



**PLANNING COMMITTEE:
28 NOVEMBER 2019**

Report of: Corporate Director of Place and Community

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SUBJECT: LATE INFORMATION

1.0 INTRODUCTION

The information below has been received since compilation of your Agenda. The following also includes suggested adjustments to the recommendations further to the receipt of late plans and/or information.

2.0 ITEM 7 – PLANNING APPLICATIONS

REPORT NO. 1 – LAND TO THE EAST OF, FIRSWOOD ROAD – 2019/0069/OUT

Following compilation of the agenda report, further representations have been received.

Technical Note prepared by Transport Seeds Ltd on behalf of Lathom South Parish Council and South Lathom Residents' Association

The Technical Note reviews the development in terms of transport aspects and reviews the report prepared by Sanderson Associates on behalf of the Council.

The note considers the compliance of the proposed development with the Development Brief and the suitability of Firswood Road in terms of vehicular and pedestrian movements and concludes that Firswood Road is not a suitable corridor to accommodate the additional development traffic from the Wainhomes development.

It also states that the mitigation measures proposed will not address the issues raised by the Development Brief and the Highway Authority in respect of providing a safe means of access for all and especially vulnerable road users along Firswood Road and the wider network. There are concerns relating to the rights over the land necessary to deliver the proposed mitigation measures along

Old Engine Lane, and reliance on these minor improvements as an alternative solution to a wider and comprehensive development is deemed inappropriate to address the limitations. The report also comments that the site access is not to an acceptable standard.

The report concludes that the Development Brief forms a material consideration in the determination of future applications for the wider site, and the proposed development and proposed mitigation by Wainhomes are not compliant with the access and transport accessibility objectives of the Development Brief. The report concludes that in the author's view, the application should be refused on highway and transportation grounds.

Email from the Planning Agent (Emery Planning) in response to the Technical Note (19.11.19)

The Transport Seeds Technical Note states that the Development Brief provides a blueprint for future developers. This is misleading, the Development Brief says that 'The brief is not a blueprint for development, but a set of principles'.

The Note refers to RLP Inspector's Report. This is a reference to the Revised Local Plan Inspector's Report from 2006 and not the Inspector's Report for the Local Plan dated September 2013. The 2006 report relates to the allocation of the land for safeguarded land and not the current housing allocation.

The Note states that the Inspectors Report allowed residential allocation based upon assurances that the site would be delivered as a comprehensive development. The Inspectors Report from 2013 refers to the need to prepare a development brief to ensure the development has proper regard to 'environmental and nature conservation interests'. The Inspector does not reference the development of the site proceeding on the basis of the vehicular access being taken from Neverstitch Road.

Counsel advice is that the proposal complies with the key principle of the Development Brief.

The conclusions of the Note are at odds with the conclusions of the applicant's highway consultants, Lancashire County Council (LCC) and the independent highway appraisal commissioned by the Local Authority.

Email from the Applicant's Highway Consultant (SCP) in response to the Technical Note (19.11.19)

Work has been critically assessed by LCC who have recommended approval of the application. The work has also been assessed by Sanderson Consultants who have not raised any overriding concerns to justify refusing the application on transport grounds.

The suitability of Firwood Road to accommodate the development has been addressed. The development will add traffic onto Firwood Road, not pedestrians. If pedestrians are considered safe from the Bellway development then they are not prejudiced to an unacceptable degree by this development.

In terms of compliance with the Development Brief, Counsel Advice concludes that there is compliance with the key principle of the Brief in that the proposal would not have an unacceptable impact on the capacity of the surrounding highway network.

LCC are satisfied that the proposals ensure connectivity for pedestrians. The proposal does not prejudice future connectivity. There is reference in the Note to SCP 'dismissing' requests made by LCC in relation to the development requirements; SCP worked closely with LCC to achieve an acceptable form of development that could be supported by the Highway Authority.

The scope of the Transport Assessment (TA), including traffic distribution was agreed with LCC.

The Transport Seeds Technical Note refers to design standards TD42/95 for the site access. This is a wholly inappropriate standard and is produced for access on trunk roads. LCC adopt the principles set out in Manual for Streets and are happy that the access complies with the necessary standards. TD42/95 was superseded in August 2019.

Representation from South Lathom Residents' Association (20.11.19)

South Lathom Residents' Association have submitted comments in response to the advice submitted by the applicants Counsel (*referred to in the agenda report*). The submission questions the weight that should be properly attributed to the Firwood Road Development Brief and comments that if the application were approved 224 of the 400 dwellings envisaged on the Firwood site would take access from Firwood Road and may result in further access being sought to Firwood Road from the remaining parcels of land.

The submission comments that it does not appear that the applicants have made genuine attempts to gain access from Neverstitch Road.

The junction of Firwood Road with Blaguegate Lane is dangerous for both pedestrians and vehicles. It is questionable whether the proposed pedestrian improvements to Old Engine Lane can be delivered. Access to the bus stop on the near side of Neverstitch Road is unsatisfactory.

The representation indicates that Counsel concentrates on residential amenity of residents within the development and ignores the requirement to have regard to the whole of Firwood Road. Vehicle movements in an area of poor pedestrian and vehicle safety affect the amenity of residents along the road.

The Highway Authority have been inconsistent in their view regarding the acceptability of additional vehicle movements on Firwood Road. Road safety along the whole of the road has been ignored as have the dangers of using the northerly junction at Spa Lane.

Pedestrians living on the west of the site would be likely to access bus stops on Blaguegate Lane by walking down Firwood Road, which would be detrimental to pedestrian safety.

The application does not accord with the Development Brief, would be harmful to highway safety and residential amenity and members of the public have very relevant concerns regarding the development.

Letter from the Planning Agent (Emery Planning) in response to the representation from South Lathom Resident's Association (21.11.19)

Following deferral at Planning Committee, Counsel was instructed by the applicant to advise on highway issues. Advice was sought from Sara Reid as a specialist in highway and rights of way matters. The advice provided is independent and robust.

SLRA consider that the limit of 60 vehicles per hour cannot be exceeded. However, there has to be a demonstration of severe harm before the development can be resisted on traffic grounds.

The Association query the trip generation stated by SCP. The assessment undertaken by SCP is based on agreed trip generation set out in the Bellway TA. In agreement with the Highway Authority, SCP have robustly assumed that all traffic will turn left out of the site and right into the site. With the option for some traffic to turn right out of the site and left into the site, the traffic impact on Firwood Road leading to Blaguegate Lane would be less.

The TA relies on the extrapolation of data produced for the Bellway Homes application. This is a method of ensuring consistency in the assessment of development impacts. The trip rates are robust and typical trip rates from housing developments are lower than the rates used to assess this development.

The Association question the ability of the applicant to undertake the pedestrian improvement works on Old Engine Lane. This is a public footpath and there is the ability for the Council to protect pedestrian interests by undertaking improvement works. The Highway Authority is happy that the works proposed to Old Engine Lane and Neverstitch Road would be of benefit to the public; it would provide a continuous surfaced pedestrian route between the site and the rest of Skelmersdale.

Three highways experts have concluded that the proposals are acceptable in highway terms. The case presented by SCP on behalf of the applicant has been reviewed by the Highway Authority and they are satisfied there would be no material increase in harm from development related traffic. The evidence was further scrutinised by Sanderson Associates acting on behalf of the Council who found the proposals to be acceptable. Therefore, with the exception of the Transport Seeds Report which was prepared on behalf of South Lathom Residents' Association and the Parish Council, the evidence agrees that there is a compliance with the Development Plan and the key principles in the Development Brief.

It does not appear that Transport Seeds have visited the site (SCP, LCC and Sanderson Associates visited the site).

The Association urge the Council not to the hand over planning decisions to developers and to maintain the Council's position as planning authority, as exercised ultimately by its Planning Committee. It is agreed that the Council are

the decision maker. However, if the LPA wishes to refuse the planning application it must produce evidence to substantiate each reason for refusal; failure to do so could result in an award of costs against the Council.

Further response from Transport Seeds Limited on behalf of South Lathom Parish Council in response to the letter from Emery Planning (25.11.19)

The response from Emery does not address the technical points raised by Transport Seeds.

It is clear from the accompanying text within the Development Brief and from the Highway Authority's initial response that there are issues in relation to the ability of Firswood Road to provide a suitable access corridor in its current form. Whilst Transport Seeds accept that the applicant is not in a position to provide access from Neverstitch Road, the scheme fails to provide a suitable alternative.

Even if there was eventually an access through to the adjoining Bellway site this would not mitigate the impacts on Firswood Road, identified in the initial Transport Seeds Technical Note.

The issues raised in the concluding paragraphs of the Sanderson Report do not appear to have been further addressed by the applicant, for example it has not been clarified that the highway improvement works along Old Engine Lane can be delivered. The Sanderson Report puts into question the ability of the applicant's proposals to suitably mitigate the development's impacts on the network.

Further response from South Lathom Residents' Association in response to comments from Emery Planning (25.11.19)

Nothing in the current application explains the complete abandonment of the Development Brief. The Brief indicates a limit of 60 two-way traffic movements at peak travel times.

South Lathom Residents Association dispute the reliability of the trip generation figures used by the applicant and the predictions relating to traffic flow out of the site.

The development will alter the rural character of the road and the Development Brief states that the rural character of the road should be preserved.

Sanderson Associates question the ability of the Highway Authority to allow the applicant to upgrade Old Engine Lane. Although it is a public footpath it is unclear whether Old Engine Lane is part of the land owned by the Crown or in other private ownership.

Old Engine Lane would not provide the most direct route to local amenities, such as Blaguegate Playing Fields or the BP garage. Furthermore, there is no acceptable pedestrian route to the Skelmersdale bound bus stop on Neverstitch Road.

The Highway Authority have reversed their previous advice and the scheme represents a major threat to pedestrian and vehicular safety with such a major

increase in traffic movements along the narrow rural road. The route to the north along Spa Lane has not been considered.

The applicants have not identified the location of Crown land.

SLRA note the applicants' determination not to cooperate with other landowners to bring forward the coherent development of the whole site.

Email received from the owner/occupier of Balcrey, Old Engine Lane (22.11.19)

Old Engine Lane would be used a 'rat-run' by residents of the 130 new homes to/from Neverstitch Road. This will affect residential amenity and the safety of pedestrians using the Public Right of Way.

Lancashire County Council (Highway Authority) (21.11.19)

It is accepted that the proposal does not comply with the Development Brief - taking vehicular access from Firswood Road. However, in the circumstances of the application and with the NPPF presumption in favour of development, it is difficult to object (and for this to be defensible on appeal) to the principle of development with access from Firswood Road on highway grounds regarding junction capacity.

With regard to the issue of 60 two-way traffic movements, there does not appear to be any evidence base for this figure. The restriction to 60 vehicles per hour at peak travel times will be taken up by the current Bellway development (when completed) and the question with the current application is whether the extra traffic will have an adverse effect on the capacity of the Firswood Road/Blaguegate Lane junction. The NPPF test for resisting development on highway grounds is if the cumulative impacts are severe, and LCC are satisfied that the applicant has demonstrated that while there would be over 60 two way traffic movements, the cumulative impacts of the development would not be severe. Transport Seeds have not demonstrated the residual cumulative impacts of the development traffic on the Firswood Road/Blaguegate Lane junction would be severe.

Further, with regard to sustainable transport modes, the applicant has submitted details to demonstrate compliance with the NPPF, i.e. 'in assessing sites allocated for development in plans, or specific applications for development, it should be ensured that:

- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
- b) safe and suitable access to the site can be achieved for all users; and
- c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree'.

LCC are satisfied that the developer has demonstrated safe and suitable means of access and pedestrian/cycle connectivity to integrate with the existing built environment and thereby encourage sustainable means of transport.

LCC would challenge the statement made in the Technical Note by Transport Seeds which states that none of the proposals directly address the concerns from LCC, nor those originally set out in the Development Brief.

The Technical Note states that the layout does not offer enhanced connectivity for all users, particularly pedestrians from the wider area including links to the consented Bellway development and existing users of Firwood Road. LCC consider that the layout could be further modified at reserved matters stage to facilitate future links to the wider area, but the consented Bellway development is separated by third party land.

LCC confirm that the section of Old Engine Lane bounding the southern side of the site is a public right of way (PROW) and not within the red edge or under the control of the applicant. While it is not an adopted highway for maintenance purposes the fact that it is a PROW means that it is a 'highway' open to the public. Therefore LCC are within their right as Highway Authority to carry out maintenance and improvement to the PROW as a highway. In the case of this application the developer has agreed to fund highway improvement through a s278 agreement which would be delivered by LCC.

With regard to the 'temporary 2.0m footpath' within the site which the report describes as 'proposed to bypass the cobbled section of Old Engine Lane'. Firstly this is required by LCC as a permanent link to access the site and it should be conditioned as available from first occupation. I did not specifically request the improvement of the surfacing along Old Engine Lane (parallel to the site), while this would be of benefit to the general public, it would encourage vehicular use of the lane and any measures to prohibit through traffic would be open to objection from residents/farmers with legitimate claims for vehicular access. Hence the requirement for the parallel footway link within the site to avoid this issue.

The available footway width at the junction of Firwood Road with the A577 Blaguegate Lane is not identified in the Development Brief, but appears to be a long standing issue. There appears to be a frontage hedge overhanging the footway restricting its width at the corner. I will request LCC Highway Team investigate further.

LCC are satisfied that given the existing traffic routing north to Spa Lane that the proposed development will not have a detrimental impact on highway safety.

LCC confirm that there are no Police records of Personal Injury Accidents (at present) on Firwood Road. The Bellway Homes site is nearly complete and the records do not indicate a collision problem caused by that development and its construction traffic which would suggest that drivers respect and drive to the conditions of the road.

With regard to the Firwood Road site access, as the report states the proposals present vision splays in excess of the recommendations from both DMRB and MfS2 for a corridor subject to 30mph. Access Drawing SCP/17348/F01 Rev A (dated 30th May 2019) provides details of 90m visibility splays in both directions at the access with Firwood Road. LCC are satisfied with the proposed level of vision splays and that the splays can be provided, subject to the provision of a 2m footway across the site frontage as per the requested condition.

Drawing SCP/17348/F01 Rev A (dated 30th May 2019) provides details of 90m visibility splays in both directions at the access. However a vision of approximately 140m is available in the leading direction to the east on Firwood Road. The access scheme also includes the provision of a speed gateway feature at the start of the 30mph speed limit to reduce vehicle speed entering the lower limit. The full detail of this would be determined at the s278 detail design stage.

LCC are satisfied that the junction design is appropriate to this location and speed limit.

TD42/95 (quoted by Transport Seeds) is for accesses to trunk roads and is now superseded. It is an inappropriate standard for this 30mph road and location. Access should be based on the principles set out in Manual for Streets and LCC are satisfied that the access complies with the necessary standards.

LCC as the local highway authority are satisfied that the mitigation measures proposed by the Applicant will provide a safe means of access for all and that all the issues raised by South Lathom Residents Association dated 20 November 2019 have been addressed.

OBSERVATIONS OF THE DIRECTOR OF PLACE AND COMMUNITY

The main issues for further consideration are:

1. The weight that may be accorded to the Firwood Road Development Brief
2. The impact of the development on highway safety and capacity

Firstly the Transport Seeds Technical Note incorrectly refers to the Inspector's Report for the Revised Local Plan (2006) which safeguarded the Firwood Road site and is therefore irrelevant now that the Adopted Local Plan 2012-2027 allocated the site for housing development.

Transport Seeds have also incorrectly stated that "It is clear from the Inspector's report that subsequent allocation of the site was eventually allowed based on reassurances that this would be delivered as a comprehensive development". This is incorrect. The Inspector stated the facts at that time vis-à-vis the potential consortium of landowners, but does not then refer to this (or any prospect of the site being delivered as a comprehensive development) as a basis for allocating the site.

However the reference to a Development Brief, and development proposals conforming to it, in Local Plan policy RS1 sets a clear status for the Development Brief as a material consideration. Therefore, the content of the Development Brief is of relevance to decision-making and needs to be weighed in the planning balance.

Page 4 of the Development Brief explains the purpose of the Brief and how to use it, with one paragraph being particularly instructive in relation to the current debate:

"This Development Brief therefore provides a design framework with principles and guidance, which should inform detailed design solutions, but it also

recognises the importance of retaining flexibility to respond to changing market conditions and social and technical demands. The Development Brief includes illustrations to indicate how future development might look. However these are not intended as prescriptive blueprints for the site, but as an indication of how the principles might be adhered to."

Furthermore, in the Vision and Key Principles on page 6 of the Development Brief, no mention is made of highways access and where it should be, reflecting the fact that the precise location of a highways access to the site is not a key principle that is central to the Council's Vision for the site.

In the Technical Constraints section of the Development Brief (on pages 11 and 12) highways access is discussed, stating:

"The main access to the Firswood Road development site should be taken off Neverstitch Road between Old Engine Lane and the Ormskirk Road roundabout, at a point where maximum visibility can be achieved.

A minor secondary access to the site may be located on the southern part of Firswood Road (south of the bridge over the disused railway line).

This will ultimately increase traffic using the Firswood Road/ Blaguegate Lane junction. However, due to the limitations of this junction and of Firswood Road generally, this access would by necessity be limited to only a small portion of the site, and to access for emergency vehicles. Advice received from the highways authority (Lancashire County Council) is that the number of residential units served by an access onto Firswood Road should be limited such that no more than 60 extra trips at peak times be generated by the new housing. This could equate to approximately 100 3-bedroom dwellings, subject to detailed transport assessments demonstrating that the 2-way trip generation on Firswood Road does not exceed 60 vehicles per hour at peak travel times in order to maintain the rural nature of the lane. ...

The key issues with regard to secondary access to the site are safety at any new junction with Firswood Road, capacity of the Firswood Road / Blaguegate Lane junction, and amenity for existing residents."

As such, as the time of writing the Development Brief, the Council clearly envisaged limited highways access onto Firswood Road. However, this assumption at that time is subservient to the point made above in relation to the purpose of the Brief on page 4 – that flexibility is required when using the Brief to inform detailed design solutions, including in relation to "technical demands" (which would include the technical assessment of whether a proposed highways access is suitable and safe). Notwithstanding this, the final paragraph quoted above from page 12 remains key – that "The key issues with regard to secondary access to the site are safety at any new junction with Firswood Road, capacity of the Firswood Road / Blaguegate Lane junction, and amenity for existing residents." This is what any transport assessment of the development proposals must consider.

The TA submitted as part of the application considers the above key issues and the Highway Authority remains satisfied that they are addressed satisfactorily, and so, if that is the case, the principle of a highways access onto Firswood Road

set in the Development Brief is met, even if the precise nature and location of that highway access and the quantum of housing accessed off it does not match with what was envisaged at the time of writing the Development Brief.

Ultimately, a Development Brief prepared over 5 years ago cannot be used in a prescriptive way, especially when the Development Brief acknowledges the need for flexibility in its application because such "technical demands" are subject to review over time and depend on the precise nature of the development proposed.

The key issue for consideration is the wording of the NPPF in relation to highways matters when it comes to considering development proposals. Paragraph 109 of the NPPF addresses highway issues very clearly, stating:

"Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."

In relation to this application neither the Highway Authority nor Sanderson Associates indicate that the scheme would be unacceptable on highway safety grounds. Even the report submitted by Transport Seeds on behalf of South Lathom Residents Association and South Lathom Parish Council stops short of concluding that the development fails to comply with the NPPF. The advice of the Highway Authority is clear.

As such, it is considered that paragraph 109 of the NPPF has been satisfied by the development proposals, and in my view this is a significant factor which leads me to conclude that, notwithstanding the apparent conflict with vehicular access anticipated at the time of writing the Development Brief, the application is acceptable and would not result in harm to highway safety sufficient to warrant a refusal of planning permission.

REPORT NO. 4 – SPORTS PAVILION AND MEMORIAL PLAYING FIELD, HALSALL ROAD – 2019/0487/FUL

A further representation has been received from the residents of Rectory Cottage commenting on the officer report.

Firstly the representation refers to e-mail correspondence between the case officer and the applicant indicating the officer's intention to request screening along the site boundary. The representation notes that whilst additional planting is proposed along Cross Lane, the planting to the boundary with Rectory Cottage does not provide sufficient screening.

Secondly there is no mention in the officer report of the intended use of the play area for younger children which runs from the car park along the side of Halsall Road and advises that it is the intention of the Parish Council to relocate this play equipment, should planning permission be granted. The representation advises that if the application is approved then there should be conditions to require the existing play area to be returned to grass.

Thirdly, there is a ditch between the Memorial Field and Rectory Cottage. The pavilion drainage system outfalls to the ditch. The representation advises that the

ditch is polluted and the scheme would benefit from boundary fencing to prevent children playing in the ditch.

OBSERVATIONS OF THE DIRECTOR OF PLACE AND COMMUNITY

The submitted application provides for landscape planting to Cross Lane, to provide screening between The Bungalow and the extended play area. This part of the site is currently enclosed with low fencing and there is no planting along the site boundary. However there is a belt of trees between the playing field and Rectory Cottage and given the separation distance between the proposed play equipment and the property it is not considered that additional planting or screening along this boundary is required to make the development acceptable.

As members of Planning Committee are aware, planning conditions can only imposed where they meet the six test for conditions laid down in paragraph 55 of the NPPF. Planning conditions must be:

necessary;
relevant to planning;
relevant to the development to be permitted;
enforceable;
precise; and
reasonable in all other respects.

In my view, given the separation distance between the Cottage and the proposed play area, it would be unreasonable to require additional planting/screening along the boundary with Rectory Cottage.

In response to the second query raised, the applicant confirmed in an e-mail dated 21st August that it is not proposed to relocate equipment from the other play area. This will remain. The applicant advises that there is increased demand for play equipment due to the café and play group using the Memorial Hall.

In relation to the last point raised, the Council has recently received a planning application to replace the existing septic tank with a new sewage treatment plant at the Memorial Hall which should improve the drainage facilities and prevent pollution of the water course. In my view it would not be reasonable to require the erection of a fence along the boundary of Rectory Cottage, Children already have unrestricted access to the Playing Fields and the intensity of use of the site is not likely to significantly increase as a result of the proposed development.

REPORT NO. 5 – 28 THE GREEN, HESKETH BANK –2019/0990/FUL

I have received eight further neighbour objections, raising the same concerns as expressed in the main report and in addition the impact on loss of privacy due to a repositioned gate providing access into the garden of 28 The Green.

OBSERVATIONS OF THE DIRECTOR OF PLACE AND COMMUNITY

The matters raised by the additional responses have been substantially addressed in the main report. There is no proposal for a side gate onto Honeysuckle Grove.