

**REPORT FROM:** PLANNING, ECONOMIC DEVELOPMENT AND  
REGULATORY SERVICES

**TO:** POLICY AND RESOURCES COMMITTEE

**DATE:** 19<sup>th</sup> March 2020

**Report Author:** Neil Watson  
**Tel. No:** 01282 661706  
**E-mail:** neil.watson@pendle.gov.uk

## PLANNING APPLICATIONS

### PURPOSE OF REPORT

To determine the attached planning application.

## REPORT TO POLICY AND RESOURCES COMMITTEE 19<sup>TH</sup> MARCH 2020

**Application Ref:** 19/0620/FUL

**Proposal:** Full: Major: Erection of 12 No. semi-detached dwellings and associated hardstanding and landscaping.

**At:** Land to the West of the Playing Fields, Bailey Street, Earby

**On behalf of:** PEARL Together Ltd.

**Date Registered:** 23.08.2019

**Expiry Date:** 27.01.2020

**Case Officer:** Charlotte Pinch

### **Site Description and Proposal**

The application was considered by West Craven Area Committee. The resolution was to refuse the application on the grounds of the development being in the wrong place and there being too many complicating issues with it including drainage. A decision on that basis would lead to the possibility of costs being awarded against the Council and hence the application has been referred to this Committee for consideration.

The application was deferred from the Policy and Resources Committee on 13<sup>th</sup> February 2020, as a site visit was required.

The application seeks permission for the erection of 12no. semi-detached dwellinghouses, with on plot parking and landscaping.

The application site is a greenfield site, designated as amenity greenspace, within the settlement boundary of Earby. It is bounded by housing to the rear on Wentcliffe Drive and to the south on Aspen Grove. Access to the site would be directly off Bailey Street, onto individual parking bays.

### **Relevant Planning History**

None relevant.

### **Consultee Response**

#### LCC Highways

Having considered the information provided, together with site observations on 20 September 2019, the Highway Development Support Section does not have any objections in principle regarding the proposed development at the above location, subject to the following comments being noted, further information being received satisfactorily, and conditions and note being applied to any formal planning approval granted.

#### **New vehicular crossings**

The formation of the new vehicle crossings from Bailey Street to the proposed dwellings would need to be carried out under a legal agreement (Section 278) with Lancashire County Council as the highway authority. Works should include, but not be exclusive to, the construction of the

vehicular crossings to an appropriate standard, re-location of any highway gullies affected and a street lighting assessment.

If planning approval is granted the developer is advised to contact Lancashire County Council as soon as possible to start the Section 278 process.

### **Car and Cycle Parking**

Two off-road parking spaces per dwelling have been provided, in line with recommendations in the borough council's 'Car & Cycle Parking Standards'. However it would appear from the Proposed Site Layout Plan (Plan 90-001 Rev C) that the off-road parking spaces proposed for Plot 5 would be accessed where there are currently traffic calming measures within the carriageway on Bailey Street. With this vertical deflection it may not be possible to enter and leave the parking spaces safely. The applicant should provide a further, larger scaled plan, showing the position of the traffic cushion in relation to the vehicular access for Plot 5, including differences in levels.

### **General**

Due to the site's location within a residential estate, and close to Earby Springfield Primary School, also accessed from Bailey Street, the developer should provide a Construction Method Statement. This should include timing of deliveries, which should be restricted to between 9.30am and 2.30pm, to ensure there is no conflict with traffic, both vehicular and pedestrian, on the surrounding highway network at peak times.

We note comments made by the borough council's Countryside Access Officer regarding a section of Public Footpath 16 (Earby) and an unrecorded footpath, both crossing the development site. We support his comments and recommendation that both of these should be extinguished through the appropriate processes, prior to any works taking place on site.

### Earby Town Council

Council would like to object to the above planning application based on the following observations:

1. There is a shortfall of green space in Earby, any previous calculations have included grass verges as part of the total green space, which is unsuitable. There are numerous brownfield sites which should be used before green space is considered. The proposal of building on green space is contrary to planning guidelines.
2. Earby is identified as an area with a high risk of flooding, with a requirement for costly flood relief measures in the future. The development of this land will push flood water from this area to others and will create further problems for residents. In addition to this, the existing utilities and sewerage system in the area is already at capacity and will be put under additional stress with the proposed development. The land identified in the planning application on Bailey Street is part of the Springfield area, which is within 20 metres of a water course and therefore a flood risk assessment should be included as part of the planning application.
3. Any additional traffic from this development will add to the current issues of congestion and parking in Earby. The proposed development is opposite a school and would cause issues for residents as the road would become very busy. It also must be considered that any building work will have serious safety issues for people getting to and from the school. There is currently a public footpath that runs through the proposed development area which is frequently used by children to gain access to the school without having to access busy roads, building on this site would mean the destruction of this footpath. The Council object to the closure of this footpath.

4. The drainage scheme proposed does not give sufficient detail. The surface water and foul drainage connections have not been confirmed. These should not be connected to the existing services at Bailey Street as these were put in as a specific sub-system for the development at Aspen Grove. The location of the suds tank is not given in the proposal.

#### LCC Schools

The education contribution is directly linked to the development and would be used in order to provide education places within a reasonable distance of the development for the children expected to live on the development. If the education contribution assessment identifies the need for a contribution to be provided Lancashire County Council is, in effect, objecting to the application. A developer contribution will, in most cases, overcome the objection. If a developer does not agree to payment of the requested education contribution or the local planning authority does not pursue Lancashire County Council's request on its behalf, Lancashire County Council cannot guarantee that children yielded by the development will be able to access a school place within reasonable distance from their home, so the development could be considered to be unsustainable. Furthermore, if the planning application is approved without the required education contribution LCC would request that the local planning authority confirm how the shortfall of school places, resulting from the development, will be addressed. (Please see page 10 of the Education Contribution Methodology).

An education contribution is not required at this stage in regards to this development.

This response is based on the latest information available at the time of writing.

#### Lancashire Fire and Rescue

No objections.

#### PBC Countryside Officer

#### **Unrecorded footpath**

The proposed development would affect a stone-surfaced footpath across the site leading between the top of Bawhead Road (point A) and a point on Bailey Street (point B). The footpath would become obstructed by plots 1, 2, 3 and 4, and therefore it would be necessary for the footpath to be diverted or extinguished for the development to be carried out. The footpath is extensively used for local journeys on foot, such as walking to the nearby primary school. The footpath is more convenient than the nearest alternative route on the existing footways of Aspen Grove and Bailey Street which add 25 metres to the trip between points A and B on foot.

The footpath running across the site is not recorded on the definitive map and statement as a public right of way, however the Council indicated its intention to dedicate the footpath as a public right of way in a decision taken by West Craven Committee on 3rd July 2007. My advice is that this footpath should be considered as if it were a public right of way because it is likely that deemed dedication has already taken place at common law and by virtue of Section 31 of the Highways Act 1980 (i.e. where a right of way can come into existence after 20 years of use by the public).

I had preliminary discussions with the applicant about a proposal to divert the footpath to run within the site boundary running adjacent to the existing culvert at the side of 57 Bailey Street. This proposal would have resulted in an increase in pedestrian journey times between points A and B by lengthening the path such that it would only be 10m shorter than the existing alternative route between the same points via the footway on Aspen Grove. In addition the diverted footpath would be more hidden from view with a dog-leg in the middle, and people could feel less safe in using it. It appears to me that a footpath with such minimal benefits and some disadvantages, compared to

a slightly longer route via Aspden Grove, would serve little purpose for the convenience and enjoyment of pedestrians.

My preference would be that plots 1 – 4 are left undeveloped because the existing footpath passing through an area of open space is widely enjoyed. It is for the Council in its capacity as the planning authority to consider on planning grounds whether the existing stone-surfaced footpath should be retained because of the amenity value of the land and the convenience of the path, if it's view is that these should be retained then it should refuse the planning application. Presumably the applicant could submit a new application which avoided the need to divert or extinguish the footpath. However, I see no purpose in diverting the footpath to a new line at the edge of the development site because the advantages of a diverted path compared to the existing alternative route on the footways would be so limited.

The grant of planning permission would not have the automatic effect of extinguishing the footpath, but it would make it likely to satisfy the criteria contained in Section 257 of the Town and Country Planning Act for an extinguishment order to be confirmed.

### **Public Footpath 16**

The proposed development also affects part of public footpath 16 running from the top of Bawhead Road (point A) along the western edge of the development site to a point level with the rear garden of 57 Wentcliffe Drive (point C). The footpath is recorded on the Definitive Map but the point where the footpath ends within the development site is not connected to another highway such as a road or another footpath. The planning application provides for the rear gardens to extend all the way to the existing boundary wall at the rear of Wentcliffe Drive and therefore it would be necessary for the footpath to be extinguished for the development to be carried out. The existing footpath does not appear to serve any purpose because it is a dead-end path. Therefore I have no objection to this aspect of the planning application which would facilitate the extinguishment of this section of footpath 16.

### **Informatives**

No work which affects either of these footpaths may commence until a separate extinguishment order has been made and confirmed.

### **PBC Drainage**

Response 7<sup>th</sup> January 2020: Provided the proposed scheme is implemented in accordance with the stated intentions and the LLFA are satisfied with the proposal, the revised drainage strategy should be acceptable.

### **Yorkshire Water**

Response 7<sup>th</sup> January 2020: Thank you for re-consulting Yorkshire Water regarding the above proposed development. We have the following comments:

### **Waste Water**

Based on the information submitted, no observation comments are requested from Yorkshire Water regarding the Reserved Matters since surface water is now going from soakaway to culvert.

### **LCC Lead Local Flood Authority**

Re-consultation was sent on 6<sup>th</sup> January 2020, to date no updated comments have been received.

No formal comments can be provided on the drainage scheme, as the following information is still outstanding:

**Confirmation of how surface water is currently drained within the application site** – *we need this information before we can assess the suitability of the applicant's surface water drainage proposals.*

**Information regarding the risk of ordinary watercourse flooding within the application site** – *we are specifically looking for an assessment into the risks associated with the watercourse that is located along the southern boundary of the site. This is to ensure that none of the dwellings are being placed at an unacceptable risk of flooding from the watercourse.*

**Details of any measures required to keep the development safe from flooding over its lifetime; taking into account the vulnerability of its users** – *this is particularly important as the finished floor levels of the dwellings look to be set lower than the driveways and external highway (Bailey Street). If overlooked, there is potential for the dwellings to be placed at an increased risk of flooding from surface water runoff. To ensure that will not happen, we need to know how that risk will be managed through the re-development of the site. Should any of the dwellings be at risk of flooding from the adjacent watercourse, then we will need to know how those risks will also be managed through the re-development of the site.*

**A site plan that shows all on-site surface water catchment areas, i.e. areas that will contribute to the proposed surface water drainage network** – *we need this information before we can assess the suitability of the applicant's surface water drainage proposals. If a plan can't be provided at this stage, then we will accept confirmation of the total impermeable area within the site, though a catchment plan will need to be provided at some point before the commencement of the development (this can be secured through an appropriately worded planning condition).*

**Surface water flow calculations for the proposed surface water drainage network. The calculations should show the network design criteria, pipeline schedules and simulation outputs for the 1 in 1 year, 1 in 30 year and 1 in 100 year return periods, plus an appropriate allowance for climate change and urban creep where applicable** - *we need this before we can assess the suitability of the applicant's surface water drainage proposals. Without this information, it is unclear whether sufficient storage is available within the site to ensure that surface water can be safely managed up to and including the 100 year return period (plus an allowance for climate change and urban creep).*

In the absence of the above information, I am still unable to provide you with a substantive response at this time. Please can you bring this to the attention of the applicant and ask for further information to be provided in this regard.

I have noted from the latest surface water drainage layout plan that a pump may need to be provided to allow surface water to be discharged to the adjacent watercourse. In accordance with standard 12 of the non-statutory technical standards for sustainable drainage systems, pumping should only be used to facilitate drainage for those parts of the site where it is not reasonably practicable to drain water by gravity. I assume the applicant is still intending to proceed with a maximum surface water discharge rate of 3l/s as suggested in earlier plans. Any deviation from that rate would need to be fully justified through the submission of a greenfield runoff assessment for the existing site.

## PBC Environment Officer

The ecology report is adequate. The landscaping shown at this stage is sufficient, with some planting at the rear. Some trees to the front would be beneficial and further landscaping of the culvert area would be required. A condition requiring a detailed landscaping scheme would be required.

## Earby and Salterforth Drainage Board

The application is not near any of our waterways and there is no plan to discharge into a waterway, therefore no objections are raised.

An application for consent would be required if it was decided to discharge into one of our waterways and there should be no obstruction within 7 metres of the edge of the watercourse.

## NHS East Lancashire

This proposed development comprises of 12 dwellings and based on the 2011 Census average household size per dwelling, we have calculated that this development will accommodate a population of 29 residents. This means that this residential development will generate 66 interventions for the Trust based on the average calculation above. The consequences of that number of interventions and the costs of them are set out in Appendix 4. The contribution requested is based on this calculation and by that means ensures that the request for the relevant landowner or developer to contribute towards the cost of health care provision is directly related to the development proposals and is fairly and reasonably related in scale and kind. Without the contribution being paid the development would not be acceptable in planning terms because the consequence would be that there would be inadequate healthcare services available to support it and it would adversely impact on the delivery of healthcare for others in the Trust's area.

As a consequence of the above and due to the payment mechanisms the Trust is subject to, it is necessary that the developer contributes towards the cost of providing capacity for the Trust to maintain service delivery during the first year of occupation of each dwelling. The Trust will receive no commissioner funding to meet each dwelling's healthcare demand in the first year of occupation due to the preceding year's outturn activity volume based contract and there is no mechanism for the Trust to recover these costs in subsequent years. Without securing such contributions, the Trust would be unable to support the proposals and would object to the application because of the direct and adverse impact of it on the delivery of health care in the Trust's area.

Therefore, the contribution requested for this proposed development is £16,840.00. This contribution will be used directly to provide additional services to meet patient demand

Having considered the cost projections, and phasing of capacity delivery we require for this development it is necessary that the Trust receive 100% of the above figure on the implementation of the planning permission. This will help us to ensure that the healthcare services are delivered in a timely manner.

## **Public Response**

The nearest neighbours were notified by letter, in addition to a site and press notice being posted. 34 letters of objection were received from neighbouring occupiers, in addition to a petition which included 342 signatures, their comments can be summarised as follows:

- The site has a natural spring which works to prevent flooding and is home to variety of wildlife.
- Disturbing the site would lead to flooding and surface water runoff elsewhere.
- Earby has a deficit in amenity green space, more will be lost as a result of this development.

- Danger to school children who pass the site daily, due to construction traffic and increase in the number of cars.
- Existing brownfield sites and empty homes within Earby that should be considered first.
- Additional investment is needed in Earby's infrastructure to support further development.
- Loss of an existing off road footpath, which is commonly used by school children.
- Concerns regarding the drainage and sewerage on the site, whether the existing systems can cope.
- Disturbance to wildlife, including birds, bats, frogs and toads.
- Lack of additional planting and trees to make up for the loss of green space.
- Would result in tensions between neighbours, walkers and those using the sports pitches nearby.
- The proposed houses do not assist in the diversity of housing stock for a range of occupants, nor does it indicate that any will be affordable.
- Lack of parking provision in the area.
- The proposed 12 houses is overdevelopment for a site of this size.
- Privacy issues from the proposed dwellings overlooking existing properties to the rear.

## **Officer Comments**

### **Policy**

Section 38A of the Planning and Compulsory Purchase Act 2004 requires that when determining planning applications regard has to be had to the development plan the application must be determined in accordance with the Plan unless material considerations indicate otherwise.

### **Local Plan Part 1: Core Strategy**

Policy SDP1 (Presumption in Favour of Sustainable Development) the decision maker will take a positive approach to development, working proactively with the applicants to jointly find salutation, to secure development that improves the economic, social and environment conditions in the area.

Policy SDP2 (Spatial Development Principles) seeks to prioritise new development within settlement boundaries, particularly to serve a localised catchment in local service centres such as Earby.

Policy SDP3 (Housing Distribution) details where the location of new housing should be focused, which should follow a settlement hierarchy.

Policy ENV1 (Protecting and Enhancing Our Natural and Historic Environments) requires development to make a positive contribution to the protection, enhancement, conservation and interpretation of our natural and historic environments.

Policy ENV2 (Achieving Quality in Design and Conservation) states that all new development should seek to deliver the highest possible standards of design, in form and sustainability, and be designed to meet future demands whilst enhancing and conserving heritage assets. The proposals compliance with this policy is addressed in the design and amenity sections.

Policy LIV1 (Housing Provision and Delivery) sets out the housing requirements for 2011 to 2030 and how this will be delivered. It allows for sustainable development outside of settlements to come forward until the part 2 plan has been approved.

Policy LIV3 (Housing Needs) provided guidance on the housing needs in order to provide a range of residential accommodation.



Policy LIV4 (Affordable Housing) sets out the targets and thresholds required to contribute towards the provision of affordable housing.

Policy LIV5 (Designing Better Places to Live) requires that layout and types of development reflect the site and the surroundings, to meet borough-wide requirements for housing stock.

### Replacement Pendle Local Plan

Policy 16 (Landscaping in New Development) requires that developments provide a scheme of planting which is sympathetic to the area.

Policy 31 (Parking) which is a saved Policy within the Replacement Pendle Local Plan requires that new developments provide parking in line with the levels set out in Appendix 1 of the RPLP.

Policy 33 (Existing Open Space) advises that the loss of open space will only be permitted where it involves poor quality space in areas where there is surplus provision in the particular ward area.

### National Planning Policy Framework

The Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development. It states that there are three dimensions to sustainable development: economic, social and environmental. The policies in the Framework, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system.

Section 2 of the Framework refers to achieving sustainable development. Paragraph 11 states that plans and decision should apply a presumption in favour of sustainable development, part (d) states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless the application of policies within the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Or, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Paragraph 97 of the Framework highlights that where a development would result in the loss of open space, applicants must demonstrate that the open space is surplus to requirements or would be replaced with equivalent at a suitable location.

Paragraph 98 details that planning policies and decision should protect and enhance public rights of way and access. Taking opportunities to provide better facilities for users.

Section 12 of the Framework relates to design and makes it clear that design is a key aspect of sustainable development. Paragraph 130 of the Framework states that permission should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area and the way it functions.

Paragraph 59 of the Framework requires local planning authorities to identify a supply of deliverable housing sites to provide five years' worth of their housing requirements. The SHLAA was updated in support of the publication of the Core Strategy.

The Framework expects that Councils meet their full objectively assessed housing needs and to annually update their supply of specific deliverable sites to meet a five year supply. Where there has been persistent under delivery a 20% buffer needs to be added to the 5 year supply.

### **Principle of the Development**

The application site is identified within the Pendle Open Space Audit 2019 as Amenity Greenspace.

Open space is defined in the NPPF as being all open space of public value which offer important opportunities for sport and recreation and can act as a visual amenity. This land formed part of the Open Space assessment examined as part of the EIP into the Local Plan, which was found to be sound.

The application site is 0.265 hectares with a quality score of medium (31/49). Overall the Earby ward has a surplus of amenity greenspace of 0.13ha. Therefore, the loss of this site would result in a deficit of -0.13ha.

The Council seeks to protect those areas of designated open space. Policy 33 of the Replacement Pendle Local Plan states that the loss of open space will only be permitted where; there is the loss of poor quality amenity open space in areas where there is a surplus provision, or replacement open space provision is provided as compensation.

Similarly in accordance with the National Planning Policy Framework, the applicant must meet one of the defined exceptions, in Paragraph 97 of the NPPF, as follows:

- a) An assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- b) The loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- c) The development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

The application site is one of 27 amenity greenspace sites within the Earby ward. There are two alternative amenity greenspace sites, AG063 and AG075, which is close to the application site and more easily accessible to existing properties.

The site is significantly constrained by its proximity to a residential road, surrounded by dense residential development and lack of fencing. This makes it unsuitable for ball games or walking of dogs off a lead. The majority of the site is underused, apart from the footpath which runs diagonally across the site.

The 2019 OSA places a low priority on increasing the provision of amenity green space within Earby and the societal benefits of 12no. residential dwellings would outweigh the loss of the existing amenity greenspace.

Moreover, the application site lies within the settlement boundary of Earby, amongst existing residential development. Therefore, development within the settlement boundary is sustainable.

Furthermore, in accordance with Paragraph 11 of the NPPF decision making must apply a presumption in favour of sustainable development. Permission should be granted unless policies within the Framework which protect assets of importance provide a clear reason for refusal or adverse impacts of the development would demonstrably outweigh the benefits.

In this case, Pendle does not benefit from a 5 year housing land supply, therefore additional weight is given to the public benefits of the development of 12 additional residential dwellings. The site is not within a protected area or detrimentally affects assets of particular importance. Therefore, the public benefits of the development far outweigh any harm and the application should be approved.

In this instance the proposed site would be sustainable and the principle of housing acceptable, which accords with Policy LIV1.

## **Design**

The proposed scheme comprises of 12no. semi-detached properties, all with private garden areas to the rear and double driveways to the front. All are set within a reasonable size plot, with side access and reasonable planting.

Concerns were raised that 12no. dwellings is overdevelopment of the site. This has been considered in the design of the scheme. Each dwelling has sufficient space about it not to appear cramped, with a reasonable front and rear garden. The dwellings are of suitable design and allow for good separation distances so as to create a terracing effect. This proposal would not be deemed overdevelopment of the site.

Two house types are proposed, which are distributed evenly throughout the development, all comprising of two storey dwellings with 3no. bedrooms. House type A consists of one large rendered front gable feature, and a central shared porch with the adjoining property. House type B has a small eaves pitched roof feature to the front, with a separate porch on the outer edge of the front elevation. Both house types have similar rear elevations, which are simple in design.

House type A is to be predominantly constructed of off white colour render to the front and rear, with a small portion on reconstituted stone on the front elevation. House type B comprises of reconstituted stone on the front elevation and off white colour render on the side and rear elevations. All the dwellings will use slate effect concrete roof tiles on the roof.

The style, design and materials for the properties aim to reflect that of dwellings in Aspen Grove, which are the most recent development in the area and are readily visible from the application site. The proposed dwellings would be sited adjacent to Bailey Street and visible from the school and sports pitches to the east. Nevertheless, the properties simplistic design and use of sympathetic materials to the locality, would not appear obtrusive within the street scene.

Therefore, the design, materials and layout of the proposed development would be acceptable in accordance with Policy ENV2 and the NPPF.

## **Residential Amenity**

The application site is located within the settlement boundary of Earby, amongst a predominantly residential area. To the east is a primary school sports pitch, to the west the rear of properties on Wentcliffe Drive. To the south is the Aspen Grove residential development and to the north a large car park serving a local business.

The proposed dwellings would be sited in a slightly staggered form, however all retain a minimum of 9.5m separation distance from the rear garden boundary and 22m from the rear elevation of properties on Wentcliffe Drive. The Design Principles SPD requires that a minimum distance of 21 metres must be maintained between habitable room windows in properties that are directly facing each other. The proposed development will exceed these distances with existing dwellings on Wentcliffe Drive and therefore would not result in significant detrimental overlooking or overbearing impacts on neighbouring occupiers.

Moreover, all Type A proposed dwellings do not have any side facing windows. Type B proposed dwellings have one first floor side facing window which serves a landing. Although this will be facing onto a blank elevation, to future proof the development, a condition will be applied to ensure that this is obscure glazed.

The front and rear elevations of the proposed dwellings are to be broadly in line with each other, therefore ensuring no intervisibility between the properties. The properties would be located over 23m from the school sports pitch to the east of Bailey Street. Taking into account this is a residential area and the sports pitch is readily visible from a number of public vantage points, this development would not result in detrimental overlooking impacts.

## **Drainage**

Concerns had initially been expressed regarding the information that had been supplied to assess drainage. Further information has been supplied looking at the requirements for drainage on the site and how this could be accommodated. This information has been supplied to the Lead Local Flood Authority and Yorkshire Water who have not offered any objections to the scheme based on this updated information. Whilst a full drainage scheme has not been provided the parameters of what is required can be adequately controlled by a condition.

The drainage to the development, as proposed, is fully acceptable.

## **Highways and Access**

No significant concerns have been raised by LCC Highways in relation to highway safety and access to the site. New vehicle crossings will need to be agreed with the Highway Authority and a construction method statement submitted prior to the commencement of development to minimise highway disturbance during the construction period. These aspects can be secured by condition and do not warrant refusal of the application.

The application proposes two on plot parking spaces per dwelling, sited to the front of the properties directly off Bailey Street. In accordance with Policy 31 this would be adequate parking provision for the 3no. bedroom properties proposed.

## **Ecology and Landscaping**

A preliminary ecological appraisal has been submitted as part of the application, it concluded that the site comprised of hedgerows of little value, marshy grassland and scattered trees. A low number of pipistrelle bats were recorded and a number of priority and protected bird species. However, given the small size of the site and disturbed nature of the habitats, it is not considered that the site is of high value. Some recommendations and mitigation measures are provided, which will be secured by condition.

The proposed landscaping details are adequate, with some planting areas to the front and private rear gardens. A landscaping condition will be applied requiring further details of planting and species to be submitted, prior to development.

## **Public Rights of Way**

The application site comprises of two established footpaths, one a public footpath and the other an unrecorded footpath.

Public footpath 16 runs along the western edge of the development site and would interfere with the proposed rear gardens of the development. Due to previous residential developments in the area the footpath now leads to a dead end and therefore does not serve an important purpose. As a result no objections are raised to the loss of this footpath to allow for the proposed residential development.

Moreover, the unrecorded footpath runs diagonally across the site from Bailey Street to Bawhead Road. This would interfere directly with plots 1-4 of the proposed development. This route is used

frequently by pedestrians accessing the local primary school from surrounding properties. There is an existing alternative route along pavement through Aspen Grove and Bailey Street, which is 25m longer.

Re-routing the existing footpath around the edge of the site, to avoid the proposed dwellings, would only be 10m shorter than the existing pavement alternative route and would result in a footpath which is hidden from view and therefore raises some safety concerns.

As a result, diverting the footpath around the edge of the site would have limited benefits over and above the existing pavement option. Moreover, the pavement route is insignificantly longer than the existing unrecorded footpath, therefore would not cause significant inconvenience to pedestrians. The benefits of new residential development on this site far outweighs the harm due to loss of the unrecorded footpath, especially when there is an existing adequate alternative route.

## **Affordable Housing**

Policy LIV4 sets out the targets and thresholds required to contribute towards the provision of affordable housing. The application site is located within the settlement boundary of Earby.

As a result, the development would be associated with Earby, as a West Craven Town, therefore as only 12 dwellings have been proposed on the site, a 0% affordable housing contribution would be required, in accordance with Policy LIV4.

## **NHS Contribution Request**

Planning legislation allows for conditions to be placed on developments to make them acceptable. It also provides for the possibility of payments being made through section 106 agreements for infrastructure affected by a development. The law surrounding this is as follows:

Section 106 of the 1990 Act provides as follows:

- (1) Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A and 106C as “a planning obligation”), enforceable to the extent mentioned in subsection (3)—
  - (a) restricting the development or use of the land in any specified way;
  - (b) requiring specified operations or activities to be carried out in, on, under or over the land;
  - (c) requiring the land to be used in any specified way; or
  - (d) requiring a sum or sums to be paid to the authority (or, in a case where section 2E applies, to the Greater London Authority) on a specified date or dates or periodically.
- (2) A planning obligation may—
  - (a) be unconditional or subject to conditions;
  - (b) impose any restriction or requirement mentioned in subsection (1) (a) to (c) either indefinitely or for such period or periods as may be specified; and
  - (c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the obligation is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period....”

The relevant parts of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (“the CIL Regulations”) are as follows:

- (1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.
- (2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—
  - (a) necessary to make the development acceptable in planning terms;
  - (b) directly related to the development; and
  - (c) fairly and reasonably related in scale and kind to the development.

Section 216(1) of the Planning Act 2008 together with Regulation 59 of the CIL Regulations requires charging authorities to apply CIL payments to “supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure”.

Section 216(2) defines “infrastructure” as follows:

“infrastructure” includes—

- (a) roads and other transport facilities,
- (b) flood defences,
- (c) schools and other educational facilities,
- (d) medical facilities,
- (e) sporting and recreational facilities, and
- (f) open spaces”

The request for contributions for health care services does in my view overall fit into a category of infrastructure that could, if necessary to make the development acceptable, fall within a category of infrastructure that can be funded through a section 106 agreement. However that does not mean to say that the contribution being requested meets the tests set out in the CIL Regulations detailed above.

Case law is clear that planning permissions cannot be bought or sold hence any sum to be paid to a planning authority must be for a planning purpose which should in some way be connected with the land in which the developer is interested.

The issue for Committee is whether the funding has a direct connection to the development and whether this would be fairly and reasonably related in scale and kind to the development. Robust evidence is required to support a request for a contribution. In London for example a model has been produced which attempts to provide robust and up to date evidence on the need for a contribution. The model is referred to as the HUDU model. This looks at the specific circumstances of each development in its own location reflecting the population characteristics of the area. The evidence supplied with this request does not in my view go far enough to support the view that the impacts of the individual development is directly related to healthcare deficiencies. A flat rate is applied to all developments which will inevitably result in some developers over providing and some underproviding. The model does not factor in demographic modelling of the area and does not for example look at any percentage of the population that may move into the developments and that they are already resident in the area thus not increasing the demand on services. Whilst more accurate evidence could be provided were the model to be finessed as it stands it is not sufficiently robust to prove the level of contribution fairly reflects the impact the development would have on acute services.

This is an important issue that will arise in other developments in the Borough. In order to get an independent view on this we have obtained Counsel’s opinion on this. That advice is legally privileged but supports the view that the evidence is not sufficiently robust to be able to support a requirement for the contribution requested.

Committee are therefore recommended not to require a contribution as the evidence is not robust enough to confirm that the funding is directly enough related to the development and is fairly and reasonably related in scale and kind to the development.

## **Education Provision**

Thorough assessment of the proposal by Lancashire County Council Education Authority deemed there is sufficient capacity in the area to accommodate additional school pupils, without the requirement for an education contribution. Therefore, no objections are raised.

## Other Issues

Concerns have been raised regarding the utilisation of brownfield sites and empty homes within Earby, as opposed to new development on a green field site. The LPA cannot require brownfield sites or privately owned properties to come forward for development. Equally, valid submitted applications must be assessed and determined on their own merits in accordance with planning policies. In addition, the types and sizes of the proposed dwellings are not something that can be stipulated by the LPA, unless those proposed have wider design or residential amenity impacts. In this case, semi-detached two storey properties are appropriate for this site.

As a result of this development, concerns have been raised regarding the capacity of infrastructure and services within the area. As part of this application drainage and highways infrastructure has been addressed and relevant consultees have not raised any objections. Moreover, the capacity of hospitals and schools have been satisfactorily considered and addressed in this report.

## Five Year Housing Supply

Pendle currently does not have a five year supply of housing. As such consideration needs to be given to paragraph 11 of the Framework. This is quoted above but is commonly referred to as the application of the tilted balance. As with all applications the development needs to be assessed against the development plan and then the tilted balance needs to be taken into consideration. The tilted balance indicates that where policies most relevant for the determination of the application are out of date approving the application unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

For this application the development would conform to the development plan and the recommendation is to approve it. The tilted balance would add weight to this as the benefits would outweigh any disbenefits.

## Reason for Decision

Section 38 of the Planning and Compulsory Purchase Act 2004 requires that applications be determined in accordance with the development plan unless material considerations indicate otherwise. The proposed development accords with the Local Plan and National Planning Policy Framework. The development therefore complies with the development plan. There is a positive presumption in favour of approving the development and there are no material reasons to object to the application.

**RECOMMENDATION: That the application is delegated to the Planning, Economic Development and Regulatory Services Manager to approve subject to satisfactory drainage details being received.**

Subject to the following conditions:

1. The proposed development hereby permitted shall be begun before the expiration of three years from the date of this permission.

**Reason:** In order to comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (As Amended).

2. The development hereby permitted shall be carried out in accordance with the following approved plans: A1828-LIB-AL-90-004, A1828-LIB-AL-90-002 RevA, A1828-LIB-AL-90-001 RevD, A1828-LIB-B1-AE-20-002 RevC Type A, A1828-LIB-B1-AE-20-002 RevC Type B, A1828-LIB-B1-

**Reason:** For the avoidance of doubt and in the interests of proper planning.

3. Prior to the commencement of development samples of the materials to be used in the construction of the dwellings hereby permitted (notwithstanding any details shown on previously submitted plan(s) and specification) shall have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

**Reason:** To ensure a satisfactory form of development in the interest of visual amenity of the area.

4. Prior to the commencement of development samples of all the boundary and retaining walls and all hard surfacing of the development hereby approved, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter at all times be carried out in strict accordance with the approved materials and details.

**Reason:** To ensure a satisfactory form of development in the interest of visual amenity of the area.

5. Prior to any above ground works, a detailed landscaping scheme must be submitted to and approved in writing by the Local Planning Authority. The scheme shall be submitted at a scale of 1:200 and shall include the following:

- a. the exact location and species of all existing trees and other planting to be retained;
- b. all proposals for new planting and turfing indicating the location, arrangement, species, sizes, specifications, numbers and planting densities;
- c. an outline specification for ground preparation;
- d. all proposed boundary treatments with supporting elevations and construction details;
- e. all proposed hard landscape elements and pavings, including layout, materials and colours;
- f. the proposed arrangements and specifications for initial establishment maintenance and long-term maintenance of all planted and/or turfed areas.

The approved scheme shall be implemented in its entirety approved form within the first planting season following the substantial completion of the development. Any tree or other planting that is lost, felled, removed, uprooted, dead, dying or diseased, or is substantially damaged within a period of five years thereafter shall be replaced with a specimen of similar species and size, during the first available planting season following the date of loss or damage.

**Reason:** To ensure appropriate landscape design and in the interests of the visual amenities of the area.

6. No part of the development shall be commenced unless and until a Construction Code-of-Practice has been submitted to and approved in writing by the Local Planning Authority. The code shall include details of the measures envisaged during construction to manage and mitigate the main environmental effects of the relevant phase of the development. The submitted details shall include within its scope but not be limited to:

- i) The parking of vehicles of site operatives and visitors
- ii) The loading and unloading of plant and materials
- iii) The storage of plant and materials used in constructing the development
- iv) The erection and maintenance of security hoarding
- 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 clearance and construction works
- viii) Details of working hours
- ix) Timing of deliveries
- x) Measures to ensure that construction and delivery vehicles do not impede access to neighbouring properties.

The Construction Code-of-Practice should be compiled in a coherent and integrated document and should be accessible to the site manager(s), all contractors and sub-contractors working on site. As a single point of reference for site environment management, the CCP should incorporate all agreed method statements, such as the Site Waste Management Plan and Demolition Method Statement. All works agreed as part of the plan shall be implemented during an agreed timescale and where appropriate maintained as such thereafter unless otherwise agreed in writing by the Local Planning Authority.

**Reason:** To ensure that adequate measures are in place to protect the environment during the construction phase(s).

7. Prior to first occupation each dwelling shall have a secure cycle storage facility.

**Reason:** For the promotion of sustainable forms of transport.

8. Prior to first occupation each dwelling shall have an electric vehicle charging point.

**Reason:** To encourage sustainable travel.

9. No development shall commence unless and until a scheme for the construction of the vehicular accesses and off-site works of highway improvement have been submitted to and approved in writing by the Local Planning Authority. All works must be implemented in accordance with the approved details prior to first occupation of the development.

**Reason:** In order to satisfy that the final details of the highway scheme/works are acceptable before works commence on site.

10. Notwithstanding the provisions of Article 3 and parts 1 and 2 of the second Schedule of the Town & Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no development as specified in Classes A, B, C, D and E of Part 1 and Class C of Part 2 of Schedule 2 of that Order shall be carried out without express planning permission first being obtained from the Local Planning Authority.

**Reason:** To enable the Local Planning Authority to control any future development on the site in order to safeguard the character of the area.

11. The recommendations detailed in the Preliminary Ecological Appraisal undertaken by Appletons dated April 2019, shall be carried out prior to any above ground works at the site. Any further necessary mitigation measures identified should be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any further development. The development shall subsequently be implemented entirely in accordance with the approved details. Thereafter, unless otherwise agreed in writing by the Local Planning Authority, the mitigation measures shall be permanently maintained and retained in accordance with the approved details.

**Reason:** To protect natural species and their habitats.

12. No development shall take place unless and until information has been provided to the Local Planning Authority in writing confirming the following:

- i Confirmation that the watercourse route from the site and the condition of the culvert is adequate to accept the flows from the site.

**Reason:** To prevent flooding by ensuring the satisfactory disposal of surface water from the site and to ensure that there is no flood risk on or off the site resulting from the proposed development.

13 No dwelling shall be occupied unless and until the existing 150mm land drain on the west of the site has been replaced with a pipe equal to the capacity of the existing one. This shall then be connected to the surface water disposal system from the site.

**Reason:** To prevent flooding by ensuring the satisfactory disposal of surface water from the site and to ensure that there is no flood risk on or off the site resulting from the proposed development.

14 No development shall commence unless and until details of the design and implementation of an appropriate surface water drainage scheme have been submitted to and approved in writing by the local planning authority. Those details shall include:

- a) A final surface water drainage layout plan; appropriately labelled to include all pipe/structure references, dimensions, design levels, finished floor levels and external ground levels (in AOD);
- b) A full set of flow calculations for the surface water drainage network. The calculations must show the full network design criteria, pipeline schedules and simulation outputs for the 1 in 1 year, 1 in 30 year and 1 in 100 year return period, plus an appropriate allowance for climate change and urban creep, where applicable. The calculations must also demonstrate that the post development surface water run-off rate shall not exceed 3l/s.
- c) A final site plan showing all on-site surface water catchment areas, i.e. areas that will contribute to the proposed surface water drainage network;
- d) Confirmation of how surface water will be managed within the non-drained areas of the site, i.e. gardens and public open space.
- e) A final site plan showing all overland flow routes and flood water exceedance routes, both on and off site;
- f) Details of any measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters, including watercourses; and
- g) Details of an appropriate management and maintenance plan for the surface water drainage network over the lifetime of the development.

The scheme shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings, or completion of the development, whichever is the sooner. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

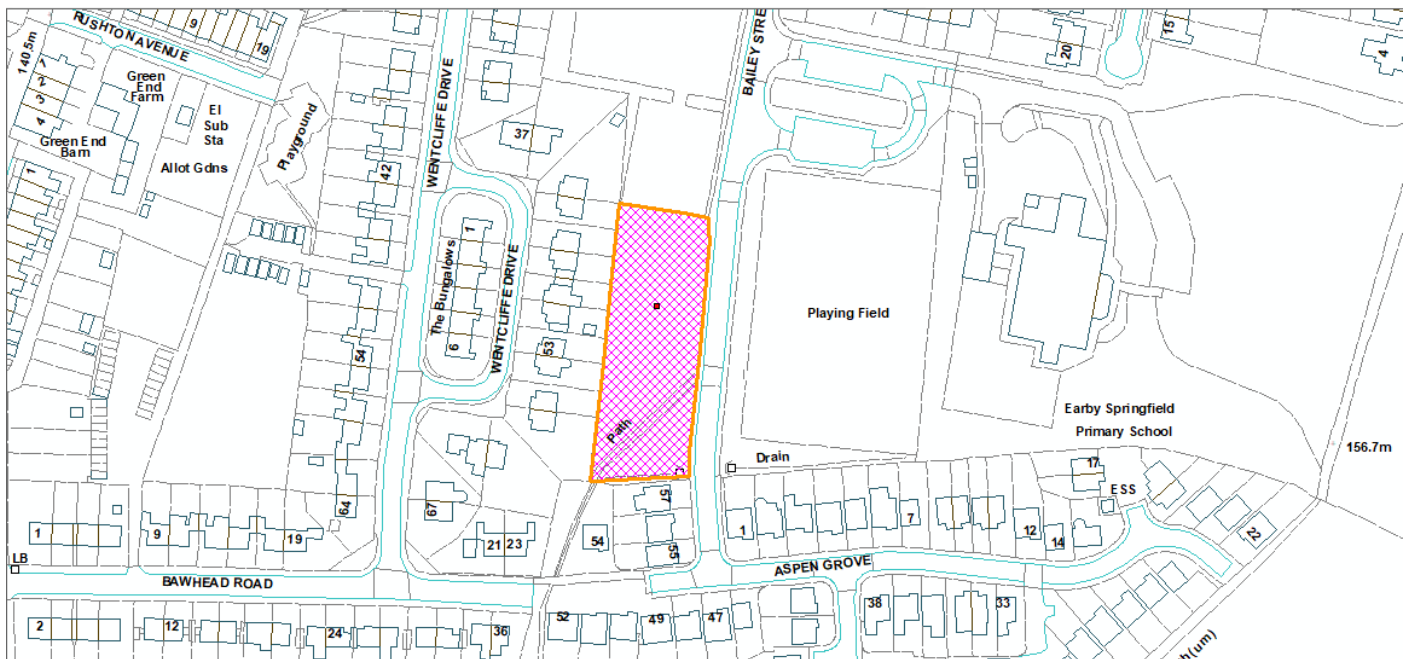
**Reason:** To ensure that the proposed development can be adequately drained, to ensure that there is no flood risk on or off the site resulting from the proposed.

15 No dwelling hereby permitted shall be occupied unless and until it is connected to the public foul effluent disposal system.

**Reason:** To ensure that foul effluent emanating from the site is properly disposed of.

## INFORMATIVE

The grant of planning permission will require the applicant to enter into an appropriate legal agreement (Section 278), with Lancashire County Council as the Highway Authority prior to the start of any development. For the avoidance of doubt works shall include, but not be exclusive to, the construction of the vehicle crossings to an appropriate standard, re-location of highway gullies affected and a street lighting assessment. The applicant should be advised to contact the county council for further information by telephoning the Development Support Section (Area East) on 0300 123 6780 or by email on [developeras@lancashire.gov.uk](mailto:developeras@lancashire.gov.uk), in the first instance to ascertain the details of such an agreement and the information to be provided, quoting the relevant planning application reference number.



**Application Ref:** 19/0620/FUL

**Proposal:** Full: Major: Erection of 12 No. semi-detached dwellings and associated hardstanding and landscaping.

**At:** Land To The West of The Playing Fields, Bailey Street, Earby

**On behalf of:** PEARL Together Ltd.