



REPORT FROM:	PLANNING, ECONOMIC DEVELOPMENT AND REGULATORY SERVICES MANAGER
TO:	NELSON, BRIERFIELD AND REEDLEY COMMITTEE
DATE:	2nd AUGUST, 2021

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PLANNING APPLICATIONS

PURPOSE OF REPORT

To determine the attached planning applications.

REPORT TO NELSON, BRIERFIELD & REEDLEY COMMITTEE ON 2nd AUGUST 2021

Application Ref: 21/0516/OUT
Proposal: Outline: Major: Erection of 63 dwelling units 2.449ha (Access only)
At: Land to the East of Martinsway, Robinson Lane, Brierfield
On behalf of: KHC Developments Ltd
Date Registered: 16 June 2021
Expiry Date: 16 June 2021
Case Officer: Kathryn Hughes

This application is for a housing development of more than 60 houses and as such must be determined by Policy and Resources Committee. The application has therefore been brought before Nelson, Brierfield and Reedley Committee for comments rather than determination.

Site Description and Proposal

The application site is a 2.449ha parcel of agricultural land located in Brierfield outside the settlement boundary within Open Countryside. The settlement boundary lies to the north and abuts part of the site along the length of Robinson Lane.

The site is mostly level and is bounded by the Leeds-Liverpool Canal to the west and south and the railway line to the east, there are dwellings located to the north and west and open countryside abutting the canal.

There are some trees on the site and modern garden centre buildings still remain on and adjacent to the site to the east.

Access to the dwellinghouses would be via the existing Robinson Lane.

This application seeks outline consent for the erection of up to sixty three dwellinghouses with access only. Details of appearance, landscaping, layout and scale will be dealt with at a later stage under the Reserved Matters submission.

An illustrative site plan has been submitted to illustrate how the proposed development could be accommodated on the site.

Relevant Planning History

None.

Consultee Response

LCC Highways – Comments awaited.

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

Canal & River Trust – The proposed development lies to the north of the Leeds & Liverpool Canal which lies within a cutting. There are risks that construction works on site could impact upon the stability of the existing cutting slope. Therefore it is important that the location and design of any foundations and retaining structures do not adversely impact the stability of the sloping land.

Land stability is a material planning consideration. We therefore request supporting information is provided prior to the commencement of development to demonstrate that the development will not result in an increased risk of land instability. This will include the provisions of cross sections of foundations and new retaining structures relative to embankment and canal and can be controlled by appropriately worded conditions.

A detailed Construction and Environmental Management Plan should also be provided.

In terms of drainage attenuation is welcome to control peak flow rates and it is essential that the culvert does not suffer excessive flows. Details of the attenuation should be provided prior to commencement of development.

Risk of contamination to the canal could occur though exposure to dust and unmanaged runoff from stockpiles or exposed soils. Any risks should be identified and mitigation measures to prevent this via the submission of a geo-environmental survey.

The ecology appraisal recommends measures for biodiversity that should be incorporated into the final scheme.

Tree group G20 & G36 should be retained as part of the final scheme.

The habitat buffer would help to retain the semi-natural character of this section of waterway.

The pumping station should be moved away from the canal and boundary treatments should not detract from the outward appearance of the waterway.

Appropriate consents should be obtained

Network Rail – The red edge includes access over a Network Rail bridge. This bridge is very narrow and only able to accommodate one vehicle at a time. The proposed management via signage of priority and the 30mph speed limit may not be sufficient to prevent collisions or bridge strikes, regardless of statements of visibility over the structure. The proposal also speaks of access on foot and on bike which increases the risk to pedestrians and cyclists, this bridge is the only access to the site. If the access were blocked there is no alternative access to this development.

The figures presented for the anticipated traffic flow, albeit according to standards, these would most likely be pre-COVID numbers (assumed 20-30 vehicles for 63 dwellings).

The bridge has been assessed to be capable of carrying 40t vehicles (deliveries, trucks etc.), the turning was also considered in the proposal. In terms of capacity this is not going to be a major issue, however, in terms of risk of bridge strikes, accidents, risk to pedestrians and cyclists due to no provision of a safe cycle or walkway not to mention the parapet heights that may not be compliant for a footpath. This is something that the local authority/highway authority should be made aware of.

Network Rail may need to undertake further assessment of the proposal (which is not possible within a 21 day consultation), however from an initial assessment Network Rail believes that the bridge would require a safe walking and cycle way, upgraded parapet heights, and some safe form of traffic management in place (lights) to prevent collisions. The development imports a potential risk to the existing operational railway and the developer is to fully fund all mitigation measures to protect the bridge from bridge strikes, damage etc.

(2) The developer/LPA should also be made aware that the access over the bridge (shaded in brown) is subject to a lease (our ref: BRF01401) – any access over the bridge would be subject to the agreement of Network Rail and details must be submitted to PropertyServicesLNW@networkrail.co.uk – this is in addition to any planning consent.

(3) The developer/LPA are advised of the following regarding earthworks

- ☐ the ground slope must not be modified, so gardens and the land where attenuation will be installed will continue to fall away from the railway.
- ☐ During construction no material should be stockpiled in close proximity to the NR boundary.

The NPPF states:

“178. Planning policies and decisions should ensure that:

a) A site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability.”

In order to comply with the NPPF, the applicant will agree all excavation and earthworks within 10m of the railway boundary with Network Rail. Network Rail will need to review and agree the works to determine if they impact upon the support zone of our land and infrastructure as well as determining relative levels in relation to the railway. Network Rail would need to agree the following:

- ☐ Alterations to ground levels
- ☐ De-watering works
- ☐ Ground stabilisation works
- ☐ Works to retaining walls
- ☐ Construction and temporary works
- ☐ Maintenance of retaining walls
- ☐ Ground investigation works must not be undertaken unless agreed with Network Rail.
- ☐ Confirmation of retaining wall works (either Network Rail and/or the applicant).
- ☐ Alterations in loading within 15m of the railway boundary must be agreed with Network Rail.
- ☐ For works next to a cutting or at the toe of an embankment the developer / applicant would be required to undertake a slope stability review.

Network Rail would need to review and agree the methods of construction works on site to ensure that there is no impact upon critical railway infrastructure. No excavation works are to commence without agreement from Network Rail. The council are advised that the impact of outside party excavation and earthworks can be different depending on the geography and soil in the area. The council and developer are also advised that support zones for railway infrastructure may extend beyond the railway boundary and into the proposal area. Therefore, consultation with Network Rail is requested. Any right of support must be maintained by the developer.

(4) The developer is to submit directly to Network Rail, a Risk Assessment and Method Statement (RAMS) for all works to be undertaken within 10m of the operational railway under Construction (Design and Management) Regulations, and this is in addition to any planning consent. Network Rail

would need to be re-assured the works on site follow safe methods of working and have also taken into consideration any potential impact on Network Rail land and the existing operational railway infrastructure. Builder to ensure that no dust or debris is allowed to contaminate Network Rail land as the outside party would be liable for any clean-up costs. Review and agreement of the RAMS will be undertaken between Network Rail and the applicant/developer. The applicant /developer should submit the RAMs directly to:

AssetProtectionLNWNorth@networkrail.co.uk

(5) The applicant will provide at their own expense (if not already in place):

- ☐ A suitable trespass proof steel palisade fence of a minimum height of 1.8m adjacent to the boundary with the railway/railway land.
- ☐ The fence must be wholly constructed and maintained within the applicant's land ownership footprint.
- ☐ All foundations must be wholly constructed and maintained within the applicant's land ownership footprint without over-sailing or encroaching onto Network Rail's boundary.
- ☐ The fence must be set back at least 1m from the railway boundary to ensure that Network Rail can maintain and renew its boundary treatments.
- ☐ Existing Network Rail fencing, and boundary treatments, must not be damaged or removed in any way.
- ☐ Network Rail will not allow any maintenance works for proposal fencing or proposal boundary treatments to take place on its land.
- ☐ Proposal fencing must not be placed on the boundary with the railway.
- ☐ Any fencing over 1.8m in height will require agreement from Network Rail with details of foundations and wind loading calculations submitted for review.
- ☐ The fence should be maintained by the developer and that no responsibility is passed to Network Rail.

New residents of the development (particularly minors) may not be aware of the risks posed by accessing the railway. It would not be reasonable to require Network Rail to fund boundary works, fencing and boundary enhancements necessitated by outside party development adjacent to the railway.

(6) The developer/applicant must ensure that their proposal, both during construction, and after completion of works on site, does not affect the safety, operation or integrity of the operational railway, Network Rail land and its infrastructure or undermine or damage or adversely affect any railway land and structures.

- ☐ There must be no physical encroachment of the proposal onto Network Rail land, no over-sailing into Network Rail air-space and no encroachment of foundations onto Network Rail land or under the Network Rail boundary.
- ☐ All buildings and structures on site including all foundations / fencing foundations must be constructed wholly within the applicant's land ownership footprint.
- ☐ Buildings and structures must not over-sail Network Rail air-space.
- ☐ Any future maintenance must be conducted solely within the applicant's land ownership.
- ☐ Rainwater goods must not discharge towards or over the railway boundary
- ☐ Should the applicant require access to Network Rail land to facilitate their proposal they would need to approach the Network Rail Asset Protection Team at least 20 weeks before any works are due to commence on site. The applicant would be liable for all costs incurred in facilitating the proposal and an asset protection agreement may be necessary to undertake works. Network Rail reserves the right to refuse any works by an outside party that may adversely impact its land and infrastructure.

☐ Any unauthorised access to Network Rail air-space or land will be deemed an act of trespass.

(7) Scaffolding which is to be constructed within 10 metres of the Network Rail / railway boundary must be erected in such a manner that at no time will any poles over-sail the railway and protective netting around such scaffolding must be installed. The applicant / applicant's contractor must consider if they can undertake the works and associated scaffolding / access for working at height within the footprint of their land ownership boundary. The applicant is reminded that when pole(s) are erected for construction or maintenance works, they must have a minimum 3m failsafe zone between the maximum height of the pole(s) and the railway boundary.

This is to ensure that the safety of the railway is preserved, and that scaffolding does not:

- ☐ Fall into the path of on-coming trains
- ☐ Fall onto and damage critical and safety related lineside equipment and infrastructure
- ☐ Fall onto overhead lines bringing them down, resulting in serious safety issues (this is applicable if the proposal is above the railway and where the line is electrified).

(8) If vibro-compaction machinery / piling machinery or piling and ground treatment works are to be undertaken as part of the development, details of the use of such machinery and a method statement must be submitted to the Network Rail for agreement.

- ☐ All works shall only be carried out in accordance with the method statement and the works will be reviewed by Network Rail. The Network Rail Asset Protection Engineer will need to review such works in order to determine the type of soil (e.g. sand, rock) that the works are being carried out upon and also to determine the level of vibration that will occur as a result of the piling.
- ☐ The impact upon the railway is dependent upon the distance from the railway boundary of the piling equipment, the type of soil the development is being constructed upon and the level of vibration. Each proposal is therefore different and thence the need for Network Rail to review the piling details / method statement.

Maximum allowable levels of vibration - CFA piling is preferred as this tends to give rise to less vibration. Excessive vibration caused by piling can damage railway structures and cause movement to the railway track as a result of the consolidation of track ballast. The developer must demonstrate that the vibration does not exceed a peak particle velocity of 5mm/s at any structure or with respect to the rail track.

(9) The NPPF states:

"178. Planning policies and decisions should ensure that:

a) A site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability."

And

"163. When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere."

In order to comply with the NPPF, the applicant must ensure that the proposal drainage does not increase Network Rail's liability, or cause flooding pollution or soil slippage, vegetation or boundary issues on railway land. Therefore, the proposed drainage on site will include the following:

- ☐ All surface waters and foul waters must drain away from the direction of the railway boundary.
- ☐ Soakaways for the proposal must be placed at least 30m from the railway boundary.
- ☐ Any drainage proposals for less than 30m from the railway boundary must ensure that surface and foul waters are carried from site in closed sealed pipe systems.

- Suitable drainage or other works must be provided and maintained by the developer to prevent surface water flows or run-off onto Network Rail's land and infrastructure.
- Proper provision must be made to accept and continue drainage discharging from Network Rail's property.
- Drainage works must not impact upon culverts, including culverts/brooks etc that drain under the railway. The applicant will not be permitted to direct surface or foul waters into culverts which run under the railway – any discharge of surface water under the railway via a culvert will require review and agreement from Network Rail who reserve the right to refuse use of any culverts.
- The developer must ensure that there is no surface or sub-surface flow of water towards the operational railway.
- Rainwater goods must not discharge in the direction of the railway or onto or over the railway boundary.

NB: Soakaways can materially affect the strength of soil leading to stability issues. A large mass of water wetting the environment can soften the ground, and a build-up of water can lead to issues with the stability of Network Rail retaining walls/structures and the railway boundary. Network Rail does not accept the installation of soakaways behind any retaining structures as this significantly increases the risk of failure and subsequent risk to the travelling public.

If the developer and the council insists upon a sustainable drainage and flooding system then the issue and responsibility of flooding, water saturation and stability issues should not be passed onto Network Rail.

We recognise that councils are looking to proposals that are sustainable, however, we would remind the council that flooding, drainage, surface and foul water management risk as well as stability issues should not be passed '*elsewhere*', i.e. on to Network Rail land.

The drainage proposals are to be agreed with Network Rail and surface water drainage on the site should be removed by a closed sealed pipe system.

The HSE identifies railways as a Major Hazard Industry. An earthwork failure within a high-hazard area has the potential to result in a catastrophic accident with multiple fatalities or long-lasting environmental issues. It should be noted that where the actions of an adjacent landowner have caused a landslide on the railway the loss adjusters are likely to advise recovery of Network Rail costs from the 3rd party, which would include costs of remediation and recovery of costs to train operators. Many railway earthworks were constructed in the Victorian period and are susceptible to failure by water saturation. Water saturation leads to an increase in pore water pressure within the earthwork material. Please also note that railways, and former railway land adjacent to it, is considered as contaminated land due to historic use of railways, which can affect the suitability of infiltration drainage.

The Council must ensure that suitable arrangements are in place for the maintenance and renewal of all new/amended drainage for the life time of the development, to mitigate risk of flooding to any adjoining land.

(10) Network Rail requires that the developer includes a minimum 3 metres gap between the buildings and structures on site and the railway boundary. Less than 3m from the railway boundary to the edge of structures could result in construction and future maintenance works being undertaken on Network Rail land, and close to the railway boundary potentially impacting support zones or lineside cabling. All the

works undertaken to facilitate the design and layout of the proposal should be undertaken wholly within the applicant's land ownership footprint including all foundation works. Network Rail requires a minimum 3m easement between structures on site and the railway boundary to ensure that we can maintain and renew our boundary treatments.

(11) The council and the developer (along with their chosen acoustic contractor) are recommended to engage in discussions to determine the most appropriate measures to mitigate noise and vibration from the existing operational railway to ensure that there will be no future issues for residents once they take up occupation of the dwellings.

The NPPF states, “182. *Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use), in its vicinity, the applicant (or ‘agent of change’)* should be required to provide suitable mitigation before the development has been completed.”

Network Rail is aware that residents of developments adjacent to or in close proximity to, or near to the existing operational railway have in the past discovered issues upon occupation of dwellings with noise and vibration. It is therefore a matter for the developer and the council via mitigation measures and conditions to ensure that any existing noise and vibration, and the potential for any future noise and vibration are mitigated appropriately prior to construction.

To note are:

- The current level of railway usage may be subject to change at any time without prior notification including increased frequency of trains, night time train running, heavy freight trains, trains run at weekends /bank holidays.
- Maintenance works to trains could be undertaken at night and may mean leaving the trains' motors running which can lead to increased levels of noise and vibration.
- Network Rail carry out works at night on the operational railway when normal rail traffic is suspended and these works can be noisy and cause vibration.
- Network Rail may need to conduct emergency works on the existing operational railway line which may not be notified to residents in advance due to their safety critical nature, and may occur at any time of the day or night, during bank holidays and at weekends.
- Works to the existing operational railway may include the presence of plant and machinery as well as vehicles and personnel for works.
- The proposal should not prevent Network Rail from its statutory undertaking. Network Rail is a track authority. It may authorise the use of the track by train operating companies or independent railway operators and may be compelled to give such authorisation. Its ability to respond to any enquiries regarding intended future use is therefore limited.
- The scope and duration of any Noise and Vibration Assessments may only reflect the levels of railway usage at the time of the survey.
- Any assessments required as part of CDM (Construction Design Management) or local planning authority planning applications validations process are between the developer and their appointed contractor.
- Network Rail cannot advise third parties on specific noise and vibration mitigation measures. Such measures will need to be agreed between the developer, their approved acoustic contractor and the local planning authority.
- Design and layout of proposals should take into consideration and mitigate against existing usage of the operational railway and any future increase in usage of the said existing operational railway.

- Noise and Vibration Assessments should take into account any railway depots, freight depots, light maintenance depots in the area. If a Noise and Vibration Assessment does not take into account any depots in the area then the applicant will be requested to reconsider the findings of the report.
- Railway land which is owned by Network Rail but which may be deemed to be 'disused' or 'mothballed', may be brought back into use. Any proposals for residential development should include mitigation measures agreed between the developer, their acoustic contractor and the LPA to mitigate against future impacts of noise and vibration, based on the premise that the railway line may be brought back into use.
- Works may be carried out to electrify railway lines and this could create noise and vibration for the time works are in progress. Electrification works can also result in loss of lineside vegetation to facilitate the erection of stanchions and equipment.

(12) Proposals for the site should take into account the recommendations of, 'BS 5837:2012 Trees in Relation to Design, Demolition and Construction', which needs to be applied to prevent long term damage to the health of trees on Network Rail land so that they do not become a risk to members of the public in the future.

No trees shall be planted next to the boundary with the railway land and the operational railway, except for evergreen shrubs which shall be planted a minimum distance from the Network Rail boundary that is equal to their expected mature growth height. The vegetation planting must be in line with the attached matrix which has been agreed with the Tree Council. This is to prevent long term issues with leaf fall impacting the operational railway.

(13) As the proposal calls for the following adjacent to the boundary with the operational railway, running parallel to the operational railway or where the existing operational railway is below the height of the proposal site:

- hard standing areas
- turning circles
- roads, public highways to facilitate access and egress from developments

Network Rail requests the installation of suitable high kerbs or crash barriers (e.g. Armco Safety Barriers).

This is to prevent vehicle incursion from the proposal area impacting upon the safe operation of the railway.

(14) As the proposal includes works which could impact the existing operational railway and in order to facilitate the above, a **BAPA** (Basic Asset Protection Agreement) will need to be agreed between the developer and Network Rail. The developer will be liable for all costs incurred by Network Rail in facilitating this proposal, including any railway site safety costs, possession costs, asset protection costs /presence, site visits, review and agreement of proposal documents and any buried services searches. The BAPA will be in addition to any planning consent.

The applicant / developer should liaise directly with Asset Protection to set up the BAPA (form attached).

No works are to commence until agreed with Network Rail. Early engagement with Network Rail is strongly recommended.

Should the above proposal be approved by the council and should there be conditions, where the proposal interfaces with the railway (as outlined in this response) the outside party is advised that a BAPA (Basic Asset Protection Agreement) must be in place, in order for Network Rail to review and agree the documentation and works outlined in conditions (and those areas covered by the discharge of conditions).

The applicant is advised that before the proposal progresses (should it be approved) they will be required to submit the development form to Network Rail's Asset Protection team and agree the BAPA before any works commence on site.

Network Rail is a Government funded Organisation and we are expected to recover our involvement costs from this type of interface, to proceed in more detail with discussions a signed Basic Asset

Protection Agreement (BAPA) would be required to be in place.

Permanent impacts of development are usually material considerations (such as the position of permanent structures, or drainage design etc) and where these are likely to occur, requests for planning conditions or scheme amendments are requested to protect the existing railway infrastructure from the impacts of the works on site and as a permanent arrangement. Controls on the temporary impact of construction to outside party land should also be picked up via building control, or in some cases a party wall surveyor.

Coal Authority –Fundamental Concern – the application site falls partly within the defined Development High Risk Area. An off-site mine entry (shaft) is located to adjacent to the northern boundary within its potential zone of influence extending into the site. A coal Mining Risk Assessment or equivalent report need to be submitted. As no relevant information has been submitted at this time the Coal Authority objects to this application.

Lead Local Flood Authority – has no objection to the proposed development subject to appropriate conditions.

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.

Lead Local Flood Authority Comments:

Outline Surface Water Sustainable Drainage Strategy:

The surface water drainage proposals set out in the submitted flood risk assessment are only preliminary and subject to change following further detailed design and investigation. The applicant is therefore expected to provide a final surface water sustainable drainage strategy 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 should 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.

It's noted that the applicant's preferred point of discharge is located beyond the red edge boundary of the site. The LPA should take note of this and satisfy itself that the applicant has sufficient right of access to the proposed outfall, either through direct ownership or legal agreement.

For the avoidance of doubt, the applicant will be expected to model their surface water drainage network with a surcharged outfall, unless it can be demonstrated that a free-flowing outfall can be achieved.

Surface Water Runoff Volumes:

The applicant is reminded that the total runoff volume from the development must not exceed the existing pre-development greenfield runoff volume the 1 in 100 year 6 hour rainfall event. This is in line with Standard S4 of the Defra Technical Standards for Sustainable Drainage Systems.

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 indicate the applicant may need 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. Further information regarding Land Drainage Consent can be found at 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 – No objection subject to appropriate conditions.

Cadent Gas – Low or Medium pressure gas pipes and associated equipment may be in the vicinity.

East Lancashire Hospitals NHS Trust – Planning application 21/0516/OUT Land to the East of Martinsway Robinson Lane Brierfield Lancashire is seeking to secure permission for the construction of 63 new dwellings. These dwellings will support a population increase of 145 (assuming an average of 2.3 people per dwelling⁵) 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 funding⁶.

We therefore request a contribution for this development in the sum of £107,510.00 a breakdown for which is at Appendix 2.

Community Infrastructure Levy Regulations 2010

In accordance with the Community Infrastructure Regulations (2010) (as amended) this request has been considered in the context of Regulation 122.

PBC Public Rights of Way – The access to the site is by means of public footpath 13/16/FP 15 known as Robinson Lane. This is part of the Pendle Way, a 45 mile route around the Pendle district area. Public footpath 13-16- FP 69 runs the eastern edge of the site.

Robinson Lane is not recorded as a public right of way for mechanically propelled vehicles (MPVs) and such rights cannot have been established by use since 2006 by virtue of the Natural Environment and Rural Communities Act (Section 66) of that year. Section 66 provides that any rights for MPVs

can only be created by an enactment or instrument that expressly provide for the creation of a public right for vehicles. Any public right of way which existed for mechanically propelled vehicles prior to 2006 may have in fact been legally extinguished under the terms of Section 67 of the Act.

The applicant does not own the access along Robinson Lane and therefore it is questionable whether the applicant has the legal capacity to enter into a Section 38 Agreement with the highway authority for the road to become adopted highway in accordance with the Highways Act 1980.

I object to this application on the grounds that the increase in vehicular movements will make use of the public footpath inconvenient for pedestrians. In addition, the increased vehicular use including that by construction traffic is likely to result in the deterioration in the condition of the surface, for example by accelerating the formation of pot holes which can create trip hazards. I would be willing to withdraw this objection if the applicant or the owners of the land enter into an agreement with the highway authority so that the access between Colne Road and the entrance to the estate is adopted by the highway authority as a road for MPVs with suitable pedestrian footways.

The impact of the proposals on footpath 13-16-FP 69 would result in a significant loss of views and the amenity value of the path where it runs along the edge of the site. The footpath is narrow to start with and the erection of high fences along the edge of the gardens would seriously affect the character of the footpath by making it feel very enclosed. This impact could be somewhat lessened at the reserved matters stage by the applicant increasing the width of the path to a minimum of 2m wide. The development is likely to result in many additional users of the path. It is suggested that the surface of this footpath should be improved as a condition of planning permission, or by means of a Section 106 agreement. I would object at the reserved matters stage without any provision for the improvement of the surface of this footpath.

PBC Environment Officer – Comments awaited.

PBC Environmental Health – requests conditions relating to land contamination and construction method statement.

Reedley Hallows Town Council – Strongly objects to this application on the following grounds:

- The access is unsuitable;
- Robinson Lane is a narrow road for the number of vehicles this development would generate;
- Unacceptable risks for pedestrians using Robinson Lane; and
- The amount of construction traffic will have a serious impact on residents in the vicinity.

Public Response

Site and press notices posted and nearest neighbours notified by letter. Publicity expires on the 27th July. A number of objections have been received so far relating to:

- The hedgerows along Robinson Lane are protected;
- Traffic will impact on the flora and fauna in the area as well as impact on bird and mammal habit;
- The few remaining green spaces ought to be left as they are;
- Reedley Hallows Greenway passes through the proposed site;
- The destruction of trees on this commenced some time ago without permission;

- The area on which the building has been authorised is greenbelt and provides habit for deer, foxes, badgers and other wildlife;
- How objective is this process – how is the decision made by the Policy and Resources Committee?
- Robinson Lane is used by many people for walking dogs etc. traffic for 63 dwellings would make it dangerous;
- The additional traffic would bring noise, light and atmospheric pollution affecting my home, my well-being and privacy;
- Robinson Lane is part of the Pendle Way a very popular and well used national route and is used regularly for people to access the countryside and is not intended as a traffic route;
- The appearance of the area will be fundamentally changed. At the moment it is open countryside with wonderful views and this development will be a blot on that landscape;
- There is no pavement on Robinson Lane and this provides access for walkers to the canal and the river;
- The letter states that “the Council cannot reject a proposal simply because a lot of people are against it” surely that is exactly what the Council should be taking notice of! It is the Council’s job to carry out the wishes of the people who elected them;
- Land stability – it is sandy terrain and Quaker View had issues and I suspect similar geology at this site;
- Site drainage- there are plans for attenuation but the culverts are not designed for large volumes of residential over spill/run off;
- Is there provision for increased traffic on the A682 with bus stop adjacent to entry/exit;
- The canal corridor needs to be preserved as a major route into the area for tourism; and
- There are plenty of brownfield sites in need of redevelopment.

Officer Comments

The issues for consideration are principle of housing, impact on Open Countryside, impact on the Canal, railway network, coal mining/stability, impact on trees and ecology, flooding and drainage and highways issues.

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 SDP1 takes a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework.

Policy SDP2 sets out the roles each settlement category will play in future growth. Nelson is defined as a one of the Key Service Centres which will provide the focus for future growth in the borough and accommodate the majority of new development.

Policy SDP3 sets out the housing distribution for Pendle.

Policy SDP6 aims to deliver the infrastructure necessary to support development within the Borough. Contributions will be sought towards improving local infrastructure and services.

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 allows for sites to come forward for housing outside of the settlement boundary prior to the site allocations being adopted and where the site is sustainable and close to a Settlement Boundary and can make a positive contribution to the five year supply of housing land.

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. Developments in West Craven are expected to provide 5% affordable housing.

SUP2 seeks to improve the health and well-being of people in the Borough.

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

Policy 4D (Natural Heritage - Wildlife Corridors, Species Protection and Biodiversity) States that development proposals that would adversely impact or harm, directly or indirectly, legally protected species will not be permitted, unless shown to meet the requirements of The Conservation (Natural Habitats, &c.) Regulations 1994.

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

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.

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 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.

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

The Framework expects that Councils meet their full objectively assessed housing needs and to annually update their supply of specific deliverable sites to meet a five year supply.

The Framework states that good design is a key aspect of sustainable development and is indivisible from good planning. Design is to contribute positively to making places better for people. To accomplish this development is to establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live and responding to local character and history. It is also proper to seek to promote or reinforce local distinctiveness.

To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.

Recommendation

The application is brought before the Area Committee for comment. Those comments will feed into the final report which will make a recommendation to the Policy & Resources Committee. Members are asked therefore to make a resolution incorporating the Committee's comment on the application.

Application Ref: 21/0516/OUT

Proposal: Outline: Major: Erection of 63 dwelling units 2.449ha (Access only)

At: Land to the East of Martinsway, Robinson Lane, Brierfield

On behalf of: KHC Developments Ltd