

Proposed development: Minor Material Amendment: Removal of Condition No.7 - "CS2 gas protection measures shall be incorporated into the development hereby approved, in accordance with the details specified in the Phase 3 'Environmental Investigation Risk Assessment and Remediation Strategy', Ref. LKC 19 1398, dated December 2019" - pursuant to planning application 10/21/0277 - "Residential development consisting of 30 dwellings and associated infrastructure works."

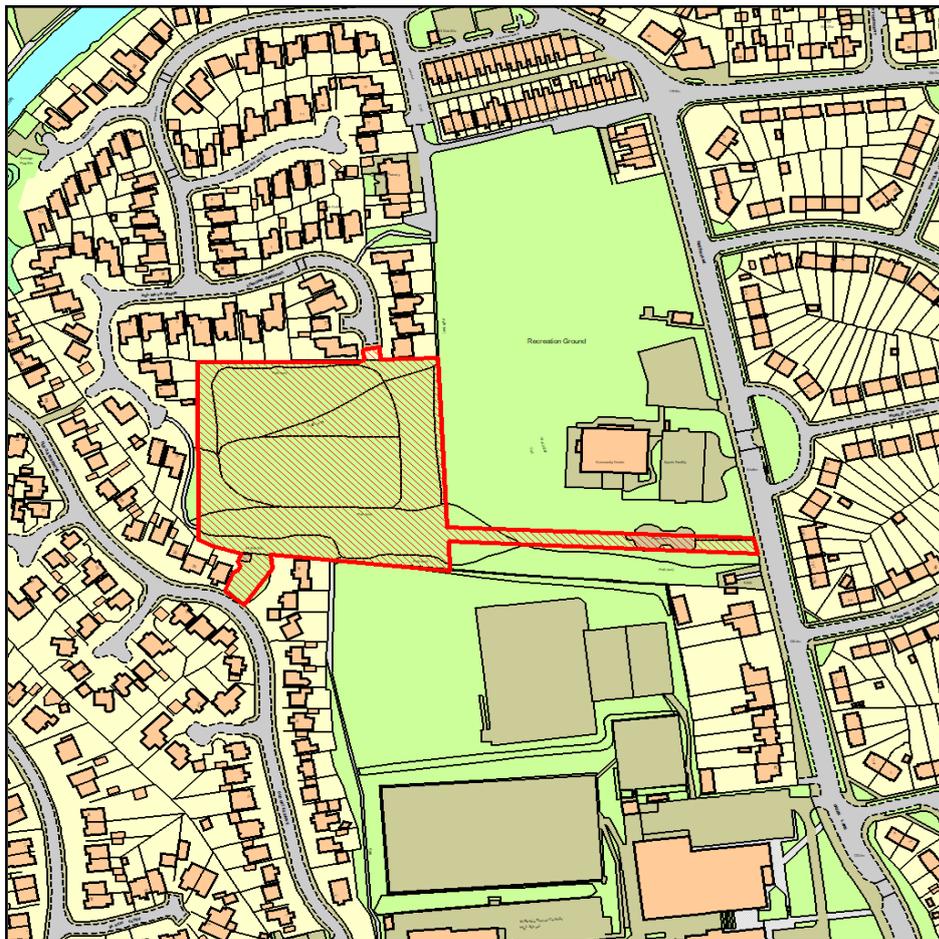
**Site address:
Land off Lomond Gardens
Blackburn**

Applicant: McDermott Homes Ltd

**Ward: Livesey With Pleasington
Ward: Mill Hill & Moorgate**

**Councillor Derek Hardman
Councillor Paul Marrow
Councillor Mark Russell**

**Jim Smith
Damian Talbot
Julie Gunn**



1.0 SUMMARY OF RECOMMENDATION

- 1.1 APPROVE – Subject to a Section 106 Agreement of £515,000, relating to Affordable Housing, Green Infrastructure / Public Open Space provision / enhancement, education provision; and conditions set out at paragraph 4.1 (including removal of condition no.7 attached to the original permission).**

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

- 2.1 This planning application is submitted under the provision of section 73 of the Town and Country Planning Act 1990, pursuant to full planning permission granted for a residential development consisting of 30 dwellings and associated infrastructure works. The application represents a Minor Material Amendment seeking to remove the following condition (no. 7) attached to the permission: *“CS2 gas protection measures shall be incorporated into the development hereby approved, in accordance with the details specified in the Phase 3 'Environmental Investigation Risk Assessment and Remediation Strategy', Ref. LKC 19 1398, dated December 2019”*. The application is reported to Committee as a proposed amendment to the original grant of full planning permission (10/21/0277) by Committee in July 2021 subject to a Section 106 Agreement, in accordance with the adopted Scheme of Delegation.
- 2.2 Members are advised that the principle of the development is established under the original permission. Assessment of this application is strictly limited to the proposed removal of the above stated condition. Furthermore, Members are advised that the s106 agreement has been signed by the developers, and the local authority and was completed on the 1st July 2021.
- 2.3 Assessment of the application finds the proposed amendment to be acceptable, in maintaining satisfactory levels of amenity and safety for future occupants of the development and the wider public, by guarding against any evident threat of ground contamination. Remaining conditions attached to the original planning permission will be re-produced in a subsequent permission, should this application receive support.
- 2.4 Support for the proposal, as a Minor Material Amendment, will have the effect of creating a new planning permission alongside the original permission. It would, therefore, still be open to the developer to implement either of the permissions.

3.0 RATIONALE

3.1 Site and Surroundings

- 3.1.1 The application site (the site) is located to the south west of Blackburn, measuring approximately 1.15 hectares in area (illustrated below).

- 3.1.2 The site, with the exception of POS on Old Gates Drive and land adjacent to Green Lane Community Centre, was formerly in use as a cinder all weather pitch, used by St Bede's RC High School. It has not, however, been used for this purpose since 1997, as evidenced by the assimilation of the all-weather surface into the general landscape.
- 3.1.3 There are informal pathways located around the perimeter of the site which connect into Nook Terrace to the north east and Solway Avenue to the west. A Public Right of Way (PROW) runs along the western and southern perimeter of the site. The PROW continues in a southerly direction along the edge of the St Bede's RC High School playing fields, from where it can be accessed from the west via Solway Avenue.
- 3.1.4 The site is bounded by residential properties to the north, south and west which are positioned with their side and rear elevations facing into to the site. To the east is the Green Lane Community Centre and grassed recreation grounds. Green Lane and residential properties are located beyond. St Bede's RC High School and associated playing fields are located to the south east, beyond which is Livesey Branch Road and more residential properties.

3.2 Proposed Development

- 3.2.1 The applicant seeks removal of Condition No.7 - "CS2 gas protection measures shall be incorporated into the development hereby approved, in accordance with the details specified in the Phase 3 'Environmental Investigation Risk Assessment and Remediation Strategy', Ref. LKC 19 1398, dated December 2019" - pursuant to planning application 10/21/0277 - "Residential development consisting of 30 dwellings and associated infrastructure works." The rationale behind the proposal is to evidence that the CS2 gas protection measures secured via this condition is no longer necessary, as set out in the submitted additional Ground Gas Risk Assessment.



Approved McDermott's Site Plan, Dec 2019.

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

- CS13 – Environmental Strategy

3.3.4 Local Plan Part 2

- Policy 1 – The Urban Boundary
- Policy 7 – Sustainable and Viable Development
- Policy 8 – Development and People

3.4 **Other Material Planning Considerations**

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

3.4.5 National Planning Policy Guidance (NPPG).

3.5 **Assessment**

3.5.1 Assessment is considered in the context of Policy 8 which requires a satisfactory level of amenity and safety is secured for surrounding uses and for occupants or users of the development itself, including but not limited to pollution.

3.5.2 A Ground Gas Risk Assessment is submitted with this application. This is in addition to an assessment previously reviewed during the course of the original application. The current assessment concludes that no gas protection measures or radon precautions are required for the site. Following review of the assessment, the Council's Public Protection consultee confirms agreement with this conclusion and recommends removal of the condition, in support of this application. This is further supported by submission of an email from the applicant confirming specification of the proposed foundations.

3.5.3 Support is offered subject to a recommendation that a final Verification Report is submitted detailing any post remedial soil analysis to evidence that no contaminated material remains. Members are, however, advised that no such mechanism exists to require the applicant to submit a Verification Report, either under the scope of this application or conditions attached to the original planning permission. Instead, discovery of unexpected ground contamination during construction of the development is captured via the following condition (no. 8) attached to the original permission.

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.

3.5.4 In the event of unexpected contamination being encountered, the applicant would be obligated to comply with the requirements of the condition.

3.5.5 Accordingly, the proposal is found to comply with the requirements of Policy 8 and The Framework.

3.5.6 Summary

This report assesses the Minor Material Amendment, proposing removal of the aforementioned condition no. 7. The assessment finds the proposal to be acceptable, as in accordance with Development Plan and The Framework.

4.0 RECOMMENDATION

4.1 Approve subject to:

- (i) **Delegated authority is given to the Strategic Director of Place to approve planning permission, subject to an agreement under Section 106 of the Town & Country Planning Act 1990, relating to the payment of £515,000; plus a monitoring fee of £5,099.**

Should the Section 106 agreement not be completed within 6 months of the date of the planning application being received, the Strategic Director of Place will have delegated powers to refuse the application.

- (ii) The following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of the original planning permission 10/21/0277 i.e. 2nd July 2021.

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 proposal received 15th March 2021 and with the following drawings numbered: LO-01, SL-02b, SD41, SD-SW1a, BTP-01b, ML-01a, 6312.01 Rev C, REFA - 20011/01/1 Rev D.

Garage type: SD/SG/B/01-2F

House types:

Cader: CAD 1.7

Cleveland Brick: CLE 1.7

Maidstone Brick: MAI 1.7

Kellet Brick: KEL 1.7

Chatham Brick: CHA 1.7
Bowfell Brick: BOW 1.7
Garth: GAR 1.7; and

The Ground Gas Risk Assessment (Groundtech Consulting, July 2021), received 19th July 2021.

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 strict accordance with the materials specified in the submitted Design & Access Statement produced by McDermott Homes, received 15th March 2021, the submitted House Type drawings and corresponding 'Materials Layout' drawing numbered: ML-01a.

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 boundary treatments specified in elevation drawings numbered SD41 and SD-SW1a, and the corresponding boundary treatments layout drawing numbered: BTP-01b.

REASON: To safeguard residential amenity and to ensure the external appearance of development is acceptable, in accordance with Policies 8 and 11 of the adopted Blackburn with Darwen Borough Council Local Plan Part 2.

5. No development shall commence until any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.

Remedial works shall be carried out in accordance with authoritative UK guidance.

REASON: To ensure a safe form of development in response to historic coal activity 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, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any

remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

REASON: To ensure a safe form of development in response to historic coal activity at the site, 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. Each dwelling shall have its own dedicated electric vehicle charging point. Each charging point will have a type 2 conductor and minimum rating of 3.7kW 16A. External points will be weatherproof and have an internal switch to disconnect electrical power.

REASON: in the interests of air quality management and protection of health, in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

9. Gas fired domestic heating boilers shall not emit more than 40mgNO_x/kWh.

REASON: In the interests of improving air quality and to protect the health of resident, in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

10. The construction of the development hereby permitted shall only take place between 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.

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

11. Foul and surface water shall be drained on separate systems.

REASON: To 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.

12. The drainage for the development hereby approved, shall be implemented in strict accordance with the surface water drainage strategy prior to

occupation, as set Preliminary Drainage Strategy indicated on drawing Ref: REFA - 20011/01/1 Rev D, November 2020.

REASON: To promote sustainable development, secure proper drainage and to manage the risk of flooding and pollution, in accordance with Policies 9 and 36 of the Blackburn with Darwen Borough Council Local Plan Part 2.

13. The drainage easement zone shall be incorporated into the development hereby approved, as indicated on drawing numbered: OGD032 Rev R1, dated December 2020.

REASON: In order to protect the Local Authority's water drainage asset, in accordance with Policy 9 of the Blackburn with Darwen Borough Council Local Plan Part 2.

14. Prior to occupation of any of the dwellings hereby approved, a Surface Water Management and Maintenance Scheme shall be submitted to and approved by the Local Planning Authority. The scheme shall provide for:

- a) The arrangements for adoption by an appropriate public body or statutory undertaker;
- b) Arrangements concerning appropriate funding mechanisms for its on-going maintenance of all elements of the sustainable drainage system (including mechanical components), including:
 - i) on-going inspections relating to performance and asset condition assessments
 - ii) operation costs for regular maintenance, remedial works and irregular maintenance caused by less sustainable limited life assets or any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime;
- c) Means of access for maintenance and easements where applicable.

The approved scheme shall be adhered to in perpetuity.

REASON: To promote sustainable development, secure proper drainage and to manage the risk of flooding and pollution, in accordance with Policies 9 and 36 of the Blackburn with Darwen Borough Council Local Plan Part 2.

15. Prior to the commencement of any above ground construction works, a nesting birds and roosting bats scheme shall be submitted to an approved in writing by the Local Planning Authority. The scheme shall provide for nest / roost boxes or bricks at various interval throughout the site. The scheme shall be incorporated into the development in strict accordance with the approved detail.

REASON: To provide roosting / nesting opportunities for Bats and birds, in accordance with the requirements of Policies 9 and 40 of the Blackburn with Darwen Local Plan Part 2.

16. No site clearance or construction works on site shall be carried out during the bird nesting season (March to August), unless the absence of nesting birds has been confirmed by further survey work or on-site inspections.

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.

17. The development shall be carried out in strict accordance with the submitted Tree Protection Scheme, prepared by Bowland Tree Consultancy Ltd, dated February 2021. Specified tree protection measures 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.

18. The development hereby approved shall be implemented in strict accordance with the 'Landscape Proposals' Plan numbered: 6312.01 Rev C, dated April 2020. Planting shall be carried out 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 visual amenity and biodiversity, in accordance with Policies 9, 11 and 40 of the Blackburn with Darwen Borough Local Plan Part 2.

19. Prior to occupation of the development hereby approved, a Landscape Management and Maintenance Strategy shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall cover all landscaped areas of public open space and it shall detail a programme of works including scheduled frequencies of weeding and watering for the duration of the development, as well as replacement planting of dead diseased or damaged trees and shrubs within a five year period from the implementation of the approved landscape scheme referenced in condition no. 13. The strategy shall be implemented in accordance with the approved detail.

REASON: To ensure that there is a well maintained 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.

20. Construction work shall take place in strict accordance with the details set out in the submitted Construction & Environmental Management Plan produced by McDermott Homes, dated 10th May 2021 and corresponding 'Management Plan' drawing numbered: CMP-01. All measures which form part of the approved details shall be adhered to throughout the period of demolition and construction.

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, to protect the amenity of the occupiers of the adjacent properties and to protect the visual amenities of the locality, in accordance with Policy 10 of the Blackburn with Darwen Borough Local Plan Part 2.

21. Prior to the occupation of any of the dwellings hereby approved, details of the proposed arrangements for future management and maintenance of the proposed streets within the development shall be submitted to and approved by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and Maintenance Company has been established.

REASON: To ensure that the estate streets serving the development are maintained to an acceptable standard in the interest of residential / highway safety, in accordance with Policy 10 of the Blackburn With Darwen Borough Local Plan Part 2.

22. Prior to the occupation of the development hereby approved, details of the proposed arrangements for future management and maintenance of the proposed streets within the development shall be submitted to and approved by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and Maintenance Company has been established.

REASON: To ensure that the estate streets serving the development are maintained to an acceptable standard in the interest of residential / highway safety in accordance with Policy 10 of the Blackburn With Darwen Borough 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, 11 and 40 of the Blackburn with Darwen Borough Local Plan Part 2.

24. Garages hereby approved shall only be used for the purpose of parking domestic vehicles and / or domestic storage. They shall not be externally altered or converted into habitable room space until and unless planning permission has been granted.

REASON: In order to retain sufficient off street parking spaces, in the interests of highway safety and efficiency, in accordance with Policy 10 of the Blackburn with Darwen Borough Local Plan Part 2.

25. Construction vehicle access shall be from Green Lane. Following completion of the development hereby approved, the temporary construction access along its entire length from Green Lane to the developed area, as indicated on the submitted Local Plan numbered: L0-01, dated February 2020, shall be reinstated to its former condition, to the satisfaction of the Local Authority.

REASON: Whilst the access is suitable as a temporary measure to serve construction traffic, it is unsuitable as a permanent means of access due to its construction not being to adoptable standard, its failure to serve as a gateway entrance to the site and its impact on land allocated as Green Infrastructure, in accordance with Policies 9, 10, 11 and 40.

5.0 PLANNING HISTORY

5.1 10/19/0542 – Outline planning permission with all matters reserved for residential development (up to 35 dwellings) – granted by the Committee at their meeting on the 15th August 2019.

10/21/0277 – Full planning permission for residential development consisting of 30 dwellings and associated infrastructure works – granted by the Committee at their meeting on the 17th June 2021.

6.0 CONSULTATIONS

6.1 Public Protection

No objection to removal of condition.

Town and Country Planning Act 1990 (as amended). 10/21/0825 Removal of Condition No.7 "CS2 gas protection measures shall be incorporated into the development hereby approved, in accordance with the details specified in the Phase 3 'Environmental Investigation Risk Assessment and Remediation Strategy', Ref. LKC 19 1398, dated December 2019." pursuant to planning application 10/21/0277 "Residential development consisting of 30 dwellings and associated infrastructure works"

The following reports/communications were submitted with this application:

☒ *Ground Gas Risk Assessment. Lomond Gardens. Groundtech Consulting. June 2021*

☞ *E-mail from Mark Wilkinson dated 28/9/21 detailing the specifications of the proposed foundations.*

After submission of the above report/E-mails and discussion via E-mail and phone with Mark Wilkinson, McDermott Homes and Bradley Massey, Groundtech I can now recommend the removal of condition 7.

Following the additional delineation and possible remediation of potential fuel on site please submit a final Verification report including details of any post remedial soil analysis to show no contaminated material remains. Upon receipt of a satisfactory Verification Report Condition 8, the unexpected contamination condition, can be considered satisfied.

I would take this opportunity to reiterate that the responsibility for the safe development of the site rests with the developer. Actions or omissions on their part may lead to liability being incurred under Part IIA. Those providing expert advice to developers should be aware of the future reliance that may be placed on it. Should unexpected contamination be discovered on site at any time during the development please stop work and contact this department immediately.

I trust this clarifies this Departments position. Should you require any further information, I can be contacted at the above number, or alternatively email david.johnson@blackburn.gov.uk.

6.2 Public Consultation

Consultation was carried out by display of site notices and a press notice, published 2nd September 2021. No written representations were received.

7.0 CONTACT OFFICER – Nick Blackledge – [Senior Planner]

8.0 DATE PREPARED: 7th October 2021