

Application Number:	2018/0574	Application Type:	Variation of Condition
Proposal:	Erection of 8 dwellings including new access road, landscaping and land stabilisation and drainage works (part retrospective), pursuant to variation of conditions 1 (approved drawings relating to drainage outflow), 8 (off-site highway works) and 9 (on-site highway works).	Location:	Land At Hurst Platt Waingate Road Rawtenstall
Report of:	Planning Manager	Status:	For Publication
Report to:	Development Control Committee	Date:	12/08/2019
Applicant:	BAK Contracts Ltd	Determination Expiry Date:	30/08/2019
Agent:	N/A		

Contact Officer:	James Dalglish	Telephone:	01706 238643
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REASON FOR REPORTING	
Outside Officer Scheme of Delegation	
Member Call-In Name of Member: Reason for Call-In:	
3 or more objections received	Yes
Other (please state):	Part of site is Council-owned land

HUMAN RIGHTS

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from the following rights:

Article 8

The right to respect for private and family life, home and correspondence.

Article 1 of Protocol 1

The right of peaceful enjoyment of possessions and protection of property.

1. RECOMMENDATION

Approval, subject to the Conditions set out in Section 11 of the report.

2. SITE

The application relates to a substantial parcel of land located to the north of Newchurch Road in Rawtenstall, accessed via Green Street.

The land has been partially developed; two pairs of semi-detached three-storey stone dwellings have been constructed on the western portion of the site. Excavations have taken place toward the eastern end of the site, extending into the slope to the north, and retaining structures have been constructed at the foot of the slope. Foundations have been partially constructed for an additional pair of semi-detached dwellings.

The site is surrounded on its north, west and south sides by residential properties and their gardens. To the east of the site is a small area of woodland.

The site lies within the defined urban boundary.

Planning permission was previously granted (ref: 2016/0630) for the construction of 8 no. dwellings on the site – the scheme also included details of a slope stability and drainage scheme to be implemented as part of the development, intended to secure the slope to the north of the site from further movement, which had previously occurred as a result of development on the site.

3. RELEVANT PLANNING HISTORY

2014/0168 - Erection of 8 houses (Approved)

2015/0508 - Discharge of Conditions: 3 (design and facing materials); 5 (scheme to improve section of Green Street); 8 (Construction Method Statement); and 10 (foul/surface water drainage) pursuant to planning permission 2014/0168 (Split Decision)

2016/0630 - Erection of 8 dwellings including new access road, landscaping and land stabilisation and drainage works (part retrospective) (Approved).

2017/0514 - Construction of access road and associated retaining wall to serve residential development approved under 2016/0630 (part retrospective) (Refused and Dismissed on Appeal)

2018/0330 - Access road, retaining wall and fence (part retrospective) (Approved)

4. PROPOSAL

Surface Water Drainage

Since obtaining planning approval for the construction of 8 no. dwellings on the site (together with land stability, drainage and other related works), it became apparent that the proposed original route of surface water drainage outflow from the site (which was to be through a drain underneath the garden of No. 16 Hurst Platt, which stands adjacent to the site) was not feasible as an agreement could not be reached with the relevant land owner to allow surface water drainage to pass beneath the land in question.

As such, the route of surface water drainage outflow approved as part of planning permission 2016/0630 cannot be implemented.

In response, the applicant has submitted the current application which proposes an alternative route of surface water drainage outflow – according to the applicant this is through pipework beneath Green Street, leading west to adjoin sewerage assets in United Utilities’ ownership.

As part of an enforcement investigation on site, the Council’s Planning Enforcement Team investigated the surface water drains beneath the part of the site in question, and found that pipework did exist which leads west beneath Green Street. It is through such pipework that the applicant now proposes to connect the surface water outflow from the site, eventually leading to United Utilities’ network.

Accordingly, the applicant seeks to vary condition 2 (approved plans) of planning permission 2016/0630 to substitute a revised site plan showing the new route of surface water drainage outflow, in place of the old plan showing the previously proposed drain beneath the garden of the adjacent property.

All other aspects of the proposed scheme in relation to surface water drainage remain the same as approved under 2016/0630.

Off-Site Highway Works

Condition 8 of planning permission 2016/0630 required the submission of a scheme (including proposed layout, construction details, materials, width, lighting and drainage) to improve the section of Green Street from its junction with Holmes Street in an easterly direction to the red edge shown on the submitted site location plan, within 3 months of that approval, and its subsequent implementation.

The condition was not complied with, but instead the required details were submitted in full as part of subsequent applications 2017/0514 and 2018/0330.

In their comments on application 2017/0514, LCC Highways concluded that the submitted details were satisfactory, stating:

“The proposed layout shown on drawing B14110-03 is acceptable including the layout, construction details, materials, width, lighting and drainage. The applicant must progress the S278 agreement with the Highway Authority to ensure that the works can be completed prior to first occupation of any dwelling.”

In respect of the current application now being considered, the applicant has submitted the exact same details – in order to consolidate all previously approved details in relation to off-site highway works into a single planning approval that they can implement.

As such, the applicant seeks to vary the wording of condition 8 (off-site highway works) to take account of the fact that such details have already been approved, and so that the condition merely requires their implementation as part of the development.

On-Site Highway Works

Condition 9 of planning permission 2016/0630 required the submission of full engineering, drainage, street lighting and constructional details of the access road (including the retaining wall and the pedestrian/vehicle restraint along the southerly side of the access road), and the subsequent implementation of the details.

The condition was not complied with, but again the required details were submitted in full as part of subsequent applications 2017/0514 and 2018/0330.

Again, in commenting on application 2017/0514 LCC Highways raised no objection to the submitted details.

In respect of the current application now being considered, the applicant has submitted the exact same details (except the details of the adjacent retaining wall, which are being dealt with separately under application 2019/0307 – which is currently pending) in order to consolidate all previously approved details in relation to on-site highway works into a single planning approval that they can implement.

As such, the applicant seeks to vary the wording of condition 9 (on-site highway works) to take account of the fact that such details have already been approved, and so that the condition merely requires their implementation as part of the development.

Summary

In all other respects, the scheme for which the applicant now seeks planning permission is the same as that approved under 2016/0630 and which has been partially implemented on site.

The only changes to that scheme as now proposed relate to:

- The location of the surface water outflow from the site.
- The approval of details of off-site highway works previously reserved by condition 8 of 2016/0630.
- The approval of details of on-site highway works previously reserved by condition 9 of 2016/0630.

5. POLICY CONTEXT

National

National Planning Policy Framework

Section 2	Achieving Sustainable Development
Section 5	Delivering a Sufficient Supply of Homes
Section 6	Building a Strong, Competitive Economy
Section 8	Promoting Healthy and Safe Communities
Section 9	Promoting Sustainable Transport
Section 11	Making Effective Use of Land
Section 12	Achieving Well Designed Places

Development Plan Policies

Rossendale Core Strategy DPD (2011)

Policy AVP4	Area Vision for Rawtenstall, etc
Policy 1	General Development Locations and Principles
Policy 8	Transport
Policy 9	Accessibility
Policy 18	Biodiversity, Geodiversity and Landscape Conservation
Policy 19	Climate Change, etc
Policy 23	Promoting High Quality Designed Spaces
Policy 24	Planning Application Requirements

Other Material Planning Considerations

RBC Alterations and Extensions to Residential Properties SPD
National Planning Practice Guidance

6. CONSULTATION RESPONSES

LCC Highways

No objection.

RBC Building Control

No objection.

United Utilities

No comments have been received.

RBC Legal Services

No comments have been received.

RBC Property Services

No comments have been received.

7. REPRESENTATIONS

To accord with the General Development Procedure Order a site notice was posted on 17/07/2019. Letters were initially sent to neighbours on 25/01/2019, and again on 17/07/2019 as part of a re-consultation exercise following receipt of amended plans and a revised description of development.

Letters of objection have been received, raising the following points:

- Problems of land instability on the site.
- Need for the stabilisation and drainage works to take place as soon as possible to secure against future land instability.
- Developer does not have the necessary rights to drain surface water as proposed through land outside their ownership.
- Land ownership disputes.
- Inadequate drainage capacity.

8. ASSESSMENT

The current application must be considered having regard to Section 73 of the Town & Country Planning Act 1990, as amended. It relates specifically to applications to vary conditions on earlier planning approvals, stating:

“On such an application the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted, and:

a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.”

Planning permission must not be granted under this section to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which a development must be started.”

Having regard to the above, the only matters for consideration in determining this application are:

- The acceptability of the proposed alternative route of surface water drainage outflow (and the associated wording of condition 2 pursuant to 2016/0630)
- The acceptability of the proposed scheme of off-site highway works (and the associated wording of condition 8 pursuant to 2016/0630)
- The acceptability of the proposed scheme of on-site highway works (and the associated wording of condition 9 pursuant to 2016/0630)

If it is determined that it would be appropriate to vary the wording of the above conditions, it may also be necessary to amend the wording of other conditions pursuant to 2016/0630 to ensure that there is no conflict between the conditions.

Alternative Surface Water Drainage Outflow

It has been established by the Council’s Planning Enforcement Team (using remote CCTV cameras) that there are surface water drains installed underneath the site which lead towards the west along Green Street. It is understood from the applicant that these drains connect to United Utilities’ assets.

United Utilities has been consulted on the application, and has not provided any objection.

It is noted that comments have been received from a neighbouring resident stating that the proposed new route of drainage outflow would still pass beneath land in their ownership – and that no such drainage rights are in place for the applicant. However, this is not a material planning consideration – land ownership and private rights of drainage are outside the remit of the planning system, and if there is a dispute over either it would be a private civil matter to be addressed through the appropriate legal framework.

The applicant has duly completed Certificate of Ownership B, acknowledging that there are other land owners besides themselves with an interest in the application site. For the purposes of considering this planning application, this is sufficient to allow the application to be determined on its planning merits.

In the absence of any material planning considerations indicating the contrary, and putting non-planning related land ownership / drainage rights disputes aside, there is no reason to doubt that an appropriate surface water drainage outflow can be achieved along the route proposed. Responsibility would lie with the applicant to ensure that all other necessary legal agreements to utilise the proposed drainage system are in place (i.e. with other land owners, and with United Utilities to connect to their assets).

Scheme of Off-Site Highway Works

The submitted scheme (including proposed layout, construction details, materials, width, lighting and drainage) of off-site highway works is the same as that previously submitted under applications 2017/0514 and 2018/0330.

In their comments on application 2017/0514, LCC Highways concluded that the submitted details were satisfactory, stating:

“The proposed layout shown on drawing B14110-03 is acceptable including the layout, construction details, materials, width, lighting and drainage. The applicant must progress the S278 agreement with the Highway Authority to ensure that the works can be completed prior to first occupation of any dwelling.”

The details now submitted are the same (albeit with a different drawing number), and as such, the proposed works are again considered acceptable.

Scheme of On-Site Highway Works

The submitted details in relation to on-site highway works (including full engineering, drainage, street lighting and constructional details of the access road) are the same as those previously submitted under applications 2017/0514 and 2018/0330.

In their comments on application 2017/0514, LCC Highways raised no objection to the submitted details.

The details now submitted are the same (albeit with a different drawing number), and as such, the proposed works are again considered acceptable. It is noted that the details of the retaining wall associated with the access road are being considered as part of a separate application which is currently pending (2019/0307).

Conclusion

Having regard to all of the above considerations, it is considered appropriate to vary the wording of the relevant conditions pursuant to planning approval 2016/0630 as necessary to reflect the updated details.

Since the approval of application 2016/0630 it is noted that there has been some excavation and placing of soil on land forming an embankment to the east of Plot 8. It is therefore considered necessary to include an additional condition requiring the submission, approval and implementation of a scheme to grade / retain and landscape the land in question prior to the commencement of further above-ground construction works on Plot 8.

9. SUMMARY REASON FOR APPROVAL

The proposed development is appropriate in principle in the Urban Boundary and would not unduly detract from visual and neighbour amenity, land stability, flood risk or highway safety. It is considered that the development is in accordance with the National Planning Policy Framework, and Policies AVP4, 1, 8, 9, 18, 19, 23 and 24 of the Council's adopted Core Strategy DPD (2011).

10. RECOMMENDATION

Approve planning permission subject to conditions.

11. CONDITIONS

1. The development shall be carried out in accordance with the following unless otherwise required by the Conditions below :

- Site Location Plan (Croft Goode Architects Drawing Number 16-2218-EX001 REV B)
- Site Layout (James Crosbie Associates Ltd Drawing Number B14110 03 P6)
- Street Lighting (Lancashire County Council Drawing)
- Permanent Sheet Pile Wall (Volker Ground Engineering Drawing Number C12538-PW01-101 REV. D)
- Part Site Layout Indicating Highway Works (James Crosbie Associates Ltd Drawing Number B14110 03)
- Detailed Landscape Proposals (Margaret Twigg Drawing Number 452.01)
- Proposed Floor Plans (Croft Goode Architects Drawing Number 16-2218-PN101)
- Sections Through Site (James Crosbie Associates Ltd Drawing Number 02 Revision P2)
- Proposed Elevations (Croft Goode Architects Drawing Number 16-2218-003)
- Proposed Site Sections (Croft Goode Architects Drawing Number 16-2218-PN301)
- Property Management North West Ltd arrangements for future management and maintenance of the proposed streets within the development
- Method Statement Relating to Rear Walls of Houses on Plots 1-4
- Waingate Mews Retaining Wall Calculations (Philip Wright Associates Ltd Ref: 1417 May 2019)

Reason: For the avoidance of doubt and to ensure a satisfactory standard of development.

2. No further development in respect of the construction of the dwelling houses hereby permitted shall take place until the slope stability and drainage works as shown on the following approved drawings have been completed in full:

- James Crosbie Associates Ltd Drawing Number B14110 03 P6 (Site Layout)
- James Crosbie Associates Ltd Drawing Number B14110 02 P2 (Sections Through Site)

Reason: In the interests of land stability and to ensure adequate drainage of the site.

3. Any construction works associated with the development hereby approved shall not take place except between the hours of 7:00 am and 7:00 pm Monday to Friday and 8:00 am and 1:00 pm on Saturdays. No construction shall take place on Sundays, Good Friday, Christmas Day or Bank Holidays.

Reason: To safeguard the amenities of neighbours.

4. Notwithstanding what is shown on the submitted plans and documents, the dwellings hereby permitted shall be constructed with facing materials to match those used in the construction of the elevations and roof of the dwelling on Plot 1 which has already been constructed on the site.

Reason: To ensure the development is of satisfactory appearance.

5. Notwithstanding what is shown on the submitted plans and documents, the retaining wall to the new access road along the southern boundary of the site shall be faced in coursed stone to match that used in the construction of the elevations of the dwelling on Plot 1 which has already been constructed on the site.

Reason: To ensure the development is of satisfactory appearance.

6. None of the dwellings to be constructed on Plots 5-8 shall be occupied until their garages are available for use for the parking of cars, and until the driveways fronting them have been surfaced in a hard permeable material as shown on Margaret Twigg Landscape Architects drawing number 452.01.

Reason: In the interests of highway safety and to ensure that sufficient parking provision is provided for the size of the dwellings hereby approved.

7. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any subsequent Order amending or revoking and re-enacting it, each of the garages associated with the dwellings on site shall be kept freely available for the parking of cars at all times.

Reason: In the interests of highway safety and to ensure that sufficient parking provision is provided and retained for the size of the dwellings hereby approved.

8. Prior to first occupation of any of the dwellings to be constructed on Plots 5-8, all off-site highway works as shown on the following drawings shall be completed in full (including road construction, surfacing, kerbs, drainage and street lighting):

- Site Layout (James Crosbie Associates Ltd Drawing Number B14110 03 P6)
- Street Lighting (Lancashire County Council Drawing)
- Part Site Layout Indicating Highway Works (James Crosbie Associates Ltd Drawing Number B14110 03)

Reason: In the interests of highway safety and to manage surface water runoff.

9. Prior to first occupation of any of the dwellings to be constructed on Plots 5-8, all on-site highway works as shown on the following drawings shall be completed in full (including road construction, surfacing, kerbs, drainage and street lighting):

- Site Layout (James Crosbie Associates Ltd Drawing Number B14110 03 P6)
- Street Lighting (Lancashire County Council Drawing)
- Part Site Layout Indicating Highway Works (James Crosbie Associates Ltd Drawing Number B14110 03)

In addition, none of the dwellings on Plots 5-8 shall be occupied until all elements of the retaining wall and associated fencing approved under application 2019/0307 have been completed in accordance with the approved details.

Reason: In the interests of highway safety and to manage surface water runoff.

10. Foul and surface water shall be drained on separate systems.

Reason: To secure proper drainage and to manage the risk of flooding and pollution.

11. All new planting forming part of the approved scheme (as shown on Margaret Twigg Landscape Architects drawing number 452.01) shall be carried out in the first planting season either following completion of the development or following first occupation of the last dwelling to be occupied (whichever is the sooner). Any trees or plants which within a period of 5 years of first occupation of the final dwelling die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All lawns, trees, shrubs and hedges located forward of the front elevations of the dwellings hereby permitted shall be retained thereafter and any that die or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of visual amenity and to enhance the biodiversity value of the site.

12. If, during any works on site, land contamination is suspected or found, or land contamination is caused, the Local Planning Authority shall be notified immediately. Within one month of such notification taking place a risk assessment (together with a scheme including full details of any proposed remediation measures, together with timescales for their implementation) shall be submitted to the Local Planning Authority for its approval. The development shall thereafter be carried out in accordance with the agreed details. Within

one month of the completion of the development or within one month of first occupation of any of the dwellings hereby permitted (whichever is the sooner), a verification report (demonstrating that the approved remediation measures have been carried out in accordance with the approved details) shall be submitted to the Local Planning Authority for its approval.

Reason: In the interests of preventing harm to the future occupants of the development from land contamination.

13. No above-ground construction works shall take place in relation to the approved dwelling on Plot 8 until a scheme has been submitted to and approved in writing by the Local Planning Authority containing full details of proposals to grade or retain, and landscape, the land immediately to the east of Plot 8. The scheme shall contain design drawings by a suitably qualified structural engineer which demonstrate that the proposed grading / retaining works are adequate to prevent any land instability.

The development shall thereafter be implemented in accordance with the approved scheme.

Reason: In the interests of protecting the proposed dwelling on Plot 8 from land instability, and in the interests of visual amenity.

14. Prior to first occupation of any of the dwellings to be constructed on Plots 5-8, the areas of land adjacent to the turning head on site, as shown on James Crosbie Associates Ltd Drawing Number B14110 03 P6 (Site Layout), shall be laid with grass and shall thereafter be maintained as areas of informal amenity space.

Reason: In the interests of visual amenity

12. INFORMATIVES

1. The Local Planning Authority has a Core Strategy (adopted in November 2011) and a series of Supplementary Planning Documents, which can be viewed at:

http://www.rossendale.gov.uk/downloads/download/331/core_strategy_local_plan_part_1_adopted

The Council operates a pre-application planning advice service. All applicants are encouraged to engage with the Local Planning Authority at the pre-application stage.

The Local Planning Authority has considered the application and where necessary considered either the imposition of planning conditions and/or sought reasonable amendments to the application in order to deliver a sustainable form of development in accordance with the National Planning Policy Framework and the local planning policy context.

2. The grant of planning permission may require the applicant to enter into an appropriate Legal Agreement, with the County Council as Highway Authority. The Highway Authority hereby reserves the right to provide the highway works within the highway associated with this proposal. Provision of the highway works includes design, procurement of the work by

contract and supervision of the works. The applicant should be advised to contact the contact the Environment Directorate for further information by telephoning the Developer Support Section (Area East) on 0300 123 6780, or writing to Developer Support Section, Lancashire County Council, Environment Directorate, Cuerden Mill Depot, Cuerden Way, Cuerden, PR5 6BJ or email lhscustomerservice@lancashire.gov.uk

3. The applicant is advised that they have a duty to adhere to the regulations of Part 2A of the Environmental Protection Act 1990, the National Planning Policy Framework 2018 and the current Building Control Regulations with regards to contaminated land. The responsibility to ensure the safe development of land affected by contamination rests primarily with the developer.

4. The applicant is advised to contact United Utilities at the earliest possible opportunity regarding any potential water supply requirements or any proposed connections to public sewers / drainage infrastructure. Additional information is available on United Utilities' website at <http://www.unitedutilities.com/builders-developers.aspx>