

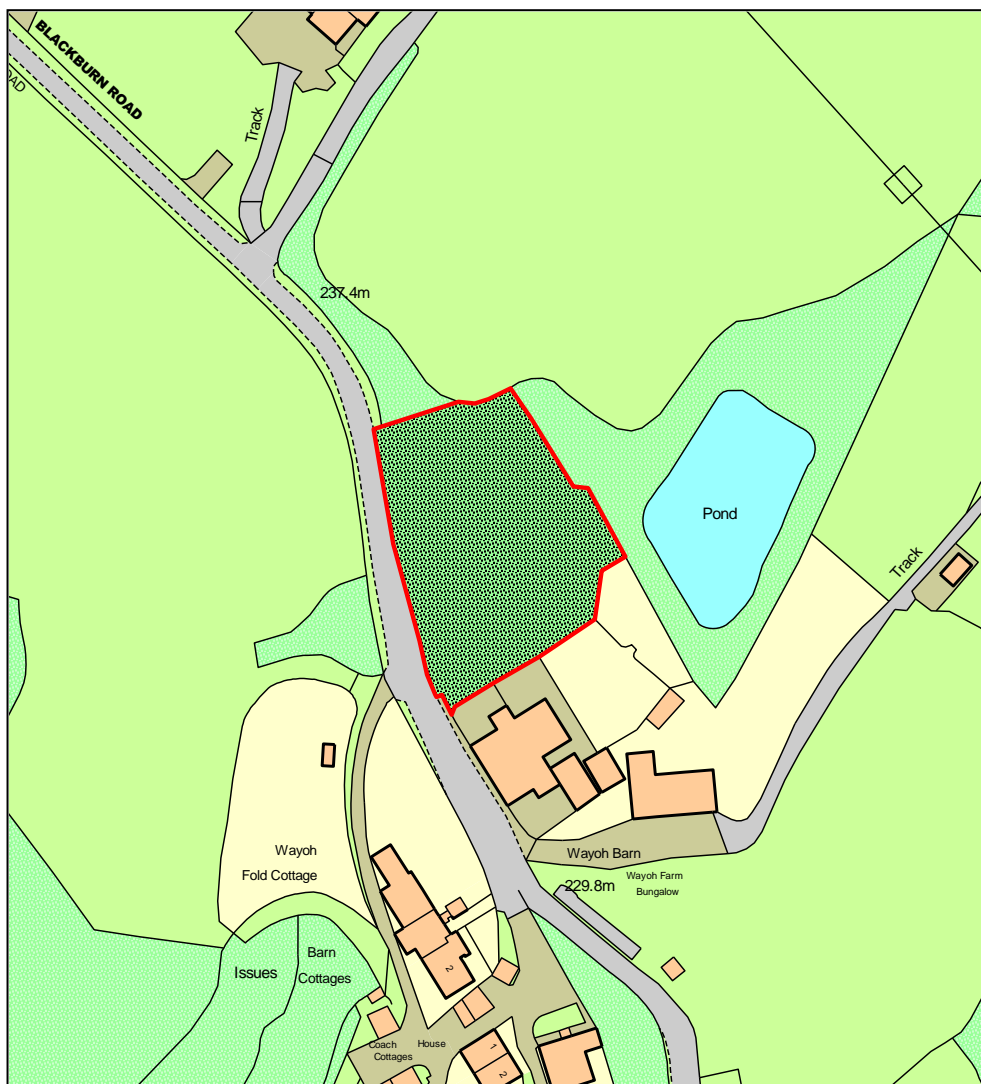
Proposed development: Removal of Condition / Minor Material Amendment for Removal of Condition No.9, pursuant to planning application 10/20/0464 - Approval of reserved matters for appearance, landscaping, layout and scale for 5No dwellings, pursuant to outline permission 10/18/0183 - "to allow permitted development rights"

**Site address:
Wayoh Barn
Blackburn Road
Edgworth
Bolton
BL7 0PZ**

Applicant: Mr Czutkwona

Ward: West Pennine

**Councillor: Jean Rigby
Councillor: J Slater
Councillor: N Slater**



1.0 SUMMARY OF RECOMMENDATION

1.1 APPROVE.

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

- 2.1 The application is reported to Committee at the request of the Chair, due to receipt of an objection from North Turton Parish Council.
- 2.2 Assessment of the application against the Development Plan, the National Planning Policy Practice Guidance and other material considerations, finds the proposal to be acceptable, with all issues having been addressed through assessment of the application.

3.0 RATIONALE

3.1 Site and Surroundings

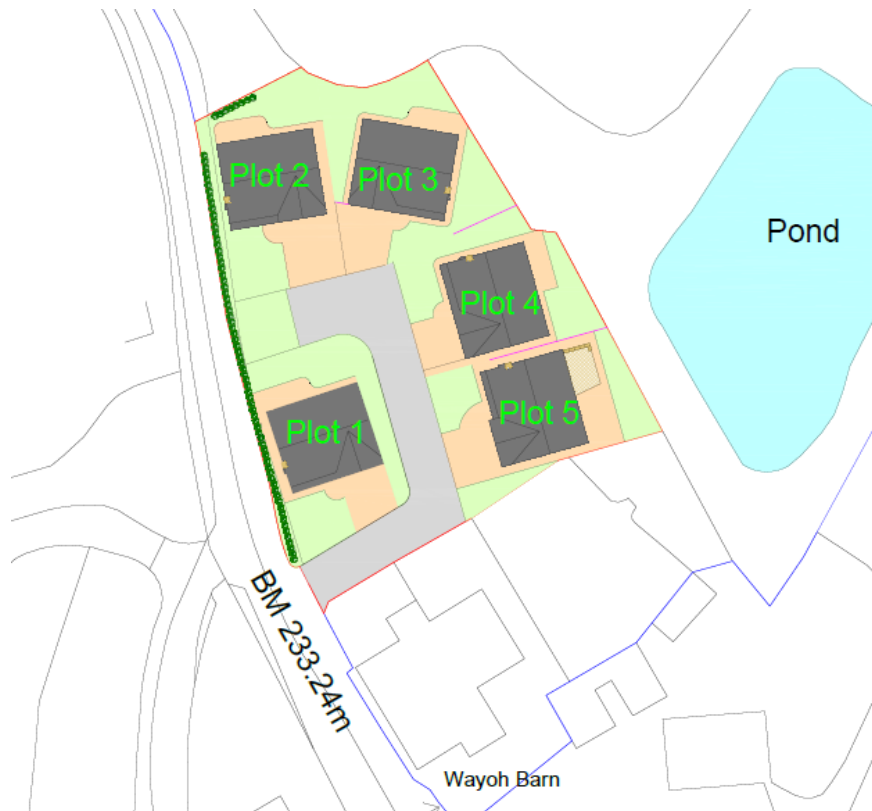
- 3.1.1 The application site (the site) lies within an area of Countryside, as allocated by the Local Plan Part 2. It comprises a redundant commercial storage building and associated hard surface infrastructure and is located to the east of Blackburn Road, Edgworth.

3.2 Proposed Development

- 3.2.1 The application is submitted under section 73 of the Town and country Planning Act 1990. It seeks the removal of condition no. 9 attached to the Reserved Matters permission granted for the erection of 5no. dwellings (pursuant to Outline permission 10/18/0183). The condition relates to the removal of Permitted Development rights (PD rights) afforded by Classes A, B, C, D and E of the T&CP (General permitted Development) Order 2015 (as amended), as follows:

Notwithstanding the provisions of Article 3 and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), no development of the type specified in Classes A, B, C, D and E of Part 1 and Class A of Part 2 of that Schedule shall be carried out unless planning permission has been granted first.

REASON: Due to the restricted nature of the site, whilst the dwellings as approved are acceptable, any further extensions or alterations normally permitted under the above provisions may in this case conflict with the interests of adjacent properties or the amenity of the area generally, in accordance with Policies 8 and 9 of the Blackburn with Darwen Borough Local Plan Part 2.



Approved layout

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 (2011) Policies:

3.3.4 Local Plan Part 2 (2015) Policies:

- Policy 8 Development & People
- Policy 11 Design

3.4 Other Material Planning Considerations

3.4.1 National Planning Policy Framework (The Framework) (2019)

3.4.2 National Planning Practice Guidance (NPPG)

3.4.3 Relevant Case Law

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:

- Amenity impact; and
- Design / Character and Appearance.

3.5.2 Members are advised that assessment is strictly limited to the merits of removing the stated condition. The planning permission granted, including all other attached conditions, would remain unchanged.

3.5.3 National Planning Policy Guidance (NPPG) states the following on the subject of removing Permitted Development rights from approved development:

Conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#), so that it is clear exactly which rights have been limited or withdrawn. Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. The local planning authority also has powers under [article 4 of the Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#) to enable them to withdraw permitted development rights across a defined area, where justified.

3.5.4 Reflecting on the decision to remove PD rights (via condition), taking into account the above guidance, it is rational to conclude that the condition may be unreasonable.

3.5.5 This is further explored in the context of the following two appeal decisions, allowing the change of use from holiday cottage to dwelling and for the erection of 3 dwellings, respectively, which are considered relevant to this assessment. It should be noted that the first decision was issued just two months in advance of the grant of Reserved Matter permission at Wayoh Barn and the second 3 months later. Both, therefore, represent material considerations carrying significant weight in assessment of this application.

3.5.6 In consideration of whether the removal of permitted development rights (Classes A, B, C & D) was necessary and reasonable, having regard to the living conditions of the occupants of the new dwellings and the neighbours, the Planning Inspector commented:

“The relative siting, density and design of the dwellings is not unusual and the permitted development rights regime has been conceived to allow the reasonable adaption of dwellings. I therefore find that ‘residential amenity’ would not be prejudiced. Rugby Borough Council

Local Plan SDC1 seeks to safeguard living standards and the proposal does not conflict with this policy.

Paragraph 55 of the National Planning Policy Framework (the Framework) describes the tests for conditions. The Planning Practice Guidance (PPG) emphasises that the tests must be applied rigorously. Moreover, the PPG is very cautionary over the removal of permitted development rights. I therefore find that the condition is unnecessary and would be unreasonable. Accordingly, the condition fails the tests in the Framework and PPG.”

Appeal Ref: APP/E3715/W/20/3248123: Brandon, Warwickshire (August 2020).

- 3.5.7 In consideration of whether the removal of permitted development rights (Classes A, B, E, G and H) was necessary and reasonable, on the context of the site location within the Green Belt, the Planning Inspector commented:

“It is reasonable to contend that permitted development rights for dwellings in the Green Belt are intentionally no different to those available outside of the Green Belt and that if greater control was desired then the GPDO would reflect this.

I find the justification for this conclusion to be further strengthened by the clear requirement of paragraph 53 of The Framework and NPPG, that exceptional circumstances must apply for the removal of permitted development rights. In this respect, if a location within the Green Belt alone was held to be an exceptional circumstances, then it would be conceivable that the definition of Article 2(3) of the GPDO (relating to Conservation Areas, AONB etc) would have been altered to reflect this. Therefore, the assumption must be that the permitted development rights should persist, unless there is a clear justification for the restriction, which must be both precisely defined and site specific to a particular circumstance rather than applicable on an area wide of blanket basis.”

Appeal Ref: APP/Z4718/W/20/3255705: Emley, Huddersfield (February 2021).

- 3.5.8 Both appeal decision serve to emphasise the purpose of householder permitted development rights and that their removal must to clearly justified. Whilst the application site is not located within the Green Belt, the second appeal is relevant, in that it serves to clarify that sensitive sites should not necessarily be prevented from having the opportunity to take advantage of permitted development rights; the site at Wayoh is not located within any such sensitive area.
- 3.5.9 Taking into account the national policy / guidance position, the noted appeal decisions - which carry significant weight - and the approved layout, it is considered that amenity levels and the character and appearance of the area

would be sufficiently safeguarded from impact arising from extensions available under the permitted development regime. Members are, therefore, recommended to support the removal of the condition (to withdraw permitted development rights).

4 RECOMMENDATION

4.1 APPROVE.

5.0 PLANNING HISTORY

5.1 10/18/0183: Outline application for permission for demolition of existing building and residential development of up to 5no. dwellings and site access, with all other matters reserved. Approved by Committee on 20th August 2018.

5.2 10/20/0464: Reserved Matters application for appearance, landscaping, layout and scale for 5no. dwellings, pursuant to outline permission 10/18/0183. Approved by Committee on 19th November 2020.

6.0 CONSULTATIONS

6.1 North Turton Parish Council.

North Turton Parish Council objects to application 10/21/0137 for the removal of a condition of planning permission to allow permitted rights in respect of approved dwellings at Wayoh Barn, Blackburn Road, on the grounds that any alterations or extensions to the permitted dwellings may be detrimental to the amenity of neighbouring properties

6.2 Public consultation has taken place, with 5 letters posted to the local community on 17th February 2021. No representations were received in response.

4.0 CONTACT OFFICER: Nick Blackledge – [Senior Planner].

5.0 DATE PREPARED: 14th May 2021.