

Proposed development: Variation/Removal of Condition/Minor Material Amendment for Variation of Condition Nos 1 "approved drawings" and removal of condition 4 "tree protection measures" pursuant to planning application 10/21/0442 "Creation of a car park" - amend Condition no.1 "drawings" to revise layout following tree removal", and remove Condition No.4 "no tree protection measures required"

**Site address:
Land at Museum Street
Blackburn
BB1 7AJ**

Applicant: Ajaii Limited

Ward: Blackburn Central

**Councillor Samim Desai
Councillor Mahfooz Hussain
Councillor Zamir Khan**



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

2.1.1 This application is reported to the Committee in accordance with the Scheme of Delegation on the basis that the application site is Council owned land. The applicant was the successful bidder for a long term lease in a tender. As land owner the Council will retain some interest in the land, and presently the Council has stewardship of the trees.

2.1.2 This current application seeks to amend conditions that were attached to the recent approval at the December 2021 Planning and Highways Committee meeting of a surfaced car park, under planning reference 10/21/0442. The proposal to remove the two trees is a minor material amendment under Section 73 of the Town and Country Planning Act 1990. The 10/21/0442 approval was granted on the condition that the two remaining trees would be retained and protected. However, the applicant now seeks to vary/remove the condition attached to the previous approval, and remove the two remaining trees.

2.1.3 The approved car park is to be used by the owners of the former Royal Bank of Scotland building on King William Street, as well as other town centre businesses nearby.

2.1.4 The justification for removal of the trees is that the site is historically known to suffer from sinkage and the trees need to be removed due to the instability of the ground and the problems they would cause in developing the site. Furthermore, their retention would continue to cause ongoing damage to the adjacent footway, resulting in significant public safety issues. There are also question marks as to whether the trees would survive the approved development works. One of the trees has recently been badly fire damaged and is unlikely to survive in any case.

2.1.5 Although it is acknowledged that the mature London Plane trees are prominent in the street scene, and provide significant amenity benefits to the area, a pragmatic and practical approach is considered necessary to facilitate development of the site, which is presently is an eyesore.

2.1.6 Mitigation planting on site will be provided, and this can be secured by a suitably worded condition. In addition to this, the applicant has also offered to provide additional planting elsewhere in the borough. The removal of the trees has the support of the Council's Arboricultural Officer, subject to replacement planting on site, and it is therefore considered reasonably necessary to remove the two remaining trees to facilitate implementation of the scheme.

2.1.7 Given the considerable regeneration and economic benefits of bringing this prominent site back into use, subject to replacement tree planting, officers are satisfied that the proposal is acceptable, and complies with the relevant

policies. In accordance with the presumption in favour of sustainable development as set out in the NPPF, the proposal is recommended for approval, subject to a new condition to secure an alternate landscaping scheme, including replacement tree planting on site.

3.0 RATIONALE

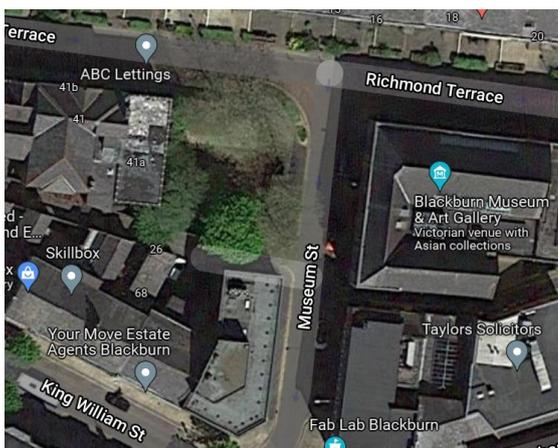
3.1 Site and Surroundings

3.1.1 The application site is located on the corner of Richmond Terrace (to the north) and Museum Street (to the east), with the western boundary abutting the Masonic Hall, and an alleyway (used for rear access to businesses on Richmond Terrace and King William Street) to the south. The former Royal Bank of Scotland building is on the other side of the alleyway, with a coffee shop now operating at ground floor, and offices at the upper floor levels.

3.1.2 The site lies within the Inner Urban Area of Blackburn within the Town Centre Boundary, and BID area. It also lies within the Northgate Conservation Area and adjacent to the Richmond Terrace Conservation Area, within an Article 4 area, and with various listed buildings in close proximity. It is within a Coal Low Risk area.

3.1.3 The application site has been vacant for a number of years and is presently screened off with temporary timber fencing, restricting public access. The adjacent footway is also suffering from root damage. This is of no benefit to the public or the character of the area, and represents a safety hazard. At one time the site had substantial tree cover. However, only 2 mature trees now remain, which are located on the Museum Street (east) boundary of the site. Both trees would be removed, one of which is badly fire damaged.

3.1.4 Below is an aerial view of the site:

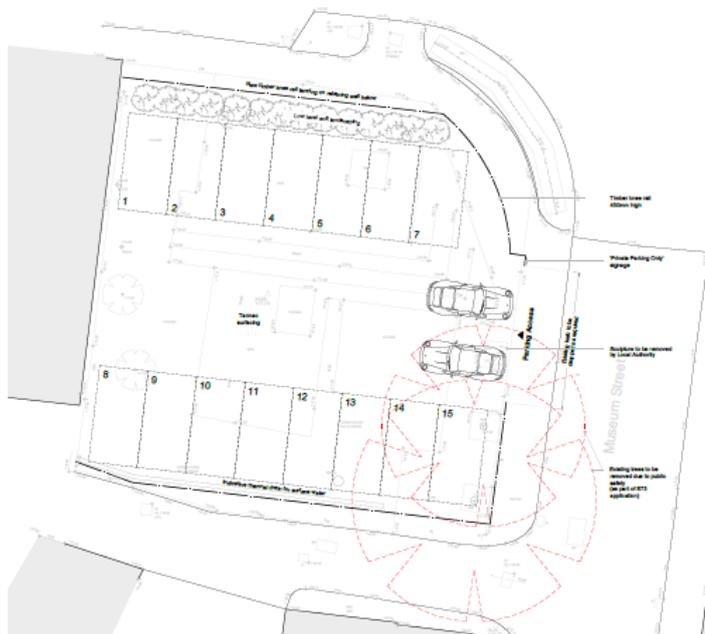


3.2 Proposed Development

3.2.1 The approved scheme (ref 10/21/0442), for a 13 space car park, with the 2 trees retained, is shown below:



3.2.2 The scheme as now proposed shows the two trees removed, and the introduction of 2 more parking spaces in their place, increasing the number of spaces to 15. This is shown below:



3.2.3 Site photos



Street scene



Root damage to footway



Fire damaged tree

3.2.4 Supporting documents submitted with the application include:

- Supporting Statement

Development Plan

3.2.2 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.

3.2.3 The Development Plan comprises of the Core Strategy (2011) and Local Plan Part 2 – Site Allocations and Development Management Policies (2015). In determining the current proposal the following are considered to be the most relevant policies.

3.2.4 Core Strategy

- Policy CS16: Form and Design of New Development
- Policy CS17: Built and Cultural Heritage

3.3.4 Local Plan Part 2

- Policy 1: The Urban Boundary
- Policy 2: The Inner Urban Area
- Policy 7: Sustainable and Viable Development
- Policy 8: Development & People
- Policy 9: Development and the Environment
- Policy 10: Accessibility & Transport
- Policy 11: Design
- Policy 26: Town Centres: A Framework for Development
- Policy 39: Heritage

3.3 **Other Material Planning Considerations**

3.3.1 National Planning Policy Framework (NPPF)

3.3.2 BwD Parking Standards

3.3.3 Conservation Area Character Appraisals

3.4 **Assessment**

3.4.1 In assessing this application the following important material considerations are taken into account:

- Principle of proposal / Justification for removal of trees
- Visual amenity / Heritage
- Highways / Parking
- Other matters / Conclusion

3.6 Principle of proposal

3.6.1 Policies 1 and 2 of the Blackburn with Darwen Local Plan Part 2 (LP) identify the urban area as the preferred location for new development.

3.6.2 LP Policy 26 refers to sites within Town Centres. Proposals are generally supported if, amongst other things, they involve main town centre uses; including restaurants and cafes; and help to establish a vibrant town centre. The NPPF also emphasises the importance of ensuring the vitality of town centres.

3.6.3 The proposal does not conflict with these aspirations. The site lies within the town centre and inner urban area of Blackburn, within a conservation area, and is a highly prominent site. It has been boarded up since circa 2017 and

has been subject to ASB / fly tipping etc. The site is presently an eyesore and a risk to public safety. There have also been safety concerns regarding an underground cellar and site sinkage. It is considered that retention of the trees will make an additional constraint and economic burden in making effective stabilisation and repairs.

3.6.4 There are significant environmental, economic and regeneration benefits for bringing this very prominent town centre site back into active use. It will also support local businesses.

3.6.5 Therefore, subject to robust justification, and a suitable scheme for replacement planting on site, the proposal to remove the 2 trees is considered acceptable in principle, and complies with LP Policies 1, 2 and 26, and the NPPF.

3.7 Justification for removal of trees

3.7.1 A supporting statement submitted by the applicant sets out the problems that would be caused by the trees remaining in situ (damage to the adjacent footpath etc.) and damage to the trees themselves. It also refers to historic sinkage problems at the site.

3.7.2 The Council is fully aware of these issues, and in March 2020, commissioned a Ground Penetrating Radar (GPR) survey to be carried out on the site. This report concluded that there were significant settlements, voids and ground heave at the site which may have been the result of poorly compacted building demolition material being used to infill an old basement. Torrential rains had washed away any demolition 'fines' and resulted in subsidence. Ground heave was present and was always in the vicinity of mature trees, with roots showing.

3.7.3 The Council's Arboricultural Officer, whilst raising initial concerns about whether there was sufficient justification provided for the removal of the trees, attended a site visit with the applicant and Council Officers during the assessment of this current application. It was confirmed that the trees were causing damage to surrounding land/footways, and that the trees themselves could be further damaged by implementation of the approved scheme, if they were retained. It was further noted that one of the trees was badly fire damaged, and its long term health was questionable. In this context, it was considered that removal of the trees, with a scheme for replacement planting on site to be submitted in due course, would be the most sensible option.

3.7.4 The Arboricultural Officer therefore concluded that, whilst the trees do make a positive contribution to the amenity of the area, their removal was, on balance, justified. However this is only on the basis that replacement planting is secured on site. This can be secured by a re-worded condition.

3.8 Visual amenity / Heritage

- 3.8.1 Core Strategy (CS) Policy 16 and LP Policy 11 require a good standard of design and an understanding of the site's wider context. The Design SPD, in relation to siting, scale and appearance, reinforces this.
- 3.8.2 CS Policy 17 and LP Policy 39 seek to sustain or enhance the significance of heritage assets, including their setting. The NPPF adds further weight to the importance of heritage assets. LP Policy 39 also says, amongst other things, that development that causes some harm or loss can be outweighed by the benefit of bringing the site back into use. Development that will negatively impact on the significance of an asset will only be permitted where the impact is outweighed by the public benefit arising from the development.
- 3.8.3 The site lies within the Northgate Conservation Area, and just outside the boundary of the Richmond Terrace Conservation Area. The site also lies within close proximity to the Grade II Listed Blackburn Museum and Art Gallery and the Grade II Listed Richmond Terrace.
- 3.8.4 From a visual amenity perspective, whilst giving this sufficient weight in the decision making process, it is considered that the overall benefits of the scheme outweigh the harm caused by loss of the trees. A mitigation planting scheme will ensure harm is minimised. Implementation of the car park would be an improvement on the existing situation, and with an appropriate replanting scheme would have a positive impact on visual amenity and the character and appearance of the area.
- 3.8.5 Similarly, any low level (less than substantial) of harm to the significance, character and appearance of the heritage assets resulting from removal of the trees, would be outweighed by the wider benefits, and suitable mitigation planting on site. This will require a revised scheme to be submitted and approved at a later date.
- 3.8.6 The proposal is therefore considered acceptable from a visual amenity/design and heritage perspective, and compliance with CS Policies 16 and 17 and LP Policy 11 and 39.

3.9 Highways / Parking / Drainage

- 3.9.1 LP Policy 10 requires, amongst other things, that road safety and the safe, efficient and convenient movement of all highway users is not prejudiced, and appropriate provision is required for vehicular access, with parking in accordance with the Council's adopted standards.
- 3.9.2 Although an amended plan has been submitted as part of this application, which shows an increase of 2 parking spaces from the approved scheme (15 spaces instead of 13), a condition will be attached to this approval to require a revised landscaping scheme / site plan, to incorporate mitigation tree planting, prior to construction of the car park commencing. The number of spaces proposed is therefore likely to change again when new planting is introduced.

3.9.3 Notwithstanding this, based on the detail presently submitted, the access, and all other aspects of the car park, will remain as previously approved, and visibility would be improved by removing the existing trees. When submitted, the impacts of the revised landscaping scheme / site plan will be assessed in the context of visibility / highway safety, amongst other things.

3.9.4 The proposal to remove the 2 trees is therefore considered acceptable in terms of highway safety. Compliance with Policy 10 of the LP and the adopted BwD Parking Standards is therefore achieved.

3.10 Other matters / conclusion

3.10.1 Whilst this planning application assesses the planning impacts and benefits of the proposal, the Council as land owner will ensure the correct procedures are followed in terms of removal of the trees, and the ongoing repair and maintenance of pavements adjoining the site etc.

3.10.2 Given the Council is retaining a long term interest in the land, an agreement is also in place for the site sinkage to be addressed.

3.10.3 In conclusion, the overall benefits of the scheme are considered to outweigh any harm identified, and the proposal is recommended for approval, subject to the conditions set out below.

4.0 RECOMMENDATION

4.1 APPROVE subject to the conditions below:

1. 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:
Location plan: Drawing No. 0647/001/A4/Rev A.
Proposed site plan: Drawing no. BB327-200-E @A2.

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

2. The development hereby permitted shall be begun before the expiration of three years from 17th December 2021 i.e. the date of the original permission.

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

3. No development shall commence until a surface water drainage scheme has been 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.

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

- 4. Notwithstanding the detail shown on the approved plans, prior to commencement of construction works on site, an alternative site plan and detailed landscaping scheme shall be submitted to and approved by the local planning authority. The scheme shall include full details of replacement tree planting on site, as well as low level soft landscaping. The approved trees and shrubs shall be planted 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. The approved landscaping shall be maintained and retained thereafter to the satisfaction of the local planning authority.

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

- 5. Prior to the car park hereby approved being first brought into use, the final layout of the car parking shall be submitted for approval, laid out in accordance with the approved details and thereafter permanently retained. The approved layout shall include a disabled parking bay, and revised vehicle sightlines with appropriate splays.

REASON: To ensure all matters in relation to the layout and surfacing of the car park (including gradients) are carried out to the Council's standards and requirements, in accordance with Policy 10 of the Blackburn With Darwen Borough Local Plan Part 2, and the adopted Blackburn With Darwen parking standards.

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

- 7. Prior to commencement of development hereby approved, the applicant is required to consult United Utilities and obtain a 'Consent to Discharge' to the public sewer. Details of the consent must also be submitted to the Local Planning Authority prior to the commencement of development. The development shall be implemented in accordance with the approved details.

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 surface water in accordance with the requirements of Policy 9 - Blackburn with Darwen Borough Local Plan Part 2 (2015), and the National Planning Policy Framework.

5.0 PLANNING HISTORY

- 5.1 10/21/0442: Full Planning Application (Regulation 4) for Creation of a car park (Approved)
- 5.2 1977_2019: Change of use to retail (non food), storage and offices.

6.0 CONSULTATIONS

- 6.1.1 A valid planning application was received by the Local Planning Authority (LPA) on 3rd August 2022. 21 Neighbour consultation letters were sent out on 3rd August 2022, including all addresses adjoining the application site. A site notice was displayed on 9th August 2022. An advert was also published in the Lancashire Evening Telegraph on 12th August 2022.

6.1.2 No representations were received.

7.0 CONTACT OFFICER: Tom Wiggans, Planner

8.0 DATE PREPARED: 7th October 2022

9.0 SUMMARY OF REPRESENTATIONS

9.1 Growth Lancashire (Arboricultural consultee)

9.1.1 The initial recommendation by the Council's Arboricultural officer was to retain the trees (see below):

Both trees are semi-mature with a potential long useful life and in fair condition. Both trees are suitable to retain with some remedial works to improve their structure. The ground level rooting environment has been substantially disrupted. Ground works will be required for the retention of the trees. Recommend retention of both trees with works as referred to above. If you were minded to allow removal with replacement, I recommend replacement planting in the same area of tree removal with agreement for species and size. Tree protection measures would be applicable with the retention of the two trees.

9.1.2 However, the above comments were subsequently revised following a site visit with the applicant and Council officers. It was agreed that if engineering works to stabilise the site will necessitate the removal of the trees, and there is sufficient evidence to show that the retention of the trees makes an additional constraint and economic burden in making effective stabilisation and repairs, a condition should be attached requiring replacement tree planting, on site, to mitigate against the loss of amenity.

9.1.3 It is recommended that replacement planting is in the same area of tree removal, with agreement for species and size.

9.2 Property Management

9.2.1 Property Management have no objections to the proposal.