



**PLANNING COMMITTEE: Thursday,
25 April 2024**

Report of: Corporate Director of Transformation, Housing & Resources

**Relevant Portfolio Holder: Councillor Deputy Leader & Portfolio Holder for
Planning & Community Safety**

**Contact for further information: Nicola Cook (Extn. 5140) (E-mail:
nicola.cook@westlancs.gov.uk)**

SUBJECT: PLANNING APPLICATION REF: 2023/0730/FUL

**PROPOSAL: Demolition of an existing bungalow and the erection of 34no.
adaptable and accessible bungalows for over 55s with associated infrastructure,
landscaping and car parking.**

ADDRESS: Land off Boundary Lane, Hesketh Bank

**REASON WHY APPLICATION IS AT PLANNING COMMITTEE: Application has been
called in by Cllr Westley as there are concerns over the possible detrimental effect
the development would have on both the surface and foul water drainage.**

Wards affected: North Meols & Hesketh Bank;

1.0 PURPOSE OF THE REPORT

- 1.1 To advise Planning Committee on an application which seeks planning permission for the demolition of an existing bungalow and the erection of 34no. adaptable and accessible bungalows for over 55s with associated infrastructure, landscaping and car parking.

2.0 RECOMMENDATION TO PLANNING COMMITTEE

- 2.1 That the planning application is refused as the proposed development fails to comply with the requirements of the NPPF and policies GN1, GN3, EN2 and RS1 in the West Lancashire Local Plan 2012-27.

3.0 THE SITE

- 3.1 The application site is located to the east of Boundary Lane and sits to the rear of nos. 29 and 31. The site comprises a detached bungalow surrounded by land that

was formerly in use as a plant nursery. There are currently two vehicular access points to the site which run between nos. 27 and 29 and nos. 31 and 37.

4.0 PROPOSAL

- 4.1 The application proposes the demolition of the existing bungalow on site and the erection of 34 bungalow style dwellings. Each property would be detached, except for one pair of semi-detached properties, and each would have a private garden and parking area.
- 4.2 It is proposed that the access adjacent to no. 29 is closed off and all properties would be accessed on foot or by vehicle via a widened access adjacent to no. 31/37.

5.0 PREVIOUS RELEVANT DECISIONS

- 5.1 None

6.0 OBSERVATION OF CONSULTEES

- 6.1 Lancashire County Council (LCC) Highways (12/09/23) & (25/09/23) & (15/11/23)

As submitted the development fails to satisfy NPPF to demonstrate safe and suitable access for all users.

However, subject to amended plans to satisfactorily address the concerns regarding the visibility splays, access details, footway widths, swept path analysis for the access and turning heads as stated above, LCC Highways has no objection to the proposed development and is of the opinion that the proposal would not severely impact highway safety or highway capacity.

- 6.2 LCC Highways (15/12/23)

Subject to an amended site plan showing the visibility splays LCC Highways has no objection to the proposed development and is of the opinion that the proposal would not have a severe impact on highway safety or highway capacity.

Subject to amended plans to satisfactorily address the above matter regarding the visibility splays and red line boundary I would be happy to provide suitable conditions

- 6.3 LCC Highways (04/01/24)

Following my previous response dated 25/09/23, 15/11/23 and 12/12/23 the applicant submitted an amended Site Layout Plan (Drawing 21-64-P01 Rev E) on 18th December 2023 which now indicates the required sight lines as requested.

Conclusion - LCC Highways has no objection to the proposed development and is of the opinion that the proposal would not have a severe impact on highway safety or highway capacity. Conditions are recommended.

- 6.4 LLFA (14/09/23)

The Lead Local Flood Authority has no objection to the above application subject to the inclusion of the recommended conditions, in consultation with the Lead Local Flood Authority.

6.5 MEAS (06/10/23)

Habitats Regulations

The development site is near to national and international sites and functionally linked land which supports qualifying bird species of the national sites network. These sites are protected under the Conservation of Habitats & Species Regulations 2017 (as amended) and Local Plan policy EN2 applies.

The proposal is for 34 net residential units, this will result in increased visits (recreational pressure) to the sites listed. This may result in significant effects on habitats and species for which these sites have been designated.

Recreational pressure from residential development has been identified as a Likely Significant Effect alone and in-combination within the Liverpool City Region. Recreational pressure is recognised in the formal statutory Conservation Advice Packages and Site Improvement as Medium-High risk to qualifying features of the national and international sites.

Due to the development's potential pathways and impacts on the above sites, this proposal requires Habitats Regulations Assessment for likely significant effects. Local Plan policy EN2 applies. In line with the recent Court of Justice of the European Union judgement of 12 April 2018 (known as People Over Wind¹), I have undertaken an assessment of likely significant effects (Appendix 1) which is based upon the essential features and characteristics of the project only. This concludes that, without mitigation measures, that there will be likely significant effects on the identified sites:

An Appropriate Assessment will therefore be required in accordance with Regulation 63 (Habitats Regulations 2017). I have therefore attached an Appropriate Assessment report (Appendix 2) which concludes that, with mitigation measures, there will be no adverse effect upon the integrity of national and international sites. I advise that Natural England is consulted on the outcome of the Appropriate Assessment prior to determination and any points which may arise should be addressed.

On this occasion, and to ensure no adverse effect on designated site integrity, provided that the production and provision of an information leaflet is secured by a suitably worded planning condition there will be no adverse effect on the integrity of the International and national sites.

The proposed development is within the Natural England SSSI Impact Risk Zone (IRZ). As the proposed development falls within the category 'residential development of 10 dwellings or more' Natural England must be consulted on the planning application prior to determination.

Ecology

The applicant has submitted a Preliminary Ecological Appraisal in accordance with Local Plan policy EN2 which meets BS 42020:2013. I advise the survey and report are acceptable to assess protected habitats and species on site but that further information is required prior to determination with respect to roosting bats.

Bats

Between 30 to 50 bat droppings were identified both internally in roof void of the bungalow (building B1). The Preliminary Ecological Appraisal states the droppings are likely to have fallen from a cavity obscuring the roost location but no further investigation was undertaken nor droppings tested by DNA analysis. This is a significant limitation in the survey as further evidence may be present within the roof and loft areas and the high number of droppings identified may indicate presence of a maternity roost. B1 is categorised in the report as of medium bat roost potential but this is not accepted as evidence confirms it as a roost.

I advise further internal assessment is required prior to determination by a suitably qualified ecologist to investigate presence of any further bat evidence in roof features which may be obscuring droppings. Recovered droppings must be collected for sampling using DNA analysis to determine species using the roost. The bungalow was subject to three bat emergence surveys on 22/5/23, 15/6/23 and 14/9/22. The May and June surveys are appropriate for observation of maternity roosting (Table 2.2 of BCT Guidelines 4th Ed.) and whilst emergence survey in September survey can be useful in observing possible transitory roosting behaviour it is not suitable to assess a potential maternity roost which is likely to have dispersed by this time. Further inspection as stated above would likely have helped in characterising the roost further and thus inform survey timings. On this occasion, I advise the September survey cannot be accepted for a potential maternity roost.

The emergence survey effort recorded emergence of two Common pipistrelle bats during the June survey, with no bats recorded emerging on either the May or September surveys. The report characterises building B1 as providing a day roost but this is not in line with the level of droppings previously found. The internal inspection and DNA analysis can assist in more robust characterisation of the roost.

The PEA identifies that presence of a roost means a bat mitigation licence is required but does not include a method statement or similar information relating to sufficient mitigation necessary to undertake a three tests assessment. A method statement and mitigation strategy is required prior to determination which must be informed by the additional internal inspection and DNA analysis.

Aquatic species (European eel and amphibians)

eDNA sampling of a rectangular concrete tank for European eel (Eel Regulations 2009 and S41 Priority Species) completed for an adjacent 2022 application (WL ref. 2021/1187/OUT) returned a positive result for European eel. Artificial attenuation tanks and other waterbodies present on this application site provide similar habitat to the concrete tank on the adjacent site and as such presence of European eel during the construction phase cannot be discounted.

Recent records show presence of for common amphibian species and European eel adjacent to the development site. I advise reasonable avoidance measures are required which can be secured by a suitably worded planning condition.

Habitats – no net loss and biodiversity net gain

The separately submitted Biodiversity Net Gain report (Envirotech – version 3, 16 August 2023) contains the results and interpretation of DEFRA Metric v4.0 calculations for baseline and post-development habitats. Habitat identification and condition assessments are informed by three site visits in February, May and June 2023, plus drone survey in June 2023. It is unclear whether the calculations taken into account the site condition prior to clearance and clarification is required. DEFRA BNG guidance states that in habitat clearance instances such as this the LPA can request habitats to be assessed as far back as January 2020.

If the applicant cannot confirm the habitat baseline has been calculated using pre-clearance values then I advise they commission their ecological consultant to provide a revised Biodiversity Net Gain report which characterises the site prior to clearance. I advise this can be achieved by supplementing drone imagery with historic publicly available aerial imagery, with condition to be assessed on a precautionary basis in line with the Environment Act (2021). This information is required prior to determination to demonstrate no net loss to development. A copy of the completed DEFRA Biodiversity Metric v4.0 and Technical Annex 1 – Condition Assessment are also required for verification purposes.

6.6 MEAS (18/12/23)

The applicant has submitted an ecological letter in response to MEAS advice dated 6 October 2023. The letter includes rebuttals to excerpts taken from the MEAS response, including useful additional information. I have provided a constructive response to identify inconsistencies or omissions in both survey and report and to highlight outstanding information required in order to robustly conclude the use of the site by roosting bats.

Emergence survey effort provides evidence the bungalow providing a summer roost for common pipistrelle bats. Further information is required prior to determination in relation to the three 2022 internal inspections which can be provided within an updated PEA in order to fully characterise the building. This may allow for acceptance of further conclusions within the report.

Paragraph 6.5.4 of the PEA confirms trees were assessed on site as largely negligible but with a small number of trees contained features which were inspected further as being of negligible bat roost potential. This is accepted.

Bat roost mitigation - The ecological letter also contains a Method Statement for Bats which includes recommendations for both external and integrated bat boxes but no indication as to which will be used as mitigation nor any information of the intended installation, e.g. height, elevation, etc. This information is provided within the separate ecology letter as, “at least four integrated bat boxes will be installed in buildings across the site. These will be on southerly aspects, at least 3m from the ground and not over windows or doorways”, with further bat boxes welcomed

as enhancements. Mitigation should be provided on a like-for-like basis for that lost to development, in this case a void in the roof with access into the loft space.

However, the proposed mitigation measures are broadly suitable for the loss of a low conservation value common pipistrelle day roost but as stated above, further information is required to fully characterise the building with respect to roosting bats which may lead to revisions to the mitigation measures.

Mitigation measures can be reviewed and accepted once the outstanding information as listed in paragraph 4 is submitted. It is recommended the above expert regarding bat box installation is included within the updated PEA.

Biodiversity Net Gain

The submitted BNG documents are accepted as demonstrating baseline habitats but the applicant must determine how they will achieve no net loss. In line with the mitigation hierarchy, this should be explored on site but can be achieved via off-site compensation.

6.7 MEAS (21/12/23)

The ecological consultant has provided a further explanatory letter following MEAS comments. This is accepted.

Further reasoning is provided for lack of endoscope search, with the gap between loft boarding being too small to facilitate an endoscope and the area of torn roof membrane being too delicate as to avoid further degradation during additional search. This is not accepted and the opinion is shared within a M&WLBG response. This limitation can only be accepted only due to the subsequent emergence survey confirming a maternity roost was not present.

Clarification is provided on a total of four internal inspections in February, May, June and September 2023, with correction of the 2022 inspections, which was referred to in error and did not take place. The letter also confirms no internal access to the loft, with bat roosting opportunities isolated to gaps at cavity between membrane and tiles following ingress at missing roof caps.

The PEA and ecology letters state the droppings were indicative of pipistrelle and despite no DNA analysis evidence that only *C. pipistrelle* was roosting at the time of survey is provided by subsequent bat emergence survey.

I advise that the information now submitted, via two PEA version and two subsequent letters, provides sufficient evidence with which to assess the bat roost potential of the building and in characterising the presence of a day roost for common pipistrelle. However, the report omits bat mitigation measures due to the intended low impact licence route. Whilst this is acceptable for Natural England in granting a licence, the Council still does not have sufficient confidence from the information submitted that the development will not have an impact upon bats.

Information is still required prior to determination in regard to the intended timing of works (in relation to the summer roost), reasonable avoidance (e.g., hand

removal of roof tiles) or capture and exclusion measures in place for the repair and demolition works, plus bat box provision for receptor and long term mitigation. Once this has been provided the three tests assessment and mitigation measures can be reviewed and accepted by the Council.

The ecological letter also includes a copy of a Natural England email return which confirms the site's registration under a CL21 low impact mitigation licence for works to repair the missing roof end caps only. This has been applied for and granted prior to a planning decision and, according to the letter, will cease on 28 April 2024, despite likely being "2-3 years before demolition would be undertaken". The roost is scheduled to be closed prior to 31 March 2024, as per the licensed information and prior to the bat active season. I advise the Licence has been sought in an attempt to overcome limitations with the surveys and reports and does not cover all activities sought for permission as part of this planning application.

The applicant's previously submitted DEFRA Biodiversity Metric v4.0 (Version 5, 19/1/24) and report showed the pre-clearance scrub and other habitats lost to development would result in -4.57 HU (-69%) and a gain of 0.74 linear hedgerow units (+160.38%). The submitted documents did not include recommendations for achieving no net loss or biodiversity net gain.

The ecological consultant has updated the Metric and Biodiversity Net Gain report (Report Version 5, Envirotech, 19/01/2024, ref. 8428) which show a slight reduction in from 2.05 HU to 2.02 HU post development habitat units, with overall losses at -4.60 HU (69.1% to 69.44%). The changes come from a slight reduction in proposed low distinctiveness / moderate condition modified grassland creation. Hedgerow creation has also been reduced from +0.74 to +0.63 linear units (+136.83%) due to proposed native, mixed hedgerow being reduced from 142 to 114 metres.

The main habitat losses are 1.95 HU of medium distinctiveness / poor condition mixed scrub and 1.49 HU of medium distinctiveness / poor condition other neutral grassland. Soft landscaping is shown in the woodland fringe being replaced by native and ornamental tree planting in residential gardens and communal areas (+0.33 HU). The updated report still does not include recommendations for achieving no net loss and at present the development will be responsible for the loss of 69% biodiversity on site.

It is likely that off-site compensation will be required. However, I advise that at 69.44% loss, the mitigation hierarchy has not been sufficiently followed in terms of retaining or replacing / enhancing habitats on site and the applicant should aim to address further biodiversity losses on site before looking off site.

6.8 Natural England (25/10/23)

For residential development in this area, proportionate assessment of recreational disturbance impacts on the coastal designated sites resulting from the development is required via the Screening stage of the Habitats Regulations Assessment, as required under the Conservation of Habitats and Species Regulations 2017 ('the Habitat Regulations').

Under Regulation 63 of the Habitat Regulations the determination of likely significant effect is for the competent authority, in this case the Local Planning Authority. If your authority can be satisfied that the proposal can conclude no likely significant effects there is no further need to consult Natural England.

Where the HRA Screening cannot rule out a likely significant effect on the coastal designated sites then an Appropriate Assessment is required, of which Natural England is a statutory consultee, please consult us again at this stage.

Natural England has not assessed this application for impacts on protected species. Natural England has published Standing Advice which you can use to assess impacts on protected species or you may wish to consult your own ecology services for advice.

6.9 United Utilities (04/10/23)

Following our review of the submitted Drainage Strategy, we can confirm the proposals are acceptable in principle to United Utilities. A condition is recommended.

6.10 Lancashire Police (11/09/23)

Design and security recommendations.

6.11 LCC Public Rights of Way Team (19/10/23)

Public Rights of Way has no objection to the application. Advice offered in regard to PROWs.

6.12 Arboricultural Officer (25/10/23)

Raises a query as the tree survey shows the vast majority of the site is treeless. Whereas satellite imagery shows the area to be well treed. I am not aware of any felling licences in the area.

6.13 Arboricultural Officer (23/02/24)

Raise no objection

6.14 WLBC - Drainage Engineer (10/10/23)

I have no objection in principle to this application as I estimate the impact on flood risk due to the proposed development, to be negligible.

6.15 WLBC - Environmental Protection (01/02/24)

The proposed development site is located in the urban area of Hesketh Bank, Preston with the application site in close proximity to existing residential properties. These properties may be adversely affected by noise and vibration from the construction/demolition phase of the development if not sufficiently mitigated. Conditions are recommended.

7.0 OTHER REPRESENTATIONS

7.1 Parish Council (18/09/23)

Following a meeting of the Hesketh with Beconsall Parish Council on the 10th of September 2023, we write to advise of our strong objection to the above development for the reasons outlined below: -

- The road network locally, is trying to cope with abundance of vehicles transporting produce from local growers and processors to processing centres and local and regional/national markets. We would encourage an up to date survey to be undertaken on these routes and would question if the roads could cope with volumes and types of vehicles trying to utilise the roads?
- The sewage treatment plant in Hesketh Bank dates back to the 1960's and is totally inadequate and not fit for purpose for today's volume of houses it services. Manhole covers regularly overflow where sewerage enters gardens, houses and watercourses.
- The land road and surface water discharge is again being dealt with by sites which were last updated in the 1950's and 1960's and again, inadequate and not fit for purpose. Regular flooding occurs in the area impacting the livelihood of local farmers and causing damage to properties and land within the vicinity.
- The barrister's opinion sought for comment on flooding issues would suggest he was clearly unaware of outstanding local flooding issues and therefore the opinion arrived at is flawed.
- National Planning Policy Framework confirms that 'age restricted specialist bungalows' do fall within exemptions set out in NPPF 65b although we consider no exemption should override flooding others out!!
- We understand flooding and associated issues report has been commissioned by the three local Parish Councils and local farmers and this report is expected imminently (within weeks, not months) and WLBC should refuse or defer any major planning decisions until this report is published and available.

Based on the above, we are of the opinion that this and any other developments placing additional pressure on an already failing drainage, sewerage and local transport infrastructure, should be refused.

7.2 Merseyside & West Lancashire Bat Group (MWLBG) (02/09/23)

MWLBG consider that the bat survey effort and bat section of the Preliminary Ecological Appraisal report is not fit for purpose and does not enable a decision-maker to make a properly informed decision, i.e., West Lancashire Council and their ecological advisors. Until such time that adequate dusk/dawn surveys at an appropriate time of year have been undertaken along with a suitable mitigation scheme then MWLBG reiterate our objection and that bat surveys should not be

secured by way of planning conditions as this would be in contradiction to current central government guidance.

7.3 MWLBG (21/11/23)

I note that an amended application form has been submitted which under the Biodiversity and Geological Conservation section it is stated that no protected species will be affected by the development. The ecological survey identified the presence of bats at the property, which will be demolished, therefore the information provided at the above section is incorrect.

7.4 MWLBG (07/12/23)

The application is now supported by a response letter (Envirotech 2023) to the comments made by your ecological advisor (MEAS.) I note that Envirotech have declined to respond to the comments made by MWLBG. Raise concerns in regard to the content of the additional information/surveys which have been submitted.

In conclusion MWLBG maintains its objection to this application for the reasons set out in this response and the contents of my previous comments.

7.5 MWLBG (26/01/24)

The application is now supported by a second response letter (Envirotech 2024) in which a justification is attempted as to why additional surveys or DNA testing of droppings is not required.

Raise concerns regarding several sections of the report and consider the above points have not been fully addressed within the PEA or any other surveys undertaken by Envirotech; it appears that the application for a CL21 licence is being used to circumvent the undertaking of additional and appropriate surveys or detailed investigations.

Whilst Natural England have issued a CL21 licence that is not to say that the LPA are satisfied that a sufficient level of information is available to determine this application where a protected species is present. Therefore MWLBG consider that WLC should not determine this application until such time that our comments and those of your ecological advisor have been adequately addressed. Following the addressing of our comments MWLBG will review our position in addition to raising our concerns about the issue of the CL21 licence with Natural England.

In conclusion MWLBG maintains its objection to this application.

7.6 MWLBG (29/01/24)

Further to my recent and submitted comments I note the email sent by PWA planning (20.11.2023) to the case officer which includes the statement: "However, the additional information document provided clarifies the request for more survey work - it is pertinent to note that some of the works suggested would be illegal." MWLBG consider that PWA have made an incorrect and/or ill-advised statement in as much as there has not been any requests or suggestions by WLC's ecological

advisor or the MWLBG to undertake any work by any person/s that would be illegal under current wildlife legislation.

7.7 Letters of representation have been received which can be summarised as:

Objections

Principle of development

- Site is outside settlement boundary,
- Proposal is contrary to local plan policy GN1 regarding the use of protected land for small scale developments,
- Over 55s housing is not considered to be the same as affordable housing, note that the Council are able to demonstrate a 5 year housing land supply

Amenity

- Adverse impact on residential amenity of neighbouring properties,
- Overbearing nature of the development,
- Overlooking,
- Lack of privacy,
- Impact of the construction works including noise pollution and congestion of local roads

Design

- Development is bland and seeks to place as many houses as possible in a small space,
- Houses would be too close together,
- No consideration is given that the dwellings will require steep driveways to get to the house - how does this help with an over 55s development,
- Comprises over development of the site - site will be cramped with 34 dwellings, out of character with the density of the surrounding development and over the 30 dwellings per hectare allowed,
- Proposal would not enhance the rural character of the area

Trees/landscaping

- Concerns regarding the loss of trees/hedgerow on site
- Consider the submitted arboricultural survey is inaccurate,
- There is a lack of proposed landscaping to boundaries
- Note that the trees previously on the land were removed in Dec 2022

Ecology

- Proposal will result in a loss of habitat and biodiversity for a large variety of species,
- Note the requirements of BNG/Environment Bill and do not consider the proposal complies
- Query what will happen to the existing pond which attracts ducks, toads, frogs and possibly newts
- The open land is a hunting ground for owls

Highway/Traffic

- Concerns regarding the impacts of so many additional vehicles on the local roads

- Concerns regarding conflict with tractors/HGVs which serve the surrounding farm and businesses
- Concerns that transportation of the heavy machinery required for the development construction will damage the roads
- There is a lack of suitable pavements within the area, those that exist are narrow.
- Raise concerns for pedestrian safety
- Public transport in the area is poor and the site not considered to be highly accessible by rail.

Flooding/Drainage

- Provide details (including photographs) of existing flooding concerns/situations that have occurred in the past in relation to Carr Heyes watercourse
- Provide a copy of a letter from the Environment Agency to Damien Moore MP regarding the works which have been undertaken by the EA.
- Raise concerns that the existing system cannot cope with this number of new dwellings
- Query if there is a requirement for betterment for the drainage
- Query if the developer can show how they will avoid flooding of its site and the wider area
- To say that the proposals can manage “surface water run-off up to and including the 1 in 100 year plus 35% climate change” is all well and good but in Hesketh Bank we have had 2 incidents in the last 3 years which have been categorised as 1 in 100 years
- Acknowledge the sewage treatment plant was upgraded approx. 5 years ago but consider that the infrastructure for getting foul water to the treatment plant is inadequate for the number of houses today
- Flooding causes an impact on the local economy due to the flooded highways, loss of edible crops and destruction of grade 1 land.
- Consider that the suggestion by the LLFA to discharge to the watercourse is irresponsible and reckless
- Consider the barrister is not aware of local flooding issues

Other matters

- Concerns that there aren't suitable facilities such as GP and Dentists to accommodate the number of new occupants
- The village has already seen significant level of development without relevant improvement to the supporting infrastructure
- Query why the affordable housing statement contains information regarding a South Ribble Council application
- The land was used for growing and should be preserved as it is important to the area
- Query why there is no Design and Access Statement (*officer note: a D&A was submitted on 21/08/23 prior to validation of the application and has been published on the Council's website*)
- Consider that the agent response does not understand local residents' real life experiences

8.0 SUPPORTING INFORMATION

8.1 The application has been supported by the following documents:

8th August 2023
Affordable Housing Statement
Arboricultural Impact Assessment
Flood Risk Assessment / Drainage Strategy
Land Contamination Assessment
Letter PWA planning to Richard Calderbank
Older Persons Need Assessment
Poppi data for West Lancashire
Preliminary Ecological Appraisal
Sequential Test Statement
Statement of Community Involvement
Transport Assessment
Planning Statement

18th August 2023
High Court decision x 2

21st August 2023
Cushman & Wakefield Report
Design and Access Statement
Legal Opinion on behalf of applicant
Phase 1 Preliminary Risk Assessment
Ranking Results
Seniors Housing Opportunity Ranking
The Mayhew Review

30th August 2023
Response to Arboricultural Officer

19th September 2023
Preliminary Ecological Appraisal

26th September 2023
Response to third party issues

30th October 2023
Letter from Ascerta

21st November 2023
BNG statement
High Court Judgement
Letter from Envirotech

16th January 2024
Letter from Envirotech to agent

19th January 2024
BNG Matrix
BNG Report

9.0 RELEVANT PLANNING POLICIES

- 9.1 The National Planning Policy Framework (NPPF) and the West Lancashire Local Plan 2012-2027 Development Plan Document provide the policy framework against which the development proposals will be assessed.
- 9.2 The site is located on Protected Land outside any settlement boundary defined within the West Lancashire Local Plan 2012-2027 DPD.

National Planning Policy Framework

Promoting healthy and safe communities
Achieving well-designed places
Delivering a sufficient supply of homes

West Lancashire Local Plan Policies

SP1 - A Sustainable Development Framework for West Lancashire
GN1 - Settlement Boundaries
GN3 - Criteria for Sustainable Development
GN5 - Sequential Tests
EC2 - The Rural Economy
RS1 - Residential Development
RS2 - Affordable and Specialist Housing
IF2 - Enhancing Sustainable Transport Choice
EN2 - Preserving and Enhancing West Lancashire's Natural Environment

Supplementary Planning Document - Design Guide (January 2008)

10.0 OBSERVATIONS OF CORPORATE DIRECTOR OF TRANSFORMATION, HOUSING AND RESOURCES

Principle of development

- 10.1 Policy GN1(b) of the WLLP which relates to 'development outside settlement boundaries' states that 'Development on Protected Land will only be permitted where it retains or enhances the rural character of the area, for example small scale, low intensity tourism and leisure uses, and forestry and horticulture related uses.
- 10.2 However in accordance with policy RS1 (b), policy GN1(b) goes on to state: Small scale 100% affordable housing schemes (i.e. 10 units or fewer), or small scale rural employment (i.e. up to 1,000 square metres) or community facilities to meet an identified local need may be permitted on Protected Land, provided that a sequential site search has been carried out in accordance with Policy GN5. If it is demonstrated that there are no sequentially preferable sites within the settlement boundary, then the most sustainable Protected Land sites closest to the village centre should be considered first, followed by sites which are further from the village centre where a problem of dereliction would be removed. Only after this search sequence has been satisfied should other sites outside that settlement boundary be considered.
- 10.3 Paragraph 63 of the NPPF is noted which states (inter alia) *Within this context of establishing need, the size, type and tenure of housing needed for different groups*

in the community should be assessed and reflected in planning policies. These groups should include older people (including those who require retirement housing). Council policies support the development of housing and directs such development to appropriate locations within the borough. The proposal does not accord with the requirements of policies GN1 part b) and RS1 part b) as firstly the development is not for affordable housing and secondly 34 dwellings significantly exceeds the threshold of 10 set out in Policy GN1 b).

- 10.4 It is noted that despite the principle of development being not in accordance with policies GN1 and RS1 the applicant has submitted a Sequential Test (dated August 2023) in support of the application that seeks to identify whether there are any more preferable sites within the locality.
- 10.5 As detailed above Policy GN1 b) allows for small scale 100% affordable housing schemes (i.e. 10 units or fewer) to be permitted on Protected Land, provided that a sequential site search has been carried out in accordance with policy GN5. Given that the proposed development is contrary to policy as it is not an appropriate development on Protected Land (i.e. 10 affordable units or fewer), the application of a Sequential Test would still not allow accordance with policy GN1 b) or RS1 b).

Design/Layout

- 10.6 Paragraph 131 of the NPPF advises that the creation of high quality beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Policy GN3 along with the Council's SPD Design Guide requires that new development should be of a scale, mass and built form, which responds to the characteristics of the site and its surroundings.
- 10.7 The proposed dwellings would all be single storey in nature and would have pitched roofs with front gable features. In terms of materials the buildings would be mainly brick and tile with some decorative features in either timber boarding or hanging tiles. The surrounding properties are both single and two storey buildings in a variety of designs and materials. I am satisfied that the design and scale of the proposed dwellings would be in keeping with the surrounding development.
- 10.8 Each property has been provided with a private garden to the rear, parking area and/or garage and bin storage locations. The SPD - Design Guide requires that the minimum rear garden depth will generally be 10m unless the particular merits of the case, in terms of the character of the setting, can be proved to warrant a reduction in this requirement. Many of the gardens do not reach a depth of 10m however some of those properties are compensated by a greater width of garden. Nonetheless several properties, including plots 4, 9, 10, 23 and 33, fall below the requirements without appropriate compensatory width.
- 10.9 The development would comprise backland development however having regard to patterns of development in the area it is not considered the principle of such development would be so out of keeping to warrant refusal of the application on that basis.

10.10 The density of the development would be approx. 19 dwellings per hectare. This falls below the minimum density set out in RS1d) due to the proposed arrangement of the roads within the site. Due to the position of the entrance road and the position of the site in its context it is considered unlikely that any additional dwellings on the site could be accommodated without the development appearing cramped or out of keeping with its surroundings particularly given the issue raised above whereby several gardens already fall below the required size. The amount of landscaping and open space is very limited within the site however the applicant has introduced two small areas of planting towards the front of the site to soften the entrance road. Some trees are proposed within the site and small gardens would be provided to the front of each site.

10.11 On balance it is considered the development would not comply with the relevant requirements of policy GN3 and the SPD - Design Guide as suitable private amenity space has not been provided for all of the proposed dwellings.

Impact on residential amenity

10.12 Policy GN3 of the West Lancashire Local Plan (2012-2027) DPD allows development provided it retains or creates reasonable levels of privacy, amenity and sufficient garden/outdoor space for occupiers of the neighbouring properties.

10.13 It is noted that concerns have been raised in regard to loss of privacy and overlooking from the proposed dwellings. Each property would be single storey in nature and therefore all windows/doors would be at ground floor level. A condition would be recommended to ensure that suitable boundary treatment is provided to the rear/sides of each garden that lies adjacent to another property. Having regard to the nature of the proposed development and the siting of nearby dwellings it is considered that the proposal would not result in overlooking or loss of privacy subject to suitable boundary treatment being provided where relevant.

10.14 It is noted that concerns have been raised in regard to the impact of the development on neighbouring properties. I have consulted the Council's Environmental Health officer who acknowledges that there may be some noise or disturbance during the construction phase however conditions/informative note have been recommended which are considered to mitigate any resultant harm.

10.15 It is considered that the proposed development would not result in adverse impacts on neighbouring properties as a result of overlooking or loss of privacy and that harms from disturbance can be mitigated by conditions. However as detailed above at 10.8 suitable amenity space would not be provided for future and on that basis the proposal fails to comply with the requirements of local plan policy GN3 1(iii).

Highways

10.16 Paragraph 112 of the NPPF sets out the criteria that applications should adhere to and includes the requirement for applications to give priority first to pedestrians and cyclists and secondly to facilitate access to high quality public transport. Development should create places that are safe, secure and attractive. Policy GN3 of the West Lancashire Local Plan 2012-2027 DPD states that development

should incorporate suitable and safe access and road layout design in line with latest standards. Parking should be provided in accordance with policy IF2.

- 10.17 The Highway Authority have been consulted in respect of the submission. Amended plans have been submitted during the course of the application to address the comments made. The Highway Authority have confirmed that the amended plans are acceptable and that suitable visibility splays can be provided at the proposed access point. It is considered that the development would not have a severe impact on highway safety or highway capacity subject to the recommended conditions.
- 10.18 Each property would be provided with a minimum of two parking spaces which is considered to be in accordance with the requirements of policy IF2. Suitable pedestrian pavements have been provided within the site connecting to existing pavements along Boundary Lane and the design of the roads is shown to be to an adoptable standard.
- 10.19 It is therefore considered that the development complies with the relevant requirements of local plan policies GN1 and IF2.

Drainage/Flood Risk

- 10.20 It is noted that representations have raised concerns in regard to foul and surface water drainage. United Utilities and LLFA have not raised any concerns in regard to the proposed drainage of the site although it is noted that United Utilities confirm that no surface water drainage should enter the public sewer.
- 10.21 Notwithstanding the above lack of objection, Environment Agency data identifies Northern and Western parts of the application site at two different risks in relation to surface water flooding. These are low (between 1 in 100 and 1 in 1,000) which relates to the majority and medium (between 1 in 30 and 1 in 100) which covers smaller parts of the site.
- 10.22 Local plan policy GN3, part 3 sets out requirements for developers to ensure development does not result in unacceptable flood risk or drainage problems. National advice (NPPF and PPG), which is more up to date, requires consideration of flood risk from all sources of flooding, not just sea and river sources.
- 10.23 The development site is within Flood Zone 1 and there is no identified risk from groundwater flooding or from artificial sources. The outstanding potential flood risk to the site is therefore from surface water flooding.
- 10.24 Paragraph: 004 (Reference ID: 7-004-20220825) of the PPG Chapter 'Flood risk and coastal change' sets out the process for where flood risk is a consideration for a development proposal. Under the heading "Avoid" the guidance advises that site layout should be used to locate the most vulnerable aspects of development in areas of lowest flood risk, unless there are overriding reasons to prefer a different location. In addition, measures to avoid flood risk vertically can then be taken, by locating the most vulnerable uses on upper storeys, and by raising finished floor and/or ground levels, where appropriate and that such techniques are suitably designed.

- 10.25 The proposed site layout incorporates More Vulnerable development (as identified by NPPF Annex 3) on areas within the site at risk of surface water flooding, meaning the applicant would need to reconsider this layout in accordance with the avoidance measures identified above. This is supported by Paragraph: 023 (Reference ID: 7-023-20220825) of the PPG which states: *The approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding including areas at risk of surface water flooding.*
- 10.26 The Council therefore need to consider the proposal in relation to Paragraph 167 of the NPPF. This indicates that when determining any planning applications development should only be allowed in areas at risk of flooding where, in the light of this (site specific flood risk) assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:
- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location.
 - b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;
 - c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
 - d) any residual risk can be safely managed; and
 - e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.
- 10.27 The applicant has not applied the sequential approach as per NPPF para 173a and Paragraph: 004 Reference ID: 7-004-20220825 of PPG Chapter on Flood risk and coastal change. The application has therefore not demonstrated that within the site, the most vulnerable development is located in areas of lowest flood risk. On that basis the proposal fails to comply with the requirements of the NPPF.

Ecology

- 10.28 Policy EN2 2 in the Local Plan states development proposals must seek to avoid impacts on significant ecological assets and protect and improve the biodiversity value of sites. If significant impacts on biodiversity are unavoidable, then mitigation or as a last resort, compensation, are required to fully offset impacts. The application, which has been assessed by the Council's Ecological Consultant MEAS, has been accompanied by a series of Ecological documents as listed above at para. 8.1.
- 10.29 MEAS have indicated that in respect of the Habitat Regulations, with mitigation measures, there will be no adverse effect upon the integrity of national and international sites. Natural England have been consulted on this matter and raise no objection to this conclusion.
- 10.30 In respect of bats, while it is considered that appropriate surveys have now been undertaken, suitable mitigation for the loss of bat roosts has not been submitted to

support this application. The Council are therefore unable to review the three tests assessment and mitigation measures to determine whether they are suitable.

- 10.31 In respect of Biodiversity Net Gain the submission was received prior to the relevant legislation coming into force however the submission was accompanied by BNG supporting information. MEAS have therefore addressed this matter in their consultation responses and confirm that the development will be responsible for the loss of 69% biodiversity on site and that it is likely that off-site compensation will be required. At 69.44% loss, the mitigation hierarchy has not been sufficiently followed in terms of retaining or replacing / enhancing habitats on site and the applicant should aim to address further biodiversity losses on site before looking off site.
- 10.32 Having regard to the above it is considered that the proposal fails to comply with the requirements of local plan policy EN2 as the submission fails to demonstrate that there would not be any adverse impact on protected species or their habitat.

Trees/Landscaping

- 10.33 Policy EN2 (3) of the Local Plan states that development involving the loss of, or damage to, woodlands or trees of significant amenity, screening, wildlife or historical value will only be permitted where the development is required to meet a need that could not be met elsewhere, and where the benefits of the development clearly outweigh the loss or damage. All development should include appropriate landscaping plans which incorporate suitable tree planting that integrates well with all existing trees.
- 10.34 The Arboricultural Officer noted that the site appears to have been cleared of trees prior to the submission of the application. The applicant submitted additional supporting information to confirm that the trees are self-seeded and category C specimens. The Arboricultural Officer has confirmed there is no objection to the proposal. The proposed scheme would introduce new trees within the two amenity areas at the front of the site and also at intervals around the site. Whilst the loss of trees is regrettable the trees to be removed are not of great amenity value and will be replaced. It is considered that the development complies with the requirements of local plan policy EN2 (3).

11.0 CONCLUSION

- 11.1 The principle of the proposed development is considered to be unacceptable as the submission fails to demonstrate compliance with policies GN1(b) and RS1. Furthermore, it is considered that the proposal development fails to demonstrate that within the site the most vulnerable development is located in areas of lowest flood risk. The proposal fails to provide adequate private amenity space for all proposed properties and fails to demonstrate that the development would not have an adverse impact on protected species or their habitats. It is therefore considered that the proposal fails to meet the requirements of the National Planning Policy Framework and Guidance, Policies GN1, GN3, RS1 and EN2 of the West Lancashire Local Plan 2012-2027 DPD and the SPD - Design Guide.

12.0 RECOMMENDATION

12.1 The proposed development fails to comply with the NPPF and the relevant policies in the West Lancashire Local Plan 2012-27 and is recommended for refusal for the following reasons:

1. The proposed development conflicts with Policies GN1 and RS1 in the West Lancashire Local Plan 2012-2027 DPD in that firstly the development is not for affordable housing and secondly 34 dwellings significantly exceeds the threshold of 10 set out in Policy GN1 b).

2. The proposed development conflicts with the NPPF and Policy GN3 in the West Lancashire Local Plan 2012 - 2027 DPD as the submission fails to demonstrate that within the site, the most vulnerable development is located in areas of lowest flood risk.

3. The proposal conflicts with Policy GN3 in the West Lancashire Local Plan 2012 - 2027 and supplementary planning document 'Design Guide' (Jan 2008) in that it would result in a form of development that does not provide adequate amenity space for all the proposed dwellings.

4. The submission documentation fails to demonstrate that the development would not cause harm to protected species or their habitats and therefore the proposal fails to meet the requirements of Policy EN2 in the West Lancashire Local Plan (2012-2027) Development Plan Document.

13.0 SUSTAINABILITY IMPLICATIONS

13.01 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder.

14.0 FINANCIAL AND RESOURCE IMPLICATIONS

14.1 There are no significant financial or resource implications arising from this report.

15.0 RISK ASSESSMENT

15.1 The actions referred to in this report are covered by the scheme of delegation to officers and any necessary changes have been made in the relevant risk registers.

16.0 HEALTH AND WELLBEING IMPLICATIONS

16.1 There are no health and wellbeing implications arising from this report.

Background Documents

In accordance with Section 100D of the Local Government Act 1972 the background papers used in the compilation of reports relating to planning applications are listed within the text of each report and are available for inspection in the Planning Division, except for such documents as contain exempt or confidential information defined in Schedule 12A of the Act.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore, no Equality Impact Assessment is required.

Human Rights

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from Article 8 (the right to respect for private and family life, home and correspondence) and Article 1 of Protocol 1 (the right of peaceful enjoyment of possessions and protection of property).

Appendices

None.