

Proposed development: Variation/Removal of Condition/Minor Material Amendment for Removal of conditions 7 (permitted development rights) and 11 (validation report) pursuant to application 10/20/0019

**Site address:
White Lodge Farm
Blackburn Road
Edgworth
BL7 0PU**

Applicant: LTW Development LTD

**Ward: West Pennine
Councillors: Cllr Jean Rigby
Cllr Julie Slater
Cllr Neil 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 the receipt of an objection from North Turton Parish Council, in accordance with the Chair Referral Scheme of Delegation.
- 2.2 The assessment of the application against the Development Plan, the National Planning Policy Practice Guidance, and other material considerations, finds the proposal acceptable, with all issues having been addressed through assessment of the application.

3.0 RATIONALE

3.1 Site and Surroundings

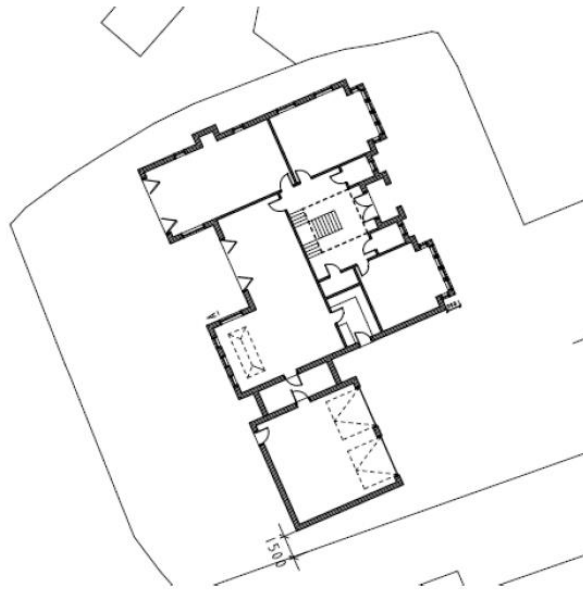
- 3.1.1 The application site lies within the Edgworth Village Boundary as shown on the Adopted Policies Map accompanying Local Plan Part 2, whilst the north and west boundaries of the curtilage abut Green Belt.

3.2 Proposed Development

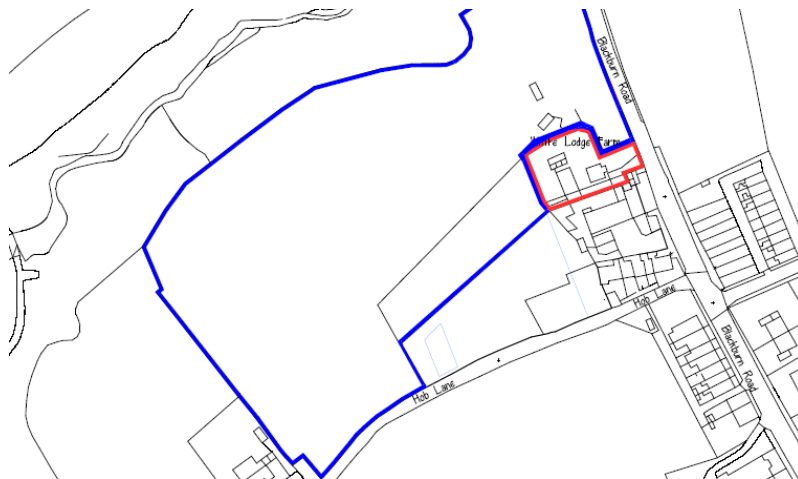
- 3.2.1 The application is submitted under Section 73 of the Town and Country Planning Act 1990. It seeks the removal of conditions 7 and 11 attached to the original planning permission, and variation of drawing number permission granted for the '**Demolition of outbuildings and erection of one dwelling**' (10/18/1002 and 10/20/0019). *Condition 7* relates to the removal of permitted development rights afforded by Classes A, B, C, D, E and F of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), as follows

Notwithstanding the provisions of Article 3 and Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment No.2) (England) Order 2015 as amended, no development of the type specified in Classes A, B, C, D, E, F of Part 1 and in Classes A and B 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 dwelling as approved is 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 3, 8 and 9 of the Blackburn with Darwen Borough Local Plan Part 2.



Approved layout above (10/20/0019)
Site and location plan below



3.2.2 Condition 11 relates to 'prior to the permitted use' validation requirements, as follows

Prior to the commencement of the permitted use, the developer must submit two copies of 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,

in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

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 Core Strategy (2011) and adopted Local Plan Part 2 (2015) – 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)

Policy CS5: Locations for New Housing

3.3.4 Local Plan Part 2 (2015)

Policy 6: Village Boundaries
Policy 9: Development and the Environment
Policy 8: Development and People
Policy 10: Accessibility and Transport
Policy 11: Design
Policy 41: Landscape

3.4 Other Material Planning Considerations

3.4.1 National Planning Policy Framework (NPPF) (2021)

3.4.2 National Planning Practice Guidance (NPPG)

3.4.3 Relevant Case Law

3.5 Assessment

3.5.1 In assessing this application in particular to the removal of condition 7 (PD rights) 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 the assessment is strictly limited to the merits of removing the stated conditions. The planning permission previously granted, including all other attached conditions, would remain unchanged.

3.5.3 Para 017 (Use of Planning Conditions) of the National Planning Practice Guidance (NPPG) states the following on the subject of removing Permitted Development rights from an 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 Taking into account the above guidance, it is rational to conclude that the condition attached may be unreasonable given the location of the site and surroundings.

3.5.5 This is further explored in the context of three recent appeal decisions, the first and second allowing the erection of a replacement dwelling and the third case allowing the change of use from holiday cottage to dwelling, respectively, which are all considered relevant to this assessment. It should be noted the first decision was issued in March 2021, circa 2+ years subsequent to the original approval at White Lodge Farm, the second decision issued in December 2020 (both within Green Belt) and the third decision in August 2020. As such, all three decisions, represent material considerations carrying significant weight in assessment of this application.

3.5.6 In the most recent decision and in considering whether the removal of permitted development rights (Classes A, B C, D and E) was reasonable the Inspector with reference to Class E stated:

Paragraphs 53 and 55 of the National Planning Policy Framework (the Framework) state that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In addition, conditions should be kept to a minimum and only imposed where, amongst other matters, they are necessary and reasonable. More guidance is given in the Planning Practice Guidance (PPG), which states that Section 70(1) of the Town and Country Planning Act 1990 enables the local planning authority to impose 'such conditions as they think fit'. However, this power must be interpreted in the light of material considerations such as the Framework, the PPG, and relevant case law.

*The PPG sets out the 6 tests for conditions and states that they must be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. The PPG also states that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in **exceptional circumstances**. 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.

I am mindful of the great importance given to the Green Belt by the Government and the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, where the essential characteristics of Green Belts are their openness and their permanence. However, in this instance and on the evidence that is before me and from my own observations, I am not persuaded that the Council has demonstrated **exceptional circumstances** to justify the imposition of condition 3 that removed permitted development rights under Class E on the original application. Therefore, in this instance, I consider that a condition removing domestic permitted development rights under Schedule 2, Part 1, Class E of the GPDO, is not reasonable and necessary to protect the character and appearance of the site and the openness of the Green Belt.

Therefore, for the reasons given above and in light of national policy and guidance regarding imposition of conditions restricting the future use of permitted development rights, I conclude there are no **exceptional circumstances** to justify the removal of permitted development rights under Schedule 2, Part 1, Class E at the appeal site. Accordingly, I find no conflict with Policy BDP4 of the Bromsgrove District Plan 2017, the PPG, and the requirements of the Framework.

Appeal Ref: APP/P1805/W/20/3256333: Portway, Birmingham (March 2021).

- 3.5.7 With regards to the second case presented, in considering 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 Inspector stated:

It is reasonable therefore 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 the 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 circumstance, then it would be conceivable that the definition of Article 2(3) of the GPDO 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 or blanket basis.*

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

3.5.8 The third appeal relates to the removal of permitted development rights for Classes A, B, C and D. The condition applied to protect residential amenity of the occupants at the new dwellings and the neighbours. The 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 Policy 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/20/324813 Brandon, Warwickshire (August 2020).

3.5.8 All appeal decisions serve to emphasise the purpose of householder permitted development rights and that their removal must be clearly justified with specific reference made to **exceptional circumstance**. The application site whilst not directly in the Green Belt, does adjoin the Green Belt, and therefore it is considered that all the aforementioned appeal decisions are of relevance. PD rights for dwellings in the Green Belt are no different to those available outside of it and if this were the case, the GPDO would reflect it.

3.5.9 Furthermore, conditions within each relevant class would provide adequate restrictions to a proposed development at the site i.e. Class E permits the erection of outbuildings etc. subject to a number of conditions. A summary of the conditions are, height limitation, floor area restriction, incidental use and the outbuilding etc. must not be situated on land forward of a wall forming a principle elevation. Whilst the new dwelling is considered a relatively considerable unit, the limited red edge of the site would provide adequate restrictions in ensuring any additions/alterations undertaken within the limitations of Schedule 2, Part 1 would be appropriate, limited and therefore would not bear an overbearing impact or additions/alterations.

3.5.10 Taking into account the national policy/guidance position, the noted appeal decisions – which carry significant weight – and the approved site layout, it is considered that amenity levels and the character and appearance of the area would be sufficiently safeguarded from impact arising from extensions/outbuildings etc. available under permitted development.

Case Officer Site photographs of application site as at 9th August 2021:



3.5.11 With reference to the removal of condition 11, the Council's Public Protection Team confirm based on the fact that condition 9 (validation) has been previously discharged, the removal of the condition is considered acceptable based on the confirmation received by email from the applicant that it is in effect suitable for use (no soil brought onto site, and no unexpected contamination was identified).

3.5.12 Members are therefore requested to recommend to support the removal of both the aforementioned conditions (to withdraw permitted development rights and validation).

4.0 RECOMMENDATION

4.1 APPROVE subject to the conditions below:

1. The development hereby permitted shall be begun before the expiration of three years from the date of the original planning permission 10/19/0149, 25th February 2019.

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

2. Prior to the commencement of construction hereby approved, save for the demolition of the outbuildings, samples of all external walling, roofing materials, and their colour to be used in the 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.

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.

3. Prior to commencement of the construction 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 along the boundary with the Green Belt and adjacent barn

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

VIII) a scheme to ensure that all heavy commercial vehicles carrying bulk materials into or out of the site are sheeted

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 neighbouring properties, in order to protect the visual amenities of the locality, in order to protect the Biological Heritage Site, and to comply with Policies 9, 10, 11 and 40 of the Blackburn with Darwen Borough Local Plan Part 2.

4. Prior to the commencement of development/construction hereby approved, save for the demolition of the outbuildings, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. Trees and shrubs shall be planted on the site in accordance with the landscaping scheme during the first available planting season. The scheme shall include details of materials to be used for hard surfaces, and details of species to be planted, with their siting and planting distances, and shall be implemented during the first available planting season after the commencement of development. 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 in the interests of amenity in accordance with Policy 9 of the Blackburn with Darwen Borough Local Plan Part 2.

5. Prior to the commencement of development/construction hereby approved, save for the demolition of the outbuildings, details of visibility splays and sightlines shall be provided.

REASON: To ensure safe access and egress into and out of the site and to ensure the safe, efficient and convenient movement of all highway users is not prejudiced.

6. 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 Policy 10 of the Blackburn with Darwen Borough Local Plan Part 2.

7. The construction of the development hereby permitted shall take place only between the hours of 08:00 and 18:00 Monday to Friday, 09:00 and 13:00 on Saturdays and not at all on Sundays or Bank Holidays.

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

8. Prior to the Prior to the commencement of development/construction hereby approved, save for the demolition of the outbuildings, the developer must submit to the Local Planning Authority (LPA) for written approval:

i Detailed proposals for site investigation based on the submitted CSM shall be submitted; the developer will be advised whether any further site assessment is required.

ii. If required by the LPA, two copies of 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.

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

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

10. If pile driving works are 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 adjacent residential premises, in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

11. If outdoor floodlighting is to be installed, an outdoor floodlighting scheme shall be submitted to and approved in writing by the Local Planning Authority before the construction phase 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, in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

12. The following mitigation measures will 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 NO_x/kWh

REASON: To ensure that the development is designed to incorporate facilities for charging plug-in and other ultra-low emission vehicles and to implement the requirements of Council's Air Quality PAN and the Principles of Good Practice in the EPUK & IAQM guidance "Planning for Air Quality", in accordance with the National Planning Policy Framework 2018 and Policies 8 and 36 of the Blackburn with Darwen Borough Local Plan Part 2.

13. This consent relates to the submitted details marked received on 25th February 2019 and numbered HLF12, 10, 09, 08, 07, 06, 05, 04, 03, 02, 01; as amended by plans received 7th January 2020 and numbered HLF12 (A), 10 (A), 09 (A), 08 (A), 07 (A), 06 (A), 03 (A), and any subsequent amendments approved in writing by the Local Planning Authority within 12 months of the date of this decision.

REASON: To clarify the terms of this consent.

5.0 PLANNING HISTORY

5.1 10/18/1002 - Demolition of outbuildings and erection of one dwelling – approved under delegated powers on 9th November 2018.

5.2 10/18/1234 - Discharge Condition No 3 pursuant to planning application 10/18/1002 – approved under delegated powers on 27th February 2019.

5.3 10/19/0149 - Demolition of outbuildings and erection of one dwelling (resubmission of application 10/18/1002) – approved under delegated powers on 29th April 2019.

5.4 10/20/0019 - Variation of Condition No.15 pursuant to planning application 10/19/0149 - demolition of outbuilding and erection of one dwelling - reposition and increase size of garage and alterations to front elevation – approved under delegated powers on 2nd March 2020.

5.5 10/20/0226 - Discharge of Condition Nos 2, 3, 4, 5 and 9 pursuant to planning application 10/20/0019 approved under delegated powers on 16th April 2020.

6.0 CONSULTATIONS

6.1 Public consultation has taken place, with 5 letters posted to neighbouring addresses on 9th July 2021. No representations were received in response.

6.2 North Turton Parish Council

North Turton Parish Council objects to the proposals to remove condition 7 of 10/20/0019 to allow permitted development rights at White Lodge Farm, Blackburn Road, Edgworth, on the grounds that it is already an over-development of the site.

6.3 Public Protection

Based on the fact that condition 9 has already been discharged, then it does change things. Condition 11 can be discharged now based on the emails below (ie. That no soil was brought on to the site, and no unexpected contamination was identified). Ideally this would have come in the form of a report with photographs, but the email will suffice as validation.

7.0 CONTACT OFFICER: Adam Shaikh – Planning Officer

8.0 DATE PREPARED: 26th August 2021.