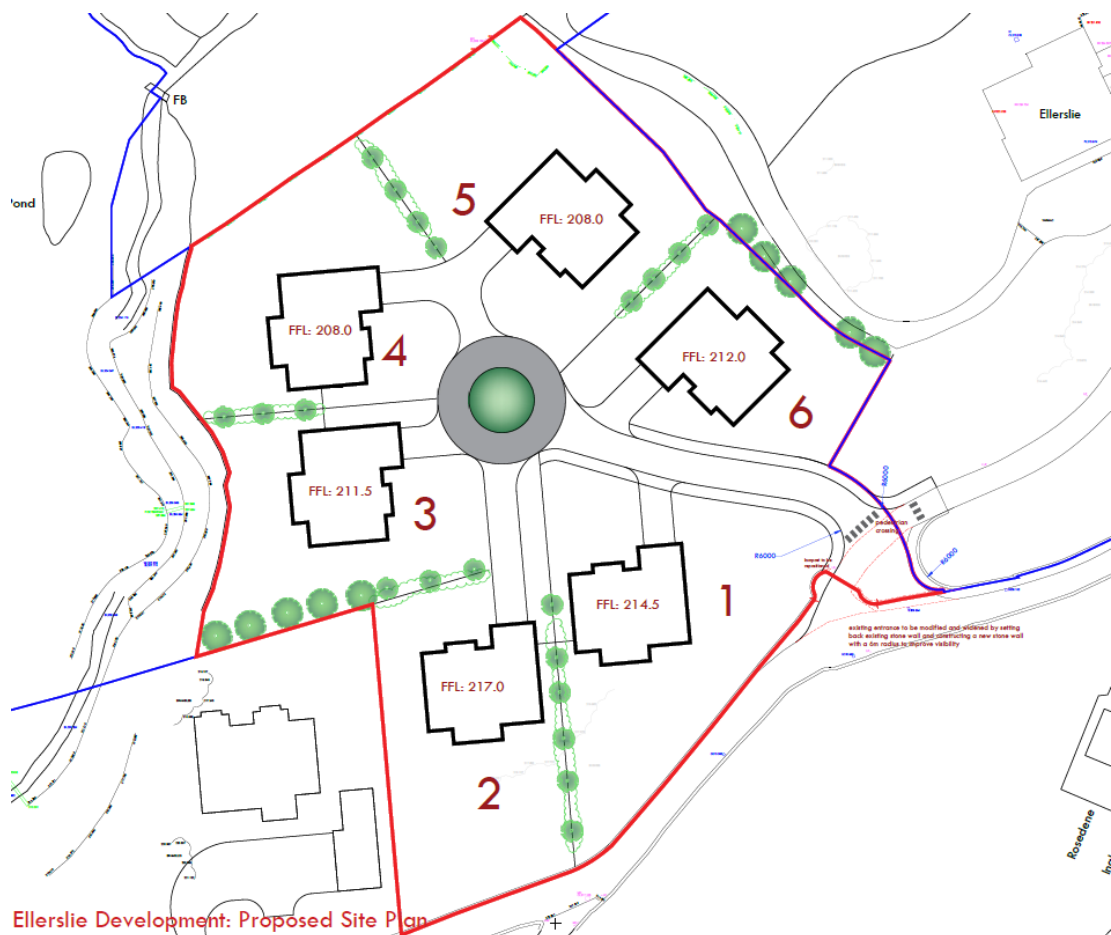


3.2 Proposed Development

3.2.1 Full planning permission is sought for the erection of 6no. detached dwellings and associated works including access arrangements, internal road, driveways and landscaping, as set out in the submitted drawings and Design and Access Statement.

3.2.2 Large, 6 bedroom, 2 storey dwellings are proposed, contemporary in appearance, which would sit in contrast to the grand, traditional appearance of Ellerslie House.

3.2.3 The proposed site layout is illustrated below (MKW Architecture, April 2022).



3.3 Development Plan

3.3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications be determined in accordance with the development plan unless material considerations indicate otherwise.

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

3.3.3 Core Strategy

- CS1 – A Targeted Growth Strategy
- CS5 – Locations for New Housing
- CS6 – Housing Targets
- CS7 – Types of Housing
- CS15 – Ecological Assets
- CS16 – Form and Design of New Development
- CS18 – The Borough’s Landscapes

3.3.4 Local Plan Part 2 (LPP2)

- Policy 1 – The Urban Boundary
- Policy 7 – Sustainable and Viable Development
- Policy 8 – Development and People
- Policy 9 – Development and the Environment
- Policy 10 – Accessibility and Transport
- Policy 11 – Design
- Policy 12 – Developer Contributions
- Policy 18 – Housing Mix
- Policy 28 – Development Opportunities
- Policy 39 – Heritage
- Policy 40 – Integrating Green Infrastructure and Ecological Networks with New Development
- Policy 41 – Landscape

3.4 Other Material Planning Considerations

3.4.1 Residential Design Guide Supplementary Planning Document.

This document provides targeted advice to ensure high quality new homes. It aims to ensure that new development reflects the individual and collective character of areas of the Borough and promotes high standards of design. The document also seeks to ensure a good relationship between existing and proposed development in terms of protecting and enhancing amenity.

3.4.2 Green Infrastructure Supplementary Planning Document.

This document provides guidance in relation to maximising opportunities to improve existing green infrastructure and to create new green infrastructure and ecological networks.

3.4.3 National Planning Policy Framework (The Framework)

Overall, The Framework aims to raise economic performance by ensuring the quantity, quality and mix of housing reflect that required, with an expectation

to maintain a 5-year housing land supply. Quality design should be secured and environmental impacts minimised. Effective use of under-used or vacant land is also emphasised. Areas of The Framework especially relevant to the proposal are as follows:

- Delivering a sufficient supply of homes
- Building a strong, competitive economy
- Making effective use of land
- Achieving well-designed places
- Meeting the challenge of climate change, flooding and coastal change
- Conserving and enhancing the natural environment.

3.4.4 Blackburn with Darwen Local Plan 2018 – 2037 (Consultation Draft) (January 2021).

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 impact;
- Environmental impact;
- Highways and access;
- Design and layout;
- Planning Gain / Section 106 contributions: Affordable Housing, GI and Education.

3.5.2 Principle

Core Strategy Policy CS1 explains that the overall planning strategy for the Borough is one of 'Targeted Growth' and identifies a need for '*a limited number of small scale urban extensions*'.

3.5.3 Policy CS5 directs that the preferred location for new housing, where market conditions permit its delivery, will be the inner urban areas of Blackburn and Darwen.

3.5.4 Policy CS7 encourages the development of a full range of new housing over the life of the Core Strategy in order to widen the choice available in the local market.

3.5.5 Policy 1 of the Local Plan states that the defined Urban Area is to be the preferred location for new development. Development in the Urban Area will be granted planning permission where it complies with the other policies of this Local Plan and the Core Strategy. The site is located within the urban area boundary defined on the proposals map.

3.5.6 Policy 7 on Sustainable and Viable Development echoes the presumption in favour of sustainable development set out in The Framework. Thus, applications that accord with policies in the Local Plan will be approved without delay unless material considerations indicate otherwise.

3.5.7 The site forms part of a wider 'Development Opportunities' allocation as confirmed by the Local Plan Part 2, under Policy 28/12, which supports 'small scale residential' development. Although *small scale* is not defined either at local or national level, the aforementioned previous of grant of planning permission (in 2019) for 18no. dwellings, sets a precedent for small scale, notwithstanding that the permission related to the whole allocation, as defined in the below extract (BwD Local Plan Part 2, 2015), rather than the westerly portion subject to this application, and that it has since expired.



3.5.8 An extant permission (May 2022) within the (above) site allocation for a single dwelling should be recognised. The current proposal in addition, therefore, equates to a total of 7 units for the allocation, well within the tolerance of small scale.

3.5.9 Members are advised that, as a minor application for residential development - defined as under 10 dwellings – no Section 106 contributions can be applied.

3.5.10 Accordingly, as a proposal delivering an appropriate mix of homes, on a site allocated for housing, the principle of the development is found to be entirely acceptable, in accordance with the provisions of the Development Plan and The Framework.

3.5.11 Amenity

Policy 8 requires development to contribute positively to the overall physical, social, environmental and economic character of the area. It is also required

to secure 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.

3.5.12 Relationship between buildings:

With reference to separation between proposed and existing dwellings, the submitted layout demonstrates mutually acceptable relationships, through compliance with the Council's adopted separation standards of 21m between facing habitable room windows and 13.5m between habitable room windows and facing blank elevations. It should be recognised that the interface of circa 17m between habitable room windows proposed to the side of the dwelling at plot 2 and the dwelling approved to the west of the site, accords with the minimum 13.5m standard, due to the absence of windows in the side elevation of the approved dwelling, as illustrated below (MKW Architecture, May 2022).



3.5.13 Separation between proposed dwellings within the site is also compliant with the adopted standards.

3.5.14 The Council's Public protection consultee offers no objection to the proposal, subject to recommending conditions to secure the following:

- Contaminated land – desk study and intrusive site investigation / remediation strategy, as necessary;
- Limited hours of construction works to between 08:00 – 18:00 hours Monday to Friday and 09:00 - 13:00 hours on a Saturday; and
- Noise and vibration control measures, should pile driving be necessary.

3.5.15 Electric vehicle charging points for each dwelling are also recommended. Members are, however, advised that, since June 2022, these are now a mandatory requirement under Building Regulations. Accordingly, they need not be required under the scope of planning control.

3.5.16 A Construction and Environmental Management Plan (CEMP) will also be secured via condition, to guard impacts arising throughout construction phase of the development, including but not limited to control of noise, vibration, dust emissions and highway cleansing / wheels washing.

3.5.17 Accordingly, it is found that satisfactory levels of amenity and safety would be secured for existing and future residents. The development is also considered to contribute positively to the overall physical, social, environmental and economic character of the area, in accordance with the requirements of Policy 8, The Masterplan and The Framework.

3.5.18 Environment

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

3.5.19 Flood Risk / Drainage:

The site within Flood Zone 1, defined as low probability of flooding. The Council's Drainage consultee, as Lead Local Flood Authority, and United Utilities, recommend securing a foul and surface water drainage scheme via condition. United Utilities also recommend that a management and maintenance regime for an approved sustainable drainage system is secured via condition.

3.5.20 Ecology:

An Ecological Assessment has been submitted with the application, review of which concludes no significant adverse effects will arise on habitat or protected species. Notably, the site is considered to offer poor suitability for Great Crested Newt, due to the absence of breeding habitat. Previous habitat surveys referenced in the Assessment failed to record any Badger setts on site or surrounding land. The surrounding woodland is, however, acknowledged as suitable for foraging Badgers. Assessment of trees relevant to the proposed works both on and adjacent to the site found their potential for roosting bats to be negligible. Woodland / trees and scrub provide bird nesting opportunities. Sub-optimal conditions exist for reptiles.

3.5.21 The following measures are recommended to be secured via condition:

- Appropriate measures to prevent pollution to watercourses (to be included in the CEMP);
- Control of invasive species (Rhododendron, Cotoneaster and Himalayan Balsam);
- Submission of a Long-term Woodland Management Plan;
- Site clearance / removal of trees & scrub limited to outside of the bird nesting season;

- Provision of bat roost and bird nesting boxes;
- Submission of a scheme for 'hedgehog highways' and 'hedgehog boxes';
- Submission of a planting scheme;
- Adherence to Reasonable Avoidance Measures (RAMS);
- Submission of updated survey work within 18 months of the Assessment (dated May 2022), if no works are undertaken on site within that time.

3.5.22 Trees:

An Arboricultural Impact Assessment (AIA) and Arboricultural Method Statement (AMS) has been submitted with the application. 5 trees, 2 groups, part of 1 further group and 1 hedge are proposed to be removed. It is important to acknowledge that tree removal should be considered in the context of the accepted principle of housing led development at the site, in accordance with the site allocation and having due regard to the previous grant of planning permission. Tree removal has previously been accepted, to a greater extent to that currently proposed. The Council's Arboricultural consultee offers no objection, acknowledging the extent of retained woodland around the perimeter of the site.

3.5.23 The submitted AIA and AMS do not clarify tree removal to facilitate necessary road widening and access improvements to Bury Fold Lane, at the southern edge of the site. Additional assessment in this regard will be secured via condition. It should be recognised that road widening involving tree removal was established by the previous permission, along a greater length of Bury Fold Lane.

3.5.24 Retained trees in proximity to the development will be protected throughout construction works through adherence to the AMS, secured via condition.

3.5.25 A detailed landscaping scheme will be secured via condition, to include tree, hedgerow and shrub planting.

3.5.26 Submission of a long-term Woodland Management Plan will be secured via condition. Adherence to the approved detail will ensure continued protection and effective management of existing woodland.

3.5.27 Accordingly, the environmental impact of the development is found to be acceptable and in accordance with the requirements of Policies 9 and 40, The Masterplan and The Framework.

3.5.28 Highways / Access and Transport

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

- 3.5.29 Members are advised that public objections have been received expressing concern around additional trip generation / congestion arising from the development, along Bury Fold Lane.
- 3.5.30 A Highways Technical Note has been submitted with the application and reviewed by the Council's Highways consultee. The Note utilises the TRICS database to forecast trip generation arising from the development at peak times. 3-trip movements are forecast in the am peak and 3 in the pm peak. This is outcome is somewhat contested, on account of the 6 bed properties proposed, with a potential for increased movements recognised. Further, it should be noted that the forecast does not account for the stand-alone dwelling previously approved at the allocation. Accordingly, and notwithstanding the forecasted trip generation, impact along Bury Fold is addressed as follows:
- 3.5.31 Access to the site is proposed from the existing point that serves Ellerslie House, to the north of Bury Fold Lane. This is consistent with the previously approved arrangements. Whilst the access is deemed acceptable in principle, visibility of vehicles approaching the site from the east is hindered by the angle of the carriageway. Consequently, to aid convenient and efficient access / egress at the site and the general movement of vehicles along Bury Fold Lane, visibility splays are to be significantly improved by widening the carriageway. Members are advised that under the previous approval (for 18 dwellings), carriageway widening was necessary from the rear of Ellen Street, up to the site access. As the current proposal is reduced to 6 dwellings and confined to the western portion of the site allocation, widening can be limited to a section of Bury Fold Lane to the east of the access, down to approximately Low Hill. Although indicatively referenced on the proposed site plan, precise engineering details, including the extent of works, re-alignment of the stone boundary (retaining) wall, footway provision, drainage and lighting will be secured via a Grampian condition. Works must be carried out prior to commencement of development within the site.
- 3.5.32 The site location is acknowledged as challenging for construction vehicles. It is, however, allocated for housing. Whilst some disruption will be inevitable, it will be temporary and should be appropriately managed between the developer and local residents. Adherence to the requirements of the CEMP will mitigate excessive nuisance / disruption.
- 3.5.33 Dwellings are supported by in-curtilage parking consistent with the adopted standard (3 spaces for dwellings of 4 bedrooms or more), in the form of a double garage (measuring 6m x 6m) and at least one space per private drive.
- 3.5.34 The internal road will include with footway provision on each side and link to the existing private drive serving Ellerslie House. The road will remain in private ownership and will not be adopted.
- 3.5.35 Policy CS22 requires new development to be located within accessible locations so as to minimise the need to travel. The proposal has good access links to the A666 and main road network including the M65 motorway corridor.

Furthermore, the development is within walking distance of a main bus route with linkages to the rail network in Darwen Town Centre.

3.5.36 Accordingly, highway impacts arising from the development are found to be acceptable and in accordance with the requirements of Policies 10 and 22, and The Framework.

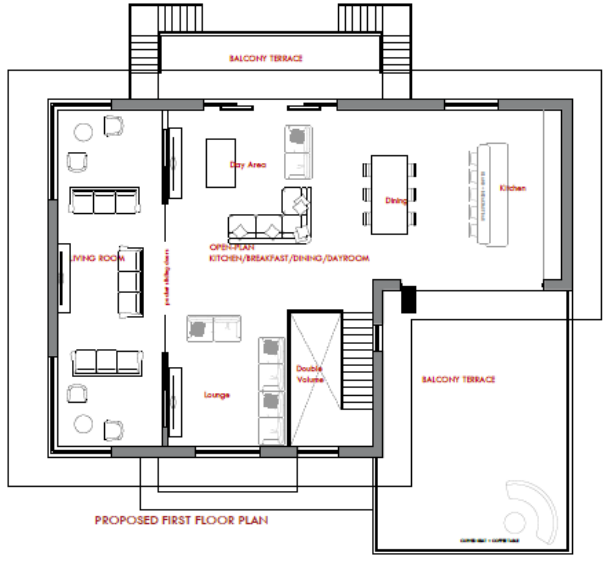
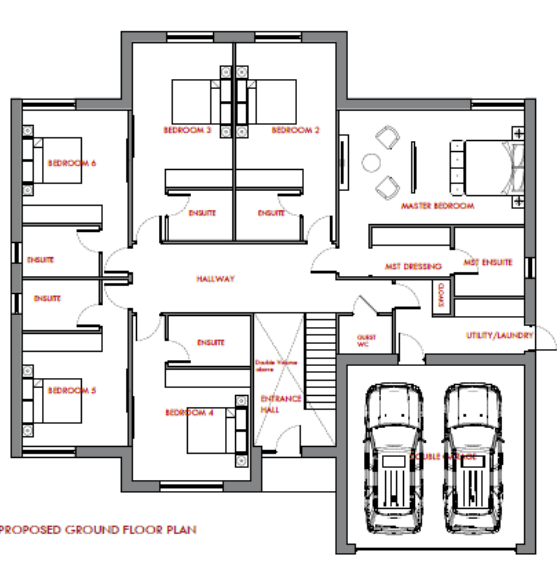
3.5.36 Design / Character and Appearance

Policy 11 requires a good standard of design and will be expected to enhance and reinforce the established character of the locality or where the character of a place has been compromised by previous change, the development must assist in re-establishing a strong character, taking references from positive character elements in the wider area and applying them in a modern context.

3.5.37 Dwellings will be arranged in a circular formation, around a central roundabout, in response to the general sloping land form of the site, positioned within generous plots which will provide ample outdoor amenity space. House types proposed are of an overtly modern design which would sit in stark contrast to the traditional appearance of Ellerslie House. The wider context is characterised by a mix of house types, including stone terraces, semi-detached and detached, or varying scale and more recent 1970's style dormer bungalows along a section of Bury Fold Lane, which serve to compromise the otherwise traditional character of the area.

3.5.38 The dwellings will be 2 storey high with flat roof profiling, utilising the change in site levels, through cut and fill design to provide a development with stepped rooflines and gardens. The design concept is acknowledged as very contemporary and distinctive from the prevailing character of much of the area. A similar design concept has, however, recently been approved for a single dwelling to the north of the site, on the opposite side of Kebbs Brook. This dwelling is currently under construction and sets a precedent for well-designed modern interventions which are read in contrast to the more typical traditional form. Moreover, the development would not be especially visually prominent to the wider public realm. It would, instead, hold a position confined to the grounds of Ellerslie House.

3.5.39 Design is heavily influenced by the 'Prairie-style' architecture of renowned American architect Frank Lloyd Wright, with a design rationale focussed around an emphasis on "nature, artisanship and simplicity, creating buildings that are practical, focusing on the appearance and the interior that connects with people" (MKW Architecture, Design & Access Statement). A mixed palette of external materials is proposed, which would complement materials found in nearby properties, as well as the surrounding woodland. The following drawings and illustrations are extracted from the Design & Access Statement:





Random Coursed Stone



Cedar Wood Cladding



Contemporary grey brick



Soft-white render

3.5.40 For reference, the following illustrate house types designed by Frank Lloyd Wright located within woodland settings, as examples of works which influence the proposed design.



3.5.41 Notwithstanding submitted details, finalised external walling and roofing materials will be secured via condition, as will boundary treatments.

3.5.42 Having due regard to the defining mixed character of the wider area and the confined woodland nature of the site, the design of the development is found to be acceptable and in accordance with the requirements of Policy 11, The Residential Design Guide SPD and The Framework.

3.5.43 Summary

This report assesses the full planning application for the erection of 6 dwellings and associated works. In considering the proposal, a wide range of material considerations have been taken into account. The assessment demonstrates that the planning decision must be made in the context of assessing the merits of the proposal balanced against any potential harm that may arise from its implementation. This report finds that the proposal meets the policy requirements of the Blackburn with Darwen Core Strategy, Local Plan Part 2, Supplementary Planning Documents and the National Planning Policy Framework.

4.0 RECOMMENDATION

4.1 Approve subject to:

(i) Delegated authority is given to the Strategic Director of Growth and Development to approve planning permission, subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this planning permission.

REASON: Required to be imposed pursuant to Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Unless explicitly required by condition within this consent, the development hereby permitted shall be carried out in complete accordance with the application received 22nd December 2021 and with the following drawings / plans / information: *(to be added)*.

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

3. Notwithstanding the submitted details, prior to commencement of any above ground works hereby approved, written and illustrative details, including colours and textures, of the external walling, roofing and window materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in strict accordance with the approved details.

REASON: To ensure that the external appearance of the development is satisfactory, in accordance with Policy 11 of the Blackburn with Darwen Borough Local Plan Part 2 and the adopted Blackburn with Darwen Design Guide Supplementary Planning Document.

4. Notwithstanding the submitted details, prior to commencement of any above ground work hereby approved, a scheme of boundary treatment(s) shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the precise location, height and construction materials of all boundaries. The approved scheme of boundary treatment(s) shall be implemented prior to first occupation of the development and retained thereafter.

REASON: To ensure that the external appearance of the development is satisfactory, in accordance with Policy 11 of the adopted Blackburn with Darwen Borough Council Local Plan Part 2.

5. Prior to the commencement of development hereby approved, the developer must submit to the Local Planning Authority for written approval:

i) A comprehensive desk study report, including a preliminary conceptual site model (CSM) in text, plan and cross-section form. Where necessary, detailed proposals for subsequent site investigation should also be included, clearly based on the CSM.

ii) Findings of the approved site investigation work (where necessary), including an appropriate assessment of risks to both human health and the wider environment, from contaminants in, on or under the land (including ground gas). If unacceptable risks are identified, a remedial options appraisal and detailed remediation scheme should be presented, along with an updated CSM. No deviation shall be made from this scheme without the written agreement from the Local Planning Authority.

REASON: To ensure that all reasonable steps have been taken to identify contamination at the site, in accordance with Policy 8 of the adopted Blackburn with Darwen Borough Council Local Plan Part 2.

6. Prior to the occupation of the development hereby approved, a comprehensive Validation Report shall be submitted to and approved in writing by the Local Planning Authority. The Validation Report shall demonstrate effective remediation in accordance with the agreed remediation scheme and updated CSM. All the installed remediation must be retained for the duration of the approved use, and where necessary, the Local Planning Authority should be periodically informed in writing of any ongoing monitoring and decisions based thereon.

REASON: To ensure that all reasonable steps have been taken to identify contamination at the site, that the risks it presents have been appropriately assessed, and that the site can be made 'suitable for use', as such, does not pose a risk to future users of the site or the wider

environment, in accordance with Policy 8 of the adopted Blackburn with Darwen Borough Council Local Plan Part 2.

7. Should contamination be encountered unexpectedly during redevelopment, all works should cease, and the LPA should be immediately informed in writing. If unacceptable risks are identified, a remedial options appraisal and detailed remediation scheme should be presented, and agreed in writing by the LPA. No deviation shall be made from this scheme without the written express agreement of the LPA.

REASON: To protect the health of future occupiers of the site, in accordance with Policy 8 of the adopted Blackburn with Darwen Borough Council Local Plan Part 2.

8. Should pile driving works be required on site, prior to the commencements of those works, a programme for the monitoring of generated noise and vibration shall be submitted to and approved in writing by the Local Planning Authority. The programme shall specify the measurement locations and maximum permissible noise and vibration levels at each location. Noise and vibration levels shall not exceed the specified levels in the approved programme.

REASON: In order to safeguard neighbouring amenity, in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

9. The construction of the development hereby permitted shall only take place between the following hours:

Monday to Friday: 08:00 to 18:00

Saturday: 09:00 to 13:00

Sundays or Bank Holidays: No site operations

REASON: To safeguard the amenities of the adjoining premises and the area generally in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

10. Prior to the commencement of development hereby approved, details of a sustainable surface water drainage scheme and a foul water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The drainage schemes must include:

(i) An investigation of the hierarchy of drainage options in the National Planning Practice Guidance (or any subsequent amendment thereof). This investigation shall include evidence of an assessment of ground conditions and the potential for infiltration of surface water in accordance with BRE365;

(ii) A restricted rate of discharge of surface water agreed with the local planning authority (if it is agreed that infiltration is discounted by the investigations);

(iii) Levels of the proposed drainage systems including proposed ground and finished floor levels in AOD;

- (v) Incorporate mitigation measures to manage the risk of sewer surcharge as required;
- (vi) Full details of overland flow paths and any associated mitigation measures as required; and
- (vii) Foul and surface water shall drain on separate systems.

The approved schemes shall also be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards.

Prior to occupation of the proposed development, the drainage schemes shall be completed in accordance with the approved details and retained thereafter for the lifetime of the development.

REASON: To promote sustainable development, secure proper drainage and to manage the risk of flooding and pollution, in accordance with Policy 9 of the adopted Blackburn with Darwen Borough Council Local Plan Part 2.

11. Prior to occupation of the development hereby approved, a sustainable drainage management and maintenance plan for the lifetime of the development shall be submitted to the local planning authority and agreed in writing. The sustainable drainage management and maintenance plan shall include as a minimum:

- (i) Arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a resident's management company; and
- (ii) Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system to secure the operation of the surface water drainage scheme throughout its lifetime.

The development shall subsequently be completed, maintained and managed in accordance with the approved plan.

REASON: To ensure that management arrangements are in place for the sustainable drainage system in order to manage the risk of flooding and pollution during the lifetime of the development, in accordance with the requirements of Policy 9 and 36 of the Blackburn with Darwen Borough Local Plan Part 2.

12. No works to trees shall occur or demolition commence between the 1st March and 31st August in any year unless and until a detailed bird nest survey, undertaken by a suitably experienced ecologist, has been submitted to the Local Planning Authority in writing, confirming that no active bird nests are present.

REASON: To ensure the protection of nesting birds, in accordance with the requirements of Policies 9 and 40 of the Blackburn with Darwen Local Plan Part 2.

13. Prior to commencement of any above ground works hereby approved, a scheme detailing the provision of bat and bird boxes within the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved detail prior to operational use of the site and shall be so retained.

REASON: To ensure enhanced bat and bird nesting opportunities, in accordance with the requirements of Policies 9 and 40 of the Blackburn with Darwen Local Plan Part 2.

14. Prior to commencement of any above ground works hereby approved, a scheme detailing the provision of Hedgehog highways and Hedgehog boxes shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved detail prior to operational use of the site and shall be so retained.

REASON: To ensure enhanced bat and bird nesting opportunities, in accordance with the requirements of Policies 9 and 40 of the Blackburn with Darwen Local Plan Part 2.

15. The development shall be carried out in strict accordance with the submitted Tree Impact Appraisal and Protection Scheme (Bowland Tree Consultancy Ltd, April 2022). Specified protection measures for retained trees shall be adhered to throughout the period of construction.

REASON: Trees represent a public benefit by way of visual amenity and should therefore be protected at all times, in accordance with Policies 9 and 40 of the Blackburn with Darwen Borough Local Plan Part 2.

16. Prior to commencement of above ground works hereby approved and notwithstanding the submitted details, a hard and soft landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of materials to be used for hard surfaces and native tree and shrub planting, to compliment local priority habitat, to compensate for loss of habitat and to provide for a net gain in biodiversity. Hard surfaces shall be implemented in accordance with the agreed details. Planting of trees and shrubs shall also be implemented in accordance with the approved details, during the first available planting season following completion of the development. Trees dying or becoming diseased, removed or being seriously damaged within five years of planting shall be replaced by trees and shrubs of similar size and species to those originally required to be planted during the first available planting season after the loss of the trees and/or shrubs.

REASON: To ensure an appropriate appearance to the site and in the interests of amenity and ecology, in accordance with Policy 9 and 11 of the Blackburn with Darwen Borough Council Local Plan Part 2.

17. Prior to commencement of the development hereby approved, a Construction and Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall provide for the following:

- An appropriate 'stand-off' zone from the adjacent watercourse
- the parking of vehicles of site operatives and visitors;
- loading and unloading of plant and materials;
- storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- wheel washing facilities, including a method statement outlining how the developer intends to use and manage the facility. The approved wheel wash shall be put in place at all vehicle access points onto the public highway when work commences and shall remain in operation throughout the period of development;
- noise control measures;
- measures to control the emission of dust and dirt during construction; and
- a scheme for recycling / disposing of waste resulting from demolition and construction works.

Construction shall proceed in strict accordance with the approved detail for the duration of those works.

REASON: In order to safeguard protected habitat; to avoid the deposit of debris into watercourse and onto the highway, in order to protect the amenity of the occupiers of the adjacent properties and in order to protect the visual amenities of the locality, in accordance with Policies 8, 9 and 10 of the Blackburn with Darwen Borough Local Plan Part 2.

18. Prior to any on site works, a scheme for the eradication of invasive species from the site, including Himalayan Balsam, Rhododendron and cotoneaster, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved detail.

REASON: In order to deal with the safe removal of invasive species from the site, in accordance with Policy 9 of the Blackburn with Darwen Borough Council Local Plan.

19. Prior to occupation of the development hereby approved, and notwithstanding the submitted details, a long-term Woodland Management Plan has been submitted to and approved in writing by the local planning authority. The approved Plan shall be implemented upon occupation and adhered to throughout the lifetime of the development.

REASON: In order to safeguard retained woodland, in the interests of visual amenity and biodiversity, in accordance with Policies 9 and 40 of the Blackburn with Darwen Borough Local Plan Part 2.

20. No existing trees or hedges within the development site shall be lopped, topped, felled, uprooted, pruned, or sustain root severance without prior written consent from the Local Planning Authority. Any tree works undertaken with written consent should be in line with British Standards 3998 & 5837.

REASON: Trees represent a public benefit by way of visual amenity and should therefore be protected at all times and replaced when necessary, in accordance with Policy 9 of the Blackburn with Darwen Borough Council Local Plan Part 2.

21. Reasonable Avoidance Measures (RAMS), as set out in the submitted Ecological Assessment (Bowland Ecology, May 2022), shall be adhered to throughout construction phase of the development.

REASON: In order to safeguard habitat, in the interests of ecology and biodiversity, in accordance with Policies 9 and 40 of the Blackburn with Darwen Borough Local Plan Part 2.

22. If construction of the development has not commenced within 18 months of the date of submitted Ecological Assessment (Bowland Ecology, May 2022) an updated Ecology Assessment shall be submitted to and approved in writing by the Local Planning Authority.

Any required mitigation shall inform the Biodiversity Enhancement Strategy and landscaping strategy for the development.

REASON: To ensure an up to date ecological assessment of the site, in accordance with Policies 9 and 40 of the Blackburn with Darwen Borough Council Local Plan Part 2.

23. Visibility splays at the site entrance shall not at any time be obstructed by any building, wall, fence, hedge, tree, shrub or other device exceeding a height greater than 1 metre above the crown level of the adjacent highway.

REASON: To ensure the safe, efficient and convenient movement of all highway users, for the free flow of traffic, in accordance with Policy 10 of the Blackburn with Darwen Borough Local Plan Part 2.

24. Prior to commencement of the development hereby approved, a detailed scheme for the provision of the following highway works shall be submitted to and approved in writing by the Local Planning Authority:

- Site access to include appropriate pedestrian and vehicular visibility splays, involving carriageway widening works to an agreed length of Bury Fold Lane;

- Footpath provision along an agreed length of Bury Fold Lane.

The approved scheme shall be implemented prior to commencement of the development and retained thereafter.

REASON: To provide for the safe, efficient and convenient movement of all highway users, in accordance with Policy 10 of the Blackburn with Darwen Borough Council Local Plan Part 2.

5.0 PLANNING HISTORY

- 5.1 10/15/1081: Outline application. Permission, granted by Planning & Highways Committee on 1st August 2016, for the erection of 22 three and four bedroom dwellings and access.
- 5.2 10/19/0642: Reserved Matters application. Permission granted by Planning & Highways Committee on 16th January 2020, for the erection of 18 dwellings pursuant to outline permission 10/15/1081.
- 5.3 10/22/0195: Full planning application for erection of a detached dwelling with a detached garage and associated external works including reinstating and modifying existing access off Bury Fold Lane: Permission granted under delegated powers, on 3rd May 2022.

6.0 CONSULTATIONS

6.1 BwD Public Protection

No objection:

With reference to the above application, I recommend that the following condition(s), informative(s) and/or comment(s) be included if planning permission is granted:

CONTAMINATED LAND CONDITIONS

Condition 1

Prior to the commencement of construction works on site, the developer must submit to the Local Planning Authority (LPA) for written approval:

- i. A comprehensive desk study report, including a preliminary conceptual site model (CSM) in text, plan and cross-section form. Detailed proposals for subsequent site investigation based on the CSM shall be included as appropriate; the developer will be advised whether any further site assessment is required.
- ii. If required by the LPA, the findings of the approved site investigation work, including an appropriate assessment of risks to both human health and the wider environment, arising from contaminants in, on or under the land (including ground gas) will be submitted. Where unacceptable risks are identified an updated CSM, remedial options appraisal and detailed remediation scheme shall be presented for

approval. No deviation shall be made from this scheme without the written express agreement of the LPA.

Condition 2

Prior to the commencement of the permitted use, the developer must submit a comprehensive validation report to the LPA for written approval. The report shall demonstrate effective remediation in accordance with the agreed remediation scheme. All the installed remediation must be retained for the duration of the approved use and the LPA periodically informed in writing of any ongoing monitoring and decisions based thereon as appropriate.

REASON: To ensure that the site has been made 'suitable for use', and as such, does not pose a risk to future users of the site or the wider environment.

Condition 3

Should contamination be encountered unexpectedly during redevelopment, all works should cease, and the LPA should be immediately informed in writing. If unacceptable risks are identified, a remedial options appraisal and detailed remediation scheme should be presented, and agreed in writing by the LPA. No deviation shall be made from this scheme without the written express agreement of the LPA.

REASON: To protect the health of future occupiers of the site in accordance with Policy ENV3 of the Blackburn with Darwen Borough Local Plan.

INFORMATIVE:

- All reports shall be prepared in accordance with BS10175:2011 (as amended), CLR 11 and any other relevant, appropriate and authoritative publications.
- The Local Planning Authority will not accept any liability for remediation works.
- The responsibility for the safe development and occupancy of the site, at all times, rests with the developer.
- Failure to comply with above condition may result in enforcement action being taken by the Local Authority under the Environmental Protection Act 1990.
- You are strongly advised to contact the Environmental Protection Team of the Public Protection Service to discuss the requirements of the Contaminated Land Condition (Karen Huddart or David Johnson tel: 01254 267699).
- The guidance documents entitled '**Contaminated Land Planning Guidance**' & '**Validation Policy Document**' should be read before you investigate the site. This guidance is available on the Council web site. These hyperlinks will give you direct access :
www.blackburn.gov.uk/upload/pdf/Contaminated_Land_Guidance.pdf
www.blackburn.gov.uk/upload/pdf/Validation_Policy_Document_FINAL.pdf
- A **suitably qualified, competent & impartial person** shall fulfil the requirements of the condition.

Condition – Air Quality Standard Mitigation

The following mitigation measures shall be implemented prior to the commencement of the approved use:

- a. There shall be one electric vehicle charging point at each house with a garage or driveway. An appropriate charging point for a single dwelling will have a Type 2 connector and a minimum rating of 3.7kW 16A. External points will be weatherproof and have an internal switch to disconnect electrical power.
- b. Gas fired domestic heating boilers shall not emit more than 40mg NOx/kWh

REASON: In accordance with Policy 36 of the Blackburn with Darwen Borough Local Plan Part 2 and Paragraph 110 of the National Planning Policy Framework 2019, which states that developments should be designed to enable charging plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations. This implements the requirements of Council's Air Quality PAN and the Principles of Good Practice in the EPUK & IAQM guidance Planning for Air Quality. These are readily achievable mitigation measures that reflect current good practice and help to reduce the cumulative impact of current and future developments.

Floodlighting

Should the proposed development include outdoor lighting I would recommend the following condition:

Condition – Floodlighting (other than street lights, as appropriate)

An outdoor floodlighting scheme shall be submitted to and approved in writing by the Local Planning Authority before the development commences. The floodlights shall be installed in accordance with the agreed scheme and retained for the duration of the approved use.

Reason

To minimise potential loss of amenity due to intrusive light pollution affecting residents living in the vicinity.

Informative:

When assessing potential loss of amenity the Local Authority shall make reference to the lighting levels provided in 'Guidance Notes for the Reduction of Obtrusive Light' GN01 produced by The Institution of Lighting Professionals, available at: <https://theilp.org.uk/publication/guidance-note-1-for-the-reduction-of-obtrusive-light-2020/>

NB: The proposed development is within an E2: Low district brightness area.

Construction Phase Control Conditions

Condition – Hours of Site Works

There shall be no site operations on any Sunday or Bank Holiday nor on any other day except between the following times:

Monday to Friday 08:00 – 18:00 hours

Saturday 09:00 - 13:00 hours

Any variation of the above hours restriction must be approved in writing by the Planning Authority.

Reason

To ensure appropriate hours of site work to minimise noise during the construction phase.

Condition – Dust Control

The commencement of the development shall not take place until there has been submitted to and approved in writing by the Planning Authority a scheme employing the best practicable means for the suppression of dust during the period of demolition/construction. The approved measures in the scheme shall be employed throughout this period of development unless any variation has been approved in writing by the Planning Authority.

Reason

To ensure that satisfactory measures are in place to alleviate any dust & dirt impact at adjacent residential premises.

Noise & Vibration Control

Condition

Should pile driving be required on site, the commencement of the development shall not take place until there has been submitted to and approved in writing by the Planning Authority a programme for the monitoring of noise & vibration generated during demolition & construction works. The programme shall specify the measurement locations and maximum permissible noise & vibration levels at each location. At each location, noise & vibration levels shall not exceed the specified levels in the approved programme unless otherwise approved in writing by the Planning Authority or in an emergency.

Reason

To minimise noise/vibration disturbance at adjacent residential premises.

Floodlighting Control (Construction Phase)

Condition

Should floodlighting be required on site a scheme shall be submitted to and approved in writing by the Local Planning Authority before the development commences. Floodlights shall be installed in accordance with the agreed scheme and retained for the duration of the works.

Reason

To minimise potential loss of amenity due to intrusive light pollution affecting residents living in the vicinity.

Informative:

When assessing potential loss of amenity the Local Authority shall make reference to the lighting levels provided in 'Guidance Notes for the Reduction of Obtrusive Light'

GN01 produced by The Institution of Lighting Professionals, available at: <https://theilp.org.uk/publication/guidance-note-1-for-the-reduction-of-obtrusive-light-2020/>

NB: The proposed development is within an E2: Low District Brightness Area.

Informative - Construction/Demolition Noise

All activities associated with the construction/demolition works shall be carried out in accordance with British Standard 5228: Code of Practice for Noise & Vibration Control on Construction & Open Sites – Parts 1 and 2.

6.2 BwD Drainage (Lead Local Flood Authority)

No objection:

A scheme for the disposal of foul and surface water from the site has been submitted to an approved in writing by the Local Planning Authority. The scheme shall provide for:

- i) Separate systems for the disposal of foul and surface water;
- ii) a detailed drainage strategy to demonstrate that the post-development discharge rate to any soakaway, watercourse or sewer does not exceed the pre-development rate of 5 litres per second;
- iii) the drainage strategy shall include details of the peak surface water runoff rate from the development for the 1 in 1 year rainfall event and the 1 in 100 year (+40% climate change allowance) rainfall event and shall demonstrate that the peak post-development runoff rate does not exceed the peak pre-development greenfield runoff rate for the same event;
- iv) details of any necessary flow attenuation measures, including the use of SuDS where appropriate;
- v) confirmation that drainage of foul and surface water is directed away from the railway; and
- v) a timetable for implementation, including details of any phased delivery.

The development shall be implemented in strict accordance with the approved details.

6.3 BwD Highways

The submission details have been reviewed, and a site investigation has been undertaken.

The application is for proposed erection of 6 new detached dwellings and associated external works including new internal road, driveways and landscaping.

Parking

The parking should be in accordance with adopted parking standards which sets a requirement as follows:

- 3 spaces for a 4+ bed

The proposal is for 6 properties

All car parking spaces on the drives should measure at 5.5m (in accordance with the adopted Residential Design Guide), and all garages should be 3m x 6m.

ACCESS & LAYOUT

There is an existing access into the site. It would appear that this is outside the red edge and an additional entrance is proposed directly into the site from Bury Fold Lane, alongside the existing. For clarification, please request confirmation of this arrangement, as the site access will cross each other on a tangent.

No gradient details of the access into the site are provided, nor is there any swept path analysis of refuse vehicle entering turning and leaving the site. This information should be provided for assessment and approval.

No details of sightlines have been provided – please seek further details. This may require a significant amount of the front wall to be reduced and/or splayed back to achieve the required splays for visibility.

The internal roads are intended to be kept as private, as per the submitted document.

Off-site highway works/Technical Note

On the previous application, a condition was attached for the highway to be widened and reinstatement of the retaining wall to be set further back.

The technical note has been reviewed. The TRICS database which has been utilised to produce trips to and from the site at peak times. This highlights that there are 3-trip movement in the am period, and 3 in the pm peak. This seems incorrect when each of the property is 6 bed, and trip generation is not at least 1 car per property.

Notwithstanding the above, there is still a potential for increased movements resulting from the additional units, up to 18 (if not more) vehicles movements onto Bury Fold Lane (this does not include the 1 property that was approved as a standalone). Having visited Bury Fold Lane on many occasions, it is clear that the on street situation has a heavy presence of parked vehicles from the residents who reside on Bury Fold Lane.

Our concerns when considering a development for 22 properties were directed towards the extent of offsite highway works, which were necessary to aid the development to proceed.

We are still of the opinion that some works are necessary, albeit scaled back to only requiring widening from Low Hill up to the site entrance. Details of this together with the footway and retaining wall will need to be submitted for assessment, in order to assist with movements and sightlines.

The issue of construction vehicles, navigating narrow sections of Bury Fold Road will be severely constrained without the improvement works (in full). However, we expect the developers to manage this with the residents, in order to navigate through to their site.

The off-site highway works are to be conditioned as a Grampian condition. (This should include associated drainage and lighting works)

All works are to be completed prior to the commencement of development on the site – please condition.

A further condition is required for details to be received for the retaining wall, the alignment and position of which is being altered - formal approval from the Structures Division at the council would need to be received, please request further details for assessment.

In addition to the above, we would require, the below to be undertaken:

- The access road to Ellerslie House would be compromised for vehicle movements, due to sharp bend on approach - please include this for tracking
- Street lighting is lacking and should be upgraded to support the site, details to be offered, or statement to be received.
- Gradients of drive should be below 10% or wherever possible no more than 12.5% (1:8) for a distance 6m back from the edge of the carriageway. Care should be taken at the back of footway to avoid the risk of grounding.

Construction Method Statement

No details have been submitted.

Please request this or condition for approval.

6.4 BwD Cleansing

No objection subject to the access road - can our vehicles access ok, and of are the roads wide enough for our RCVs.

6.5 BwD Arboriculture Officer

Assessment

An Arboricultural Impact Assessment and Arboricultural Method Statement has been submitted by Bowland Tree Consultancy to support the application. This shows the trees and groups on site currently.

Of the 5 trees, 2 groups, part of 1 further group and 1 hedge that are required for removal, only the group G1 containing 2 x sycamore trees are classed as category B. This amount of removal within the site is acceptable and will leave a large proportion of trees still remaining around the periphery of the site.

The 6 proposed dwellings can be constructed without impacts to the trees providing the Arboricultural Impact Assessment is adhered to and the protection measures are in place to adequately protect trees during the construction phase.

There doesn't seem to be any pruning of trees noted. It may be that the trees within W1 need pruning back slightly to allow for both scaffolding and garden space. A

detailed tree pruning schedule will need to be submitted and agreed if this is required.

It is noted that any encroachment into T1 for the entrance will be less than 1% of the total RPA and therefore I am happy this will not cause a detrimental affect providing the tree protection is in place in all other places around the tree

Recommendations

There are no objections to the proposed development provided that the submitted AIA and AMS is adhered to throughout.

6.6 United Utilities

No Objection:

DRAINAGE

We request the following drainage condition is attached to any subsequent approval:

Prior to the commencement of development, details of a sustainable surface water drainage scheme and a foul water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The drainage schemes must include:

- (i) An investigation of the hierarchy of drainage options in the National Planning Practice Guidance (or any subsequent amendment thereof). This investigation shall include evidence of an assessment of ground conditions and the potential for infiltration of surface water in accordance with BRE365;
- (ii) A restricted rate of discharge of surface water agreed with the local planning authority (if it is agreed that infiltration is discounted by the investigations);
- (iii) Levels of the proposed drainage systems including proposed ground and finished floor levels in AOD;
- (iv) Incorporate mitigation measures to manage the risk of sewer surcharge where applicable; and
- (v) Foul and surface water shall drain on separate systems.

The approved schemes shall also be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards.

Prior to occupation of the proposed development, the drainage schemes shall be completed in accordance with the approved details and retained thereafter for the lifetime of the development.

Reason: To promote sustainable development, secure proper drainage and to manage the risk of flooding and pollution.

The applicant can discuss any of the above with one of our Developer Engineers, by email at wastewaterdeveloperservices@uuplc.co.uk.

Please note, United Utilities is not responsible for advising on rates of discharge to the local watercourse system. This is a matter for discussion with the Lead Local Flood Authority and / or the Environment Agency (if the watercourse is classified as main river).

If the applicant intends to offer wastewater assets forward for adoption by United Utilities, their proposed detailed design will be subject to a technical appraisal by our Developer Services team and must meet the requirements outlined in 'Sewers for Adoption and United Utilities' Asset Standards'. This is important as drainage design can be a key determining factor of site levels and layout.

Acceptance of a drainage strategy does not infer that a detailed drainage design will meet the requirements for a successful adoption application. We strongly recommend that no construction commences until the detailed drainage design, has been assessed and accepted in writing by United Utilities. Any work carried out prior to the technical assessment being approved is done entirely at the developer's own risk and could be subject to change.

Management and Maintenance of Sustainable Drainage Systems

Without effective management and maintenance, sustainable drainage systems can fail or become ineffective. As a provider of wastewater services, we believe we have a duty to advise the Local Planning Authority of this potential risk to ensure the longevity of the surface water drainage system and the service it provides to people. We also wish to minimise the risk of a sustainable drainage system having a detrimental impact on the public sewer network should the two systems interact. We therefore recommend the Local Planning Authority include a condition in their Decision Notice regarding a management and maintenance regime for any sustainable drainage system that is included as part of the proposed development. You may find the condition below a useful example.

Prior to occupation of the development a sustainable drainage management and maintenance plan for the lifetime of the development shall be submitted to the local planning authority and agreed in writing. The sustainable drainage management and maintenance plan shall include as a minimum:

- a. Arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a resident's management company; and

Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system to secure the operation of the surface water drainage scheme throughout its lifetime.

The development shall subsequently be completed, maintained and managed in accordance with the approved plan.

Reason: To ensure that management arrangements are in place for the sustainable drainage system in order to manage the risk of flooding and pollution during the lifetime of the development.

6.7 GMEU Ecology

No response offered.

6.8 Public consultation

119 letters were posted to the local community on 10th May 2022. Site notices were also displayed. A press notice was published 15th June 2022. In

response, 5 objections 1 representstation of support and 5 general comments were received - see Summary of Representations.

7.0 CONTACT OFFICER: Nick Blackledge – [Principal Planner].

8.0 DATE PREPARED: 2nd September 2022.

9.0 SUMMARY OF REPRESENTATIONS

Support – Mark France - Lyndene Ashleigh St, Darwen, Rec 10.06.2022

I write in support of this application of which I have only just become aware.

I am a local resident and am familiar with the area. I use Bury Fold Road daily as a pedestrian.

I am aware that , at an earlier stage, planning permission was granted in principle for a larger number of dwellings in the grounds of Ellerslie House. The current application therefore represents a scaling down of the development both in terms of its general impact on the amenity of the area and of its effect on the volume of traffic using Bury Fold Road.

I believe that ,in its current form, the application is realistic and proportionate. As such it should be supported. If granted it will lead to the ground of Ellerslie being developed in a sympathetic way avoiding the dangers of overdevelopment in the future

The notice I have seen suggests that comments on the application should be made by June 1st, Nevertheless I hope that my views will be taken into account as I understand that no decision has yet been taken,

Mark France

Lyndene

Ashleigh St

Darwen

Objection – Helen Cowell – 14 Bury Fold Lane, Darwen, Rec 06.06.2022

Dear Sir,

Plan Ref: 10/22/0413 – Ellerslie, Darwen

I would like to object most strongly to the new application for Ellerslie.

1. The current application for a reduced number of houses is, on the face of it, an improvement to the previous numbers applied for. However, my concern is that, if and when they get approval for these, they will then keep applying for extra plots which will take them up to numbers in the original application, without them having to fulfil any of the conditions that previously applied.

The previous consent, in my opinion, constituted over-development of the site and should not have been granted. As it was granted however, the condition regarding the repositioning and rebuilding of the wall, which was no doubt onerous, should not be allowed to be circumvented by possible piecemeal applications for extra plots.

2. The design of the proposed houses is completely out of keeping with the surrounding area and especially of Ellerslie itself.

3. If the houses have 6 no. bedrooms each, then there will presumably be many more than the 2 cars per household suggested by the double garages shown on the plans. Over time there will be many more trips generated than a double garage might suggest.

Yours faithfully,

Objection – Terea Lonnen (on behalf of parents) - Epworth Street, Darwen, Rec 31.05.2022

Good afternoon Nick

I'm forwarding this on behalf of my parents, who are currently on holiday.

I'm also a resident of Whitehall, I live on Epworth Street so not far from my parents. I'd like to reiterate what my Dad had said on this, the traffic up Bury Fold Lane is horrendous. The number of times my Dad has had to come out of his drive and go up the lane to turn round and come back down again, its a weekly occurrence, because inconsiderate people park right up to the edge of his drive and abandon the vehicle for days on end.

With the number of houses being built in Darwen at this current time, do we really need 6 bedroom houses in our area?? And the traffic and chaos the building works will cause.

In recent years we have had numerous occasions where the Moors have been on fire and Bury Fold Lane is an access area for the fire engines, it really isn't a suitable area for a housing estate, even a small one as proposed.

Best regards

Teresa Lonnen

Buryfold lane is becoming more dangerous by the day.

The volume of traffic and badly parked cars and vans is an accident waiting to happen.

People park so close to my drive entrance it becomes very difficult to get in and out

At the last council meeting there was a video shown without a car in sight if one is to be shown at the next meeting ,please show what it's really

Like

We were also told that a certain percentage was to be affordable housing ,,6 bedrooms houses are not what I would say are affordable

We were also told the entrance to the lane would have to be widened as again it is dangerous,that again seems to have forgotten about.The morning commute is going to be like the M1

Fire ambulances and waste collection services are at breaking point in this area and yet we build more and more.

Nothing is ever done about water storage, the last reservoir to be opened in this country was thirty years ago, in the next fifteen years this is will come back and bite us

Regards Idris and Magdalen Davies

Comments – Mr & Mrs Trevor Cowell, Bury Fold Lane, Darwen – 29/06/2022

Dear Mr. Prescott,

Planning Application Ref. No. 10/22/0413. Land at Ellerslie House, Bury Fold Lane, Darwen.

I wish to comment on the proposed development of at Ellerslie House Bury Fold Lane Darwen.

- Bury Fold Lane is a narrow single track cul-de-sac leading onto the moors and is only a single track for most of its length.
- There are 10 terraced houses at the lower part of the lane, which to help ease congestion at the point where the lane meets the A666, park on the pavement. Many of these houses have more than 1 car.
- The lane holds very few passing places, some of which are used by cars from the twenty-three properties on Ellen Street, so residents frequently need to reverse either up Bury Fold lane or down the lane out onto the A666 .
- There are several dangerous blind spots to be risked when making this manoeuvre, especially when oncoming traffic is encountered from traffic travelling at speed from a southerly direction.
- In interests of safety the lane cannot sustain more vehicles, especially heavy duty waggons that will be required if building were to commence.
- This new planning application is for six properties; however, planning has also been made for a single large property which may have a separate access higher up the lane but still needs to use the lane. In reality there are seven large properties some of which are very likely to have several vehicles. Additional traffic will be generated by service vehicles, visitors and delivery vans.

Yours Sincerely

Mr. and Mrs. Trevor Cowell Cowell

Objection – Donald Sharples, Bury Fold Lane, Darwen, Rec 27/05/2022

**Objection in relation to housing development on land at Ellerslie House:
Reference number 10/19/0642**

I have lived on Bury Fold Lane for sixty-seven years and I am raising serious concerns on behalf of myself and several longstanding residents about the

proposed development on land at Ellerslie House primarily in relation to access.

On regular occasions I am either unable to, or have great difficulty transporting goods to and from my farm due to the current volume of cars using Bury Fold Lane inconsiderately and from the volume of cars parking on this very narrow highway. Wagons have consequently had to reverse back down to the A666. It has become normal practice to escort vehicles both up and down the lane and to try and identify vehicle owners inconsiderately parked.

I strongly object to the proposed development on the grounds that Bury Fold Lane is becoming increasingly even more congested due to the traffic generated by existing residents. This, for several years, has had a detrimental effect on my farming business and in recent months this has become close to becoming a welfare issue as delivery vehicles carrying cattle feed have, at certain times, been unable to access my property.

Bury Fold Lane has buildings that are of historic interest and properties developed over the years have been in keeping with the character of the area. The new properties proposed are not going to enhance, in any way, the identity of the surroundings and should not be considered in their current form.

Furthermore, I believe that any gains the development will have on local housing needs are far outweighed by the impact of increased traffic on Bury Fold Lane.

Yours sincerely

DONALD SHARPLES

Objection – Christine & Brian Chappell, 34 Bury Fold Lane, Darwen, Rec 27.05.2022

To whom it may concern in relation to planning application number 10/19/0642

In relation to this planning application we wish to formally record our objections.

Relating to the design and access statement

Point 3: Description and proposed development

The previous planning history listed does not indicate all the conditions that had to be met before full approval would be obtained giving a false impression to the reader that the Council fully supported all applications.

Point 4.1: Layout

The layout will “maximise available land to offer the dwellings expansive gardens”. What conditions will be set so that the proposed gardens actually get developed? The impression is given that the gardens will enhance biodiversity – which the development in itself is taking away!

It is questionable that the site is hidden, perhaps so from Bury Fold Lane but what about the Astley Bank area and bridle path running to the west of the site?

Point 4.4 Design and appearance

“The development features ultra-modern designs”, this is definitely not in keeping with the character of the area. Ellerslie House itself plus the blue plaque Low Hill (which has been considerably developed into apartments) are only two of the historic buildings present in the area

Point 4.5 Access

The first point states that “the development is to be served by the existing access from Bury Fold Lane and the access will be modified and upgraded to meet Highway standards” – where is the detail for this in the application?

Within the “Highways Technical Note” evidence that has been submitted is rather vague:

- A current traffic flow survey is required to capture the current traffic flow both at the bottom of Bury Fold Lane and the area between Low Hill and Ellerslie gateway. This will give an up to date picture of how the statistics have changed since the last, ill-placed monitoring system.
- No consideration has been given to the fact that within a few years of the development several cars/vehicles could be at each property – not two as shown in the illustrations.
- No data has been included for delivery vehicles which is relevant due to the change in buying habits on-line
- What about visitors – how do they access the development if not from Bury Fold Lane?

A survey is also required in relation to the vast increase in walkers and cyclists that have now discovered that Bury Fold Lane is a popular route through the Print Shop to Whitehall, along the bridle path to Bold Venture and a very popular route to the West Pennine Moors. What arrangements are going to be put in place if the development is approved to safeguard such users?

8. Summary and conclusion

This does not indicate that this will be the only planning application. Are we to expect that if this application is approved there will be others until the total equates to those on previous applications?

The Technical Note submitted is confusing and not easy for the layman to interpret and is of little use to the residents on Bury Fold Lane who will be affected by this development. It must be noted that the current situation with parked cars gives rise to safety concerns constantly and this will be exacerbated during site clearance, construction materials being delivered and ground working vehicles.

Boundary walls have already been damaged due to vehicles trying to pass on a very narrow lane as illustrated below:



Regular instances of Heavy Goods Vehicles having to back down Bury Fold Lane occur. What arrangements are going to be put in place for construction traffic if this development takes place?

Please note we strongly object to the development and hope that the planning committee will take these views into account when making their decision and be considerate to the needs of current residents.

Yours sincerely

CHRISTINE AND BRIAN CHAPPELL

Objection – Mr J Thomas & Mrs H Thomas, Rosedene Lowhill Bury Fold Lane, Darwen, Rec 26.05.2022

Mr Nick Blackledge,

We received a letter about the planning application for 6 dwellings to be built on land on Bury Fold Lane in Darwen.

My husband and myself are both against this application mainly due to the single track road but also to the disruption and spoiling of the nature involving the flora and the fauna. The land is a pathway for the local deer and the land has a bluebell colony in the tree area and the field which they are thinking of building on. Blue bells are not supposed to be dug up (they are protected).

The main concern is the road. It is single track with many cars already using it and already having to drive on the pavement when passing or patiently waiting for cars to pass in a couple of areas that are on the road. We even have to wait on the main road at the bottom of the lane for cars or vans and lorries coming down which can cause disruption on the main road. The entrance on Bury fold is single track which causes numerous problems on the main road. The original plans where to widen the road before any building is done and now they are not going to do that because there would be less cars due to being less houses being built. there still could be two or three cars per house and the extra separate application for another house on that land which still puts extra pressure on the people living on Bury Fold. this also makes us think that there may be chance at a later date to build more houses without the lane being widened. If they do manage to get planning permission there is also the amount of traffic which will be using the lane while building. The amount of lorries diggers truck and delivery wagons using the lane would be horrendous.

To widen the road also would spoil the looks of the quaint road which leads to the moors for many walkers. There also is not many areas on Bury Fold that have a pavement for the many walkers and it is still dangerous for them now when cars have to mount the pavements in some areas to pass.

We put in our objection with a hope that you look at the problems of the road very seriously.

Your sincerely

Mr J Thomas and Mrs H Thomas

Rosedene

Objection – Mrs Norma Astley, Low Hill, Bury Fold Lane, Darwen, Rec 24.05.2022

Darwen BB3 2QG

18/05/22

Dear Sir

I write in response to your letter regarding the planning application at Ellerslie

On Bury Fold Lane ref:10/2/0413

I am definitely ~~low hill~~

in favour of this new proposal as I feel it will enhance this area. However, I am very concerned that the road should not be widened as it was proposed in the previous applications as I am most concerned that this would change the feel of the road leading up to our property. Other neighbours have expressed this wish too.

Any traffic issues are minimal and occur at the bottom of the lane due to the narrowness. I have lived here for many years and haven't encountered any problems in all these years.

Yours faithfully

Mrs Norma Astley

Objection – Millie Jackson, Bury Fold Lane, Darwen, Rec 13.05.2022

Dear Gavin,

I am writing to you in regards to the planning application - 10/22/0413, for the proposal of 6 new detached dwellings to be built at the Land at Ellerslie, Bury Fold Lane, Darwen, BB3 2QG.

Firstly, I am the owner & occupier of a house on Bury Fold Lane, and whilst we believe the introduction of 6 new houses would be of great value to the Lane we do have a few concerns that we hope can be addressed should the planning be accepted.

I am aware that planning had been submitted in late 2019/ early 2020 for a whole new development of 18 new houses to be built on the land at Ellerslie where permission had been granted despite there being objections from the residents. I also understand some committee members were also sceptical the works would go ahead, due to the lane being too narrow for access and comments were passed in regards to the road leading to the land at Ellerslie (Bury Fold Lane) would have to be widened and works could not start until this was completed to improve access.

Development plans have not been available to view by the residence, with respect to changes since the earlier application in 2019, and would be something we would be interested to view. This is something we believe should be available to the local residence before the committee should accept the application. I know myself and my partner would like to see the designs, more so in regards to the new internal road.

Our only concern going forward should the application be accepted would be the access plan during the build, should the road need to be widened for access arrangements. We would not be happy to accept major works to the road leading to the land, that would result in major disruption on the lane. For example, us being unable to park our cars outside of our home or on the lane; trucks causing traffic issues; constant noise and mess; being unable to access the public walk paths.

We are aware there is also 2 other planning applications raised for work on or off Bury Fold Lane 10/21/1134 & 10/22/0195, that would also require access to the road. For all 3 applications to be accepted and works to start around the same time would cause major disruption to the lane and would have to be managed accordingly.

We hope our comments can be taken into consideration in regards to the application.

Kind Regards,

Millie Jackson

REPORT OF THE STRATEGIC DIRECTOR

Plan No: 10/22/0647

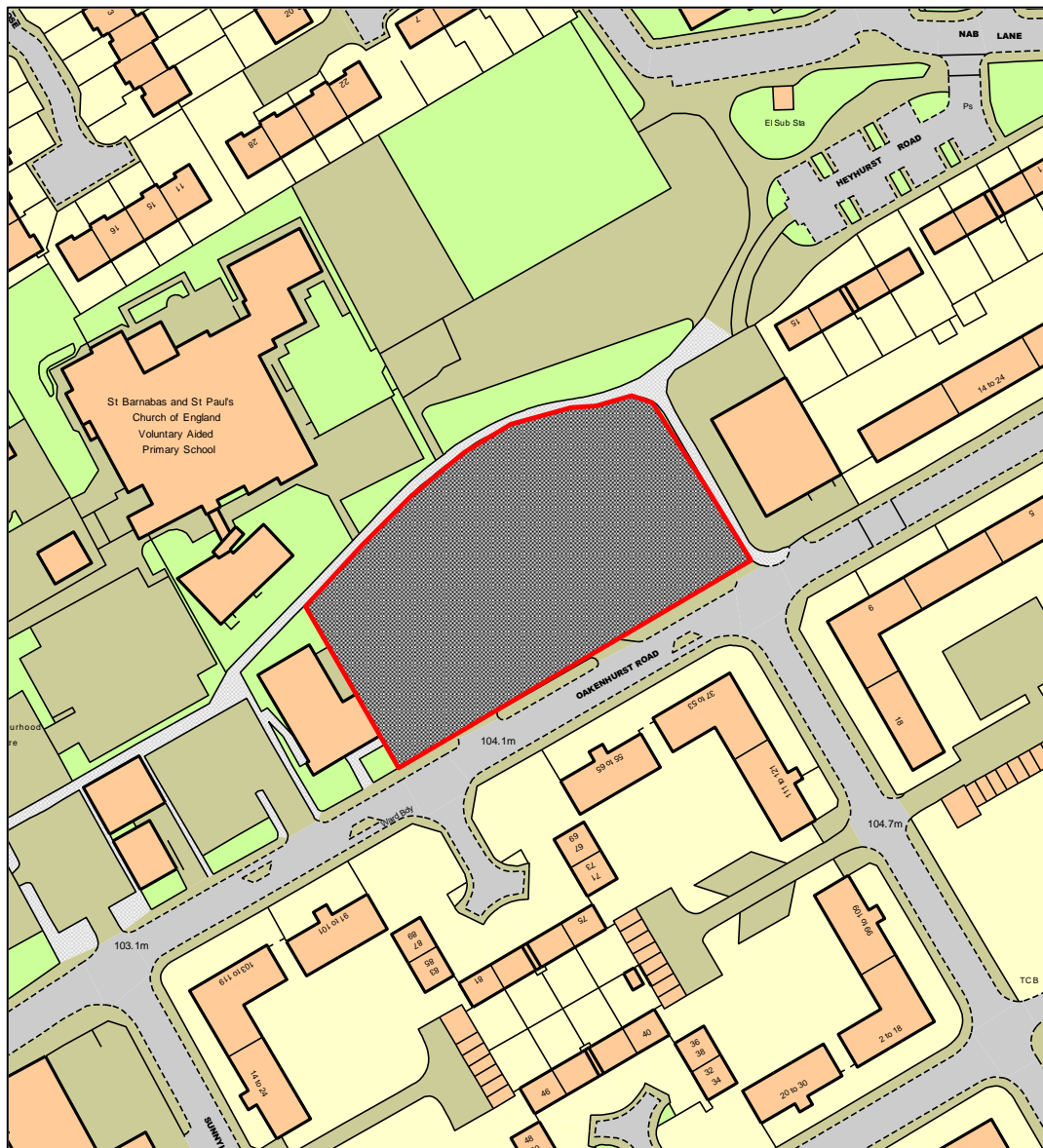
Proposed Development: Variation of Condition No 2 pursuant to planning application 10/19/0706 "Demolition of Former Health Centre and construction of 5 storey Apartment Block consisting of 76 no, 1 and 2 bedroom apartments with associated car parking" to amend internal layout and external appearance

Site Address: Palm Tree Islamic School (Former Montague Health Centre), Oakenhurst Road, Blackburn, BB2 1SN

Applicant: Homewood Properties

Wards: Wensley Fold

**Councillor Qesir Mahmood
Councillor Dave Harling
Councillor Sabahat Imtiaz**



1.0 SUMMARY OF RECOMMENDATION

1.1 The proposed development is recommended to be granted planning permission, subject to the conditions detailed in Section 5.

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

2.1 This application is presented to the Planning and Highways Committee, in accordance with the Council's scheme of delegation. The application involves the implementation of numerous changes in accordance with Section 73 of the 1990 Town and Country Planning Act, to an extant permission (10/19/0706) that was previously presented to the Committee in December 2019, as it is classed as a "significant major development". Much of the narrative provided below is taken directly from the Committee report produced for the 2019 application.

2.2 The proposed development has been publicised through letters to residents and occupants of the nearest 26 adjacent properties, on 12th July 2022. A site notice was also displayed outside of the site, on 23rd August 2022. No public comments have been received for the application so far, yet a number of consultee responses have been provided. A summary of those responses is detailed below in Section 7. Should any further comments be made ahead of the committee meeting, they will be presented as part of a committee update report.

2.3 The Council's development plan supports new residential/educational development and associated works, provided they constitute sustainable development and accord with the development plan when taken as a whole.

2.4 The initial proposals involved the construction of five-storey apartment block consisting of 76 1 and 2 bedroom apartments. An associated carpark and rooftop garden area was also proposed. These proposed variations involve the application of amendments to the internal layout and external appearance of the apartment block.

2.5 On balance, the proposals would be satisfactory from a technical point of view, with all issues having been addressed during the course of the application process, or capable of being controlled or mitigated through appropriately worded planning conditions together with the signing of the s106 agreement to ensure suitable persons occupy the apartments.

2.6 The key issues to be addressed in determining this application are;

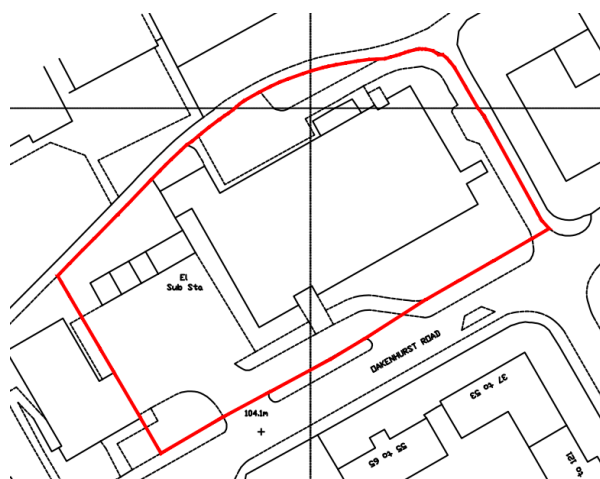
- Principle of development;
- Highways and Access;
- Design and Layout;
- Amenity impact;
- Drainage;
- Affordable housing and planning contributions; and,
- Biodiversity

3.0 RATIONALE

3.1 Site and Surroundings

The application site is approximately 0.38Ha in area and accommodated the former Montague Health Centre located on the north side of Oakenhurst Road, Blackburn. The building was last in use as an Islamic school and was demolished in 2018, under application 10/18/0681.

Figure One – Submitted location plan



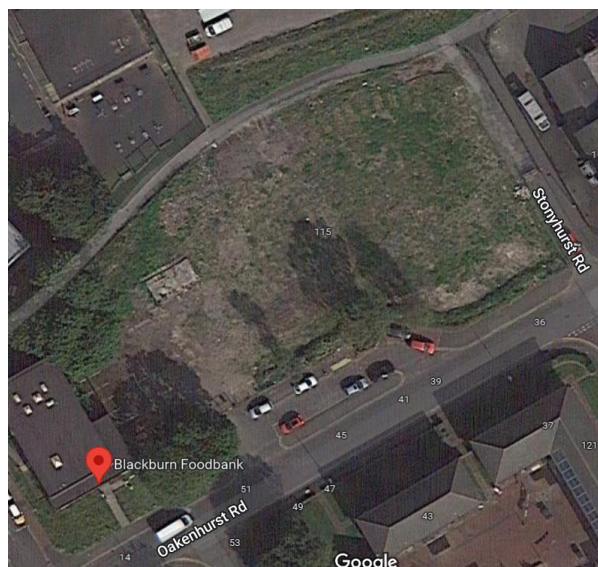
3.1.1 The former Montague Health Centre building was purpose built around 1970, and while undergoing various internal alterations, the building remained largely as originally constructed externally. The building was two-storey with a flat roof, facing brick walls and regular fenestration. The building while not actually ugly, was somewhat non-descript and uninviting. Its construction was solid, comprising a masonry steel reinforced structure with concrete roof and floors. The internal layout was an array of small consulting type rooms around larger waiting spaces.

Figure Two – Photograph of previous building



- 3.1.2 Externally, there are tarmac areas to the side and rear for vehicle parking and grassed areas to the front and rear. To the north and north/west of the site is St Barnabas and St Paul's Primary School, the school buildings are away to the west and the site bounds the play areas.
- 3.1.3 To the south are substantial three-storey residential apartment blocks with steeply sloping pitched roofs, which provide significant scale. To the east is a former public house, now used as a retail unit with residential accommodation at first floor, and to the west is a council/community facility building of two storeys operating as Blackburn Food Bank. The site has direct access onto Oakenhurst Road for vehicles and pedestrians and is currently enclosed by tall green paladin fencing.

Figure Three – Satellite image of the site (taken 2022)



3.2 Proposed Development

- 3.2.1 As detailed above, the original planning application was for the construction of a five-storey apartment block comprising 76 1 and 2 bedroom apartments, within a secured site. The building is to be operated by the Applicant and a 24 hour concierge is to be available.
- 3.2.2 The roof of the building is to accommodate a roof top garden area. Cycle parking and refuse storage would occupy part of the ground floor area together with service areas. Car parking would be provided to all four sides of the building. 56 car parking spaces are proposed, including 6 bays for disabled drivers. The site would have a sliding electronic gated access with a conventional hinged gate proposed for the exit. A one-way system would be operated internally with vehicles entering at the southwest corner.

Figure Four – Proposed site plan



3.2.3 The proposed amendments, the subject of the current application, involve changes to the internal layout, external construction materials and window arrangements. Changes would be applied to the shape of the building at roof level. The layout of the apartments would be amended on all five levels. Slight amendments would also be applied to the service areas. The overall quantity of apartments and number of bedrooms would remain unchanged. Three standardised apartment types would be applied, Types A-C. Type A would have one bedroom with Types B and C having two bedrooms.

3.2.4 The building approved would have been predominantly brick faced with areas of cladding proposed for the gable stairwell shafts. This application involves the use of a more varied pallet of materials with bricks, render and horizontal cladding applied. A plant room would be formed on the roof together with lobby areas serving the rooftop garden. Changes to the door and window arrangements are proposed to all four elevations with a less regular arrangement proposed to the front and rear. The glazed balustrade enclosing the roof would be retained. Polyester powder coated cladding would also be applied to the corners and eaves lines.

Figure Five – Approved front (southeast) elevation



Figure Five – Proposed front (southeast) elevation



3.3 Case Officer Site Photos



3.4 Development Plan

3.4.1 Core Strategy Part 1 (2011):

- Policy CS1 – A Targeted Growth Strategy
- Policy CS5 - Locations for New Housing
- Policy CS6 – Housing Targets
- Policy CS7 – Types of Housing
- Policy CS16 – Form and Design of New Development
- Policy CS15 – Protection and Enhancement of Ecological Assets
- Policy CS20 – Cleaner, Safer, Greener
- Policy CS21 – Mitigation of Impacts/Planning Gain
- Policy CS22 – Accessibility Strategy

3.4.2 Local Plan Part 2 (2015):

- Policy 2 – The Inner Urban Area
- Policy 7 – Sustainable and Viable Development

- Policy 8 – Development and People
- Policy 9 – Development and the Environment
- Policy 10 – Accessibility and Transport
- Policy 11 – Design
- Policy 12 – Developer Contributions
- Policy 18 – Housing Mix
- Policy 19 – Apartment Development and Housing Developments
- Policy 36 – Climate Change
- Policy 40 – Integrating Green Infrastructure & Ecological Networks within New Development

3.4.3 Supplementary Planning Documents/Guidance

- Houses in Multiple Occupation and Apartment Development SPD
- Residential Design Guide
- Air Quality Planning Advice Notice
- Parking Standards
- Technical housing standards – nationally described space standard

3.5 Other Material Considerations

3.5.1 The most relevant national policy and guidance is contained within;

- National Planning Policy Framework
- Planning Practice Guidance

3.5.2 The Legislation relevant to the proposals is as follows:

- Town and Country Planning Act 1990 (as amended)
- The Planning and Compulsory Purchase Act 2004
- The Crime and Disorder Act 1998
- Conservation of Habitats and Species Regulations 2017

4.0 **ASSESSMENT**

4.1 Principle of Development

4.1.1 The principle of development was established under application 10/19/0706 and these proposed alterations do not conflict with that position. The application is subject to a completed Section 106 agreement that runs alongside the operations of the development. Therefore, the proposed variations do not conflict with the principle of development, in accordance with the aforementioned housing policies. For clarity, there are no conditions to duplicate from the original consent concerning the principle of development. However, there is no clause in the original S106 Agreement, dated 28th September 2020, to allow for any subsequent variation of condition applications under Section 73 of the 1990 Town & Country Planning Act. As such, the current application if approved, would be subject to a Deed of Variation to the original S106 Agreement.

4.2 Highways and Access

4.2.1 As detailed above, the overall quantity of apartments and bedroom numbers has remained unchanged. The site would also be served with the same number of parking spaces and manouvering areas. Highways impacts were appraised at length under application 10/19/0706 and these proposed variations would not materially alter those positions.

4.3 Design, Layout and Visual Amenity

4.3.1 In comparison to application 10/19/0706, changes to the shape, window arrangement and external construction materials are proposed. The building would form a standalone element within the streetscene architecturally. It would be set alongside other relatively tall apartments buildings. Any changes to its shape would be largely unnoticeable when compared with the proportions and style of the approved building.

4.3.2 Bricks and render have been used in abundance locally for similar forms of development. Horizontal cladding is less common yet the limited use of that material would not compromise the aesthetical qualities of the development or streetscene. Moreover, the amended fenestration would provide design improvements when the regularity of the original consent is taken into account.

4.3.3 Concerns have been raised by BwD Cleansing regarding the number of bins shown on the submitted plans. Such details are purely indicative at this stage and the required number of bins would ultimately be determined once the development is operational. Those comments therefore have no material influence on these proposed amendments.

4.3.4 Subject to the relevant conditions being duplicated from the original consent, the proposed development would be acceptable with reference to design, layout and visual amenity, in accordance with Policy 11.

4.4 Amenity Impact

4.4.1 The amenity impacts associated with this development were appraised at length under application 10/19/0706. The revised internal layouts accord with nationally prescribed space standards for the type of accommodation proposed. Moreover, no harmful impacts would be caused for the immediate neighbours from the proposed changes to the shape of the building and window arrangement when the impacts of the approved building are taken into account.

4.4.2 The Coal Authority have reviewed the merits of the application and no objections have been raised, under the proviso that Condition 5 from the original consent is duplicated. Subject to any other relevant conditions being duplicated from the original consent, the proposed development would be acceptable with reference to amenity impact, in accordance with Policy 8.

4.5 Drainage and Flood Risk

4.5.1 Subject to the relevant conditions being duplicated from the original consent, the proposed development would be acceptable with reference to drainage and flood risk, in accordance with Policy 9.

4.6 Biodiversity

4.6.1 Subject to the relevant conditions being duplicated from the original consent, the proposed development would be acceptable with reference to biodiversity, in accordance with Policy 9.

4.7 Summary

4.7.1 This application involves the implementation of various amendments to an approved development for a five-storey building containing 76 apartments. Subject to appropriate conditions, the proposed development would be acceptable on all the relevant planning grounds, in accordance with the policies and guidance notes detailed in Section 3.4.

4.7.2 Section 38 of the Planning and Compulsory Purchase Act 2004 requires applications to be determined in accordance with the development plan, unless material considerations indicate otherwise. Subject to appropriate conditions, the proposal would be acceptable in principle and in terms of highways and access, design, layout and visual amenity, amenity impact, drainage and flood risk, and biodiversity.

4.7.3 The proposed development therefore complies with the development plan. There is a positive presumption in favour of approving the development and there are no material reasons to object to the application.

5.0 **RECOMMENDATION:**

5.1 **Delegated authority is given to the Strategic Director of Growth & Development to approve planning permission, 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.

1. The development hereby permitted shall be begun before the expiration of three years from the date of the original planning permission 10/19/0706 i.e 28th September 2020.

REASON: Required to be imposed pursuant to Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Unless explicitly required by condition within this permission the development hereby permitted shall be carried out in complete accordance with the proposals as detailed on the following drawings: Location Plan, ORB-1, ORB-2, ORB-3, ORB-4, ORB-5, ORB-6 and ORB-7.

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

3. Prior to commencement of the development hereby approved, a Construction Method Statement shall be submitted to, and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i. the parking of vehicles of site operatives and visitors
- ii. loading and unloading of plant and materials
- iii. storage of plant and materials used in constructing the development
- iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- v. wheel washing facilities
- vi. measures to control the emission of noise, vibration, dust and dirt during construction
- vii. a scheme for recycling/disposing of waste resulting from demolition and construction works; and,
- viii. crime prevention and security of the site during the construction phase of the development;

REASON: In order to avoid the possibility of the public highway being affected by the deposit of mud/or loose materials which could create a potential hazard to road users, in order to protect the amenity of the occupiers of the adjacent properties, in order to protect the visual amenities of the locality; and in the interests of crime prevention, in accordance with Policies 8, 10 and 11 of the Blackburn with Darwen Borough Local Plan Part 2.

4. Prior to the commencement of development hereby approved a scheme for the construction of the site access and off-site works of highway improvements shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the occupation of the development.

REASON: To provide for the safety and convenience of users of the highway, for the free flow of traffic, and to safeguard the amenity of neighbouring

premises in accordance with Policies 10 and 11 of the Blackburn with Darwen Borough Local Plan Part 2.

5. Prior to the commencement of development a scheme of intrusive site investigations, designed by a competent person and adequate to properly assess the ground conditions on the site and establish the risks posed to future development by past coal mining activity shall be carried out and the submission of a report of findings arising from the intrusive site investigations and any remedial works and/or mitigation measures considered necessary; shall be submitted and approved in writing by the Local Planning Authority in conjunction with the Coal Authority. The remedial works and/ or mitigation measures approved shall be implemented in full.

REASON: In the interests of safeguarding public health and to accord with Policy 8 of the Blackburn with Darwen Local Plan Part 2 and the National Planning Practice Guidance.

6. Notwithstanding the submitted or approved plans no development shall commence until full details (including a timetable for implementation) of all site access, emergency access and the off-site works of highway improvement have been submitted to and approved in writing by the Local Planning Authority in conjunction with the Highway Authority. The development shall thereafter accord with approved details.

REASON: In the interests of highway and pedestrian safety, in order to ensure that the final details of the highway scheme/works are acceptable before work commences on site and to accommodate sufficient parking provision for the development, and to accord with Policy 10 of the Blackburn with Darwen Local Plan Part 2.

7. Prior to the commencement of development hereby approved, the developer shall submit a pre-development road/surface survey for Oakenhurst Road and within 1 month of the completion of the construction works a post road/surface survey shall be carried out and submitted to the LPA. Any deterioration of the highway road/surface caused by the development (based upon the pre-development survey findings) shall be repaired at the cost of the developer no later than 3 months from the submission of post survey.

REASON: To ensure that the safe, efficient and convenient movement of all highway users is not compromised in accordance with Policy 10 of the Blackburn with Darwen Local Plan Part 2 and the National Planning Policy Framework.

8. Prior to commencement of the development hereby approved, a scheme detailing the closure of the existing secondary access shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall detail the existing access/accesses being physically and permanently closed; and the existing verge and/or footway and kerbing of the former crossing being reinstated. The development shall be implemented in accordance with the approved details within 2 months of the formation of the new access.

REASON: To ensure the safe, efficient and convenient movement of all highway users in accordance with Policies 10 and 11 of the Blackburn with Darwen Borough Local Plan Part 2.

9. No above ground works shall take place until a scheme for the disposal of foul and surface water from the site has been submitted to and approved in writing by the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, the scheme shall include:
 - i. separate systems for the disposal of foul and surface water;
 - ii. details of the rate of surface water discharge from the site to any soakaway, watercourse or surface water sewer for the 1 in 1 year and 1 in 100 year rainfall events (including a climate change allowance of 40%), which shall not exceed the pre-development rate;
 - iii. details of any necessary flow attenuation measures, including the use of SUDS where appropriate;
 - iv. evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltrations rates;
 - v. details of flood exceedance routes (both on and off site);
 - vi. details of how surface water will be managed and pollution prevented during the construction phase; and,
 - vii. a timetable for implementation, including details of any phased delivery; The duly approved scheme shall be implemented before above groundworks are commenced, or within any other timescale first agreed in writing with the Local Planning Authority.

REASON: To ensure that the development is not at risk of flooding and does not increase flood risk elsewhere, and that adequate measures are put in place for the disposal of foul and surface water in accordance with the requirements of Policy 9 of the Blackburn with Darwen Borough Local Plan Part 2 (2015), and the National Planning Policy Framework.

10. Prior to the commencement of development hereby approved, the developer must submit to the Local Planning Authority for written approval:
 - i. Two copies of a comprehensive desk study report, including a preliminary conceptual site model (CSM) in text, plan and cross-section form. Where necessary, detailed proposals for subsequent site investigation should also be included clearly based on the CSM.
 - ii. Two copies of the findings of the approved site investigation work (where necessary), including an appropriate assessment of risks to both human health and the wider environment, from contaminants in, on or under the land (including ground gas). If unacceptable risks are identified, a remedial options appraisal and detailed remediation scheme should be presented, along with an updated CSM. No deviation shall be made from this scheme without the written agreement from the Local Planning Authority.

REASON: To ensure that all reasonable steps have been taken to identify contamination at the site in accordance with Policy 8 of the adopted Blackburn with Darwen Borough Local Plan Part 2.

11. The construction of the development hereby permitted shall not take place outside the hours of 08:00 and 18:00 Monday to Friday, 09:00 to 13:00 on Saturdays and not at all on Sundays or Bank Holidays. Unless otherwise agreed in writing by the Local Planning Authority.

REASON: To protect the health of residents in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2 and the National Planning Policy Framework.

12. No above-ground works shall take place unless and until a scheme for biodiversity mitigation and enhancement measures has been submitted to and approved in writing by the Local Planning Authority. The design features and equipment that comprise the scheme shall be fully implemented in accordance with the approved plans and particulars prior to any of the apartments being occupied, or alternatively in accordance with a phasing scheme which has been agreed in writing by the Local Planning Authority, and shall thereafter be retained in place at all times unless otherwise agreed in writing with the Local Planning Authority.

REASON: To ensure that the development provides compensatory measures and enhancement measures relating to biodiversity, in accordance with the requirements of Policy 9 of the Blackburn with Darwen Local Plan Part 2 and the National Planning Policy Framework.

13. No above-ground works shall commence until details of how the scheme aims to meet the requirements of Lancashire Police in relation to crime prevention and community safety have been submitted to and approved in writing by the Local Planning Authority. Such details shall include details of specific measures and security rated products are to be incorporated within the development e.g. access control, CCTV, fencing, gates, lighting, apartment entrance door sets, dwelling door sets, windows, landscaping, emergency door sets and any other proposed crime prevention measures, and their location within the development and shall be duly implemented in the development.

REASON: In order to reduce the risk of crime and improve community safety, in accordance with Policy 8 of the Blackburn with Darwen Local Plan Part 2 and the National Planning Policy Framework.

14. No above-ground works shall begin until a scheme for protecting the surrounding residential premises from noise, vibration and dust from the site during these works has been submitted to and approved in writing by the Local Planning Authority. All measures which form part of the approved scheme shall be adhered to throughout the period of construction.

REASON: To safeguard the amenity of neighbouring properties by reducing the noise/vibration levels emitted from the site, in accordance with Policy 8 of the

Blackburn with Darwen Local Plan Part 2 and the National Planning Policy Framework.

15. No above-ground works shall commence until a scheme for the noise insulation and ventilation of the residential accommodation hereby approved has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed prior to the first occupation of the development and shall thereafter be retained.

REASON: To minimise the disturbance by noise to future residential occupiers of the apartments hereby permitted, in accordance with the requirements of Policy 8 of the Blackburn with Darwen Local Plan Part 2 and the National Planning Policy Framework.

16. Notwithstanding any description of materials in the application and the requirements of condition 2 of this permission, no above ground works shall take place until samples or full details of all materials to be used on the external surfaces of the buildings have been submitted to and approved in writing by the Local Planning Authority. Such details shall include the type, colour and texture of the materials. The development shall thereafter be implemented in accordance with the duly approved materials.

REASON: To ensure use of appropriate materials which are sympathetic to the character of surrounding buildings and the street scene in the interests of visual amenity in accordance with the requirements of Policy 11 of the Blackburn with Darwen Local Plan Part 2, the National Planning Policy Framework and National Design Guide.

17. Notwithstanding any details shown on the approved plans and the requirements of condition 2 of this permission, within 1 months of the above-ground first taking place details of the siting, height, design, materials and finish of all boundary treatments to the site shall be submitted to and approved in writing by the Local Planning Authority. The duly approved boundary treatments shall be constructed in full accordance with the approved details before the building hereby approved is first occupied, and shall be retained as such thereafter.

REASON: In the interests of site security and to ensure a satisfactory relationship with the character of surrounding buildings and the street scene in accordance with the requirements of Policies 8 and 11 of the Blackburn with Darwen Local Plan Part 2.

18. Notwithstanding the submitted plans, prior to any above-ground works a scheme for the hard and soft landscaping of the site, including boundary treatment, shall be submitted to and approved in writing by the local planning authority. The scheme shall incorporate elements to mitigate for the loss of trees and bird nesting habitat and shall indicate, as appropriate, the types and numbers of trees and shrubs, their distribution on site, those areas to be seeded, turfed, paved or hard landscaped, including details of any changes of level or landform and the types and specifications of all fencing.

The approved soft landscaping scheme shall be implemented in the first planting season following occupation or use of the development unless otherwise agreed by the Local Planning Authority, whether in whole or part and shall be maintained thereafter for a period of not less than 5 years to the satisfaction of the Local Planning Authority. This maintenance shall include the replacement of any tree or shrub which is removed, or dies, or is seriously damaged, or becomes seriously diseased, by a species of similar size to those originally planted.

The hard landscaping and boundary treatment shall be implemented in accordance with the approved details prior to the first occupation of the development and retained thereafter at all times.

REASON: In the interests of visual amenity and habitats and species in accordance with Policies 9 and 11 of the Blackburn with Darwen Local Plan Part 2 and the National Planning Policy Framework.

19. Prior to the occupation of the development hereby approved, two copies of a comprehensive Validation Report shall be submitted to and approved in writing by the Local Planning Authority. The Validation Report shall demonstrate effective remediation in accordance with the agreed remediation scheme and updated CSM. All the installed remediation must be retained for the duration of the approved use, and where necessary, the Local Planning Authority should be periodically informed in writing of any ongoing monitoring and decisions based thereon.

REASON: To ensure that all reasonable steps have been taken to identify contamination at the site, that the risks it presents have been appropriately assessed, and that the site can be made 'suitable for use', as such, does not pose a risk to future users of the site or the wider environment in accordance with Policy 9 of the adopted Blackburn with Darwen Borough Local Plan Part 2.

20. The 56 car parking spaces indicated on Drawing No. ORB-6 shall be marked out in accordance with the details shown on the approved plan and made available for use before any of the apartments hereby approved are first occupied, and shall be retained as such thereafter.

REASON: In order to ensure adequate provision for vehicle parking off the highway in the interests of road safety and the amenity of future occupiers in accordance with the requirements of Policy 10 of the Blackburn with Darwen Local Plan Part 2 and the National Planning Policy Framework.

21. Air quality mitigation measures shall be implemented prior to the occupation of any of the apartments hereby approved. These measures shall include the provision of an electric vehicle charging point per 7 apartments and gas fired domestic heating boilers shall not emit more than 40mgNO_x/kWh.

REASON: To protect the health of residents and in the interest of sustainable development in accordance with Policies 8 and 33 of the Blackburn with

Darwen Borough Local Plan Part 2 and the National Planning Policy Framework.

22. Within 3 months of 75% occupancy of the development hereby approved, a full Travel Plan (FTP) shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall provide details of the objectives, targets and measures to promote and facilitate public transport use, walking, and cycling to reduce the need to travel and to reduce single occupancy car use. It shall provide details of its management, monitoring and review mechanisms, travel plan coordination and the provision of travel information and marketing. An annual monitoring report which assesses the effectiveness of the measures introduced by the FTP shall be submitted to and approved in writing by the Local Planning Authority for the first five years following the implementation of the FTP. The initiatives contained within the approved travel plan shall be implemented thereafter together with any additional measures that, after review, are found to be necessary to deliver the travel plan objectives.

REASON: To promote alternatives means of transport, in accordance with Policy 10 of the Blackburn with Darwen Local Plan Part 2.

23. Visibility splays shall not at any time be obstructed by any building, wall, fence, hedge, tree, shrub or other device exceeding a height not greater than 1 metre above the crown level of the adjacent highway.

REASON: To ensure the safe, efficient and convenient movement of all highway users, for the free flow of traffic, in accordance with Policies 10 and 11 of the Blackburn with Darwen Borough Local Plan Part 2.

24. Plant and equipment associated with the development shall be so designed and installed so that the following noise limits at surrounding receptors are not exceeded:

- St Barnabas and St Pauls Primary School - LAeq7:00-23:00 36 dB(A) Daytime and LAeq,23:00-7:00 33dB(A) Night Time; and,

- Residential properties along Oakenhurst Road - LAeq7:00-23:00 35 dB(A) Daytime and LAeq,23:00-7:00 33dB(A) Night Time.

REASON: To ensure that noise from plant and equipment installed at the development does not impact surrounding receptors by being 10 dB(A) below the measured background level, in the interests of the amenity of nearby residents in accordance with Policy 8 of the Blackburn with Darwen Local Plan Part 2 and the National Planning Policy Framework.

6.0 PLANNING HISTORY

- 6.1 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 – Approved, with conditions – September 2020.

6.2 10/18/0681 – Demolition of former health centre – Prior approval is given – November 2018.

7.0 CONSULTATIONS

7.1 BwD Highways – the detailed highways assessment was undertaken with application 10/19/0607. As the proposed changes do not affect the number of apartments or the approved proposed site layout, there are no further comments to add.

7.2 BwD Cleansing – I note 2 bin stores holding 18 bins. Can we request more details on the sizes of these bins please? The development will need 3 types of bins at least: rubbish and 2 types of recycling bins (paper/card and glass/cans/plastic). Plus storage for bulky rubbish. They will need at least 11 x 1100 litre bulk shared rubbish bins and 22 recycling of the same size recycling bins (11 of each type). We also need to ensure dropped kerbs and easy access for emptying/collection.

7.3 Coal Authority – We raised no objection to the Local Planning Authority granting planning permission for planning application ref: 10/19/0706 and we are pleased to note that a planning condition to secure the undertaking of intrusive ground investigations works, prior to commencement of development was imposed (Condition 5).

7.4 I can confirm that as there are no recorded coal mining features within the application site that would affect the layout of this proposal, we have no specific comments to make on this variation of condition 2 application. However, as no intrusive site investigation would appear to have yet been undertaken, we would request that the existing Condition 5 be re-imposed on any new planning permission granted.

7.5 Summary of Public Responses

No public responses received.

8.0 CONTACT OFFICER: Christian Barton – Planning Officer

9.0 DATE PREPARED: 1st September 2022

REPORT OF THE STRATEGIC DIRECTOR OF GROWTH & DEVELOPMENT

ORIGINATING SECTION: PLANNING (DEVELOPMENT MANAGEMENT)

REPORT TO PLANNING & HIGHWAYS COMMITTEE - 15th SEPTEMBER 2022

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

WARDS: BILLINGE AND BEARDWOOD
COUNCILLORS: Tasleem Fazal
Jackie Floyd
Mohammed Irfan

1.0 PURPOSE OF THE REPORT

- 1.1 To request that the Committee 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).
- 1.2 To request that the Committee confirm 17 Beardwood Brow, Blackburn 2022 Tree Preservation Order (TPO) (ref: BWD1) without modification.

2.0 RECOMMENDATION

- 2.1 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.
- 2.2 17 Beardwood Brow, Blackburn 2022 Tree Preservation Order (TPO) (ref: BWD2) is confirmed without modification.

3.0 BACKGROUND & RATIONALE

- 3.1 On the 5th May 2022, a formal pre-application enquiry was submitted 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.
- 3.2. The Council's Arboricultural officer visited the site on the 27th May 2022, to ascertain whether the tree was worthy of protection. Image 1

is a photograph of the tree taken on the 27th May 2022, image 2 is the site location.



Image 1: Photograph of Sycamore tree taken on 27th May 2022.

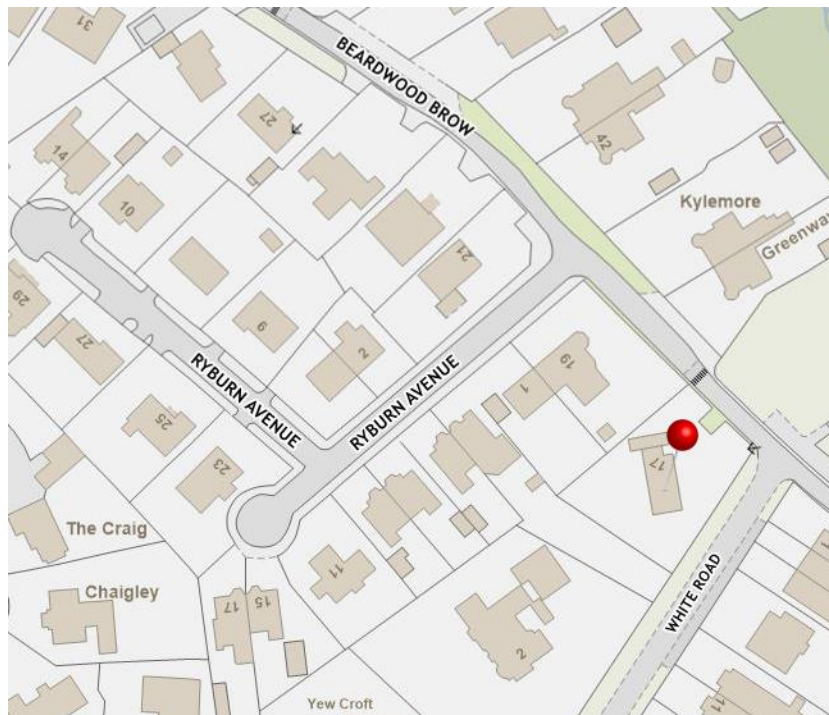


Image 2: Site location plan – Sycamore tree, 17 Beardwood Brow, Blackburn.

3.3. 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 as illustrated in image 3, which fully warrants a TPO.

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: 27.05.22	Surveyor: Karen O'Shea
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Tree details	Tree/Group No: T1	Species: Sycamore
TPO Ref (if applicable):	Location: near corner of front garden of 11 Beardwood Brow, Blackburn	
Owner (if known):		

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO; where trees in good or fair condition have poor form, deduct 1 point

5) Good	Highly suitable	<table border="1" style="width: 100%;"> <tr><th style="text-align: left;">Score & Notes</th></tr> <tr><td style="text-align: center;">3</td></tr> </table>	Score & Notes	3
Score & Notes				
3				
3) Fair	Suitable			
1) Poor	Unlikely to be suitable			
0) Dead/ dying/ dangerous*	Unsuitable			
* Relates to existing context and is intended to apply to severe irremediable defects only				

b) Retention span (in years) & suitability for TPO

5) 100+	Highly suitable	<table border="1" style="width: 100%;"> <tr><th style="text-align: left;">Score & Notes</th></tr> <tr><td style="text-align: center;">4</td></tr> </table>	Score & Notes	4
Score & Notes				
4				
4) 40-100	Very suitable			
2) 20-40	Suitable			
1) 10-20	Just suitable			
0) <10*	Unsuitable			
* Includes trees which are an existing or near future nuisance, including those <u>clearly</u> outgrowing their context, or which are significantly negating the potential of other trees of better quality				

c) Relative public visibility & suitability for TPO
Consider realistic potential for future visibility with changed land use

5) Very large trees with some visibility, or prominent large trees	Highly suitable	<table border="1" style="width: 100%;"> <tr><th style="text-align: left;">Score & Notes</th></tr> <tr><td style="text-align: center;">4</td></tr> </table>	Score & Notes	4
Score & Notes				
4				
4) Large trees, or medium trees clearly visible to the public	Suitable			
3) Medium trees, or large trees with limited view only	Suitable			
2) Young, small, or medium/large trees visible only with difficulty	Barely suitable			
1) Trees not visible to the public, regardless of size	Probably unsuitable			

d) Other factors
Trees must have accrued 7 or more points (with no zero score) to qualify

5) Principal components of arboricultural features, or veteran trees	<table border="1" style="width: 100%;"> <tr><th style="text-align: left;">Score & Notes</th></tr> <tr><td style="text-align: center;">1</td></tr> </table>	Score & Notes	1
Score & Notes			
1			
4) Tree groups, or members of groups important for their cohesion			
3) Trees with identifiable historic, commemorative or habitat importance			
2) Trees of particularly good form, especially if rare or unusual			
1) Trees with none of the above additional redeeming features (inc. those of indifferent form)			

Part 2: Expediency assessment
Trees must have accrued 9 or more points to qualify

5) Immediate threat to tree	<table border="1" style="width: 100%;"> <tr><th style="text-align: left;">Score & Notes</th></tr> <tr><td style="text-align: center;">3</td></tr> </table>	Score & Notes	3
Score & Notes			
3			
3) Foreseeable threat to tree			
2) Perceived threat to tree			
1) Precautionary only			

Part 3: Decision guide

Any 0	Do not apply TPO	<table border="1" style="width: 100%;"> <tr><th style="text-align: left;">Add Scores for Total:</th></tr> <tr><td style="text-align: center;">15</td></tr> </table>	Add Scores for Total:	15	<table border="1" style="width: 100%;"> <tr><th style="text-align: left;">Decision:</th></tr> <tr><td style="text-align: center;">TPO</td></tr> </table>	Decision:	TPO
Add Scores for Total:							
15							
Decision:							
TPO							
1-6	TPO indefensible						
7-11	Does not merit TPO						
12-15	TPO defensible						
16+	Definitely merits TPO						

Image 3: TEMPO Assessment 27th May 2022.

- 3.4 A copy of the TPO and Schedule is attached to this report. The emergency TPO was served on the landowner/freeholder on the 15th June 2022. Image 4 relate to the sycamore tree.



Image 4: Sycamore tree – north west corner of No.17 Beardwood Brow.

- 3.5 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 (refer to Image 3). The tree scored 15 which more than merits a TPO.

CONSULTATIONS:

3.6. The current freeholders of the land, where the tree is located, the neighbouring properties, and the ward councillors were informed of the proposed TPO on the 15th and 22nd June 2022.

3.7. Comments were received from the owners of No.19 Beardwood Brow (Mr Richard Cook) on the 19th June 2022. The details of the objection are as follows:

Dear Gavin,

I acknowledge the TPO that has been proposed on the said Sycamore tree and have no intention of damaging or felling the said tree.

Regards,

Richard A Cook.

3.8. The tree is of considerable amenity value, and for the reasons stated in this report are why the TPO should remain

4.0 **CONTACT OFFICER:** Gavin Prescott, Planning Manager
(Development Management)

5.0 **DATE PREPARED** 31st August 2022



Blackburn with Darwen Borough Council
Town & Country Planning Act 1990
 Title: 17 Beardwood Brow Tree Preservation
 Order 2022

Scale: 1:1250
 Date: 22 June 2022

Authorised Signature

Neil Kelly

SCHEDULE 1

SPECIFICATION OF TREES

**LOCATION: 17 Beardwood Brow Tree Preservation Order
2022**

Trees Specified Individually

(encircled in black on the plans)

Reference On Map	Description	Situation
T1	Sycamore	North West corner of front garden of 17 Beardwood Brow, Blackburn

Trees specified by reference to an area

(within a dotted black line on the plans)

Reference On map	Description	Situation
	None	

Groups of Trees

(within a broken line on the plan)

Reference on map	Description	Situation
	None	

Woodlands

(within a continuous black line on the plans)

Reference on map	Description	Situation
	None	

REPORT OF THE STRATEGIC DIRECTOR OF GROWTH & DEVELOPMENT

ORIGINATING SECTION: PLANNING (DEVELOPMENT MANAGEMENT)

REPORT TO PLANNING & HIGHWAYS COMMITTEE - 15th SEPTEMBER 2022

TITLE: Tree Preservation Order – Bradgate, 16 Oldfield Avenue, Darwen BB3 1QY 2022 (ref: BWD1)

WARDS: DARWEN WEST
COUNCILLORS: Dave Smith
Stephanie Brookfield
Brian Taylor

1.0 PURPOSE OF THE REPORT

- 1.1 To request that the Committee 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).
- 1.2 To request that the Committee confirm Bradgate, 16 Oldfield Avenue, Darwen BB3 1QY 2022 Tree Preservation Order (TPO) (ref: BWD1) without modification..

2.0 RECOMMENDATION

- 2.1 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.
- 2.2 That the Bradgate, 16 Oldfield Avenue, Darwen BB3 1QY 2022 Tree Preservation Order (ref: BWD1) is confirmed without modification.

3.0 BACKGROUND & RATIONALE

- 3.1 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.
- 3.2. The Council's Arboricultural officer visited the site to ascertain whether the tree was worthy of protection. Image 1 is a photograph of the tree taken on the 7th June 2022, image 2 is the site location.



Image 1: Photograph of Pine tree taken on 7th June 2022.



Image 2: Site location plan – Pine Tree T1.

3.3. 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 as illustrated in image 3, which fully warrants a TPO.

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: 07/06/2022	Surveyor: Karen O'Shea
Tree details	
TPO Ref (if applicable):	Tree/Group No: T1 Species: Pine
Owner (if known):	Location: North corner of front garden of Bradgate, (to side of driveway, Oldfield Avenue, BB3 1QY)

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO; where trees in good or fair condition have poor form, deduct 1 point

5) Good	Highly suitable	Score & Notes 3
3) Fair	Suitable	
1) Poor	Unlikely to be suitable	
0) Dead/dying/dangerous*	Unsuitable	
* Relates to existing context and is intended to apply to severe irreparable defects only		

b) Retention span (in years) & suitability for TPO

5) 100+	Highly suitable	Score & Notes 4
4) 40-100	Very suitable	
2) 20-40	Suitable	
1) 10-20	Just suitable	
0) <10*	Unsuitable	
*Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality		

c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

5) Very large trees with some visibility, or prominent large trees	Highly suitable	Score & Notes 4
4) Large trees, or medium trees clearly visible to the public	Suitable	
3) Medium trees, or large trees with limited view only	Suitable	
2) Young, small, or medium/large trees visible only with difficulty	Barely suitable	
1) Trees not visible to the public, regardless of size	Probably unsuitable	

d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

5) Principal components of arboricultural features, or veteran trees	Score & Notes 1
4) Tree groups, or members of groups important for their cohesion	
3) Trees with identifiable historic, commemorative or habitat importance	
2) Trees of particularly good form, especially if rare or unusual	
1) Trees with none of the above additional redeeming features (inc. those of indifferent form)	

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

5) Immediate threat to tree	Score & Notes 5
3) Foreseeable threat to tree	
2) Perceived threat to tree	
1) Precautionary only	

Part 3: Decision guide

Any 0	Do not apply TPO	Add Scores for Total: 17	Decision: TPO
1-6	TPO indefensible		
7-11	Does not merit TPO		
12-15	TPO defensible		
16+	Definitely merits TPO		

Image 3: TEMPO Assessment 7th June 2022.

- 3.4 A copy of the TPO and Schedule is attached to this report. The emergency TPO was served on the landowner/freeholder on the 7th June 2022.
- 3.5 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 (refer to Image 3). The tree scored a high score of 17 which more than merits a TPO.

CONSULTATIONS:

- 3.6. The current freeholders of the land, where the tree is located, the neighbouring properties, and the ward councillors were informed of the proposed TPO on the 7th June 2022. Acknowledgments were received from Councillors D Smith and B Taylor on the same date.
- 3.7 An objection was received from the owners of Bradgate, Mr & Mrs Boott on the 16th June 2022. The details of the objection are as follows:

**Re -Tree Preservation Order,
"Bradgate", Number 16 Oldfield Avenue Darwin 2022**

Dear Mr Prescott

Following receipt of the tree preservation order, (T.P.O.) dated the 7th of June placed on the Scots Pine at the above address we are writing to register our objection to the T.P.O. and against it being made permanent since we believe it to be difficult to justify given its size and setting, the damage to our property and onerous in terms of the ongoing liability to ourselves as householders.

We do acknowledge that the tree in question is a striking specimen of the Scots pine, we could only remember seeing similar examples in either the landscaped arboreta of stately homes or Scottish forests. Nevertheless, we feel after due consideration that we have good reasons to argue for the removal of the tree. We have lived here for 49 years and have naturally seen the tree grow considerably in that period to the point that we now feel that it is a potential threat to ourselves, our property as well as a disruption to our daily life.

The Pine tree in its current setting is by any stretch of imagination enormous. It stands at 23 metres high more than 2.5 times the height of the house and 9 metres from the front of the house. (See photos P1 & 2) The high winds, which are now a feature of global warming in the U.K, and in particular the high winds experienced last winter and this spring, meant that we have become increasingly anxious and concerned as to the tree's long-term stability in extreme weather conditions. We have been reminded of this fact on our frequent walks through Sunnyhurst Woods where we have observed a number of similar pine trees, which typically have shallow roots, that have been brought down by high winds. Were it to fall towards the house within a 60 degree arc of a circle centred on the pine tree trunk the damage to either our house or the adjacent "semi" and their occupants would be extremely serious.

We believe that this tree could be over 150 years old, in which case it was probably planted as part of the landscaping scheme to Oldfield House, an imposing Victorian house now a care home, built in 1871 where when mature it would have fitted into a large wooded landscape as shown in the attached early 20th century ordinance survey map with an overlay of the 1937 housing . With the passing of time and the development of the area into a small

housing development in 1937, the context has changed completely and we would argue that handsome though it is, a large forest tree with a potential to do so much damage has become incongruous.

Apart from the concerns from the tree's stability, over the years its continuing growth has done physical damage to the driveway such that the block paving is now unstable over the area of the tree roots causing a tripping hazard up to the end of the drive and the public footpath. *(See photographs P3,4,5&6)* This makes manoeuvring up the drive in a car difficult as well as causing damage to the tree roots. Research into potential methods of protecting the roots show this to be impractical as the depth of the build-up would make passage up the drive even more difficult.

A further problem is that the roots sit on top of the foul and surface water drainage run and surround the manhole at the end of the drive. A recent inspection of the manhole chamber and cover, which incidentally is an extremely heavy highways grade cast steel frame and cover requiring two men to lift, has revealed that the manhole and frame has been lifted about 15cm in the corner nearest the tree trunk tipping the cover and frame off its mortar base. We have been lucky that none of the mortar has fallen into the manhole chamber and down into the drainage system blocking it. *(See photographs P7,8,9&10)*

When you consider that this tree may continue growing for at least another 50 years if unchecked it is only a matter of time before the driveway becomes impassable which will have consequences on the value of our property.

Given that the expected life span of this tree could be in excess of 200 years and its eventual height could reach 35 metres the problems it has created up to date can only increase. The original setting of this tree in the garden of a large house no longer applies, whilst the present setting in the garden of a 1930s semi-detached house, in an urban cul-de-sac of similar is anachronistic, as its siting belongs to an earlier time.

We therefore ask that you consider the reasons we have given for allowing us to remove the tree; namely the understandable anxieties we feel given its size and location, the potential damage to our property should the tree fail, the damage the tree roots are currently causing and will continue to cause to the drive and reconsider the TPO placed on it and decide not to confirm it. This will enable us to remove the tree and its roots. Having lived with the Scots pine for nearly 50 years it is with regret that we have concluded that the tree must be removed but we strongly feel that there is no other way forward to give us peace of mind.

Yours Sincerely,

Stuart and Madeleine Boott.



P1 Side view of pine tree at Bradgate



P 2 Looking down drive of Bradgate



Crossfall on drive caused by tree root Growth at foot of Pine tree

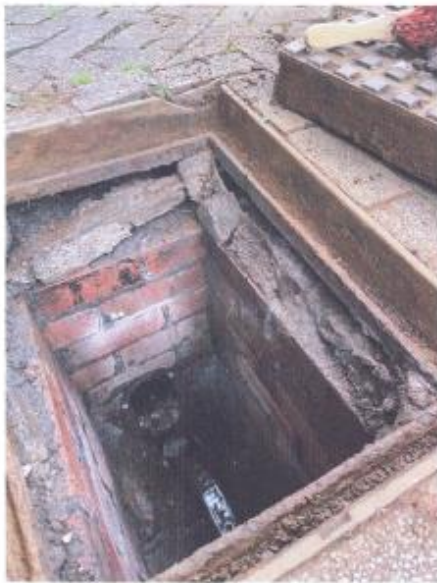
P 3



P 5

Drive pavours now unstable and trip hazards created due to displacement caused by tree roots.

P 6



P 7 Manhole lifted by tree roots



P8 Manhole Showing mortar seating destroyed



P 9 Root just visible in top LH corner of MH Frame.



P1 10 MH Frame and Pavicours lifted.

3.8 **Response to the owners objection:**

The Council's Arboricultural Officer on the 28th June 2022, fully considered the objections raised by the landowner.

Health of tree

This tree is without doubt a large mature specimen and from my initial inspection of the tree it looks to be in good condition and health. It is indeed striking, and likely 150 or more years old. Two massive factors that warrant the protection of such a tree.

I haven't seen the report, but I was informed during my site meeting with Mr and Mrs Boott that they had instructed a health and safety survey of the tree by a local arboricultural consultant that was undertaken around 2020. I was informed the conclusion of this survey was that the tree was good and healthy. It was also mentioned at this time that a resistograph was undertaken on the tree as part of the same survey. A resistograph is a piece of equipment used in the arboricultural industry to measure the strength of wood by testing its resistance to drilling. Again, I have not seen this report but it was confirmed that this test concluded the tree was of a sound and healthy structure.

While it is always accepted in our profession that trees are living organisms that change over time, at present it is my belief this tree is in good condition and healthy. I would also recommend, however, that a health and safety inspection by a qualified arboriculturist is undertaken every 1-3 years to pick up on any changes or concerns.

The drive way

I agree the driveway has suffered damage and the unevenness of the block paving is now both a trip hazard and a concern for cars using it. However, when the driveway was built it was done with the tree in situ and in my opinion the design was not done taking the tree and the roots into consideration. I do sympathise with the state of the drive and can see that something has to be done but if a proper design working with the tree had been laid at the time I believe both could have existed together. There is obvious signs where the drive has moved and been raised by tree roots, but there are also obvious places where the drive has moved or sunk, likely as a result of bad design and construction. The bricks from the drive have been built right up to the trunk of the tree, which would seem like a construction design that would never have lasted, based on the size and location of the tree.

In regards to the foul and water surface run, pictures show that the actual chamber has not been damaged, just the mortar where the manhole cover sits. It is also evident that, apart from the edge of one root in the corner, there are no others that have encroached into the drain or the chamber at all, having realigned around the structure.

The usual design solution to allow trees and drives to work alongside each other would be the use of some kind of specialised above ground method such as a cellular confinement system. This is a Tree Root Protection System that offers a solution for protecting tree roots when creating vehicular access paths. The system creates a stable, load bearing surface for traffic or footfall whilst eliminating damage to roots through compaction and desiccation of the soil. They are flexible and permeable, allowing the tree roots to continue to grow, and are ideal for driveways. It is appreciated however that this would require the whole drive to have the level altered higher which might not tie in with the public footpath and highway. It is also out of my expertise to comment on the manhole positioning but I believe this could be designed to sit at a higher level.

The cost of re-laying the drive is going to be expensive, the cost of felling the tree will also be expensive, likely in the range of £2,000 if a reputable tree surgeon company is used.

I therefore believe there are options to keep the tree and redesign the drive. If the driveway has to be redone at a great expense, then it would be possible to move the drive to the other side of the garden or create a design that moves the initial entrance further to the south east by removing one concrete pillar and then curve back in, leaving the tree trunk and a proportion of the rooting area dug out and put to a soil area. It may be that this could also incorporate the manhole. A cellular confinement system would likely still be required but it would allow a more gradual slope to tie in with the public footpath and road. If the drive has to be fixed anyway the cost of the tree to be removed would be a large portion of the costs, so by keeping the tree this cost could be redistributed aiding a better solution to be able to retain the tree and save on the costly price of both needing to be done together.

Conclusion

I do understand and can appreciate the concerns Mr and Mrs Boott have raised while I spoke with them and now. My response is based purely in regards to the tree and how I feel a tree of this size, age and condition deserves to have all options explored and the possibilities and practicalities of retaining the tree, re-doing the drive and aligning the manhole investigated fully.

Therefore it is my opinion the TPO should remain. This Pine tree is an exceptional example of its species that is in good condition and has stood for over 150 years.

Karen O'Shea

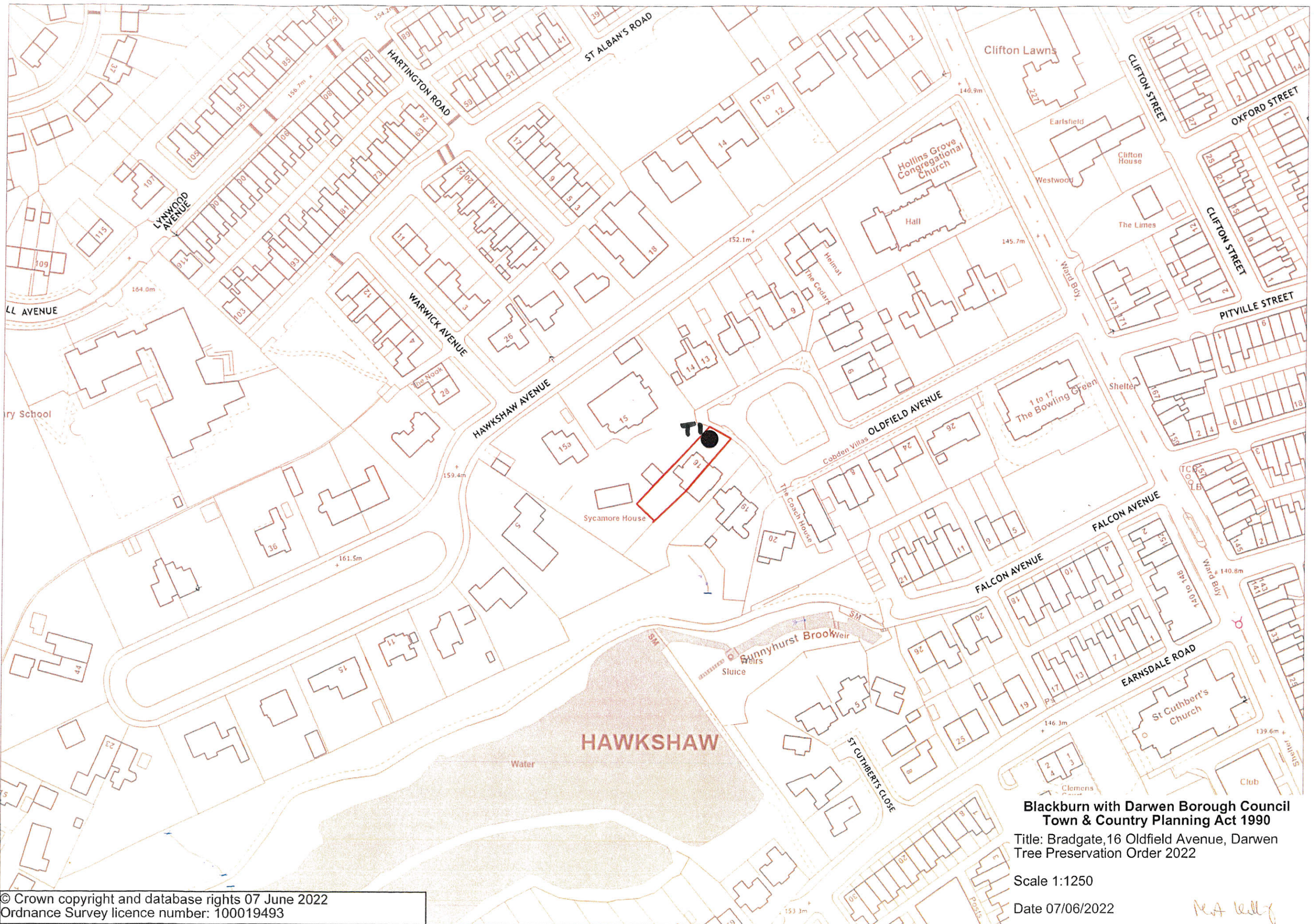
Photos taken by Karen O'Shea during site visit on 10th June 2022



3.8. The tree is of considerable amenity value, and whilst the objections from the landowners are acknowledged, the significance of the tree on Oldfield Avenue justifies why the TPO should remain

4.0 **CONTACT OFFICER:** Gavin Prescott, Planning Manager
(Development Management)

5.0 **DATE PREPARED** 31st August 2022



SCHEDULE 1

SPECIFICATION OF TREES

**LOCATION: Bradgate, No16 Oldfield Avenue, Darwen Tree
Preservation Order 2022**

Trees Specified Individually

(encircled in black on the plans)

Reference On Map	Description	Situation
T1	Pine	Front Garden Bradgate, No.16 Oldfield Avenue

Trees specified by reference to an area

(within a dotted black line on the plans)

Reference On map	Description	Situation
	None	

Groups of Trees

(within a broken line on the plan)

Reference on map	Description	Situation
	None	

Woodlands

(within a continuous black line on the plans)

Reference on map	Description	Situation
	None	

REPORT OF THE STRATEGIC DIRECTOR OF GROWTH & DEVELOPMENT

ORIGINATING SECTION: PLANNING (DEVELOPMENT MANAGEMENT)

REPORT TO PLANNING & HIGHWAYS COMMITTEE - 15th SEPTEMBER 2022

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

WARDS: SHEAR BROW AND CORPORATION PARK
COUNCILLORS: Akhtar Hussain
Suleman Khonat
Zainab Rawat

1.0 PURPOSE OF THE REPORT

- 1.1 To request that the Committee 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).
- 1.2 To request that the Committee confirm 37 Alexandra Road, Blackburn 2022 Tree Preservation Order (TPO) (ref: BWD3) without modification.

2.0 RECOMMENDATION

- 2.1 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.
- 2.2 37 Alexandra Road, Blackburn 2022 Tree Preservation Order (TPO) (ref: BWD3) is confirmed without modification.

3.0 BACKGROUND & RATIONALE

- 3.1 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).
- 3.2. 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. Image 1 is a photograph of the tree taken on the 10th June 2022, image 2 is the site location.



Image 1: Photograph of Sycamore trees taken on 10th June 2022.

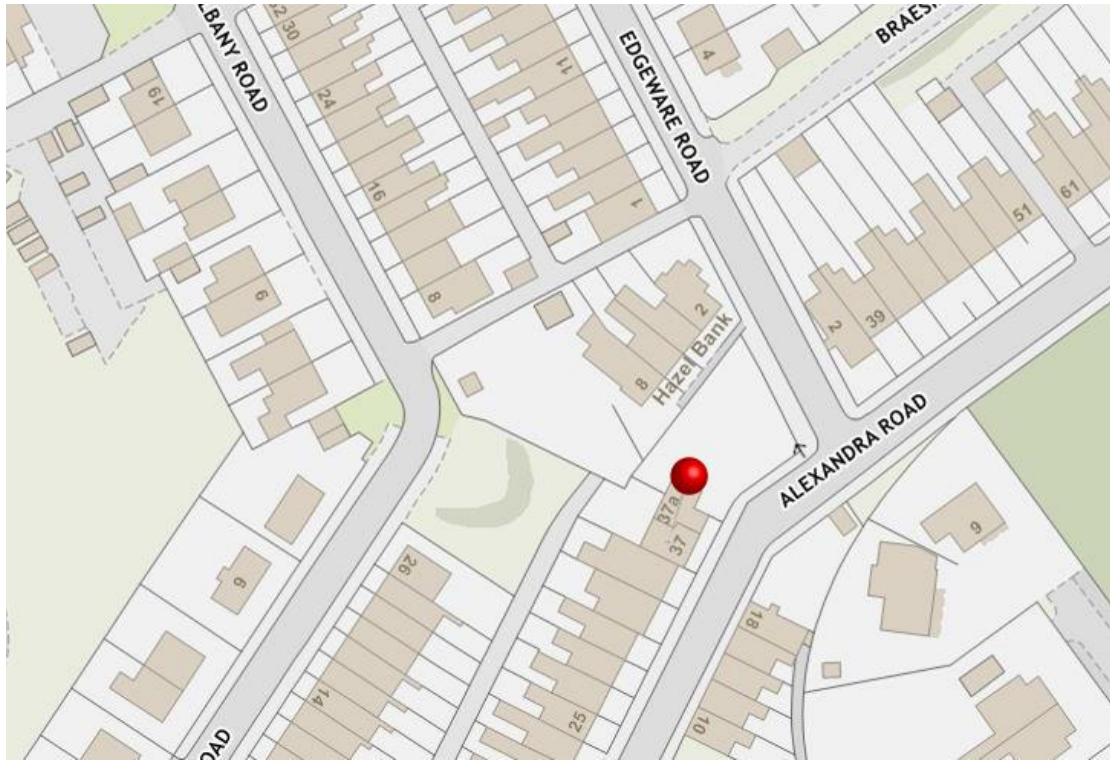


Image 2: Site location plan – Sycamore trees, 37 Alexandra Road, Blackburn.

3.3. 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 as illustrated in image 3, which fully warrants a TPO.

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: 10/06/2022	Surveyor: Karen O'Shea
Tree details	
TPO Ref (if applicable):	Tree/Group No: T1 and T2 Species: Sycamore
Owner (if known):	Location: In the rear garden of 37 Alexandra Road Blackburn

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO; where trees in good or fair condition have poor form, deduct 1 point

5) Good	Highly suitable	Score & Notes 3
3) Fair	Suitable	
1) Poor	Unlikely to be suitable	
0) Dead/dying/dangerous*	Unsuitable	
* Relates to existing context and is intended to apply to severe irremediable defects only		

b) Retention span (in years) & suitability for TPO

5) 100+	Highly suitable	Score & Notes 4
4) 40-100	Very suitable	
2) 20-40	Suitable	
1) 10-20	Just suitable	
0) <10*	Unsuitable	
* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality		

c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

5) Very large trees with some visibility, or prominent large trees	Highly suitable	Score & Notes 3
4) Large trees, or medium trees clearly visible to the public	Suitable	
3) Medium trees, or large trees with limited view only	Suitable	
2) Young, small, or medium/large trees visible only with difficulty	Barely suitable	
1) Trees not visible to the public, regardless of size	Probably unsuitable	

d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

5) Principal components of arboricultural features, or veteran trees	Score & Notes 1
4) Tree groups, or members of groups important for their cohesion	
3) Trees with identifiable historic, commemorative or habitat importance	
2) Trees of particularly good form, especially if rare or unusual	
1) Trees with none of the above additional redeeming features (inc. those of indifferent form)	

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

5) Immediate threat to tree	Score & Notes 5
3) Foreseeable threat to tree	
2) Perceived threat to tree	
1) Precautionary only	

Part 3: Decision guide

Any 0	Do not apply TPO	Add Scores for Total: 16	Decision: TPO
1-6	TPO indefensible		
7-11	Does not merit TPO		
12-15	TPO defensible		
16+	Definitely merits TPO		

Image 3: TEMPO Assessment 10th June 2022.

3.4 A copy of the TPO and Schedule is attached to this report. The emergency TPO was served on the landowner/freeholder on the 22nd June 2022.

- 3.5 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.
- 3.6 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.
- 3.7 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 (refer to Image 3). The trees scored 16 which more than merits a TPO.

CONSULTATIONS:

- 3.8. The current freeholders of the land, where the tree is located, the neighbouring properties, and the ward councillors/Chair of the Committee were informed of the proposed TPO on the 22nd June 2022.
- 3.9 Acknowledgements were received from Cllrs Dave Smith (Chair) and Zainab Rawat.
- 3.10 Objections were received from the following:

Colin Gilbert, No.8 Hazel Bank, Blackburn – 27th June 2022:

The two trees are sycamores which are often classed as weeds.

They are not a native tree.

They are huge and stop us growing anything in our lower garden because of the shadow they cast.

One of the trees is a potential danger to number 37's foundations.

Instead of TPO's, I would like to see these trees felled.

Please acknowledge receipt of this email and what your final decision(s) are.

Kind regards

Colin Gilbert

Steven Derbyshire and Carolanne Connolly, owners of No.37
Alexandra Road, Blackburn – 29th June 2022:

Dear Sir/Madam.

I wish to object to the tree preservation order 10/22/0468 which has been placed on two large sycamore trees that are situated in my back garden.

There are a number of reasons why I asked for permission to have the trees removed. They are very large trees, 80 -100 feet in height and have grown so large that the canopy of one of the trees hangs over the roof of the house. We are concerned that the roots of this tree may damage the foundations of our home as it continues to grow and spread.

In the last few years an increasing number of tree limbs have fallen from the trees and they are quite large and potentially dangerous. When the weather is windy both trees sway appreciably and we are increasingly concerned that if either of these trees fell, they would completely demolish our home. One tree in particular has a curved trunk and leans very much towards the house so could only fall in that direction.

I understand the importance of trees and the need to protect them is vital. My partner and I are nature lovers, keen gardeners and we do much to encourage wildlife into our garden, so we don't make the request lightly. We have already planted two much smaller trees into the garden and have half a dozen other small trees, currently in pots and including native species, that we would like to plant if we can find space for them. At the moment, the 2 sycamore trees in question form an enormous canopy over the garden, hindering the growth of the smaller trees, shrubs and flowers we have. I would also point out that there is another large sycamore tree in the back garden which we haven't requested be felled as we appreciate the importance of the trees for birds and insects.

I hope that information will help to convince you that we are responsible people who realise that felling trees is something that shouldn't be done lightly and I promise that, if granted the necessary permissions, we will do everything we can to make good the loss of those trees and replace them with something even better.

Please give our objection all due consideration.

Mubasar Khaliq, 35 Alexandra Road, Blackburn – 30th June 2022:

Further to the recent letter that I received about the Proposed New Tree Preservation Order at 37 Alexandra Road, Blackburn; I am writing to highlight some of my key concerns.

Though the trees are next door, one is particularly relevant to me (T2) due to the proximity and overhang. I love gardening, trees and the outdoors however I have some significant concerns about these trees, especially, T2.

I have lived at this property for around 13 years, in this time I have noticed T2 significantly grow, this in turn caused the following issues:

1. *Growing close to my property, the branches are growing closer to my property and so are the roots, the actual garden wall, which is thick and made from rock has visible cracks and damage caused by growth from T2, I am concerned about future growth will cause this wall to fall altogether.*

2. *Our Light has significantly reduced, my mum is 80 plus, she has moved in with us as we are her main carers and she has limited mobility. On most days the only outdoors she gets to see is the back garden, sadly year on year the lighting which was once thoroughly enjoyed, with us have a sun area /conservatory at the back of the house - has reduced massively. The impact of the reduced light impacts on us all, and prevents us from enjoying the sun or daylight at the rear of the house, however it has had a detrimental impact on my mum.*

3. *Finally due to the increasing overhang we have had a number of near misses where huge branches have fallen in my garden. In winter 2021 we had a number of seriously windy days and this caused huge branches to fall, causing a few near misses that were too close for comfort, this included a branch which hit our conservatory roof and one that nearly hit my child whilst they were out in the garden. I did flag my concern about T2 and the hazard it presented to my family to the owner of 37 Alexandra Road.*

In the light of the above concerns, I request the proposed order is not implemented as it will present a seriously health and safety risk, in the case of damage or injury who will be responsible, when I am telling clearly how significant risk there is.

I look forward to receiving your acknowledgement and response.

3.11 Response to the objections received:

They are very large trees, 80-100 feet in height and have grown so large that the canopy of one of the trees hangs over the roof of the house:

Response: Trees are not a threat due to being tall. Whereas it is appreciated this can cause alarm, a tall tree can be perfectly safe and healthy.

We are concerned that the roots of this tree may damage the foundation:

Response:It is assumed this is just a concern and there is no structural cracking or movement that has been noted. If any structural defects are present than a report from a qualified structural engineer following investigation works would need to be provided to support the reasoning for wanting to fell the sycamore trees on these grounds.

In the last few years an increasing number of tree limbs have fallen from the trees and they are quite large and potentially dangerous. When the weather is windy both trees sway appreciably and we are increasingly concerned that if either of these trees fell, they would completely demolish our home.

Response: If there is a concern on the health of the trees then a health and safety survey should be undertaken. If this concludes the trees are in a dangerous condition then this report should be submitted to support the reason for removal of the trees.

One tree in particular has a curved trunk and leans very much towards the house so could only fall in that direction of our home as it continues to grow and spread.

Response: Trees can grow in all directions and for many reasons. This trunk has been inspected during the site visit undertaken by the Arboricultural Officer, and the reasoning for the lean was the trees response to competition as it was establishing. The trunk of this tree has straightened up over the years, which would be expected, and gave no concern as to its stability. A lean on a tree is only a concern if it's a new lean and/or the ground to the base has moved or is uplifted.

The 2 sycamore trees in question form an enormous canopy over the garden, hindering the growth of the smaller trees, shrub and flowers we have.

They are huge and stop us growing anything in our lower garden because of the shadow they cast (No.8 Hazel Bank).

Response: This is appreciated and a justified response, however an application to reduce the canopies would be considered.

Growing close to my property (No.35), the branches are growing closer to my property and so are the roots, the actual garden wall, which is thick and made from rock has visible cracks and damage caused by

growth from T2, I am concerned about future growth will cause this wall to fall altogether.

Response: The branches could be pruned back following an agreed application. If the roots are causing structural damage to the wall then an investigation would need to be carried out and evidence submitted in the form of a structural engineers report. This could then be taken into consideration against the works applied for.

Our light has significantly reduced, my mum is 80 plus, she has moved in with us as we are her main carers, and she has limited mobility. On most days the only outdoors she gets to see is the back garden, sadly year on year the lighting which was once thoroughly enjoyed, with us having a sun area/conservatory at the back of the house, has reduced massively. The impact of the reduced lights impacts on us all, and prevents us from enjoying the sun or daylight at the rear of the house, however it has had a detrimental impact on my mum.

Response: Works to reduce the tree(s) could be considered via a new application to help with this issue.

Finally, due to the increasing overhang we have had a number of near misses where huge branches have fallen in my garden. In winter 2021 we had a number of seriously windy days and this caused huge branches to fall, causing a few near misses that were too close for comfort, this included a branch which hit our conservatory roof and one that nearly hit my child whilst they were out in the garden. I did flag my concern about T2 and the hazard it presented to my family to the owner of No.37 Alexandra Road.

Response: If there is a concern on the health of the trees then a health and safety survey should be undertaken. If this concludes the trees are in a dangerous condition then this report should be submitted to support the reasons for removal of the trees.

- 3.12. The application to fell the two sycamore trees in a conservation area was not justified on the grounds that the trees are very large and may fall into the house. If the health and safety 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 Arboricultural Officer's site visit 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.

3.13 It is fully appreciated both trees are large and dominating and for that reason reduction work could be applied for, but it is considered this does not fully justify warranting the removal of the trees. These trees scored 16 on a TEMPO assessment that fully warrants them worthy of protecting. Therefore, it is considered that the TPO should remain unless a justified reason is presented as evidence in a future application.

4.0 **CONTACT OFFICER:** Gavin Prescott, Planning Manager
(Development Management)

5.0 **DATE PREPARED** 1st September 2022



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Blackburn with Darwen Borough Council
Town & Country Planning Act 1990
Title: 37 Alexandra Road Blackburn Tree
Preservation Order 2022

Scale: 1:1250
Date: 22 June 2022

Authorised Signature

SCHEDULE 1

SPECIFICATION OF TREES

**LOCATION: 37 Alexandra Road Blackburn Tree
Preservation Order 2022**

Trees Specified Individually

(encircled in black on the plans)

Reference On Map	Description	Situation
T1	Sycamore	Rear garden of 37 Alexandra Road, Blackburn
T2	Sycamore	Rear garden of 37 Alexandra Road, Blackburn

Trees specified by reference to an area

(within a dotted black line on the plans)

Reference On map	Description	Situation
	None	

Groups of Trees

(within a broken line on the plan)

Reference on map	Description	Situation
	None	

Woodlands

(within a continuous black line on the plans)

Reference on map	Description	Situation
	None	

REPORT OF:	STRATEGIC DIRECTOR OF GROWTH & DEVELOPMENT
TO:	PLANNING AND HIGHWAYS COMMITTEE
ON:	15th SEPTEMBER 2022
ORIGINATING SECTION:	PLANNING (DEVELOPMENT MANAGEMENT SERVICE)
WARDS AFFECTED:	ALL
COUNCILLORS:	ALL

TITLE OF REPORT:

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

1. PURPOSE OF THE REPORT

- 1.1 To present Members with 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.

2. BACKGROUND

- 2.1 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 magistrates court.
- 2.2 Members will recall 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.

3. RATIONALE

3.1 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 Figure 2 is an extract from the map attached to the amended notice.

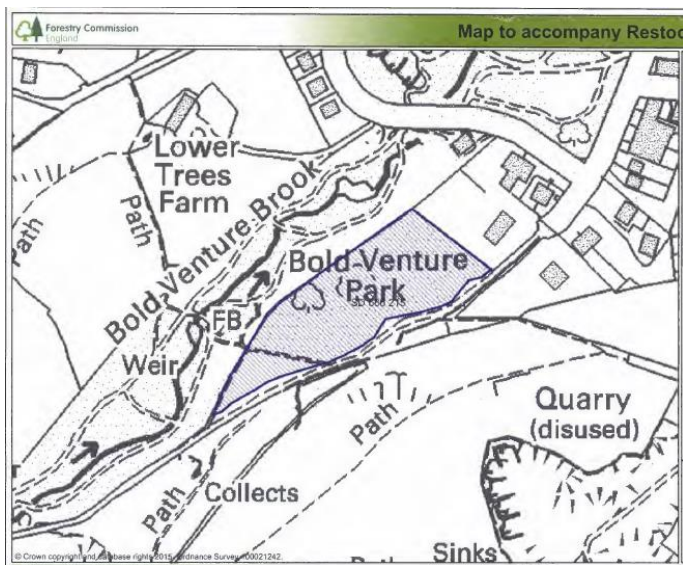


Figure 1 – map from 2018 Notice

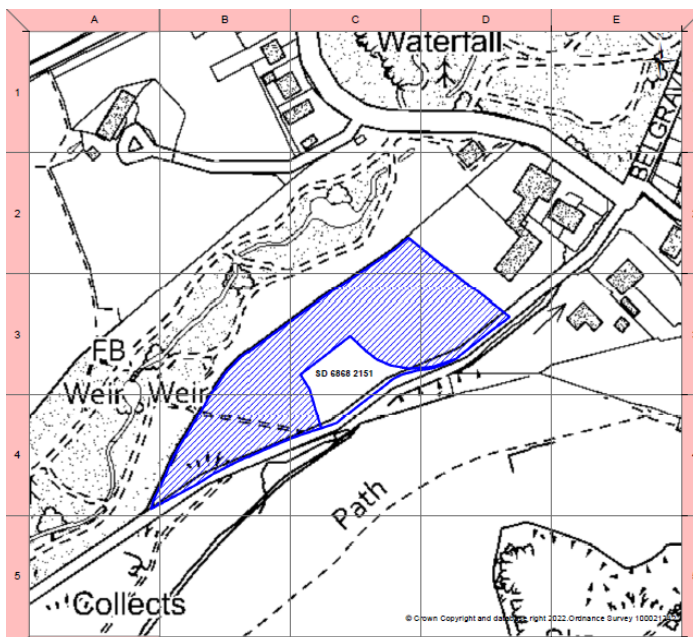


Figure 2 – map from 2022 Notice

3.2 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

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 in blue (see Figure 2), 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.



Photographs of the site taken from Lancashire Evening Telegraph article 3rd October 2018.

4. POLICY IMPLICATIONS

- 4.1 The land the subject of the Restocking Notice, is identified as Green Infrastructure under Policy 38 of the adopted Blackburn With Darwen Borough Local Plan Part 2 (LPP2) (December 2015), and also Countryside Area as defined as Policy 5 – refer to Figure 3.



Figure 3 – extract from BwD LPP2 (December 2015).

- 4.2 The FC increases the value of woodlands to society and the environment, and is the government department responsible for protecting, expanding and promoting the sustainable management of woodlands. A felling licence from the FC is required to fell most trees, with exceptions being small scale felling works, such as, less than 5m³ of timber in any “calendar quarter (Jan- March etc).
- 4.3. The importance of the site is recognised with the local plan policies and its listing with English Heritage as a Grade II Park and Garden i.e. Bold Venture Park. The site, the subject of the Restocking Notice, lies to the south of the main body of the Park. The trees and woodland are one of the main components to the historical character of the park. Pursuant to the restocking of the land with trees, the FC Notice specifies the requirements for establishment of the trees for a 10 year period i.e June 2033. Before the end of this period, the Council may wish to consider if it would be expedient to make the trees subject of a Tree Preservation Order (TPO), if there is known, potential, or perceived threat to the tree cover.
- 4.4. The amended Restocking Notice may be considered by the local planning authority to be a material consideration in any deliberation of planning permission, in relation to the land specified in the Notice, that may be submitted in the future.

The FC, as a government department, is entirely neutral on the desirability and appropriateness of any particular planning application. Planning decisions are entirely a matter for the local planning authority. The Restocking Notice simply sets out the Forestry Commission's position in relation to Restocking and Enforcement Notices issued under the Forestry Act 1967.

- 4.5 With due regard to the above designations, policies and felling licence controls, the Council's Arboricultural Officer considers there are no compelling reasons at the present time, to consider a TPO and it may be appropriate to keep a "watching brief" on the site. Should circumstances change the Council can consider making the trees subject to a TPO.

5. FINANCIAL IMPLICATIONS

- 5.1 None.

6. LEGAL IMPLICATIONS

- 6.1 The Restocking Notice simply sets out the Forestry Commission's position in relation to Restocking and Enforcement Notices issued under the Forestry Act 1967.

7. RESOURCE IMPLICATIONS

- 7.1 None

8. EQUALITY IMPLICATIONS

- 8.1 The report is for information purposes only and does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore, no Equality Impact Assessment is required.

9. CONSULTATIONS

- 9.1. None.

10. RECOMMENDATION

- 10.1 That the Committee note the content of the report

Contact Officer: Gavin Prescott, Planning Manager (Development Management)

Date: 31st August 2022

Background Papers: Amended Restocking Notice (ref: RN11/18-19), Land to the south west of Manor Road, Darwen dated 5th September 2022.

REPORT OF:	THE STRATEGIC DIRECTOR OF GROWTH & DEVELOPMENT
TO:	PLANNING AND HIGHWAYS COMMITTEE
ON:	15th SEPTEMBER 2022
ORIGINATING SECTION:	PLANNING (DEVELOPMENT MANAGEMENT) SERVICE
WARDS AFFECTED:	ALL
COUNCILLORS:	ALL

TITLE OF REPORT:

Planning Service Performance (Development Management)

1. PURPOSE OF THE REPORT

- 1.1 To inform 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 December 2020 "Improving planning performance Criteria for designation (updated 2020)".
- 1.2 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. This report provides Blackburn With Darwen Borough Council's (BwDBC) performance for the 2 preceding years ending June 2022.

2. BACKGROUND

- 2.1 The Growth and Infrastructure Act 2013 introduced measures relating to the performance of Local Planning Authorities in relation to the speed of determining major planning applications.
- 2.2 Section 1 of the Growth and Infrastructure Act inserted sections 62A and 62B into the Town and Country Planning Act 1990. Section 62A allows certain applications to be made directly to the Secretary of State if a Local Planning Authority fails to meet performance targets for the speed of determining major planning applications. Local Planning Authorities who fail to meet performance targets may be designated as poorly performing.

- 2.3 At present Local Planning Authorities must determine over 50% of major planning applications within the specified 13 week period (or 16 week period if the development requires an Environmental Impact Assessment) or within any written extension of time period agreed with the applicant. If a Local Planning Authority fails to determine 50% of major applications within the specified time period or within the agreed extension of time, Authorities may be designated as underperforming, placed in “special measures” and applicants may bypass the Council and submit applications directly to the Planning Inspectorate for determination. Underperforming Authorities are also required to prepare and implement an improvement plan.
- 2.4 With the publication of the “Improving planning performance Criteria for designation” document, further measures were introduced to improve performance.
- 2.5 The Government propose that the performance of Local Planning Authorities in determining both major and non-major development will be assessed separately, meaning that an Authority could be designated on the basis of its performance in determining applications for major development, non-major development or both. The assessment for each of these two categories of development will be against two separate measures of performance:
- the **speed** with which applications are dealt with measured by the proportion of applications that are dealt with within the statutory time or an agreed extended period; and,
 - the **quality** of decisions made by Local Planning Authorities measured by the proportion of decisions on applications that are subsequently overturned at appeal.
- 2.6 Therefore, the performance of Local Planning Authorities will be assessed separately against:
- the **speed** of determining applications for **major development**;
 - The **quality** of decisions made by the Authority on applications for **major** development;
 - the **speed** of determining applications for **non-major** development;
 - The **quality** of decisions made by the Authority on applications for **non-major** development,
- 2.7 In order to designate LPA’s as poorly performing, the Government use the quarterly statistical returns made to Ministry of Housing Communities & Local Government (MHCLG), and Department for Levelling Up, Housing & Communities. For the measure relating to the quality of decisions, this will be based on the numbers of appeals that are overturned during a particular quarter. The threshold for designation for both major and non-major development, above which a Local Planning Authority is eligible for designation, is 10% of the Authority’s total number of decisions on applications made during the assessment period being overturned at appeal.
- 2.8 Where a Local Planning Authority is designated, applicants may apply for

planning permission directly to the Planning Inspectorate (on behalf of the Secretary of State) for the category of applications (major, non-major or both) for which the authority has been designated, subject to limited exceptions. Thus removing control from the Local Planning Authority in terms of the decision, conditions applied to any approval and fee income.

- 2.9 Soon after a designation is made the Local Planning Authority will be expected to prepare an action plan addressing areas of weakness that it identifies as having contributed to its under-performance. Where necessary, this action plan will directly address weaknesses in the processing of these types of applications. With regards to BwDBC, this action plan (Performance Improvement Plan) was produced in October 2015, and is ongoing in terms of the processes and decision making relating to the Development Management Service.
- 2.10 Data showing the performance of Local Planning Authorities against the speed and quality measures is published by the MHCLG on a quarterly basis. The Government indicates that a Local Authority's performance will be assessed using figures which have already been provided to MHCLG.
- 2.11 The following table shows the designation thresholds and initial assessment periods.

Table 1 – Designation thresholds and assessment period overview

Measure and type of Application	Threshold and assessment period October 2018 to September 2020	Threshold and assessment period October 2019 to September 2021	Live Table
Speed of major Development (District and County)	60%	60%	District - P151a County – P151b
Speed of non-major Development	70%	70%	P153

Measure and type of Application	Threshold and assessment period April 2018 to March 2020	Threshold and assessment period April 2019 to March 2021	Live Table
Quality of major Development (District and County)	10%	10%	District - P152a County – P152b
Quality of non-major Development	10%	10%	P154

- 2.12 The last report presented to the Committee on the performance levels, was at the meeting on the 16th August 2018. The performance levels based on the latest threshold and assessment period (April 2020 and September March 2022) can be found in the separate report on the agenda “National Planning Performance Tables”.

3. RATIONALE

- 3.1 Members will recall in the autumn of 2015, the Council received notification from the Secretary of State that at that time during the initial assessment period i.e. the preceding 2 years, the local planning authority were at serious risk of being placed in “special measures” due to the performance of dealing with majors and non-majors application not meeting the criteria set. As a result of this, the Planning Service immediately produced a “Planning Performance Improvement Plan”, which set out an action plan and monitoring framework to improve the Service’s performance, and reduce any risk of the service being placed in “special measures”. This included setting a local planning performance target to be adopted that is equivalent to the upper quartile performance level nationally; recruitment process for three additional planning posts; scheme of delegation

being revised. With regards to the latter this has been in place now since the 1st October 2015.

Below is the action plan that was put in place, with all the items now fully in place, which is currently subject to an audit review by the Council's Internal Audit Team.

No.	Item
1	Establish local target for processing of Major and Minor applications in line with national Upper Quartile, and include in Management Accountability Framework
2	Resources – recruit to full establishment including additional Principal, Planner & Enforcement roles
3	Scheme of delegation – revise to eliminate objections trigger
4	Quality of submissions – stricter validation process – applications automatically invalid if missing information, not worked upon again or made valid until all missing information submitted
5	Digitisation of service – application boundary polygons, historic records, live records via EDMS
6	Decision making culture – approve unless demonstrable harm; focus on timescales

3.2 Since the performance threshold was introduced for the speed of determining major applications and the Action Plan was implemented, officers have sought to work with applicants to either ensure that applications are determined within the statutory period or that an extension of time can be agreed. Major developments often throw up complex issues which take a considerable length of time to resolve and they are rarely dealt within the prescribed 13 or 16 week period (for development requiring Environmental Impact Assessment). Applicants are fully encouraged to submit their schemes through the Council's adopted Pre-Application Advisory Service, so that the issues can be identified and addressed at an early stage of the process. In many cases applicants are keen to work with officers and will agree an extension of time to formally extend the determination period where issues cannot be addressed within the statutory time period. This approach by officers applies to the determination of major and non-major applications where officers negotiate extensions of time with the applicants. Members are advised that the designation thresholds for non-major applications measured by the Government only relates to the "minor category" and in the "other category, just householder and changes of use applications".

3.3 Speed of decisions

The measure to be used is the percentage of decisions on applications made:
 (a) within the statutory determination period
 ; or

(b) within such extended period as has been agreed in writing between the applicant and the local planning authority as recorded for major development in Live Tables P151a and 151b, and for non-major development in Live Table 153 from the data collected by the Ministry of Housing, Communities and Local Government.

The assessment period for this measure is the two years up to and including the most recent quarter for which data on planning application decisions are available at the time of designation. For example, a two year assessment period between October 2019 and September 2021 will be used for designation decisions in Quarter 1 2022. The average percentage figure for the assessment period as a whole is used.

- 3.4 The designation thresholds, below which a local planning authority is eligible for designation are:
- a) For applications for major development: less than 60 per cent of an authority's decisions made within the statutory determination period or such extended period as has been agreed in writing with the applicant;
 - b) For applications for non-major development: less than 70 per cent of an authority's decisions made within the statutory determination period or such extended period as has been agreed in writing with the applicant.
- 3.5 As part of the monitoring framework, a Planning Service Dashboard has been produced by Development Management, which allows management information to be monitored relating to the performance of majors and minors planning applications, number of applications approved, and the performance of appeals. This is monitored over a monthly basis for 12 months, together with the quarterly monitoring on majors and minors for the preceding two years. The Dashboard is reported on a bi-monthly basis to the Planning Cross Party Working Group.
- 3.6 Figure 1 below shows the Council's performance for the rolling period of 2 years up to 30th June 2022 (measured by the Government).

Blackburn With Darwen Performance for the rolling period of 2 years up to 30th June 2022	published	published	published	published	published	published	published	published	published	target
	July-Sep 2020	Oct - Dec 2020	Jan - March 2021	Apr-June 2021	July-Sept 2021	Oct-Dec 2021	Jan-March 2022	Apr-June 2022	24 months to end of June 2022	
Majors										
Major Decisions	10	7	6	7	9	14	10	7	70	
Major Decisions within 13 weeks	2	1	2	4	1	4	4	0	18	
PPA, EoT or EIA Decisions	8	6	4	3	8	10	6	7	52	
PPA, EoT or EIA Decisions within agreed time	7	6	4	3	8	10	6	7	51	
performance measure per quarter	90%	100%	100%	100%	100%	100%	100%	100%	99%	
total decisions	70									
within time	69									
performance measure	99% target is over 60%									
	July - Sept 2020	Oct - Dec 2020	Jan - March 2021	Apr-June 2021	July - Sept 2021	Oct-Dec 2021	Jan - March 2022	Apr-June 2022	24 months to end of June 2022	
Minors and others										
M&O Decisions	125	135	148	171	172	175	124	143	1193	
M&O Decisions within 8 weeks	87	92	103	111	108	100	84	90	775	
PPA, EoT or EIA Decisions	35	42	36	54	64	71	40	49	391	
PPA, EoT or EIA Decisions within agreed time	33	38	35	54	64	70	40	49	383	
performance measure per quarter	96%	96%	93%	96%	100%	97%	100%	97%	97.07%	
total decisions	1193									
within time	1158									
performance measure	97% target going forward is 70%									
Others category only includes Changes of Use & Householder applications.										

Figure 1: Blackburn With Darwen Performance for the rolling period of 2 years up to 30th June 2022

3.7 Turning to the performance measure for this period, the Council determined 70 major applications during the 2 year period. 18 applications (26%) were determined within the statutory 13 week period. However, with the agreed extension of time (51 applications) 99% were determined which exceeds the target of 60%. The predominant reason why the majority of the major applications are determined with an agreed extension of time is due to the negotiations between the Council and the applicants relating to the viability of the proposed development and the financial contributions that are sought through the Section 106 Agreements.

3.8 With regards to the non-majors performance, 65% of the applications determined (775 out of 1193) during the 2 year period are determined within the 8 week statutory period, which is just below the target. However, with the agreed extensions of time the performance is at 97%. Members will be aware that the Service over the last 12 months has had some resource issues, but this has been resolved since the beginning of the year with a full recruitment process. As a result of this, the Service is now fully resourced with planning case officers. In addition, the Digitisation of the Planning Service is now complete, which assists in the processing of the planning applications at the validation/registration stage. This means from Figure 1 you can see that the number of required extensions of time for non-major applications are now reducing.

3.9 At the time of writing the report, performance figures for the Service over a rolling 12 month period are shown in Figures 2 and 3 for the period up to 31st July 2022. These reports are produced for the Cross Party Planning Working Group, on a bi-monthly basis.

Date	No. of apps received	No. of apps decided	No. of apps approved	No. of apps refused	No. of apps withdrawn	% apps approved	% apps refused	Major target	% majors within 13 weeks	% of majors 13 wks & agreed EoTs	Number of majors determined	No of Majors determined within 13 wks	Extension of time agreed (ppas etc) - Majors
Aug-21	100	62	57	5	2	92%	8%	50%	50%	100%	2	1	1
Sep-21	96	58	48	10	8	83%	17%	50%	0%	100%	2	0	2
Oct-21	103	70	67	3	11	96%	4%	50%	33%	100%	6	2	4
Nov-21	99	71	55	16	10	77%	23%	50%	20%	100%	5	1	4
Dec-21	100	58	54	4	3	93%	7%	50%	50%	100%	2	1	1
Jan-22	98	43	40	3	8	93%	7%	50%	50%	100%	4	2	2
Feb-22	84	62	60	2	2	97%	3%	50%	0%	100%	2	0	2
Mar-22	95	62	58	4	4	94%	6%	50%	33%	100%	4	1	3
Apr-22	73	48	44	4	4	92%	8%	50%	0%	100%	2	1	2
May-22	111	53	43	10	4	81%	19%	50%	0%	100%	4	0	4
Jun-22	114	58	54	4	2	93%	7%	50%	0%	100%	1	0	1
Jul-22	78	48	42	6	7	88%	13%	50%	80%	100%	5	4	1
Total	1151	693	622	71	65						39	13	27
Average						90%	10%	50%	45%	100%			

Figure 2: Blackburn With Darwen Performance for the period August 2021 to July 2022

Date	Minor/Other target	% minors/other within 8 weeks	% of minors/other 8 wks & agreed EoTs	Number of minors/other determined	No of minors/other determined within 8 wks	Extension of time agreed (ppas etc) - Minors
Aug-21	80%	64%	100%	59	38	21
Sep-21	80%	63%	100%	56	35	21
Oct-21	80%	59%	100%	64	38	26
Nov-21	80%	55%	100%	66	36	30
Dec-21	80%	61%	98%	56	34	21
Jan-22	80%	58%	100%	39	23	16
Feb-22	80%	53%	100%	58	31	27
Mar-22	80%	56%	100%	58	32	26
Apr-22	80%	56%	100%	46	26	18
May-22	80%	73%	100%	49	36	13
Jun-22	80%	60%	100%	57	35	22
Jul-22	80%	70%	100%	43	30	13
Total				651	394	254
Average	80%	61%	100%		33	21

Figure3: Blackburn With Darwen Performance for the period August 2021 to July 2022

- 3.10 From these figures, it can be seen that 90% of the applications determined over the 12 month period are approved, and 10% refused planning permission. The performance measure for majors and non-majors at 100% are meeting the targets set by the Government.
- 3.11 Turning to the appeals threshold criteria, no appeals have been submitted relating to major planning applications. However, as the number of major applications received by the LPA is relatively low the Council must be mindful that the 10% target figure is also relatively low so a small number of appeal overturns could have a significant impact on the Council. However, at the current time, the Council meets the performance target for the quality of decisions in relation to major applications.
- 3.12 With regards to non-majors, the latest performance figures for the 2 year rolling period up to the 30th June 2022, show that 23 appeals have been determined against 1,235 applications determined by the LPA. As stated in paragraph 2.7 above, the measure is 10% of the Authority's total number of decisions on applications made during the assessment period being overturned at appeal. Out of the 23 appeals determined by the Planning Inspectorate 2 were allowed, which amounts to 0.16% of the total number of applications determined by the LPA during the same period. As such, at the current time, the Council's meets the performance target for the quality of decisions in relation to non-major applications (minors and householder/changes of use applications). The Planning Dashboard which is reported to the Planning Cross Party Working Group on a bi-monthly basis, also shows the numbers of appeals received and determined over a rolling 12 month period. Figure 4 below shows the latest figures.

Date	No. of appeals received	No. of appeals decided	No. of appeals allowed	No. of appeals dismissed	% of appeals allowed	% of appeals dismissed
Aug-21	0	1	0	1	0%	100%
Sep-21	3	3	1	2	33%	67%
Oct-21	2	0	0	0	0%	0%
Nov-21	1	2	2	0	100%	0%
Dec-21	2	4	0	4	0%	100%
Jan-22	3	1	0	1	0%	100%
Feb-22	1	2	0	2	0%	100%
Mar-22	0	3	0	3	0%	100%
Apr-22	2	2	0	2	0%	100%
May-22	1	1	0	1	0%	100%
Jun-22	3	0	0	0	0%	0%
Jul-22	1	0	0	0	0%	0%
Total	19	19	3	16		
Average					16%	84%

Figure4: Blackburn With Darwen Performance for the period August 2021 to July 2022

- 3.13 On the agenda, is a separate report “Appeals Monitoring”, which includes the Council’s position relating to the appeals decisions against the national performance measures, and benchmarking against other local planning authorities.
- 3.14 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.

4. POLICY IMPLICATIONS

- 4.1 None

5. FINANCIAL IMPLICATIONS

- 5.1 There are some financial/resource implications arising from this report should the Council fail to meet its performance targets. In this case there would be the potential for applicants to submit planning applications directly to the Planning Inspectorate with consequent impact on the planning fee income received by the Council.

6. LEGAL IMPLICATIONS

- 6.1 None

7. RESOURCE IMPLICATIONS

- 7.1 None

8. EQUALITY IMPLICATIONS

- 8.1 The report is for information purposes only and does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore, no Equality Impact Assessment is required.

9. CONSULTATIONS

- 9.1. Planning Cross Party Working Group.

10. RECOMMENDATION

10.1 That the Committee note the content of the report

Contact Officer: Gavin Prescott, Planning Manager
Date: 26th August 2022

Background Papers: Department of Communities and Local Government – Improving planning performance Criteria for designation (updated 2020). December 2020.

REPORT OF:	STRATEGIC DIRECTOR OF GROWTH & DEVELOPMENT PLANNING AND HIGHWAYS COMMITTEE
TO:	
ON:	15th SEPTEMBER 2022
ORIGINATING SECTION:	PLANNING (DEVELOPMENT MANAGEMENT SERVICE)
WARDS AFFECTED:	ALL
COUNCILLORS:	ALL

TITLE OF REPORT:

NATIONAL PLANNING PERFORMANCE TABLES

1. PURPOSE OF THE REPORT

- 1.1 To present Members with an update on the recently published National Planning Performance Tables.

2. BACKGROUND

- 2.1 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.

3. RATIONALE

- 3.1 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.

- 3.2 Figures 1 and 2 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.
- 3.3 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%). Figure 1 below shows with 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%.

Table P151a: District planning authorities' performance -
England, April 2020 to March 2022 ^F

Local planning authority	ONS Code	Imputed blank=No 1=yes	Number/per cent	
			% within 13 weeks or within agreed time without penalty for missing data	% within 13 weeks or within agreed time with penalty for missing data
England	E92000001	15	87.2	72.2
Barrow-in-Furness	E07000027		100.0	100.0
Brent	E09000005		100.0	100.0
Brentwood	E07000068		100.0	100.0
Bury	E08000002	1	100.0	100.0
Copeland	E07000029		100.0	100.0
Corby ⁴	E07000150		100.0	100.0
Dudley	E08000027		100.0	100.0
Exmoor National Park	E26000002		100.0	100.0
Greenwich	E09000011		100.0	100.0
Haringey	E09000014		100.0	100.0
Hartlepool	E06000001		100.0	100.0
Isles of Scilly	E06000053		100.0	100.0
Kensington and Chelsea	E09000020		100.0	100.0
Knowsley	E08000011		100.0	100.0
New Forest National Park	E26000009		100.0	100.0
Newcastle-under-Lyme	E07000195		100.0	100.0
Newham	E09000025		100.0	100.0
North East Lincolnshire	E06000012		100.0	100.0
North Tyneside	E08000022		100.0	100.0
Rossendale	E07000125	1	100.0	100.0
Rotherham	E08000018		100.0	100.0
South Tyneside	E08000023		100.0	100.0
Southampton	E06000045		100.0	100.0
St. Helens	E08000013		100.0	100.0
Sunderland	E08000024		100.0	100.0
Trafford	E08000009		100.0	100.0
Woking	E07000217		100.0	100.0
Barking and Dagenham	E09000002		100.0	100.0
East Staffordshire	E07000193		100.0	100.0
Lewisham	E09000023		100.0	100.0
Wigan	E08000010		100.0	100.0
Staffordshire Moorlands	E07000198		100.0	100.0
Northampton ⁴	E07000154		100.0	100.0

FIGURE 1

Table P151a: District planning authorities' performance -
England, April 2020 to March 2022 ^F

		Number/per cent		
Local planning authority	ONS Code	Imputed blank=No 1=yes	% within 13 weeks or within agreed time without penalty for missing data	% within 13 weeks or within agreed time with penalty for missing data
Yorkshire Dales National Park	E28000012		100.0	100.0
Bolsover	E07000033		100.0	100.0
Stevenage	E07000243		100.0	100.0
Colchester	E07000071		99.0	99.0
Sedgemoor	E07000188		98.9	98.9
North Kesteven	E07000139		98.9	98.9
Rugby	E07000220		98.8	98.8
Horsham	E07000227		98.8	98.8
Plymouth	E08000026		98.7	98.7
York	E08000014		98.7	98.7
Stockport	E08000007		98.6	98.6
Swindon	E08000030		98.4	98.4
Winchester	E07000094		98.4	98.4
West Lindsey	E07000142		98.2	98.2
Newark and Sherwood	E07000175		98.1	98.1
Cheshire West and Chester	E08000050		98.1	98.1
Mid Sussex	E07000228		98.0	98.0
Gateshead	E08000037		97.9	97.9
Islington	E09000019		97.9	97.9
Redbridge	E09000026		97.9	97.9
Southend-on-Sea	E08000033		97.8	97.8
Spelthorne	E07000213		97.7	97.7
Lambeth	E09000022		97.6	97.6
East Riding of Yorkshire	E08000011		97.6	97.6
Derbyshire Dales	E07000035		97.6	97.6
Gedling	E07000173		97.5	97.5
Blaby	E07000129		97.4	97.4
Ealing	E09000009		97.4	97.4
Hammersmith and Fulham	E09000013		97.4	97.4
North Warwickshire	E07000218		97.4	97.4
Chesterfield	E07000034		97.4	97.4
Wellingborough ⁴	E07000156		97.3	97.3
Wokingham	E08000041		96.9	96.9
Allerdale	E07000026		96.9	96.9
Thurrock	E08000034		96.8	96.8
Telford and Wrekin	E08000020		96.8	96.8
Harlow	E07000073		96.6	96.6
Tunbridge Wells	E07000116		96.5	96.5
Fenland	E07000010		96.4	96.4
Amber Valley	E07000032		96.4	96.4
High Peak	E07000037		96.2	96.2
East Lindsey	E07000137		96.1	96.1
East Cambridgeshire	E07000009		96.1	96.1
Kirklees	E08000034		96.1	96.1
North Northamptonshire ⁵	E08000061		95.9	95.9
Oldham	E08000004		95.7	95.7
Havering	E09000016		95.7	95.7
Three Rivers	E07000102		95.6	95.6
Ipswich	E07000202		95.6	95.6
South Derbyshire	E07000039		95.5	95.5
Fylde	E07000119		95.5	95.5
Charnwood	E07000130		95.5	95.5
Bolton	E08000001		95.4	95.4
Blackburn with Darwen	E08000008		95.3	95.3

3.4 Analysis:

There are 58 Unitary local authorities in England. BwDC are placed 12th out of the unitary authorities as follows:

<u>Authority</u>	<u>Population</u>	<u>Area(km2)</u>
Hartlepool	93,663	94
North East Lincolnshire	159,563	192
Southampton	252,520	50
Plymouth	262,100	80
York	210,618	272
Swindon	222,193	230
Cheshire West & Chester	343,071	917
Southend on Sea	183,125	42
East Riding of Yorkshire	341,173	2,405
Thurrock	174,341	164
Telford & Wrekin	179,854	290
Blackburn With Darwen (87th)	149,696	137
Cheshire East	384,152	1,166
Blackpool (105 th)	139,446	35

3.5 With regards to unitary authorities of similar size in population terms i.e. below 200,000, BwDBC are placed 6th as follows:

Hartlepool 100%
North East Lincolnshire 100%
Southend on Sea 97.9%
Thurrock 96.8%
Telford & Wrekin 96.8%
Blackburn With Darwen 95.3%

With regards to the north-west authorities, BwDBC are placed 12th as follows.

Bury (4th) 100%
Knowsley (14th) 100%
Rossendale (20th) 100%
St Helens (24th) 100%
Trafford (26th) 100%
Wigan (31st) 100%
Stockport (44th) 98.6%
Cheshire West & Chester (49th) 98.1%
Oldham (79th) 95.7%
Fylde (84th) 95.5%
Bolton (86th) 95.4%
Blackburn With Darwen (87th) 95.3%
Cheshire East (88th) 95.2%
Wyre (89th) 95.2%
Preston (90th) 95.2%

- 3.6 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%). Figure 2 below shows with the current figures published for the quarter ending March 2022, BwDBC ranking has now rose to **52nd place with a performance of 95.9%**, 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%.

Table P153: District planning authorities' performance - speed of non-major develop
England, April 2020 to March 2022⁷

Local planning authority	ONS Code	to end of March 2022		Imputed blank=No 1=yes	% within 8 weeks or within agreed time without penalty for missing data	% within 8 weeks or within agreed time with penalty for missing data
		Planning Performance Agreement agreed Extension of Time or Environmental Impact Assessment decisions ^{3,4}	Planning Performance Agreement, agreed Extension of Time or Environmental Impact Assessment decisions within agreed time ⁵			
England	E92000001	265,441	238,457	15	86.0	86.0
Rotherham	E08000018	661	661		100.0	100.0
Thurrock	E08000034	780	780		99.8	99.8
St. Helens	E08000013	272	269		99.7	99.7
North East Lincolnshire	E08000012	459	458		99.7	99.7
Chorley	E07000118	665	665		99.7	99.7
Wellingborough ⁶	E07000156	118	118		99.4	99.4
North Tyneside	E08000022	241	238		99.4	99.4
Castle Point	E07000069	80	79		99.3	99.3
Mid Sussex	E07000228	804	790		99.1	99.1
Dudley	E08000027	675	663		99.0	99.0
Newham	E08000025	343	340		99.0	99.0
Copeland	E07000029	270	270		99.0	99.0
Brentwood	E07000068	597	589		98.9	98.9
Wokingham	E08000041	548	532		98.9	98.9
Maidstone	E07000110	500	489		98.8	98.8
Northumberland National Park	E28000004	14	13		98.8	98.8
Knowsley	E08000011	391	385		98.8	98.8
Newcastle-under-Lyme	E07000195	327	317		98.6	98.6
Southend-on-Sea	E08000033	940	929		98.6	98.6
Hartlepool	E08000001	355	355		98.6	98.6
Northampton ⁶	E07000154	324	315		98.4	98.4
West Suffolk	E07000245	942	913		98.1	98.1
Bury	E08000002	881	868	1	98.0	98.0
West Lindsey	E07000142	456	442		98.0	98.0
Adur	E07000223	365	358		98.0	98.0
Babergh	E07000200	457	442		98.0	98.0
Amber Valley	E07000032	854	828		97.9	97.9
Barking and Dagenham	E09000002	95	95		97.9	97.9
Fareham	E07000087	313	297		97.8	97.8
Telford and Wrekin	E08000020	555	544		97.7	97.7
Preston	E07000123	571	561		97.6	97.6
Broxtowe	E07000172	752	745		97.6	97.6
Tamworth	E07000199	93	93		97.5	97.5
Tunbridge Wells	E07000116	548	526		97.3	97.3
Rochdale	E08000005	488	474		97.0	97.0
Swale	E07000113	497	483		97.0	97.0
Bolsover	E07000033	130	128		96.9	96.9
Wigan	E08000010	682	659		96.8	96.8
Three Rivers	E07000102	314	304		96.8	96.8
Horsham	E07000227	1,351	1,317		96.7	96.7
Ipswich	E07000202	281	258		96.6	96.6
Hertsmere	E07000098	682	660		96.6	96.6
Gravesham	E07000109	501	479		96.6	96.6
Newark and Sherwood	E07000175	574	549		96.4	96.4
Colchester	E07000071	830	804		96.4	96.4
East Lindsey	E07000137	476	435		96.2	96.2
East Staffordshire	E07000193	599	569		96.2	96.2
East Cambridgeshire	E07000009	878	848		96.1	96.1
Mid Devon	E07000042	726	704		96.1	96.1
Breckland	E07000143	697	650		95.9	95.9
Greenwich	E09000011	910	894		95.9	95.9
Blackburn with Darwen	E08000008	391	381		95.9	95.9
Bolton	E08000001	1,600	1,559		95.8	95.8

FIGURE 2

3.7 Analysis:

There are 58 Unitary local authorities in England. BwDC are placed 5th out of the unitary authorities as follows:

<u>Authority</u>	<u>Population</u>	<u>Area(km2)</u>
Thurrock	174,341	164
North East Lincolnshire	159,563	192
Southend on Sea	183,125	42

Hartlepool	93,663	94
Blackburn With Darwen	149,696	137
County Durham	530,094	2,226
Medway	278,556	194
Plymouth	262,100	80

3.8 With regards to the north west authorities, BwDBC are placed 8th as follows.

St Helens (3 rd)	99.7%
Chorley (4 th)	99.7%
Knowsley (16 th)	98.8%
Bury (22 nd)	98%
Preston (30 th)	97.6%
Rochdale (34 th)	97%
Wigan (37 th)	96.8
Blackburn With Darwen (52nd)	95.9%
Bolton (53 rd)	95.8%
Fylde (75 th)	95.8%

3.5 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.

4. POLICY IMPLICATIONS

4.1 None

5. FINANCIAL IMPLICATIONS

5.1 None

6. LEGAL IMPLICATIONS

6.1 None

7. RESOURCE IMPLICATIONS

7.1 None

8. EQUALITY IMPLICATIONS

8.1 The report is for information purposes only and does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore, no Equality Impact Assessment is required.

9. CONSULTATIONS

9.1. Planning Cross Party Working Group.

10. RECOMMENDATION

10.1 That the Committee note the content of the report

Contact Officer: Gavin Prescott, Planning Manager (Development Management)

Date: 26th August 2022

Background Papers: Planning Performance Tables (Last updated 21st July 2022) - Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government.

Improving planning performance criteria for designation (updated 2020).

PLACE (GROWTH & DEVELOPMENT) DEPARTMENT

ORIGINATING SECTION: PLANNING (DEVELOPMENT
MANAGEMENT)

REPORT TO PLANNING & HIGHWAYS COMMITTEE –15th September 2022

TITLE: APPEALS MONITORING REPORT

WARDS: ALL

1.0 PURPOSE OF THE REPORT

- 1.1 To present Members with an update of recently decided appeals since the last monitoring report presented to the Committee in December 2021. You can see from the attached table, 14no appeals in total were determined during the period 3rd December 2021 to 26th August 2022. 14no appeals were dismissed, and 0 appeals were allowed.
- 1.2 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**. Figure 1 below is the top 30 table.
- 1.3 The table at Figure 1 presents data on the performance of local planning authorities against the published criteria for assessing under-performance under section 62B of the Town and Country Planning Act 1990. The data in the table cover minor developments, changes of use where the site area is less than one hectare and householder developments. These are subsequently described collectively as 'non-major developments', having been referred to in previous versions of this table as 'Minor and other developments'. For the quality of decisions, the statistics show the overall figure for planning applications determined in the assessment period of 24 months to the end of March 2021 (and subsequent appeal decisions to the end of December 2021).
- 1.4 The measure to be used is the percentage of the total number of decisions made by the authority on applications that are then subsequently overturned at appeal, once nine months have elapsed following the end of the assessment period, as recorded in Live Table P152a and P152b for major development and in Live Table 154 for non-major development from the data collected by the Ministry of Housing, Communities and Local Government and the Planning Inspectorate. The nine months specified in the measure enables appeals to pass through the system and be decided for the majority of decisions on planning applications made during the assessment

period. The assessment period for this measure is the two years up to and including the most recent quarter for which data on planning application decisions are available at the time of designation, once the nine months to be allowed for beyond the end of the assessment period is taken into account. For example, a two year assessment period ending March 2021 will be used for designation decisions in Quarter 1 2022, this allows for applications to be decided between April 2019 and March 2021 and a 9 month lag to December 2021, for appeals to be decided. The average percentage figure for the assessment period as a whole is used.

1.5 The threshold for designation on applications for both major and non-major development, above which a local planning authority is eligible for designation, is 10 per cent of an authority's total number of decisions on applications made during the assessment period being overturned at appeal. Members are advised that there have been no appeals relating to 'major developments' within the same period.

1.6

England	Quality of decisions (% overturned at appeal)
City of London	0.0
Darlington	0.0
Ebbsfleet Development Corporation ⁴	0.0
Isles of Scilly	0.0
Knowsley	0.0
London Legacy Development Corporation ⁴	0.0
Northumberland National Park	0.0
Old Oak and Park Royal Development Corporation ⁴	0.0
Stevenage	0.0
Allerdale	0.1
Blaby	0.1
Eden	0.1
Fareham	0.1
Halton	0.1
Preston	0.1
Wyre	0.1
Barrow-in-Furness	0.2
Bassetlaw	0.2
Blackburn with Darwen	0.2
Bolsover	0.2
Cambridge	0.2
Carlisle	0.2
Chorley	0.2
Colchester	0.2
Havant	0.2
Ipswich	0.2
Redditch	0.2
Sandwell	0.2
Stockport	0.2
Tamworth	0.2
Broads Authority	0.3

Figure 1 -

Table P154: District Matters Planning Performance Table for Quality of non-major decisions: April 2019 to March 2021 ^P

1.7 Analysis:

There are 58 Unitary local authorities in England. BwDC are placed 2nd out of the unitary authorities as follows:

<u>Authority</u>	<u>Population</u>	<u>Area(km2)</u>
Darlington	106,803	198
Blackburn With Darwen	149,696	137
County Durham	530,094	2,226
Blackpool	139,446	35

1.7 With regards to the authorities in the north west, BwDBC are placed 4th as follows:

Knowsley (5th)
Preston (15th)
Wyre (16th)
Blackburn With Darwen (19th)
Chorley (23rd)
Stockport (29th)
Bury (32nd)

2.0 RECOMMENDATION

2.1 That the report be noted.

3.0 BACKGROUND PAPERS

3.1 See the file numbers referred to.

4.0 CONTACT OFFICER: Gavin Prescott, Planning Manager
(Development Management)

5.0 DATE PREPARED 26th August 2022

**APPEALS MONITORING REPORT RELATING TO APPEALS DETERMINED BETWEEN THE PERIOD 3rd DECEMBER 2021 AND 26th AUGUST 2022
PLANNING & HIGHWAYS COMMITTEE – 15th SEPTEMBER 2022**

APPEAL START DATE	APPEAL REFERENCE	APPEAL SITE ADDRESS & DEVELOPMENT DESCRIPTION	APPEAL TYPE	APPEAL DECISION	APPEAL DECISION DATE	REASONS FOR DECISION
24 th January 2022	APP/M2372/W/21/3288909 10/20/1186	29 King William Street Blackburn BB1 7DJ Proposed change of use of 29 King William Street from an E use (previously A1/B1) to an Adult Gaming Centre (AGC) (Sui Generis) (Re-submission 10/20/0891)	Written Representations	Dismissed	31 st May 2022	Should the appeal site be granted permission, the Primary Shopping Frontage block would comprise of only around 29.5% of units being in either retail or restaurant use. This is significantly lower than the level required by Policy 31 of LPP2. Additionally, the proposal would result in 3 adjoining non-retail uses in the block. The Inspector accepted that town centres and customer habits have changed and continue to do so. However, the extent of flexibility is still restricted, and uses that do not fall within those captured by Class E, such as the proposal, still require planning permission,

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APPEAL START DATE	APPEAL REFERENCE	APPEAL SITE ADDRESS & DEVELOPMENT DESCRIPTION	APPEAL TYPE	APPEAL DECISION	APPEAL DECISION DATE	REASONS FOR DECISION
						thereby indicating the Government's intention to retain a suitable balance of uses within town centres.
15 th October 2021	APP/M2372/W/21/3279173 10/21/0060	The Coach House Oldfield Avenue Darwen BB3 1QY Erection of Detached Garden office/studio	Written Representations	Dismissed Appeals Costs Decision Dismissed.	12 th January 2022	The Inspector considered that the combined height of the building and enclosing supporting structure would be considerable when viewed from the opposite direction. The proposed enclosure of space below the floor level of the building would cause it to appear of significantly greater scale along its side and rear elevations. It would form an imposing building along the common boundary. The proposal with the lack of screening would be highly obtrusive in the outlook from the

**APPEALS MONITORING REPORT RELATING TO APPEALS DETERMINED BETWEEN THE PERIOD 3rd DECEMBER 2021 AND 26th AUGUST 2022
PLANNING & HIGHWAYS COMMITTEE – 15th SEPTEMBER 2022**

APPEAL START DATE	APPEAL REFERENCE	APPEAL SITE ADDRESS & DEVELOPMENT DESCRIPTION	APPEAL TYPE	APPEAL DECISION	APPEAL DECISION DATE	REASONS FOR DECISION
						<p>neighbouring property causing significant harm to the living conditions of those neighbouring occupiers. The proposal conflicts with Policy 8 of LPP2. Costs decision – the appellant argued there were undue delays in determining the application. The Inspector considered that the reasons for the delays have been explained by the Council, and it issued apologies to the applicant on more than once occasion. Further, the Inspector found the additional substantive reasons of the effect of the pandemic, increased workloads arising from staff absences, and the case officer leaving the Council, to provide clear extenuating</p>

**APPEALS MONITORING REPORT RELATING TO APPEALS DETERMINED BETWEEN THE PERIOD 3rd DECEMBER 2021 AND 26th AUGUST 2022
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APPEAL START DATE	APPEAL REFERENCE	APPEAL SITE ADDRESS & DEVELOPMENT DESCRIPTION	APPEAL TYPE	APPEAL DECISION	APPEAL DECISION DATE	REASONS FOR DECISION
						circumstances for the extended period to consider the planning application. Unreasonable behaviour was not demonstrated by the Council.
2 nd September 2021	APP/M/2372/W/21/3279278 10/21/0229	Land at Hazel Avenue Darwen BB3 3AF Proposed 5G telecoms installation - 15m high slimline pole c/w wrap around cabinet and 3no. cabinets with ancillary works	Written Representations	Dismissed	21 st December 2021	The Inspector considered that the pole would appear vastly out of scale with its low level residential surroundings and would appear as a prominent and incongruous addition to the streetscene in views when rounding the corner along Ash Grove.
4 th January 2022	APP/M/2372/D/21/3285012 10/21/0399	235 Whalley New Road Blackburn BB1 9TJ Formation of driveway and creation of vehicular access	Written Representations	Dismissed	22 nd April 2022	The Planning Inspector considered that the appeal site is close to the roundabout and observed that vehicles can appear quite suddenly turning towards the site from St James Road. In the other direction, a

**APPEALS MONITORING REPORT RELATING TO APPEALS DETERMINED BETWEEN THE PERIOD 3rd DECEMBER 2021 AND 26th AUGUST 2022
PLANNING & HIGHWAYS COMMITTEE – 15th SEPTEMBER 2022**

APPEAL START DATE	APPEAL REFERENCE	APPEAL SITE ADDRESS & DEVELOPMENT DESCRIPTION	APPEAL TYPE	APPEAL DECISION	APPEAL DECISION DATE	REASONS FOR DECISION
						vehicle parked at the roadside immediately adjacent would pose a possible constraint when trying to manoeuvre in or out and would also significantly inhibit the visibility of incoming vehicles. The proposal would have an unacceptable effect on highway safety contrary to Policy 10 of the LPP2.
29 th November 2021	APP/M/2372/D/21/3280829 10/21/0438	Lower Paddock Farm Belthorn Road Belthorn BB1 2NN Domestic garage & Office	Written Representations	Dismissed Appeal costs decision dismissed.	13 th April 2022	The Planning Inspector considered that the proposed building is not in close proximity, nor is read as part of the dwellinghouse. The proposal based on its size would result in disproportionate additions over and above the size of the original building. The proposal would have a greater visual impact than the existing garage, thereby

**APPEALS MONITORING REPORT RELATING TO APPEALS DETERMINED BETWEEN THE PERIOD 3rd DECEMBER 2021 AND 26th AUGUST 2022
PLANNING & HIGHWAYS COMMITTEE – 15th SEPTEMBER 2022**

APPEAL START DATE	APPEAL REFERENCE	APPEAL SITE ADDRESS & DEVELOPMENT DESCRIPTION	APPEAL TYPE	APPEAL DECISION	APPEAL DECISION DATE	REASONS FOR DECISION
						resulting in a small loss of openness in the green belt, conflicting with Policy 3 of LPP2 and NPPF para 149. The appellant applied for costs as the considered the Council acted unreasonably against well-established case law, and ignored evidence in relation to the volume increase of the development. The Inspector considered that the case law was not directly relevant to the appeal proposal, and the Council did not ignore the applicant's evidence, but it considered that the volume increase calculation was not relevant. The Council did not act unreasonably.
21 st September 2021	APP/M/2372/D/21/3278745 10/21/0456	49 St Clement Street Blackburn BB1 1NW	Written Representations	Dismissed	9 th December 2021	The Planning Inspector considered that the appearance of the

**APPEALS MONITORING REPORT RELATING TO APPEALS DETERMINED BETWEEN THE PERIOD 3rd DECEMBER 2021 AND 26th AUGUST 2022
PLANNING & HIGHWAYS COMMITTEE – 15th SEPTEMBER 2022**

APPEAL START DATE	APPEAL REFERENCE	APPEAL SITE ADDRESS & DEVELOPMENT DESCRIPTION	APPEAL TYPE	APPEAL DECISION	APPEAL DECISION DATE	REASONS FOR DECISION
		Retention of front and rear side porch/rainshelter				structure gave it a disjointed appearance when seen alongside the solid, brick finish extension. In addition, the design was alien to the broadly uniform appearance of the other dwellings within the terrace, thereby affecting the street scene. The proposal conflicted with Policy 11 of the LPP2.
15 th September 2021	APP/M/2372/D\21\327875 10/21/0529	1 Belper Street Blackburn BB1 5HA Double storey side and front porch extensions	Written Representations	Dismissed	9 th December 2021	The Planning Inspector considered the two storey element would be much closer to the back edge of the pavement breaching the established and broadly consistent build line along Peter Street, conflicting with Policy RES18 of the Design Guide. The proposal would be unduly prominent within the street scene reducing the feeling of spaciousness at the

**APPEALS MONITORING REPORT RELATING TO APPEALS DETERMINED BETWEEN THE PERIOD 3rd DECEMBER 2021 AND 26th AUGUST 2022
PLANNING & HIGHWAYS COMMITTEE – 15th SEPTEMBER 2022**

APPEAL START DATE	APPEAL REFERENCE	APPEAL SITE ADDRESS & DEVELOPMENT DESCRIPTION	APPEAL TYPE	APPEAL DECISION	APPEAL DECISION DATE	REASONS FOR DECISION
						<p>junction. The Inspector was also mindful that the appeal property has been subject to previous extensions leaving only a limited useable private amenity area, the proposal would reduce this further leading to overdevelopment. The Inspector acknowledged that the appellant has a growing family, but this does not justify a visually harmful form of development in this instance.</p>
5 th January 2022	APP/M/2372/ D/21/3286378 10/21/0850	31 Chestnut Avenue Blackburn BB1 8FG Proposed outbuilding (retrospective)	Written Representations	Dismissed	21 st March 2022	The Planning Inspector considered the outbuilding is visible from the rear of a number of properties and the design, scale and materials creates an incongruous feature in the area that is not replicated in its surroundings,

**APPEALS MONITORING REPORT RELATING TO APPEALS DETERMINED BETWEEN THE PERIOD 3rd DECEMBER 2021 AND 26th AUGUST 2022
PLANNING & HIGHWAYS COMMITTEE – 15th SEPTEMBER 2022**

APPEAL START DATE	APPEAL REFERENCE	APPEAL SITE ADDRESS & DEVELOPMENT DESCRIPTION	APPEAL TYPE	APPEAL DECISION	APPEAL DECISION DATE	REASONS FOR DECISION
						and is therefore contrary to Policy 11 of LPP2.
15 th October 2021	APP/M/2372/ D/21/3283732 10/21/0857	97 and 99 Wimberley Street Blackburn BB1 8HX Single storey front extensions enlargement, erection of rear porch and erection of front dormers (retrospective)	Written Representations	Dismissed	23 rd December 2021	The Planning Inspector considered the dormer extensions appeared incongruous when viewed from the north, particularly the paths, play area and on Ruthin Close. The projection above the ridgeline is significant and disrupts the consistency of the terrace and roofscape. The dormers harm the character and appearance of the area, conflicting with Policy 11 of LPP2. The proposed ground floor extensions would effect the living conditions of Nos 101 and 95 Wimberley Street, contrary to Policy 8 of LPP2.
6 th December 2021	APP/M/2372/ D/21/3285259 10/21/0999	17 Bay Street Blackburn BB1 5NJ	Written Representations	Dismissed	1 st February 2022	The Planning Inspector considered that the porch would have an

**APPEALS MONITORING REPORT RELATING TO APPEALS DETERMINED BETWEEN THE PERIOD 3rd DECEMBER 2021 AND 26th AUGUST 2022
PLANNING & HIGHWAYS COMMITTEE – 15th SEPTEMBER 2022**

APPEAL START DATE	APPEAL REFERENCE	APPEAL SITE ADDRESS & DEVELOPMENT DESCRIPTION	APPEAL TYPE	APPEAL DECISION	APPEAL DECISION DATE	REASONS FOR DECISION
		Erection of front porch				unacceptably harmful appearance on both the appeal dwelling and the terrace as a whole being the only front extension on the terrace. The large glazed windows would be out of character. Proposal would conflict with Policy 11 of LPP2.
9 th February 2021	APP/M/2372/ D/22/3290808 10/21/1069	8 Brantfell Road Blackburn BB1 8DN Proposed construction of dormer to rear	Written Representations	Dismissed	30 th March 2022	The Planning Inspector considered the dormer by virtue of its width would appear as an incongruous and dominant feature being at odds with the existing roofscape. The proposal fails to enhance or preserve the character and appearance of the conservation area, conflicting with Policy 11 of LPP2.
30 th December 2021	APP/M/2372/ D/21/3287866 10/21/1116	94 Ambleside Close Blackburn BB1 5HE	Written Representations	Dismissed	24 th February 2022	The Planning Inspector considered the alteration to the roof height would contrast

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PLANNING & HIGHWAYS COMMITTEE – 15th SEPTEMBER 2022**

APPEAL START DATE	APPEAL REFERENCE	APPEAL SITE ADDRESS & DEVELOPMENT DESCRIPTION	APPEAL TYPE	APPEAL DECISION	APPEAL DECISION DATE	REASONS FOR DECISION
		Proposed single storey rear extension and alteration to roof height with rear dormer				and stand out from the uniform and horizontal appearance of the remainder of the terrace. The proposed dormer extension would not be set down from the ridge of the roof and would be significantly larger than the windows on the host dwelling, being an incongruous addition. There was no evidence before the Inspector to suggest there is a reasonable likelihood that the appellant would implement the fall-back position of the permitted development rights, however the proposed roof extension would not be permitted development. The proposal was contrary to Policy 11 of LPP2.
9 th February 2021	APP/M2372/D/22/3290809	10 Brantfell Road Blackburn	Written Representations	Dismissed	30 th March 2022	The Planning Inspector considered the dormer

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PLANNING & HIGHWAYS COMMITTEE – 15th SEPTEMBER 2022**

APPEAL START DATE	APPEAL REFERENCE	APPEAL SITE ADDRESS & DEVELOPMENT DESCRIPTION	APPEAL TYPE	APPEAL DECISION	APPEAL DECISION DATE	REASONS FOR DECISION
	10/21/1266	BB1 8DN Rear dormer (retrospective)				by virtue of its width would appear as an incongruous and dominant feature being at odds with the existing roofscape. The proposal fails to enhance or preserve the character and appearance of the conservation area, conflicting with Policy 11 of LPP2.
7 th June 2022	APP/M2372/ D/22/3299355 10/22/0270	4 Wellington Road Turton Bolton BL7 0EG Proposed balcony to rear lower ground extension	Written Representations	Dismissed	3 rd August 2022	The Planning Inspector considered that as a result of the proposed screen's position on top of the existing extension, and close proximity to No.2, it would be a structure of considerable scale, and due to its orientation would lead to significant overshadowing to the lower ground floor of No.2. The proposal would also lead to loss of privacy towards the occupiers of No.2 and

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 PLANNING & HIGHWAYS COMMITTEE – 15th SEPTEMBER 2022**

APPEAL START DATE	APPEAL REFERENCE	APPEAL SITE ADDRESS & DEVELOPMENT DESCRIPTION	APPEAL TYPE	APPEAL DECISION	APPEAL DECISION DATE	REASONS FOR DECISION
						No.12 Wellington Road. The proposal would conflict with Policy 8 of LPP2.

TOTAL NUMBER OF DECISIONS: 14

TOTAL NUMBER ALLOWED: 0 (0%)

TOTAL NUMBER DISMISSED: 14 (100%)

ORIGINATING DIVISION: HIGHWAYS AND TRANSPORTATION

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

DATE: 15 September 2022

TITLE: Diversion of Public Footpath 5 Eccleshill (part)

WARD: West Pennine **COUNCILLORS:** Jean Rigby
Julie Slater
Neil Slater

1.0 PURPOSE OF THE REPORT

The purpose of the report is to seek committee approval for a public path order under the Highways Act 1980, Section 119 to divert part of Public Footpath 5, Eccleshill

2.0 BACKGROUND AND DETAILS

Under the Council's Constitution this Committee has '*The power to create, divert, stop up, extinguish and reclassify footpaths and bridleways and the power to make orders and enter agreements in relation to the same*'

The Committee therefore has to consider whether, or not, to promote the Order requested by the applicant.

In order to assist members in making this decision, officers have prepared a detailed report with the necessary information to enable an informed decision to be made.

3.0 LEGAL

The relevant legislation is the Highways Act 1980, Section 119.

4.0 IMPLICATIONS

Customer	Improved Public Rights of Way
Financial	the Applicants will meet the cost of the diversions.
Anti-poverty	None
Crime and Disorder	None

5.0 RECOMMENDATION

If members are satisfied that the legislative criteria have been met, it is recommended the committee should resolve to Promote the Order and authorise the Director of HR Legal & Governance to progress the necessary legal orders.

6.0 BACKGROUND PAPERS: Attached detailed report

7.0 CONTACT OFFICERS: George Bell

8.0 DATE PREPARED: 17th August 2022

Highways Act 1980, Section 119

Wildlife and Countryside Act 1981 Section 53A

Application for Public Path Diversion Order

Diversion of Public Footpath 5 Eccleshill (part) at Pottery Farm, Eccleshill

1. Introduction

- 1.1 This report seeks to assist the members of Planning and Highways Committee in their determination of an application to divert part of public footpath 5 Eccleshill under Section 119 of the Highways Act 1980.

2. Background

- 2.1 The Council is Highway & Surveying Authority for the area within which the public footpath proposed for diversion lies.
- 2.2 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.
- 2.3 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.
- 2.4 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.
- 2.5 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.
- 2.6 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 requesting the diversion of Public Footpath 5 Eccleshill.
- 2.7 The initial application sought to formalise the concessionary route but, as mentioned above, this was substandard in places with no scope for improvement.
- 2.8 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.
- 2.9 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.

- 2.10 This report seeks to address those matters being put before members of the Committee, namely the application for the public path order to divert part of the path as shown on the plan attached to this report.

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.

- 2.11 Public Footpath 5 Eccleshill currently leaves Roman Road at Point A (SD 370031 423623) on the attached plan heading in a south-easterly direction via Point B (SD 370127 423549) to join Public Footpath 8 Eccleshill at Point C (SD 370276 423513).

- 2.12 The proposed diversion seeks to move the point where the footpath leaves Roman Road some 35 metres south to Point D (SD 370015 423590). The proposed diversion then heads in a generally easterly direction via Point B to Point C.

3. Legislative Criteria

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

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

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

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

- 3.4 The Wildlife and Countryside Act 1981 Section 53A gives the local Surveying Authority the powers to amend the definitive map and statement.

4. Assessment against the Legislative Criteria

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

- 4.2 The proposal is considered to be in the interests of the landowner because it will move the path away from the immediate vicinity of his property. It is considered that the diversion of the path will give improved privacy and security compared to the path remaining on its

current alignment (e.g. it removes any excuse for members of the public to be within the direct curtilage of the property).

- 4.3 The proposed diversion is approximately 17 metres longer than the current route. Any increase in distance must however be taken in context to the nature of the route, and indeed the overall distance travelled by anyone using the path. In this particular case the path is in a rural location and only likely to be used for recreational purposes, and as part of a longer walk. In such circumstances it may be reasonable to conclude that, in terms of length, the alternative is not substantially less convenient
- 4.4 The new point of access from Roman Road (Point D) is from an area used for parking at a point where the road is wider. It is considered that this area of the highway off the traffic running line is a safer point of access for walkers and is at a safer crossing point of Roman Road.
- 4.5 With regard to other issues which may have an effect on the convenience of the route, the new path will have an improved surface to a standard acceptable by the Highway Authority. As explained in paragraph 2.9, the new path will have significantly less need for limitations along its length making it more accessible for walkers particularly those with a disability. There would not therefore appear to be any reason to suggest that the proposed alternative path will be less convenient than the current route.
- 4.6 The path is not used for the purposes of accessing any land, and is entirely within land owned by the applicant. As a result, there would not appear to be any issues arising regarding land served by the path or compensation arising from its diversion.
- 4.7 There are no material provisions within the Rights of Way Improvement Plan for the area which would have an effect on the proposals. Furthermore, such a document may not fetter the discretion of the Authority when making its decision whether or not to promote the requested Order.

5. Consultations

- 5.1 Non-statutory consultations have been undertaken with all user/interest groups, including Eccleshill Parish Council, and no objections have been received in respect of the proposals.
- 5.2 The local representative for the Ramblers did initially express some concerns regarding the route but following a site visit with officers these concerns were allayed and they have confirmed that they have no objection to the proposal.

6. Conclusion

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

7. Decision Required

7.1 If, having considered all of the relevant information, Committee is minded to approve the application to divert the public footpath shown on the plan, they should resolve that:

a) A Public Path Diversion Order be made pursuant to Section 119 of the Highways Act 1980 to divert part of Public Footpath Number 5 Eccleshill as shown on the attached plan.

b) if no objections are duly lodged, the Authority confirm the Orders;

or

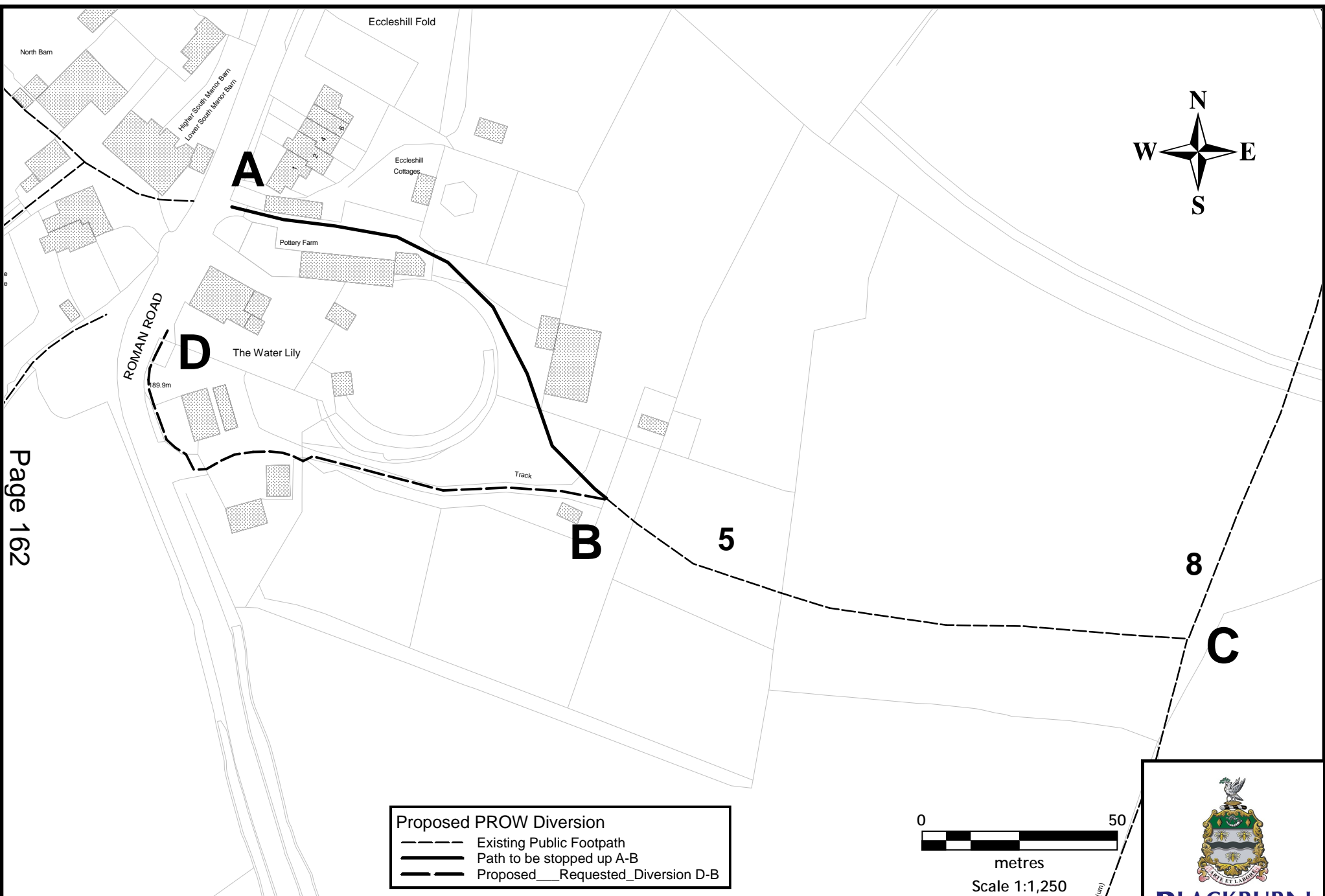
c) if objections are duly lodged, and not subsequently withdrawn, the Orders be passed to the Secretary of State for confirmation.

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

8. Recommendation

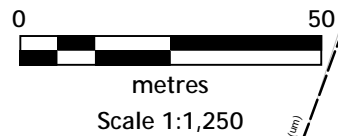
8.1 Whilst it is the view of officers that the legislative tests appear to be satisfied, the Authority (Members of the Planning and Highways Committee) must make its own decision **whether or not to promote** the requested Order.

8.2 Any such decision is quasi-judicial in nature and must be made based upon the relevant evidence and facts of the case set against legislative criteria.



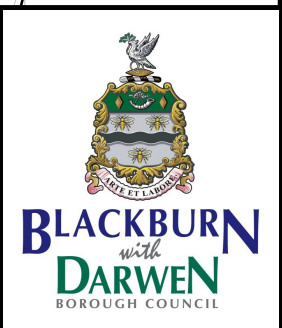
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- | Proposed PROW Diversion | |
|-------------------------|----------------------------------|
| | Existing Public Footpath |
| | Path to be stopped up A-B |
| | Proposed Requested Diversion D-B |



**THE BOROUGH OF BLACKBURN with DARWEN,
Proposed Diversion of FP 5 Eccleshill (part)**

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