

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

**TO: WEST CRAVEN COMMITTEE**

**DATE: 8<sup>th</sup> June 2021**

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## **PLANNING APPLICATIONS**

### **PURPOSE OF REPORT**

To determine the attached planning applications.

## REPORT TO WEST CRAVEN COMMITTEE 08<sup>TH</sup> JUNE 2021

**Application Ref:** 21/0012/FUL

**Proposal:** Full: Major: Erection of 15 dwelling houses and new access.

**At:** Land at the Junction with Greenberfield Lane, Gisburn Road, Barnoldswick

**On behalf of:** Opulwood Developments

**Date Registered:** 11.01.2021

**Expiry Date:** 12.04.2021

**Case Officer:** Neil Watson

### **Site Description and Proposal**

The application was deferred from the last Area Committee to look at a number of issues. These were the access arrangements into the site, the internal turning areas and the footpath link from the site to Gisburn Road.

The site comprises an area of open, maintained grassland, roughly 0.58 hectares in size. It is located adjacent to, but outside of the settlement boundary of Barnoldswick. To the north is Greenberfield Lane with commercial / farm buildings and dwellings opposite, to the west are the rear of dwellings fronting Gisburn Road, to the south is a garage colony and to the east is open land.

Outline planning permission (access, layout and scale) for 20 houses was granted on this site at appeal in 2017. Full planning permission for 17 houses was granted on this site at appeal in 2020.

This application is a full planning application for 15 houses with a revised layout and house types since the previous application.

All the properties would be detached, comprising of 10no. 4 bedroom properties and 5no. 5 bedroom properties. The proposed houses would be finished in re-constituted stone, natural slate roof tiles, UPVC windows and composite doors.

### **Relevant Planning History**

16/0382/RES – Outline: Erection of 20 dwellings - Refused

16/0597/OUT - Outline: Major: Erection of twenty dwelling houses and construction of access road from Greenberfield Lane (Access, Layout and Scale) (Re-Submission) - Appeal allowed.

19/0025/FUL - Full: Major: Erection of 17 dwelling houses and new access – Appeal allowed.

### **Consultee Response**

#### **LCC Highways**

The development site has been the subject of previous planning applications for the erection of houses and creation of a new access, the most recent ones being 13/19/0025/FUL for 17 houses and 16/0597/OUT for 20 houses, both of which were allowed at appeal. Therefore the principle of development on this site has been established.

Having considered the information submitted, the Highway Development Support Section does not have any objections regarding the proposed development at the above location, subject to the following comments being noted, and conditions and note being applied to any formal planning approval granted.

The red edge of the development site needs amending to include the verge on Gisburn Road where a pedestrian crossing will be provided, so that this can be controlled by condition. It should also be extended to show the existing site boundary at the proposed access to include the section of Greenberfield Lane which will need to be widened and included in the adopted highway network.

### **New access**

The formation of the new vehicle access from Greenberfield Lane to the development site 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 access to an appropriate standard, including a minimum width of 5.4m, 6m radius kerbs, tactile paved dropped pedestrian crossings on Greenberfield Lane, re-location of the highway gully and a street lighting assessment and design.

Construction of the new access would also require the widening of the carriageway on Greenberfield Lane to an appropriate standard and being dedicated as part of the adopted highway network through the relevant legislation (Sections 278 and 38).

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

No visibility splay details have been submitted. Visibility splays of 2.4m x 25m x 1m in both directions at the new access should be shown on the site layout plan, which will also be controlled by condition.

### **Off-site highway improvements**

The construction of tactile paved dropped pedestrian crossings on Gisburn Road would need to be carried out under the Section 278 works, although this would require United Utilities' permission for the construction of the crossing on the eastern side of Skipton Road.

### **Internal layout**

The internal layout, including the internal spine estate road and turning head, has been amended from that previously approved at appeal for planning application reference 13/19/0025/FUL. Therefore a swept path analysis should be provided to demonstrate that a twin axle refuse wagon can still enter and leave the site in forward gear.

Whilst the internal estate roads and footways would not be considered for adoption they should still be constructed in accordance with the county council's 'Specification for the Construction of Estate Roads'. As the internal roads and footways would remain private the developer should provide details of the proposed arrangements for the future management and maintenance of the road. These should include the establishment of a private management and maintenance company.

No street lighting columns are indicated on the plan. A street lighting assessment

and design should be provided.

## **Car & cycle parking provisions**

Given the site's limited accessibility to local amenities and facilities, and the likely reliance on private motor vehicles, we recommend that maximum parking standards, as outlined in Pendle Borough Council's Car & Cycle Parking Standards, are applied to this site. That is, three spaces for dwellings with four and above bedrooms.

The following comments are made based on the Proposed Site Plan (Drawing 2479.2.001) and Site Plan Boundary Treatments (Drawing No 2479/2/13).

Ten out of the fifteen proposed dwellings would have in-line parking for three vehicles. There are concerns that this style and level of off-road parking would lead to an increase in vehicle manoeuvres and may instead lead to some vehicles being parked on the road. Whilst this may be more convenient for residents it would narrow the carriageway width and/or cause an obstruction if vehicles were parked partly on the footway. In addition, any vehicles from Plots 7, 8, 9 and 12 parking on the road would obstruct the turning head, which should be kept free from vehicles.

### **Plots 1 - 4**

The parking layout is acceptable.

**Plots 5 - 7 and 12 -15** - Taking the previous comments into account, the highway authority recommends that the dwellings are set further back into the plots and the parking widened so that two vehicles can park side by side with the third space being in tandem. (Similar to Plot 4.)

### **Plots 9-11**

At 3m the manoeuvring space proposed is sub-standard. To access perpendicular parking a minimum manoeuvring distance of 6m should be provided (Manual for Streets). The only way to achieve this with the site layout submitted would be to move the dwellings 3m further back into the plots. This would also allow two side by side parking spaces to be provided, which is the preferred layout. However, the dwellings would then encroach into the UU sewer easement. The applicant should advise how they intend to address this issue.

### **Plot 8**

Given the constricted plot layout, and the UU sewer easement at the rear of the plot it would not be possible to revise the parking layout as suggested for Plots 9-11. This raises concerns that vehicles would park within the turning head, as highlighted earlier. The alternative may be to swap Plot 8 and the Open Space, which should allow a more acceptable parking layout to be provided. Or reduce the number of bedrooms to three so that only two parking spaces would need to be provided.

Recommendations in the borough council's parking standards are that at least two secure cycle spaces should be provided for residential properties where two or more bedrooms are to be provided. As no garages are proposed, covered, lockable cycle storage should be provided within each domestic curtilage.

Electric vehicle charging points should be installed for each dwelling prior to first occupation to support the use of sustainable forms of transport.

## **General**

Given the development site's location near the junction with Gisburn Road, on a bus

route and close to the bus turning circle, plus Greenberfield Lane providing access to neighbouring residential and commercial properties and leisure facilities, a Construction Method Statement, including plan, would need to be submitted.

#### LCC Schools

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

#### Yorkshire Water

No objections.

#### United Utilities

No objections, subject to the application of suitable surface water and foul water drainage conditions.

#### LCC Lead Local Flood Authority

No objection to the proposed development, subject to the inclusion of suitable conditions, with regard to sustainable drainage schemes, construction phase surface water management plan and an operation and maintenance plan.

#### NHS East Lancashire

Planning application 21/0012/FUL, Land at the Junction with Greenberfield Lane, Gisburn Road, Barnoldswick, Lancashire is seeking to secure permission for the construction of 15 new dwellings. These dwellings will support a population increase of 35 new residents (assuming an average of 2.3 people per dwelling) all of whom will need to access health services.

It follows that without the provision of additional facilities and services it will not be possible to accommodate the health impact of the development within the existing provision which is available.

Whilst the Trust will, in due course, be able to obtain funding to meet the needs of the population which arises from the development, this funding will not be in place for approximately three years. Once in place, the funding will not be provided retrospectively, and as such the impact on the Trust for the initial period will not be met from any alternative source of funding.

We therefore request a contribution for this development in the sum of £25,598.

#### Lancashire Constabulary

No objection.

### **Public Response**

Letters of objection were received from neighbouring occupiers, their comments can be summarised as follows:

- Busy junction and road off Greenberfield Lane, with vehicles and pedestrians.
- Greenberfield Lane is not wide enough to accommodate extra traffic
- Parked vehicles often obscure views when entering and exiting the junction.

- Loss of trees, hedgerows and habitats for wildlife.
- Loss of garden area for existing houses to allow for the development
- The trees already removed were not dead.
- Houses will not be affordable for local residents.

## **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 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 ENV7 (Water Management) does not allow development where it would be at risk of flooding and appropriate flood alleviation measures will be provided and/or would increase the risk of flooding elsewhere. The proposal's compliance with this policy is addressed in the drainage and flood risk section.

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.

### 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.

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.

### **Principle of the Development**

Policy LIV1 of the Pendle Local Plan: Part 1 Core Strategy states that until the Council adopts the Pendle Local Plan Part 2: Site Allocations and Development policies then sustainable sites outside but close to a Settlement Boundary, which make a positive contribution to the five year supply of housing land, will encourage significant and early delivery of the housing requirement.

This site is a sustainable location abutting the settlement of Barnoldswick it is acceptable in terms of accessibility to local services and facilities in the settlement. Two previous applications for dwellings on this land were approved at appeal in 2017 and 2020, this establishes that the acceptability of the principle of a residential development of the scale proposed on this site.

The principle of the proposed residential development is acceptable in accordance with Policy LIV1.

### **Design**

The design of the proposed development consists of all detached two storey houses. The land itself is not overly prominent in public views, set behind the existing building line of Gisburn Road. The existing retained landscaping and landscaped public open space area to the north and south east side of the development would acceptably soften its visual impact from the north, south and east.

The development would be somewhat inward facing with plots 1 and 2 backing onto Gisburn Road. Taking into account that this point of Gisburn Road marks a transition between terraced housing with a strong street frontage and housing that is set further back from the road behind walls and hedges, it is not essential in design terms for that strong street frontage to be continued in this development.

In this case the development of the land would not result in an unacceptable loss of open countryside, it would constitute the rounding off of development in the area, rather than representing an unacceptable incursion in to the rural landscape. The proposed layout retains a

sense of space with the proposed landscaping and open space and design of the dwellings. The development would also not adversely impact upon the setting of the listed building Lane Ends Farmhouse.

The proposed development is acceptable in terms design, visual amenity and landscape impact in accordance with Policies ENV1, ENV2 and LIV1.

### **Residential Amenity**

The orientation and layout of the proposed development ensures adequate separation distances between the proposed dwellings and surrounding houses. The development would not result in unacceptable impacts upon the residential amenity of occupants of surrounding properties and would ensure an acceptable degree of residential amenity for future occupants. The development is acceptable in terms of residential amenity in accordance with Policy ENV2.

### **Highways and Access**

The principle of development in this location and the access has been established as part of previous applications and appeals, however the internal layout of the site and parking arrangements have been altered since the previous application. Whilst no formal objection has been raised to this, there are a number of alterations required to the proposal in order to be acceptable.

Amended plans have been received showing swept path analysis of the ability of vehicles to maneuver internally. These have been sent to LCC for comment but at the time of writing no response has been received. An update on this will be given at Committee.

Committee raised the issue of the ownership of the strip of land on the north west corner where a crossing point is proposed as well as whether an alternative path could be agreed linking the development to the footpath to Gisburn Road.

There are several issues to consider here. Primarily however Committee should note that the arrangement initially proposed was identical in this respect to one that has been approved at appeal. To go behind this decision would result in an award of costs against the Council for re-opening a decision that has already been tested at appeal despite the Council objecting to it.

The applicant has however submitted a plan showing a pedestrian link between two houses which would allow pedestrians to access the footway on the east side of Gisburn Road via a single track unmade side road. That would allow some access to the footway although via a vehicular track without a footway for circa 10m.

### **Drainage and Flood Risk**

A Flood Risk and Drainage Impact Assessment has been provided to address any potential issues associated with the proposals. The site lies within Flood Zone 1 and is therefore low risk. The report advises that a suitably designed drainage scheme should also be able to mitigate and reduce any possible future incidences of both pluvial and fluvial flooding.

The Lead Local Flood Authority and United Utilities have advised that the development is acceptable in terms of drainage and flood risk subject to appropriate drainage conditions. The development is acceptable in terms of drainage and flood risk in accordance with policy ENV7.

### **Ecology and Trees**

Concerns have been raised relating to impacts of ecology. The submitted ecology survey adequately demonstrates that the proposed development would not result in unacceptable impacts



upon protected species and ecology subject to a condition requiring that its mitigation recommendations are adhered to, including a Water Vole Survey and bat friendly lighting throughout the development.

The applicant has provided a tree survey to account for the presence of protected trees adjacent to the site (TPO No.4 1990). The survey advises that the three protected trees adjacent to the junction of Greenberfield Lane and Gisburn Road have now been felled due to their poor and unsafe condition. A condition will be applied to secure suitable landscaping and planting across the site.

The plans also show root protection details for the trees to be retained on the south and east boundaries to ensure they are not harmed during development. This can be controlled by condition to ensure that the proposed measures are correctly installed and maintained throughout the construction.

## **Open Space**

Policy LIV5 requires all proposals for residential units to provide on-site open space. The development provides two areas of public open space in the north and south eastern corner of the site. This combined with the overall layout and acceptable landscaping is acceptable in accordance with Policy LIV5. It is necessary to attach a condition to ensure adequate management and maintenance of the open space.

## **Affordable Housing**

The development falls within the threshold set out in Policy LIV4 for the provision of affordable housing at a level of 5%. However, the requirement for affordable housing provision was omitted from the allowed appeal for 20 dwellings and the subsequent appeal for 17 dwellings. Taking into account the fall-back position of the existing permissions, without such a requirement, and in the interest of consistency in relation to this specific site, it is not recommended that a requirement for affordable housing provision be imposed in relation to this application.

## **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. That is also supported by advice from Counsel that other Councils have had.

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.

## **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: Delegate Grant Consent**

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: 2479-1-002, 2479-1-003, 2479-1-004, 2479-1-001, 2479-2-011, 2479-2-009, 2479-2-007, 2479-2-006, 2479-2-005, 2479-2-002, 2479-2-013, 2479-2-012, 2479-2-010, 2479-2-001, 2479-2-008 and 2479-2-003.

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

3. Prior to the commencement of above ground works involved in the erection of the external walls of the development samples of the external materials and finished 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. The window openings shall be set back from the external face of the wall to a depth of at least 70mm.

**Reason:** To ensure a satisfactory appearance to the development.

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 ground clearance, changes of level or development or development related work shall commence until protective fencing in full accordance with BS 5837:2012 'Trees in relation to design, demolition and construction. Recommendations' has been erected around each tree/tree group or hedge to be retained on the site or on immediately adjoining land. No work shall be carried out on the site until the written approval of the Local Planning Authority has been issued confirming that the protective fencing is erected in accordance with this condition. Within the areas so fenced, the existing ground level shall neither be raised nor lowered. Roots with a diameter of more than 25 millimetres shall not be severed. There shall be no construction work, development or development-related activity of any description, including service runs, the deposit of spoil or the storage of materials, within the fenced areas. The protective fencing shall thereafter be retained and maintained during the period of construction. All works involving excavation of soil, including foundations and the laying of services within the recommended distance calculated under BS 5837:2012 of the trees to be retained on the site, shall be dug by hand and in accordance with a scheme of works which has been submitted to and approved in writing by the Local Planning Authority prior to the commencement of works.

**Reason:** To ensure that trees to be retain within and adjacent to the site are protected during the course of the development works.

7. No development shall commence until a final, detailed surface water sustainable drainage scheme for the site has been submitted to, and approved in writing by, the local planning authority.

The detailed sustainable drainage scheme shall be based upon the site-specific flood risk assessment submitted and the sustainable drainage principles set out in the National Planning Policy Framework, Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems. No surface water shall be allowed to discharge to the public foul sewer(s), either directly or indirectly. The detailed sustainable drainage scheme shall include, as a minimum:

- a) Final sustainable drainage plans, appropriately labelled to include:
  - i. A final surface water drainage layout plan showing all pipe and structure references, dimensions and design levels;
  - ii. A plan identifying the areas contributing to the surface water drainage network, including surface water flows from outside the curtilage as necessary;
  - iii. Details of all sustainable drainage components, including landscape drawings showing topography and slope gradient as appropriate;

iv. Flood water exceedance routes in accordance with Defra Technical Standards for Sustainable Drainage Systems;

v. Finished Floor Levels (FFL) in AOD, with adjacent ground levels for all sides of each building; and

vi. Measures taken to manage the quality of the surface water runoff to prevent pollution, protect groundwater and surface waters, and deliver suitably clean water to sustainable drainage components;

b) A full set of sustainable drainage 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 additional 40% allowance for climate change and an additional 10% allowance for urban creep. Surface water run-off must not exceed a maximum rate of 5l/s.

The scheme shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings.

**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.

8. No development shall commence unless and until details of how surface water and pollution prevention will be managed during each construction phase have been submitted to and approved in writing by the local planning authority. These details shall be implemented thereafter.

**Reason:** To ensure that the construction phase(s) of development does not pose an undue flood risk on site or elsewhere and that any pollution arising from the development as a result of the construction works does not adversely impact on existing or proposed ecological or geomorphic condition of water bodies.

9. No building hereby permitted shall be occupied until a Verification Report and Operation and Maintenance Plan for the lifetime of the development, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority.

The Verification Report must demonstrate that the sustainable drainage system has been constructed as per the agreed scheme (or detail any minor variations), and contain information and evidence (including photographs) of details and locations (including national grid reference) of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an final 'operation and maintenance manual' for the sustainable drainage scheme as constructed.

Details of appropriate operational, maintenance and access requirements for each sustainable drainage component are to be provided, with reference to published guidance, through an appropriate Operation and Maintenance Plan for the lifetime of the development as constructed. This shall include arrangements for adoption by an appropriate public body or statutory undertaker, and/or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

**Reason:** To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems.

10. 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).

11. No other part of the development shall be commenced until all the highway works to facilitate construction traffic access have been constructed in accordance with a scheme which shall be submitted to and approved by the Local Planning Authority.

**Reason:** To enable all construction traffic to enter and leave the premises in a safe manner without causing a hazard to other road users.

12. No dwelling hereby permitted shall be occupied unless and until a scheme for all highway works to facilitate access to the site from Greenberfield Lane, including visibility splays of 2.4m x 25m in both directions and the creation of new pedestrian footways to Greenberfield Lane and pedestrian crossing point on Gisburn Road, has been submitted to and approved in writing by the Local Planning Authority. The new access, visibility splays, footways and associated works shall be constructed in accordance with the approved details before any dwelling hereby approved is first occupied. Thereafter land within the visibility splays shall be permanently maintained free from obstructions within the splays in excess of 1 metre in height above the height at the centre line of the adjacent carriageway.

**Reason:** To ensure that the access can be achieved to a suitable standard to enable vehicles to enter and leave the premises in a safe manner without causing a hazard to other road users.

13. No dwelling hereby approved shall be occupied unless and until details of a maintenance plan for the future management and maintenance of the public open space as shown on approved drawing No. 2479-2-001 have been submitted to and approved in writing by the Local Planning Authority. The plan shall include details of the timescales and work required to be carried out on

the site. The open space shall then be provided in its entirety prior to the occupation of any dwelling hereby approved and maintained in accordance with the agreed plan thereafter.

**Reason:** To ensure that the site is maintained in an appropriate manner.

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

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

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

**Reason:** To encourage sustainable travel.

16. Prior to first occupation of the development details of the proposed arrangements for future management and maintenance of the proposed roads and footways within the development shall be submitted to and approved by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as a private management and maintenance company has been established.

**Reason:** To ensure that the internal roads and footways serving the development are completed and thereafter maintained to an acceptable standard in the interest of residential/highway safety.

17. Prior to first occupation of any approved dwelling the parking area associated with that dwelling, as shown on the approved plans, shall be constructed, laid out and surfaced in bound porous materials. The parking area shall thereafter always remain available for the parking of domestic vehicles associated with the dwelling.

**Reason:** In order to ensure satisfactory levels of off-street parking are achieved within the site to prevent parking on the highway to the detriment of highway safety.

18. The recommendations detailed in the Preliminary Ecological Appraisal undertaken by Pennine Ecological dated December 2020, 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.

## **INFORMATIVE**

For the avoidance of any doubt, this response does not grant the applicant permission to connect to the ordinary watercourse(s) and, once planning permission has been obtained, it does not mean that land drainage consent will be given.

The applicant should obtain Land Drainage Consent from Lancashire County Council before starting any works on site. Information on the application process and relevant forms can be found at [www.lancashire.gov.uk/flooding](http://www.lancashire.gov.uk/flooding).

**Application Ref:** 21/0012/FUL

**Proposal:** Full: Major: Erection of 15 dwelling houses and new access.

**At:** Land at the Junction with Greenberfield Lane, Gisburn Road, Barnoldswick

**On behalf of:** Opulwood Developments



## REPORT TO WEST CRAVEN COMMITTEE ON THE 8<sup>th</sup> JUNE, 2021

**Application Ref:** 21/0111/FUL

**Proposal:** Full: Major: Erection of 19 No. bungalows (over 55) with associated landscaping, car parking and access from Brogden Lane.

**At:** Land to the West of Brogden View, Brogden Lane, Barnoldswick

**On behalf of:** Applethwaite Ltd

**Date Registered:** 19 February 2021

**Expiry Date:** 21 May 2021

**Case Officer:** Kathryn Hughes

### **Site Description and Proposal**

This application seeks permission to erect nineteen dwellinghouses.

The application site is located outside but adjacent to the settlement boundary of Barnoldswick accessed from Brogden Lane

The scheme would consist of nineteen detached bungalows which are proposed to be marketed for the over 55's.

There are protected trees as well as Listed Buildings nearby.

A Design and Access Statement, Transport Statement, Ecology Report, Arboricultural Assessment, Landscape Scheme, Contamination Report, Flood Risk Assessment and Utilities Report have been submitted in support of this scheme.

### **Relevant Planning History**

16/0714/FUL - Full: Major: Erection of 24 dwellinghouses and estate road with access from Brogden Lane including open space – Withdrawn.

### **Consultee Response**

LCC Highways – There has been a previous application (reference 16/0714), which was subsequently withdrawn, for 24 new dwellings with a new access on Brogden Lane. The recently approved application reference 20/0825 proposes a new footway along the south side of Brogden Lane and details of this proposal are shown with the Transport Statement.

### **Site access**

The Proposed site layout Rev B does not reflect the site access arrangement shown embedded within the Transport Statement. The layout shown within the Transport Statement is supported rather than the more constrained geometry shown on the mck associates drawing. Please amend this.

The speed survey records 85%ile speeds of 34.3mph in both directions and visibility splays of X2.4m by Y52m in both directions are proposed and accepted.

There are no collisions recorded in the previous 5 years on Brogden Lane in the vicinity of the site.

## **Brogden Lane**

The proposed works on Brodgen Lane are requested to be amended. The priority give way feature proposed for Brodgen Lane to allow a continuous footway to be provided may present more problems for the farm access directly opposite and loss of on-street car parking would present concerns.

The route to the nearest bus stop from the site to Greenberfield Road would benefit from a new build out on Gisburn Road at the south side of the junction of Brodgen Lane to give pedestrians an improved visibility of oncoming vehicles when crossing. Currently it is difficult to cross Gisburn Road and it is likely to present a concern for people with limited mobility. This would not result in any loss of on-street car parking as there are currently double yellow lines in-situ. The verge on the east side of Gisburn Road and continuing on Greenberfield Road is proposed to be converted to footway under application 19/0025 allowed at appeal and 21/0012 pending a decision.

There are no collisions recorded on Gisburn Road in the vicinity of the Greenberfield Road junction in the previous 5 years other than a dog which ran into the road and collided with a motorcycle. This cannot be attributed to a highway safety concern which would require mitigation measures to address.

The existing scheme of street lighting is not to current standards and would require upgrading to support the intensification of movements from the development for the safety and movement of pedestrians and cyclists.

The nearest bus stop on Greenberfield Road should be upgraded to provide a quality bus stop and DDA compliant bus border kerbing with bus shelter, subject to the parish Council's view on future maintenance.

## **Internal Layout**

Please include a 0.5m service strip around the turning heads.

## **Parking**

Each dwelling should have a secure cycle store and electric vehicle charging point with a minimum 7kw output.

## **Conclusion**

To conclude we would request an amended off-site highway works layout drawing and subject to this there is no objection to the proposal and conditions relating to construction method statement, construction traffic access, off site highway works, visibility splays, management and maintenance of roads, etc., engineering, drainage and street lighting construction details, construction of internal estate roads, parking, cycle storage and electric charging points.

LLFA – No objections subject to appropriate conditions relating to FRA, Sustainable Drainage Scheme, Construction Phase Surface Water Management Plan and Operation and Maintenance Plan & Verification Report.

## **Surface water drainage scheme:**

The surface water drainage proposals set out on drawing 31203-SUT-ZZ-XX-DR-C-6020-0002 Rev P04 are only preliminary and subject to change following further detailed design and investigation. The applicant will therefore be expected to provide a final surface water drainage scheme for the development once all detailed design and investigation work has been completed.

The final strategy will need to be submitted to and approved by the LPA prior to the commencement of any development and must comply with the requirements of the National Planning Policy Framework, the Planning Practice Guidance and the Defra Technical Standards for Sustainable Drainage Systems. The strategy must also be accompanied by an appropriate management and maintenance plan that details how the surface water drainage network will be managed and maintained over the lifetime of the development. The LLFA is satisfied that these details can be secured through the inclusion of the above recommended planning conditions.

The applicant is advised to take note of the requirement with regard to urban creep and to ensure that this is appropriately accounted for within the final detailed sustainable drainage scheme.

### **Sustainable Drainage Systems:**

The LLFA encourages the applicant to maximise the use of sustainable drainage systems (SuDS) when designing the surface water drainage scheme for the development site. This is because sustainable drainage systems offer significant advantages over conventional piped drainage systems in reducing flood risk. Sustainable drainage systems can attenuate the rate and quantity of surface water run-off from a site, and they can also absorb diffuse pollutants and promote groundwater recharge. Ponds, reed beds and seasonally flooded grasslands are also particularly attractive features within public open space. The wide variety of available sustainable drainage techniques means that virtually any development should be able to include a scheme based around these principles and provide multiple benefits, reducing costs and maintenance needs.

Some SuDS features, for example rainwater harvesting and permeable paving used on roads and driveways, must not be included as part of the hydrological calculations for the site. This is because occupants may change or remove these features in the future and this could have the potential to increase surface water runoff from the site. Where SuDS features such as rainwater harvesting and permeable paving are included in the hydrological calculations, the local planning authority would be advised to consider the removal of permitted development rights.

### **Construction Phase including enabling works:**

It's critical that flood risk is appropriately managed during the construction phase(s) of the development. Compaction of the soil is likely to speed up the run-off rate whilst the site is cleared and the permanent drainage systems and/or attenuation systems are constructed and brought into use.

The developer should identify the flood risk associated with this phase of the development and provide details of how surface water will be managed during construction, including any mitigation. The LLFA is satisfied that these details can be secured through the inclusion of the above recommended planning conditions.

### **Ordinary Watercourse Land Drainage Consent:**

The proposals show the applicant is intending to carry out works on or near to an existing ordinary watercourse. Under the Land Drainage Act 1991 (as amended by the Flood & Water Management Act 2010), the applicant will need consent from the LLFA for these works as they have the potential to alter or impede the flow of the watercourse. Consent is required regardless of whether the watercourse is open or culverted. Failure to obtain consent before starting works may result in enforcement action being taken. Retrospective consent cannot be issued.

The applicant is advised to contact the Flood Risk Management Team at Lancashire County Council to discuss their proposals prior to applying for Land Drainage Consent. The applicant can contact the Flood Risk Management Team by the following email: [enquiries@lancashire.gov.uk](mailto:enquiries@lancashire.gov.uk). Further information regarding Land Drainage Consent can be found at [www.lancashire.gov.uk/flooding](http://www.lancashire.gov.uk/flooding).

For the avoidance of doubt, it should not be assumed that land drainage consent will automatically be granted once planning permission has been obtained.

United Utilities – In accordance with the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG), the site should be drained on a separate system with foul water draining to the public sewer and surface water draining in the most sustainable way.

The NPPG clearly outlines the hierarchy to be investigated by the developer when considering a surface water drainage strategy. We would ask the developer to consider the following drainage options in the following order of priority:

1. into the ground (infiltration);
2. to a surface water body;
3. to a surface water sewer, highway drain, or another drainage system;
4. to a combined sewer.

We recommend the applicant implements the scheme in accordance with the surface water drainage hierarchy outlined above.

If the applicant intends to offer wastewater assets forward for adoption by United Utilities, the proposed detailed design will be subject to a technical appraisal by an Adoptions Engineer as we need to be sure that the proposal meets the requirements of Sewers for adoption and United Utilities' Asset Standards. The proposed design should give consideration to long term operability and give United Utilities a cost effective proposal for the life of the assets. Therefore, should this application be approved and the applicant wishes to progress a Section 104 agreement, we strongly recommend that no construction commences until the detailed drainage design, submitted as part of the Section 104 agreement, has been assessed and accepted in writing by United Utilities. Any works carried out prior to the technical assessment being approved is done entirely at the developers own risk and could be subject to change.

Details of both our S106 sewer connections and S104 sewer adoptions processes (including application forms) can be found on our website

<http://www.unitedutilities.com/buildersdevelopers.aspx>

Please note we are not responsible for advising on rates of discharge to the local watercourse system. This is a matter for you to discuss with the Lead Local Flood Authority and / or the Environment Agency if the watercourse is classified as main river.

### **Water supply**

If the applicant intends to obtain a water supply from United Utilities for the proposed development, we strongly recommend they engage with us at the earliest opportunity. If reinforcement of the water network is required to meet the demand, this could be a significant project which should be accounted for in the project timeline for design and construction.

Please note, all internal pipework must comply with current Water Supply (water fittings) Regulations 1999.

### **United Utilities' property, assets and infrastructure**

Where United Utilities' assets exist, the level of cover to the water mains and public sewers must not be compromised either during or after construction.

It is the applicant's responsibility to investigate the possibility of any United Utilities' assets potentially impacted by their proposals and to demonstrate the exact relationship between any United Utilities' assets and the proposed development.

Yorkshire Water – consult UU.

Lancashire Fire & Rescue – comments relating to access document B part B5.

Lancashire Architectural Liaison Officer - The applicant should be encouraged to build the dwellings to achieve the Secured by Design Gold certification to keep people safe and feeling safe. Academic research has provided evidence that shows that Secured by Design schemes suffer from less burglary, criminal damage and vehicle crime. The applicant can be signposted to the Designing Out Crime office and the Secured by Design website for design guides and further information on the scheme <https://protect-eu.mimecast.com/s/UYmVC8qglFQgAGFnsISd>

NHS East Lancashire Hospitals NHS Trust – Request a contribution towards infrastructure costs of £32,424.00.

PBC Environmental Health – Requests conditions relating to construction methods and contamination.

Barnoldswick Town Council – This site lies within an area of archaeological interest. There are 8 heritage assets within the studied area. There are serious flooding concerns as the site has surface water run-off. Concerns over highway safety due to the exit route being on a busy road that already has a development approved on the opposite side. This means they would all be converging on to the same main road.

## **Public Response**

Site and press notices posted and nearest neighbours notified by letter. Seven responses received objecting to the scheme on the following grounds:

- Site is prone to flooding and is a natural flood plain and floods numerous times every year. The flood water often spills onto Brogden Lane and sometimes its unpassable;
- The site is greenfield and there seems to be lots of applications for housing on green land even though there are pockets of brownfield sites which would be more acceptable to residents;
- The local population has had to endure increasing amounts of traffic through Colne and Foulridge with no start date for the by-pass. It would be better to freeze housing in these areas until the Foulridge by-pass is finished;
- Barnoldswick can't withstand any more houses without upgrading its infrastructure;
- The proposed houses to be built on our site are not shown on the submitted plans. We believe that the development would impact on plots 1 & as there will be first floor windows overlooking these properties at less than 3m from the shared boundary;
- We are aware that a previous application was withdrawn due to the technical drainage issues on site and trust that the Council will thoroughly examine the submitted drainage strategy;
- Water course runs at the edge of the site yet the application seems to indicate no stream, rivers or water in close proximity;
- Brogden lane is a busy and popular route for walkers, runners, dog walkers, horse riding and cyclists providing access to the countryside providing local access to exercise and helping mental wellbeing;
- The land is busy with works traffic throughout the day with large vehicles from numerous farms including tractors and tipper trucks;
- If this proposal is for over 55's then why put it at the edge of town instead of close to amenities with no bus stops in the near vicinity;
- This is a green field site in a historic area of natural beauty;

- There are serious flaws and omissions in the application with reference to the flood risk assessment and statements. In particular the FRA statement is incorrect, incorrect planning history, incorrect watercourse statement, questionable calculations of flood water storage and inappropriate timing of flood risk assessment.

## **Officer Comments**

The issues for consideration are principle of housing, layout and impact on amenity, design and materials, highway issues, flooding and drainage issues, contamination, trees/ landscaping, ecology, contributions and affordable housing units.

### **1. Policy**

The starting point for consideration of any planning application is the development plan. Policies which are up to date and which conform to the provisions of the National Planning Policy Framework (the Framework) must be given full weight in the decision making process. Other material considerations may then be set against the Local plan policies so far as they are relevant.

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 paragraphs 18 to 219 of the Framework, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system.

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

The following Local Plan policies are relevant to this application:

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

Policy ENV2 identifies the need to protect and enhance the heritage and character of the Borough and quality of life for its residents by encouraging high standards of quality and design in new development. It states that siting and design should be in scale and harmony with its surroundings. The proposal's compliance with this policy is addressed in the design and amenity sections.

Policy ENV7 does not allow development where it would be at risk of flooding and appropriate flood alleviation measures will be provided and/or would increase the risk of flooding elsewhere. The proposal's compliance with this policy is addressed in the flooding and drainage section.

Policy LIV1 sets out the housing requirements for 2011 to 2030 and how this will be delivered.

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

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

Policy LIV5 requires all new housing to be designed and built in a sustainable way. New development should make the most efficient use of land and built at a density appropriate to their location taking account of townscape and landscape character. Provision for open space and/or green infrastructure should be made in all new housing developments.

The following saved policies from the Replacement Pendle Local Plan are also relevant:

Policy 31 'Parking' requires that new developments provide parking in line with the levels set out in Appendix 1 of the RPLP. This is addressed in the Highways Issues/Parking section.

In national terms the National Planning Policy Framework ("the Framework") provides guidance on housing requirements, design and sustainable development which is relevant to this proposal.

Paragraph 73 of the Framework requires local planning authorities to identify a supply of deliverable housing sites to provide five years' worth of their housing requirements.

Para 130 of the National Planning Policy Framework states that permission should be refused for development of poor design that fails to take the opportunities available for improving character and quality of an area and the way it functions. This paragraph is unqualified. If a development is poor in design it should be refused.

## 1. Principle of Housing

This proposal is for the erection of 19 detached dwellinghouses on a greenfield site outside of the settlement boundary for Barnoldswick.

Until such time that the Council adopts the Pendle Local Plan Part 2: Site Allocations and Development Policies Policy LIV1 allows for sites within sustainable locations outside of but close to a Settlement Boundary which would make a positive contribution towards the five year housing land supply.

The site is immediately adjacent to the settlement boundary to the east and south with existing and proposed residential properties to those boundaries.

There are facilities including shops, bus stops, schools and public houses in close proximity of the site and therefore this site is sustainable and the principle of housing acceptable and accords with policy LIV1.

## 2. Layout and Impact on Amenity

The nearest properties are Lynton Grove to the north, Cherry Tree Cottage to the east, No.'s 11 - 17 Brogden View to the south east and No.'s 24 and 26 Foster Road.

Both Lynton Grove and Cherry Tree Cottage are sufficient distance not to be unduly affected by the proposal.

No.'s 11 and 15 Brogden View are proposed to have Open Space to the rear and therefore would not be unduly affected.

No. 17 Brogden View also has Open Space to the rear with the rear of plot 1 22m distant at an oblique angle this would be acceptable.

No's 24 and 26 Foster Road are proposed to have Open Space to the rear and therefore would not be unduly affected.

There are also four recently approved dwellinghouses accessed off Brodgen View sited to the eastern side of this site which originally obtained permission on Appeal and have been revised and yet to be constructed.

The approved Plot 1 on the adjacent site would lie a minimum of 2m from the boundary of this site with the proposed plot 1 at a distance of 1.5m from this boundary. Whilst the approved two storey

house has two side facing bedroom windows these would look over the roofscape of the adjacent bungalow which has a side facing window and door which to some degree would be screened by the proposed 1.8m high boundary fence. Moreover the approved house at Plot 1 on the adjacent side is set forward of the proposed bungalow on this site by 6m front to front elevation which would also prevent any undue privacy issues.

Due to the design and fenestration the distances proposed are acceptable between these dwellings.

Details of boundary treatments and landscaping can be controlled by appropriate conditions albeit the agent has been requested to review these prior to the meeting.

Subject to appropriate conditions scheme would be acceptable in terms of layout and impact and accords with policies ENV1 and ENV2.

### 3. Design and Materials

The application proposes all different designs which would be of a similar design with a mixture of two and three bedrooms and some with a detached single garage.

The materials proposed are Natural Stone with Polar White Render and Slate Grey tiles. No details of windows, doors or garage doors have been provided.

Subject to appropriate conditions this scheme would be acceptable in terms of design and materials and accords with policies ENV1 and ENV2.

### 4. Highway Issues

The proposed development proposes access onto Brogden Lane which subject to appropriate conditions would not result in any adverse impact on highway safety issues.

LCC Highways have requested that the proposed works on Brogden Lane are amended to remove the priority give way signs and markings and the remove the new footway outside Cherry Tree Cottages. As this would remove on-street parking and potential cause problems for the farm access

A continuous footway, however, not on all of it will be on the south side and pedestrians will have to cross over Brogden Lane. The flows are low on Brogden Lane so this is acceptable. A scheme of street lighting on Brogden Lane and a build out on Gisburn Road is important to ensure pedestrians can get across Gisburn Road to the bus stop has also been requested. These details have been agreed and can be controlled by an appropriate condition.

This scheme would provide sufficient off-street car parking and manoeuvring space within the curtilage in a combination of garages and driveways.

This would provide off-street car parking spaces in line with the car parking standards set out in saved Policy 31 of the Replacement Pendle Local Plan.

### 5. Flooding and Drainage

Whilst the site is not within a Flood Risk area the size of the site and major development proposed requires that an appropriate scheme for the disposal of surface water can be achieved on the site.

Drainage is a technical issue and whilst it is clearly acknowledged that the site floods and that there is land drains and culverts on the site it is a matter that can be satisfactorily addressed by a technical solution.



It is understood that residents are concerned about flooding in relation to their properties and the road and this is a fundamental matter which needs to be addressed.

In assessing the FRA submitted with the application Lead Local Flood Authority have requested and clarified further information on the site. This has been provided and subject to numerous detailed conditions which will require the developer to submit sufficient information and calculations for the flood storage and run off rates to ensure that an appropriate drainage scheme can be achieved which will then address the issues on this site. These details will need to be agreed prior to commencement of any development on the site.

Subject therefore to appropriate conditions requiring further technical information the development would be acceptable in terms of flood risk and accords with policy ENV7,

## 6. Contamination

A site investigation report has been submitted which is acceptable. A standard contamination condition has been recommended by PBC Environmental Health to be attached and this will ensure the site is clear of any potential hazards.

## 7. Landscaping and Ecology

Policy LIV5 requires all proposals for residential units to provide on-site open space which can take the form of Green Corridors and spacious layouts.

Open Space is proposed within the site towards the south east corner abutting the new development on the Former Ambulance Station site which has still to be commenced/completed.

Tree planting is proposed throughout the site and the agent has been requested to review the proposed boundary treatments to the north and west of the site and provide hedges instead of stone walling in order to soften the scheme and blend with the fields to the west.

The site layout provides adequate private amenity spaces for each plot which will help to soften the scheme and the open space provision adds some visual interest in the overall layout.

Details of the overall landscaping for the site can be controlled by an appropriate condition.

The submitted ecology recommends compensatory planting and habitat enhancement which can be controlled by condition.

The proposal therefore accords with policy.

## 8. Contributions

A request has been made from East Lancashire Hospitals NHS Trust for a contribution towards the cost of healthcare interventions it calculates will be generated by the residents of the dwellings in their initial occupation, for which there is a funding gap.

In terms of health service contributions there are a number of concerns about the request and justification for those requests. 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.

We have also raised a concern about the timing of funding and that developments can take several years in order to come to fruition. From the information supplied to us it appears that once a development is known about then financing is included in the next budgetary year. The issue therefore is that if developments take several years to come forward and they are included in financial planning after year 1 then the developer would be paying for services already funded in the standard funding formulae.

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 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 to the NHS 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. The level of contribution would also undermine the already low level of profitability and would jeopardise whether or not the scheme would proceed. The provision of affordable housing is a major need within Pendle and significant weight should be attached to providing that housing.

## 9. Affordable Units

Policy LIV4 sets out the criteria for providing affordable units on sites within the Borough. As this site is for 19 units in West Craven it is required to provide 5% as affordable. This equate to one unit. It is understood from the agent that they are of the view that as the scheme is for over 55's this does not apply. However, this is not reflected in the policy and affordable units for over 55's can still be provided.

Discussions with the agent are on-going in the respect but this element can be controlled by an appropriate condition.

## 10. Other issues

Whilst there Listed Buildings in the locality none of these are in close enough proximity to be affected by the proposal and are in any event close to existing housing development. Reference has been made to its historic setting and archaeological merit but no evidence to support this has been provided and the site is not within a Conservation Area which would require further consideration.

## **Summary**

The principle of residential development in this location is acceptable in terms of design, materials, highways and landscaping subject to appropriate conditions. The proposed development would not have a detrimental impact on residential amenity and accords with the adopted policies of the Pendle Local Plan: Part 1.

There are a number of issues that are outstanding that need to be resolved before permission for the development could be granted. These do not however affect the principle of development and are matters that could be delegated for decision.

### **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. Subject to appropriate conditions the proposal would not unduly impact on amenity, raise undue highway concerns or design issues and details of drainage/flooding, landscaping contamination and ecology 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: Delegate grant consent**

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: Required to be imposed by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan, 19-153-LDP01 REV B, 19-153-MP01, 19-153-BT01 REV B, 19/153/PL-0001 REV B site layout & Colour Layout, House Pack Rev B 05.02.21, Street scene, Landscaping, Drainage and FRA.

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

3. The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
  - i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 5% of housing units/bed spaces;
  - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
  - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider [or the management of the affordable housing] (if no RSL involved);
  - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and

v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

**Reason:** To ensure the provision of a mix of tenure on the site appropriate for the requirements of the area.

4. Prior to the commencement of development samples of the materials to be used in the construction of the development 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. The development shall be carried out in strict accordance with the approved details.

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

5. No part of the development hereby permitted shall be commenced until details of the proposed ground levels have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include a number of sections across the site, which shall indicate existing and proposed ground levels, together with the floor levels of any proposed dwelling/buildings through which the sections run and shall extend beyond the site boundaries to include any surrounding, adjacent properties. The development shall thereafter be implemented in accordance with the approved details.

**Reason:** To enable the Local Planning Authority to assess how the development will accommodate the varied land levels and control the final form.

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:

a) A programme of works including phasing, hours of operation and measures for the control of traffic to and from the site, and within the site, during construction.

b) The areas and methods of loading and unloading of plant and materials.

c) The areas for the storage of plant and materials.

e) Details of wheel-washing facilities including location

g) Measures related to construction waste management

i) Soil resource management including stock-pile management

n) Location and details of site compounds

o) Hoarding details during construction

u) Parking area(s) for construction traffic and personnel

v) Routeing of construction vehicles

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 the commencement of development the applicant shall have submitted to and have agreed in writing by the Local Planning Authority a method statement which sets out in detail the method, standards and timing for the investigation and subsequent remediation of any contamination which may be present on site. The method statement shall detail how:-

- a) an investigation and assessment to identify the types, nature and extent of land contamination affecting the application site together with the risks to receptors and potential for migration within and beyond the site will be carried out by an appropriately qualified geotechnical professional (in accordance with a methodology for investigations and assessments which shall comply with BS 10175:2001) will be carried out and the method of reporting this to the Local Planning Authority; and
- b) A comprehensive remediation scheme which shall include an implementation timetable, details of future monitoring and a verification methodology (which shall include a sampling and analysis programme to confirm the adequacy of land decontamination) will be submitted to and approved in writing by the Local Planning Authority.

All agreed remediation measures shall thereafter be carried out in accordance with the approved implementation timetable under the supervision of a geotechnical professional and shall be completed in full accordance with the agreed measures and timings, unless otherwise agreed in writing by the Local Planning Authority.

In addition, prior to commencing construction of any building, the developer shall first submit to and obtain written approval from the Local Planning Authority a report to confirm that all the agreed remediation measures have been carried out fully in accordance with the agreed details, providing results of the verification programme of post-remediation sampling and monitoring and including future monitoring proposals for the site.

**Advisory Notes:**

(i) Where land identified as having the potential to be contaminated is undergoing redevelopment, a copy of the leaflet entitled 'Information for Developers on the investigation and remediation of potentially contaminated sites' will be available to applicants/developers from the Council's Contaminated Land Officer. The leaflet will be sent to the developer by request.

(ii) Three copies of all contaminated land reports should be sent to the Local Planning Authority.

(iii) This condition is required to be fully complied with before development is commenced. Failure to comply with the condition prior to commencement of work may result in legal action being taken.

**Reason:** In order to protect the health of the occupants of the new development and/or in order to prevent contamination of the controlled waters.

8. The scheme shall provide for separate systems for foul and surface waters and be constructed and completed in accordance with the approved plans before the dwelling is occupied.

**Reason:** To ensure proper drainage and manage risk of flooding and pollution.

9. The development permitted by this planning permission shall be carried out in accordance with the principles set out within the submitted flood risk assessment (reference: 31203/LRD issue 2, by: Sutcliffe, dated: Feb 2021) and indicative surface water drainage strategy (drawing: 31203-SUT-ZZ-XX-DR-C-6020-0002Rev P04, dated: 5 February 2021).

The measures shall be fully implemented prior to first occupation of any dwelling and in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority in consultation with the Lead Local Flood Authority.

Reason: To promote sustainable development, secure proper drainage and to manage the risk of flooding and pollution.

10. No development shall commence until a final, detailed surface water sustainable drainage scheme for the site has been submitted to, and approved in writing by, the local planning authority.

The detailed sustainable drainage scheme shall be based upon the site-specific flood risk assessment submitted and the sustainable drainage principles set out in the National Planning Policy Framework, Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems. No surface water shall be allowed to discharge to the public foul sewer(s), either directly or indirectly. The detailed sustainable drainage scheme shall include, as a minimum:

- a) Final sustainable drainage plans, appropriately labelled to include:
  - i. A final surface water drainage layout plan showing all pipe and structure references, dimensions and design levels;
  - ii. A plan identifying the areas contributing to the surface water drainage network, including surface water flows from outside the curtilage as necessary;
  - iii. Details of all sustainable drainage components, including landscape drawings showing topography and slope gradient as appropriate;
  - iv. Flood water exceedance routes in accordance with Defra Technical Standards for Sustainable Drainage Systems;
  - v. Finished Floor Levels (FFL) in AOD with adjacent ground levels for all sides of each building;
  - vi. Details of proposals to collect and mitigate surface water runoff from the development boundary; and
  - vii. Measures taken to manage the quality of the surface water runoff to prevent pollution, protect groundwater and surface waters, and deliver suitably clean water to sustainable drainage components;
- b) A full set of sustainable drainage 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 additional 40% allowance for climate change and a 10% allowance for urban creep. Surface water run-off must not exceed a maximum rate of 10.6l/s.

The scheme shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings.

**Reason:** To ensure satisfactory sustainable drainage facilities are provided to serve the site in accordance with the Paragraphs 163 and 165 of the National Planning Policy Framework, Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems.

11. No development shall commence until details of how surface water and pollution prevention will be managed during each construction phase have been submitted to and approved in writing by the local planning authority. Those details shall include, as a minimum:

a) Measures taken to ensure surface water flows are retained on-site during construction phase(s) and, if surface water flows are to be discharged they are done so at a restricted rate to be agreed with the Lancashire County Council LLFA.

b) Measures taken to prevent siltation and pollutants from the site into any receiving groundwater and/or surface waters, including watercourses, with reference to published guidance.

The development shall be constructed in accordance with the approved details.



**Reason:** To ensure the development is served by satisfactory arrangements for the disposal of surface water during each construction phase(s) so it does not pose an undue flood risk on site or elsewhere and to ensure that any pollution arising from the development as a result of the construction works does not adversely impact on existing or proposed ecological or geomorphic condition of water bodies.

12. No building hereby permitted shall be occupied until a Verification Report and Operation and Maintenance Plan for the lifetime of the development, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority.

The Verification Report must demonstrate that the sustainable drainage system has been constructed as per the agreed scheme (or detail any minor variations), and contain information and evidence (including photographs) of details and locations (including national grid reference) of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an final 'operation and maintenance manual' for the sustainable drainage scheme as constructed.

Details of appropriate operational, maintenance and access requirements for each sustainable drainage component are to be provided, with reference to published guidance, through an appropriate Operation and Maintenance Plan for the lifetime of the development as constructed. This shall include arrangements for adoption by an appropriate public body or statutory undertaker, and/or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

**Reason:** To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of Paragraph 165 of the National Planning Policy Framework.

13. No other part of the development shall be commenced until all the highway works to facilitate construction traffic access have been constructed in accordance with a scheme which shall be submitted to and approved by the Local Planning Authority.

**Reason:** In the interest of highway safety to ensure that satisfactory access is provided to the site before the development is commenced.

14. Prior to the commencement of development a scheme for the site access and off-site highway works shall be submitted to and approved by the Local Planning Authority. The works shall include the following and be implemented prior to the first occupation of any dwelling.

- a. New footway on Brodgen Land and new pedestrian build out on Gisburn Road to link to Greenberfield Road.
- b. Scheme of street lighting on Brodgen Lane between Gisburn Road and the site access.
- c. Upgrade of bus stop on Greenberfield Road

**Reason:** In the interest of highway safety to ensure that off-site highway improvements are provided to the site which will mitigate the development.

15. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 there shall not at any time in connection with the development

hereby permitted be erected or planted or allowed to remain upon the land hereinafter defined any building, wall, fence, hedge, tree, shrub or other device over 1m above road level. The visibility splay to be the subject of this condition shall be that land in front of a line drawn from a point 2.4 m measured along the centre line of the proposed road from the continuation of the nearer edge of the carriageway of Brogden Lane to points measured 52m along the nearer edge of the carriageway of Brogden Lane in both directions, from the centre line of the access, in accordance with a scheme to be agreed by the Local Planning Authority.

Reason: To ensure adequate visibility at the street junction or site access.

16. Within 3 months of commencement details of the proposed arrangements for future management and maintenance of the proposed roads and footways within the development shall be submitted to and approved by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as a private management and maintenance company has been established.

Reason: To ensure that the internal roads and footways serving the development are completed and thereafter maintained to an acceptable standard in the interest of residential/highway safety.

17. Within 3 months of commencement of development full engineering, drainage, street lighting and constructional details to adoptable standards (LCC specification) of the internal estate roads have been submitted to and approved in writing by the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority.

Reason: In order to ensure the development is carried out in an acceptable manner in terms of completion.

18. The internal estate roads shall be constructed in accordance with the approved engineering details and to at least base course level prior to first occupation of any dwelling, unless otherwise agreed in writing with the Local Planning Authority.

Reason: In order to ensure the development is carried out in an acceptable manner in terms of completion.

19. Prior to first occupation of any approved dwelling the parking area associated with that dwelling, as shown on the approved plans, shall be constructed, laid out and surfaced in bound porous materials. The parking area shall thereafter always remain available for the parking of domestic vehicles associated with the dwelling.

Reason: In order to ensure satisfactory levels of off-street parking are achieved within the site to prevent parking on the highway to the detriment of highway safety.

20. Prior to the first occupation of any approved dwelling, at a ratio of 1 cycle per bedroom, secure covered cycle storage facilities shall be provided in accordance with a scheme to be approved by the Local Planning Authority.

Reason: To ensure that the development provides sustainable transport options.

21. Prior to the first occupation of any approved dwelling, an electric vehicle charging point shall be installed. Charge points must have a minimum power rating output of 7kW, be fitted with a universal socket that can charge all types of electric vehicle currently.

Reason: To ensure that the development provides sustainable transport options.

22. The garages hereby permitted shall not at any time be used for any purpose which would preclude its use for the parking of a motor car.

Reason: To ensure that there is adequate off-street parking provision within the site to prevent on-street parking that would be inimical to highway safety.

23. Window and doors shall be set at least 75mm from the external face by at least 75mm in depth.

Reason: To ensure an acceptable form of development.

24. The development hereby permitted shall not be commenced unless and until a detailed landscaping scheme has been 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 that the development is adequately landscaped so as to integrate with its surroundings.

25. Unless approved in writing by the Local Planning Authority no ground clearance, demolition, changes of level or development or development-related work shall commence until protective fencing, in full accordance with BS 5837 : 2012 has been erected around each tree/tree group or hedge to be preserved on the site or on immediately adjoining land, and no work shall be carried out on the site until the written approval of the Local Planning Authority has been issued confirming that the protective fencing is erected in accordance with this condition. Within the areas so fenced, the existing ground level shall be neither raised nor lowered. Roots with a diameter of more than 25 millimetres shall be left unsevered. There shall be no construction work, development or development-related activity of any description, including the deposit of spoil or the storage of materials within the fenced areas. The protective fencing shall thereafter be maintained during the period of construction.

All works involving excavation of soil, including foundations and the laying of services, within the recommended distance calculated under the BS 5837 (2012) of the trees to be retained on the site, shall be dug by hand and in accordance with a scheme of works which

has been submitted to and approved by the Local Planning Authority, prior to the commencement of works.

**Reason:** To prevent trees or hedgerows on site from being damaged during building works.

26. The development shall be carried out in full accordance with the mitigation plan set out in the 'envirotech Preliminary Ecological Appraisal, Land off Brogden Lane, Barnoldswick, August 2020'. Details for the provision of bird and bat boxes and other mitigation and enhancement measures shall be submitted to and agreed in writing by the Local Planning Authority prior to work commencing on site. The development shall then be carried out in accordance with the agreed details

**Reason:** To ensure no net loss of biodiversity as a result of the development.

27. Before the first dwelling unit is occupied waste containers shall be provided in the bin storage area.

**Reason:** To ensure adequate provision for the storage and disposal of waste.

### **Notes**

The grant of planning permission will require the applicant to enter into an appropriate legal agreement (Section 278), with Lancashire County Council as Highway Authority prior to the start of any development. For the avoidance of doubt works shall include, but not be exclusive to:

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 [developer@lancashire.gov.uk](mailto:developer@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. For the avoidance of doubt, this response does not grant the applicant permission to connect to the ordinary watercourse(s) and, once planning permission has been obtained, it does not mean that land drainage consent will be given.

The applicant must obtain Land Drainage Consent from Lancashire County Council before starting any works on site. Information on the application process and relevant forms can be found at [www.lancashire.gov.uk/flooding](http://www.lancashire.gov.uk/flooding).

**Application Ref:** 21/0111/FUL

**Proposal:** Full: Major: Erection of 19 No. bungalows (over 55) with associated landscaping, car parking and access from Brogden Lane.

**At:** Land to the West of Brogden View, Brogden Lane, Barnoldswick

**On behalf of:** Applethwaite Ltd

## REPORT TO WEST CRAVEN COMMITTEE ON 08 JUNE 2021

**Application Ref:** 21/0242/FUL

**Proposal:** Full: Major: Conversion of former St Andrews Sunday School into 13 No. Apartments.

**At:** St Andrews Methodist Church, Mosley Street, Barnoldswick

**On behalf of:** Barnoldswick Development Co.

**Date Registered:** 31/03/2021

**Expiry Date:** 30/06/2021

**Case Officer:** Alex Cameron

### **Site Description and Proposal**

The application site relates to a vacant former school building adjacent but outside of the Barnoldswick Conservation Area and Barnoldswick town centre and is within the settlement boundary. There is a church building and nursing home to the north and terraced housing on all other sides.

Planning permission was granted in 2016 for the partial demolition of the school building and redevelopment into six apartments together with an extension to the church.

This application is for the conversion of the existing building to 13 apartments, without the demolition previously proposed.

### **Relevant Planning History**

16/0303/FUL - Full: Part demolition of school building and conversion to six 1 and 2 bed apartments and erection of two storey extension to rear, erection of single storey extension to rear of church. Approved

### **Consultee Response**

**LCC Highways;** Planning permission has been previously approved for the part demolition of the Sunday School building and conversion to six 1 and 2 bed apartments and erection of two storey extension to rear, plus erection of single storey extension to rear of church (ref 16/0303/FUL). The application also included six off-road parking spaces. The principle of the provision of residential units on site has therefore been established.

The current proposal is on a larger scale, being eleven 1 bed and two 2 bed apartments, as no demolition of any part of the Sunday School building is proposed, as was previously. There is also no off-road car parking proposed.

Having considered the information submitted, together with site observations, the proposed development raises highway safety concerns, which it is unlikely can be mitigated satisfactorily. Therefore the Highway Development Control Section objects to the development on highway safety grounds.

**Car & cycle parking**

The development site is located in an area of predominantly terraced houses which have no associated off-road parking. As observed on the site visits in both May 2016 and May 2021 there is a high demand for on-street parking on Mosley Street and the surrounding highway network, with limited capacity for additional demand. A further increase could lead to inappropriate parking at road junctions or vehicles having to reverse out of junctions because the side streets are double parked, narrowing the carriageway down to single file, which is a safety concern.

The application form states that the apartments would be social, affordable or intermediate rent. Whilst this type of property may have lower than average car ownership we have noted that the borough council no longer has a policy which referred to social housing requiring less parking. Therefore parking provision would need to be in line with recommendations in the council's car and cycle parking standards.

An alternative to providing off-road parking may be to have a contractual agreement between occupants of the apartments and neighbouring church. However, as this could not be controlled by condition it is likely to fail the test for applying conditions. There is also likely to be a conflict for demand between the different users when the church's premises are in use.

We have noted the provision of 13 internal, secure cycle storage spaces.

#### **Accessibility**

Although the site is within acceptable walking distances for some local facilities and amenities, we do not consider it to be a town centre location, where no parking would need to be provided.

The site is located within acceptable walking distances of some local amenities and facilities, including the public transport network. A number of bus services go through Barnoldswick connecting to various destinations. Whilst access to public transport may reduce the reliance on private vehicles, it is unlikely to reduce it to the level of that of a car-free development, which the applicant is proposing.

Given the above concerns regarding the detrimental impact on the surrounding highway network the highway authority objects to this application on highway safety grounds. However, if the number and scale of apartments proposed was reduced to the level previously approved under 16/0303/FUL, and some off-road parking was provided, then the highways authority may reconsider its response and withdraw its objection.

LCC Schools Planning – An education contribution is not required.

East Lancashire NHS Trust – Request a contribution to meet the provision of additional facilities and services for the residents of the dwellings in the first three years of its occupation.

United Utilities – The site should be drained on a separate system with foul water draining to the public sewer and surface water draining in the most sustainable way.

### **Public Response**

Press and site notices posted and neighbours notified. Responses received objecting on the following grounds:

- Lack of car parking provision
- Restriction of access for emergency and other vehicles
- This type of development is unprecedented in Barnoldswick
- Insufficient daylight and poor living conditions of the proposed apartments
- Bats have been seen flying around the building

### **Officer Comments**

The main issues for consideration are compliance with policy, principle of development, impact on amenity, design and materials and highway safety issues.

#### **Policy**

The starting point for consideration of any planning application is the development plan. Policies which are up to date and which conform to the provisions of the National Planning Policy Framework ("the Framework") must be given full weight in the decision making process.

#### **Local Plan Part 1**

The following Policies are wholly compliant with the Framework and as such should be afforded full weight.

Policy SDP1 (Presumption in Favour of Sustainable Development) is set out to secure development that improves the economic, social and environmental conditions in the area.

Policy SDP2 (Spatial Development Principles) prioritises new development within settlement boundaries provided they are of a nature and scale that is proportionate to the role and function of that settlement.

Policy LIV1 (Housing Provision and Delivery) states that housing development will be supported within a settlement boundary where they are sustainable and make a positive contribution to the five year supply of housing land.

Policy ENV1 states that the historic environment and heritage assets of the borough (including Listed Buildings, Conservation Areas, Scheduled Monuments, non-designated assets and archaeological remains), including and their settings, will be conserved and where appropriate should be enhanced.

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.

Policy 31 'Parking' requires that new developments provide parking in line with the levels set out in Appendix 1 of the RPLP. This is addressed in the highways section

### **Principle of Development**

The site is previously developed land and is located in a residential area within the settlement boundary of Barnoldswick. It is within walking distance of public transport where regular buses travel along Essex Street. The site has easy access to essential services given its location adjacent to the town centre. The property would be positioned on a non - allocated site within the settlement boundary, there is no policy directly relating to the site that would prevent the change of use and therefore the principle of development is acceptable.

Whilst the development is proposed as affordable housing the number of dwellings proposed does not meet the threshold for the provision of affordable housing in West Craven and therefore it is not necessary to require that the dwelling remain as affordable housing.

### **Impact on amenity**

Taking into account the existing window relationships and character of the area of terraced dwellings with spacing distances of considerably less than 21m, the proposed development would not result in an unacceptable reduction in the level of privacy of surrounding properties. The proposed development would provide an acceptable living environment for its occupants and would not result in any unacceptable residential amenity impacts upon the residents of surrounding properties in accordance with policies ENV2 and LIV5.

### **Design and Materials**

Proposed alterations to the external appearance of the building are minor and would result in no unacceptable visual amenity impacts in accordance with policies ENV2 and LIV5.

### **Highways**

Regarding the proposed single storey rear extension to the church, LCC Highways does not have any objections regarding this proposed extension. As existing there are 14 spaces available for both the church and the school building, the proposal is to demolish the school building which would considerably reduce the number of parking spaces required for the church and the proposed extension. Holistically the site including the proposed apartments will now provide 20 spaces rather than 14 which would be an increase in parking that would be sufficient and acceptable for the proposed development.

Concerns have been raised by LCC highways in relation to the lack of car parking provision. The car parking standards set out in the RPLP are maximum rather than minimum standards and therefore can be relaxed where appropriate. This site is directly adjacent to the town centre boundary of Barnoldswick, with the facilities of the town centre and public transport within easy walking distance. Off street car parking is not a typical feature of residential properties in the surrounding area, the school building itself currently has no off-street parking and the lawful use of the building could potentially generate significant parking demand in surrounding streets. Taking these factors into account, the proposed development is acceptable and would not have an unacceptable impact on highway or pedestrian safety around the site in accordance with policy ENV4.

### **Landscaping**

The plans submitted show the trees along the north eastern side boundary will be retained, this also includes the grassed area however no details have been submitted. A condition should be attached for a landscaping scheme to be submitted and approved.

### **Ecology**

Concerns have been raised that bats have been seen in the immediate vicinity of the building and the building could provide habitat for them. The building is of an age and has features that could potentially make it suitable for bat roosting and therefore a bat survey has been requested and is awaited.

### **Contributions**

A request has been made from East Lancashire Hospitals NHS Trust for a contribution towards the cost of healthcare interventions it calculates will be generated by the residents of the dwellings in their initial occupation, for which there is a funding gap.

In terms of health service contributions there are a number of concerns about the request and justification for those requests. 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.

We have also raised a concern about the timing of funding and that developments can take several years in order to come to fruition. From the information supplied to us it appears that once a development is known about then financing is included in the next budgetary year. The issue therefore is that if developments take several years to come forward and they are included in financial planning after year 1 then the developer would be paying for services already funded in the standard funding formulae.

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 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 to the NHS 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. The level of contribution would also undermine the already low level of profitability and would jeopardise whether or not the scheme would proceed. The provision of affordable housing is a major need within Pendle and significant weight should be attached to providing that housing.

## **Conclusion**

The proposed development is acceptable in terms of housing development on this site which would contribute towards the housing land supply and would not unacceptably impact upon amenity and highways safety.

A bat survey is required in order to establish whether protected species are present in the building. It is recommended that the approval of the application be delegated to the Planning, Economic Development and Regulatory Services Manager subject to the receipt of the survey and any additional conditions that need to be attached as a result.

## **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 is acceptable in terms of sustainability, design residential amenity, highway safety and all other relevant regards. 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: Delegated Grant Consent**

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: Required to be imposed by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans: 001A, 002B, 003A, 004A, 005D, 009A

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

- 3 All materials to be used in the elevations and roof of the proposed development shall be as stated on the application form and approved drawings and shall not be varied without the prior written permission of the Local Planning Authority.

Reason: These materials are appropriate to the locality and in order to allow the Local Planning Authority to control the external appearance of the development.

- 4 No dwelling hereby approved shall be occupied unless and until the cycle storage facilities details in the approved plans have been made available for the use by the occupants of that dwelling and those cycle storage facilities shall be retained at all times thereafter.

Reason: In the interest of amenity.

- 5 No dwelling hereby approved shall be occupied unless and until a scheme of foul and surface water drainage has been submitted to and approved in writing by the Local Planning Authority and the drainage has been installed in accordance with the approved scheme.

Reason: In order that the Local Planning Authority may be satisfied with the details of the proposal and to avoid flooding.

- 6 The development hereby permitted shall not be occupied unless and until a detailed landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme 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. all proposed boundary treatments with supporting elevations and construction details;
- d. all proposed hard landscape elements and pavings, including layout, materials and colours;

The approved scheme shall be implemented in its entirety approved form within the first planting season following the occupation 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 that the development is adequately landscaped so as to integrate with its surroundings.

- 7 Before the first dwelling unit is occupied waste containers shall be provided in the bin storage area.

Reason: To ensure adequate provision for the storage and disposal of waste.

8. No development shall take place, including any works of clearance, unless and until a construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. It shall provide for:

- 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) Measures to control the emission of dust and dirt during construction
- vi) A scheme for recycling/disposing of waste resulting from clearance and construction works
- vii) Details of working hours
- viii) Timing of deliveries
- ix) Measures to ensure that construction and delivery vehicles do not impede access to neighbouring properties.
- x) Construction site noise and vibration.
- xi) Burning on site.

Reason: In the interest of highway safety and to protect the amenities of occupiers of adjoining and nearby properties.

## **LIST OF BACKGROUND PAPERS**

Planning Applications

**NPW/MP**

**Date:** 25th May 2021