



## Appeal Decision

Site visit made on 24 February 2020

by **S R G Baird BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5<sup>th</sup> June 2020

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**Appeal Ref: APP/M2372/W/19/3243411**

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Ms G Lomax against the decision of Blackburn with Darwen Borough Council.
  - The application Ref 10/18/1153, dated 15 January 2019, was refused by notice dated 20 June 2019.
  - The development proposed is the erection of 9 dwellings with detached garages.
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### Preliminary Matter

1. The application was submitted in outline with all matters other than access and layout reserved for a subsequent application.
2. An application for costs was made by Ms G Lomax against Blackburn with Darwen Borough Council. This application is the subject of a separate decision.
3. The issuing this decision on what is a straightforward planning dispute has been substantially delayed. The Planning Officer's report to the Planning Committee sought financial contributions to the provision of affordable housing and green infrastructure. However, the appeal as submitted was not accompanied by a completed S106 Obligation and the Council's subsequent statement made no reference to the need for an Obligation. Following a request for clarification, the Council acknowledged<sup>1</sup> that the absence of a reference to a S106 Obligation was an oversight and that financial contributions to the provision of affordable housing and green infrastructure were necessary to make the development acceptable in planning terms. Due to the impact of the Coronavirus on the appellant's and Council's ability to provide an executed S106 Agreement, I agreed to the appellant's request to a 2-month extension until the 5 June 2020 to allow for an Agreement to be submitted. On the 4 June, the Council confirmed that it no longer required a S106 Obligation to provide financial contributions toward the provision of affordable housing and green infrastructure. The proposal has been assessed on this basis.

### Decision

4. The appeal is allowed and outline planning permission is granted for the erection of 9 dwellings with detached garages on land adjoining Moorthorpe Cottage, Park Road, Darwen, Lancashire BB3 2LQ in accordance with the

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<sup>1</sup> 26 March 2020.

terms of the application, Ref 10/18/1153, dated 15 January 2019, subject to the conditions contained in the attached Schedule of Conditions.

### **Main Issue**

5. The effect on the character and appearance of the area.

### **Reasons**

6. The development plan for the area includes the Core Strategy (CS) adopted January 2011 and the Local Plan Part 2 (LP) Site Allocations and Development Management Policies adopted December 2015. The site forms part of a larger area identified by LP Policy 28 as a development opportunity where planning permission will be granted for, "...*very small-scale residential development in the immediate vicinity of the existing dwelling, ensuring no loss of trees or woodland*". The existing dwelling is Moorthorpe Cottage located immediately to the north of the application site and within the LP allocation. In October 2017 planning permission was granted on appeal<sup>2</sup> for a dwelling, currently under construction, immediately to the north-east of Moorthorpe Cottage.
7. The Council acknowledges that the principle of residential development is acceptable, and the proposal would comply with CS and LP policies that relate to amenity, the environment, design, accessibility and transport. However, the Council indicate that, notwithstanding a lack of objection from the Council's specialist arboricultural advisors, the loss of trees and the scale of development would be disproportionately large such that the proposal would conflict with LP Policy 28.
8. Neither the development plan nor national planning policy and guidance<sup>3</sup> defines "very small-scale". One of the key principles that underpins the planning and development management process is the application of a consistent approach to development proposals and decisions. The appellant draws attention to a site at Eilerslie House, Darwen. This is a similar sized site identified by LP Policy 28 as a development opportunity for "*small-scale residential*" development. Here, the Council has granted outline planning permission for 22 dwellings at a density of some 9.56 dwellings per hectare (dph). On the appeal site, the development and the one allowed on appeal would produce a density of some 4.41dph. In this context, the development of 9 dwellings on the appeal site would be consistent with the policy reference to very small-scale.
9. The appeal site and surrounding land is covered by a blanket Tree Preservation Order (TPO). This appears to have been imposed because of the value and contribution the woodland makes to the sylvan character and appearance of the area. The scheme would involve the loss of several freestanding trees and 2 groups of trees/shrubs and this loss would conflict with LP Policy 28. That said, the area of woodland covered by the TPO is extensive and in comparison, the number of trees lost would be minor. The individual trees proposed for removal appear to have once formed part of a larger group. That said, they are multi-stemmed, exhibit various defects and are generally poor specimens. Moreover, these trees are not visible from any public vantage point and are detached from the more extensive and valuable areas of woodland. In my view, their loss would not diminish the contribution

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<sup>2</sup> APP/M2372/W/17/3179112.

<sup>3</sup> National Planning Policy Framework (Framework) & Planning Practice Guidance.

the wider woodland makes to the sylvan character and appearance of the area. Similarly, 2 groups of vegetation/trees would be removed. These are adjacent to 2 substantial areas of Category A and B woodland. Tree Group 5 is a linear group of common trees covered by dense ivy. The dense ivy and the proximity to the more mature woodland group (W3) appears to be suppressing their growth. Along with the margin to Group 6, the loss of these trees/shrubbery would not diminish the contribution of the wider woodland area to the character and appearance of the area.

10. Whilst the whole area is covered by a TPO, which prevents unauthorised felling, it does not require the woodland to be maintained. It is evident that the woodland has lacked active management over many years. The lack of management has allowed the spread of ivy and trees to self-seed; both of which have introduced undesirable competition, particularly for light, which has resulted in poor quality growth. The development would provide the opportunity to obtain a comprehensive woodland management programme. Such a programme would ensure the continued and enhanced contribution the woodland makes to the character and appearance of the area. This is a significant benefit, which I attach substantial weight to.

#### Other Considerations

11. Access to the site would be from Park Road, via a long private track. The Highway Authority do not object to the scheme and I have no reason to conclude that the proposal would result in unacceptable vehicle/pedestrian conflict. As such, the proposal would not conflict with LP Policy 10. Rights of access and covenants are private matters between landowners and are not for me to consider as part of a planning appeal. In terms of the impact on neighbours from the use of the access road, there is adequate separation to ensure there would be no material impacts on neighbours from comings and goings. Impact on ecology could be appropriately managed through the imposition of relevant conditions and as such there would be no conflict with LP Policy 9.

#### Conclusions

12. Whilst the Council may be able to demonstrate a housing supply in excess of 5 years, that does not weigh against the development. The site is allocated in the development plan for residential development and the Government's objective is to significantly boost the supply of homes. Here, whilst the proposal is in outline, the detail supplied indicates that the house typology presented is consistent with the aims and objectives of Policy CS7 and LP Policy 18 to widen the choice of house types in the Borough. Whilst the proposed development would be consistent with LP Policy 28 in terms of the scale of development, it would result in the loss of several trees. However, the proposed loss of trees would not materially affect the contribution of the wider woodland to the character and appearance of the area and would be outweighed by the benefits in terms of replacement planting and the management of what is otherwise a deteriorating environmental asset. Taken in the round, the proposal would not unacceptably affect the character and appearance of the area or conflict with the development plan when read as a whole. For these reasons and having taken all other matters into considerations, the appeal is allowed.

## Conditions

13. A condition specifying the relevant drawings has been imposed as this provides certainty. In the interests of the appearance of the area, conditions requiring the submission of samples of finishing materials and details of boundary treatments have been imposed. In the interests of ecology conditions relating to the submission of measures to protect badgers, otters and great crested newts, bats and reptiles, to protect the site from invasive plant species, the avoidance of construction during the bird nesting season, the submission, if necessary, of an updated Ecological Impact Assessment, the protection of trees, and a woodland management plan have been imposed.
14. In the interests of residents' living conditions, conditions relating to hours of construction, construction management, dust suppression, ground conditions and remediation are imposed. To ensure adequate drainage, conditions relating to the provision of foul and surface water drainage and a sustainable surface water drainage scheme have been imposed. In the interests of sustainable development, a condition requiring the installation of electric vehicle charging points is imposed. In the interests of highway safety, a condition relating to visibility splays at the access and all driveways is imposed. Where necessary and in the interests of precision and enforceability I have reworded the suggested conditions.
15. Landscaping is a reserved matter and as such I have not imposed a separate condition requiring details of landscaping to be submitted. Planning Practice Guidance highlights that the blanket removal of freedoms to carry out small scale domestic alterations is unlikely to meet the test of reasonableness and necessity. Here, I consider the Council's suggested condition removing permitted development rights specified in Classes A-G of Part 1 of that Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, has not been justified and is unreasonable.

*George Baird*

Inspector

## SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Nos. C3697-1 Site Plan; LP-01 Rev B Location Plan; 17-116 SK01(t)-B Sketch Layout; 17-116 SK01(T)-C Curtilages; D6647.002 Tree Removal and Retention Plan; 18167 Measurements and SCP/18167/ATR01 Rev A General Arrangement and Swept Path Analysis but only in respect of those matters not reserved for later approval.
- 5) Prior to commencement of the development hereby approved, samples of all external walling and roofing materials, including their colour, to be used in construction of the building work shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
- 6) Prior to the commencement of any works on site, a Badger Activity Survey shall be carried out to determine the presence of badgers in the area. The survey shall be carried out by a suitably competent ecologist, during the time of year when badgers are active. The results of this survey and any recommendations or mitigation measures shall be submitted to and approved in writing by the local planning authority. Any recommended mitigation measures shall be carried out in accordance with the approved badger activity survey.
- 7) Prior to the commencement of any works on site, an Otter Activity Survey shall be carried out by a suitably qualified ecologist; in accordance with national survey guidance. The results of this survey and any recommendations or mitigation measures shall be submitted to and approved in writing by the local planning authority. Any recommended mitigation measures shall be carried out in accordance with the approved Otter Activity Survey.
- 8) Prior to the commencement of any works on site, a Great Crested Newt presence/absence survey of the 2 ponds identified in Section 3.25 of the Bowland Ecology "Ecological Impact Assessment" shall be carried out by a suitably qualified ecologist in accordance with Great Crested Newt survey guidelines (Natural England 2001). The results of this survey and any recommendations or mitigation measures shall be submitted to and approved in writing by the local planning authority. Any recommended mitigation measures shall be carried out in accordance with the approved Great Crested Newt presence/activity survey.
- 9) Prior to the commencement of any works on site, a Reasonable Avoidance Measures (RAMs) mitigation plan shall be produced, in order to

mitigate the threat of light spill on bats. The RAMs mitigation plan shall be submitted to and approved in writing by the local planning authority. Any recommended mitigation measures shall be carried out in accordance with the approved plan.

- 10) Prior to the commencement of any works on site, a Reasonable Avoidance Measures (RAMs) mitigation plan shall be produced, in order to mitigate risk to reptiles. The RAMs mitigation plan shall be submitted to and approved in writing by the local planning authority. Any recommended mitigation measures shall be carried out in accordance with the approved plan.
- 11) Prior to the commencement of any works on site, a detailed Invasive Plant Species Survey of the site shall be carried out by a remediation/invasive species specialist. The results of this survey and any recommendations or mitigation measures shall be submitted to and approved in writing by the local planning authority. Any recommended mitigation measures shall be carried out strictly in accordance with the approved details.
- 12) No site clearance or construction works on site shall be carried out during the bird nesting season (1 March to 31 July), unless the absence of nesting birds has been confirmed by further survey work or on-site inspections.
- 13) Prior to the commencement of any works on site, a Woodland Management and Access Plan shall be produced to safeguard retained woodland (Long Clough) at the site. This plan should consider the following issues during the clearance, construction and operational phases of the development;
  - i) formalising access/egress into the woodland and pathways to prevent desire lines dissecting the habitat;
  - ii) zoning of natural habitat to ensure an appropriately restricted and undisturbed area for wildlife;
  - iii) non-native species management to prevent spread to gardens of new residential properties;
  - iv) implementation of traditional woodland management techniques such as felling, coppicing and pollarding, where appropriate;
  - v) retention of standing and fallen dead wood;
  - vi) creation of artificial habitats such as bird/bat boxes, hedgehog hotels and felled log piles for invertebrates;
  - vii) provision of education packs for homeowners about the value of the surrounding habitat and rationale for habitat protection measures;
  - viii) creation of a buffer zone (in accordance with BS5837:2012) during the construction phase and adoption of working practices when carrying out any works near trees or woodland; in accordance with BS5837:2012 guidelines, in order to reduce negative impact on biodiversity.

The Woodland Management and Access Plan shall be submitted to and approved in writing by the local planning authority. All recommended mitigation measures shall be carried out in accordance with the approved plan.

- 14) Should no clearance or construction works be carried out on site within 2 years of the date of the Bowland Ecology "Ecological Impact Assessment" (EIA) an updated EIA shall be produced. The updated EIA shall be submitted to and approved in writing by the local planning authority. Any recommended mitigation measures shall be carried out strictly in accordance with the approved assessment.
- 15) Prior to commencement of the development hereby approved, a Construction Method Statement (CMS) shall be submitted to and approved in writing by the local planning authority. The approved CMS shall be adhered to throughout the construction period. The CMS 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, 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;
  - 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.
- 16) Visibility splays at the site access/egress and all driveways 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.
- 17) Foul and surface water shall be drained on separate systems.
- 18) Prior to the commencement of the development hereby approved, a sustainable surface water drainage scheme shall be submitted to and approved in writing by the local planning authority. The drainage scheme 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;
  - 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); and
  - iii) a timetable for its implementation.

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

hereby permitted shall be carried out only in accordance with the approved drainage scheme.

- 19) Prior to commencement 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;
  - i) arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a residents' 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.
- 20) Prior to the implementation of the development hereby approved, a scheme shall be submitted to and approved in writing by the local planning authority detailing provision of an electrical vehicle charging point for each dwelling. The approved scheme shall be implemented prior to first occupation of the development.
- 21) 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.
- 22) 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 Conceptual Site Model. 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.
- 23) Should contamination be encountered unexpectedly during redevelopment, all works should cease, and the local planning authority 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 local planning authority.

No deviation shall be made from this scheme without the written express agreement of the local planning authority.

- 24) Prior to commencement of the development 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.
- 25) Prior to commencement of any works at the site, an arboricultural method statement and tree protection plan shall be submitted to and agreed in writing by the local planning authority. The method statement shall clearly state how the trees to be retained on site will be protected during construction works. The agreed method statement shall be implemented in full prior to the undertaking of any on site works and retained for duration of the demolition and construction works.
- 26) Prior to commencement of the development hereby approved, a scheme for the suppression of dust during the period of construction shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be used throughout the construction process.
- 27) 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.