

<b>Application Number:</b>	2019/0307	<b>Application Type:</b>	Full
<b>Proposal:</b>	Access road, retaining wall and fence (part retrospective)	<b>Location:</b>	Land at Green Street / Hurst Platt, Rawtenstall
<b>Report of:</b>	Planning Manager	<b>Status:</b>	For Publication
<b>Report to:</b>	Development Control Committee	<b>Date:</b>	12/08/2019
<b>Applicant(s):</b>	Ryan Kiely, BAK Building Contracts Ltd	<b>Determination Expiry Date:</b>	10 <sup>th</sup> September 2019
<b>Agent:</b>	N/A		

<b>Contact Officer:</b>	<b>James Dagleish</b>	<b>Telephone:</b>	<b>01706 238643</b>
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<b>REASON FOR REPORTING</b>	
<b>Outside Officer Scheme of Delegation</b>	
<b>Member Call-In</b> Name of Member: Reason for Call-In:	
<b>3 or more objections received</b>	
<b>Other (please state):</b>	<b>Previously considered by Committee</b>

## 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

Approve full planning permission subject to the conditions set out in this report.

## **APPLICATION DETAILS**

### **2. SITE**

The application relates to the completion of a retaining wall on the southern part of a piece of land on which planning permission has been previously granted for the erection of eight dwellings (ref: 2016/0630). The land is located to the north of Newchurch Road in Rawtenstall, accessed via Green Street.

The land associated with planning approval 2016/0630 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 two steel sheet piled retaining walls 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.

### **3. RELEVANT PLANNING HISTORY**

2008/0681 - Erection of 3 no. detached dwellings (Refused)

2009/0028 - Erection of 3 dwellings (Refused, than allowed on appeal, not implemented)

2012/0544 - Erection of 3 dwellings (Approved, not implemented)

2013/0470 – Outline: Construction of 8 Dwellings Comprising Four Semi Detached Pairs (Approved, not implemented)

2014/0168 - Erection of 8 houses (Approved, not implemented. The construction of the four dwellings currently on site commenced but without the discharge of several pre-commencement conditions included on planning permission 2014/0168, and as such it is not considered that planning permission 2014/0168 has been lawfully implemented)

2015/0087 - Variation of condition 6 (access road and retaining walls) pursuant to planning permission 2014/0168 (Not determined)

2015/0088 - Discharge of Conditions: 5 (road improvements) 8 (construction method statement) 10 (foul & surface water drainage) & 11(structural stability of land & properties) pursuant to planning permission 2014/0168 (Refused)

2015/0507 - Variation of Condition 11 (land stability) pursuant to Planning Permission 2014/0168 (Refused)

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 – Only Conditions 3 and 8 were discharged)

2016/0167 - Variation of conditions: 5 (scheme to improve section of Green Street); 10 (foul / surface water drainage); and 11 (land stability) pursuant to planning permission 2014/0168 (Not determined)

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

2017/0380 - Discharge of Conditions 8 (Green Street improvements) and 9 (access road) pursuant to Planning Approval 2016/0630 (Withdrawn)

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

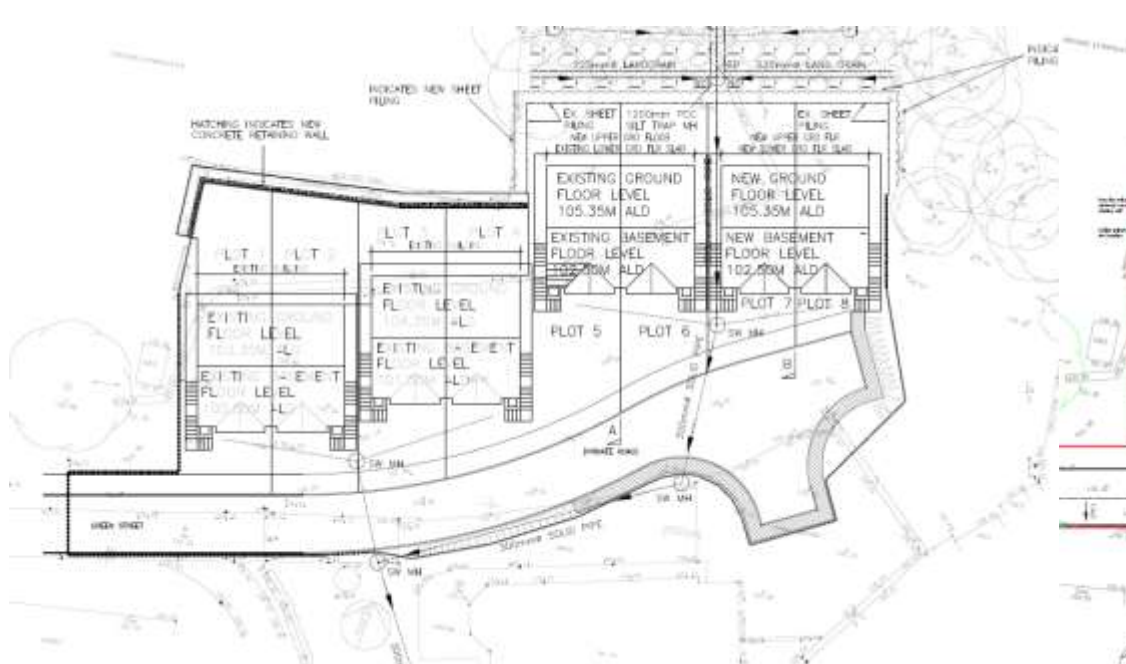
2018/0330 - Access road, retaining wall and fence (part retrospective) (Approved)

2018/0574 - Erection of 8 dwellings including new access road, landscaping and land stabilisation and drainage works (part retrospective), pursuant to variation of conditions 2 (relating to drainage outflow), 8 (off-site highway works) and 9 (on site highway works) (Pending)

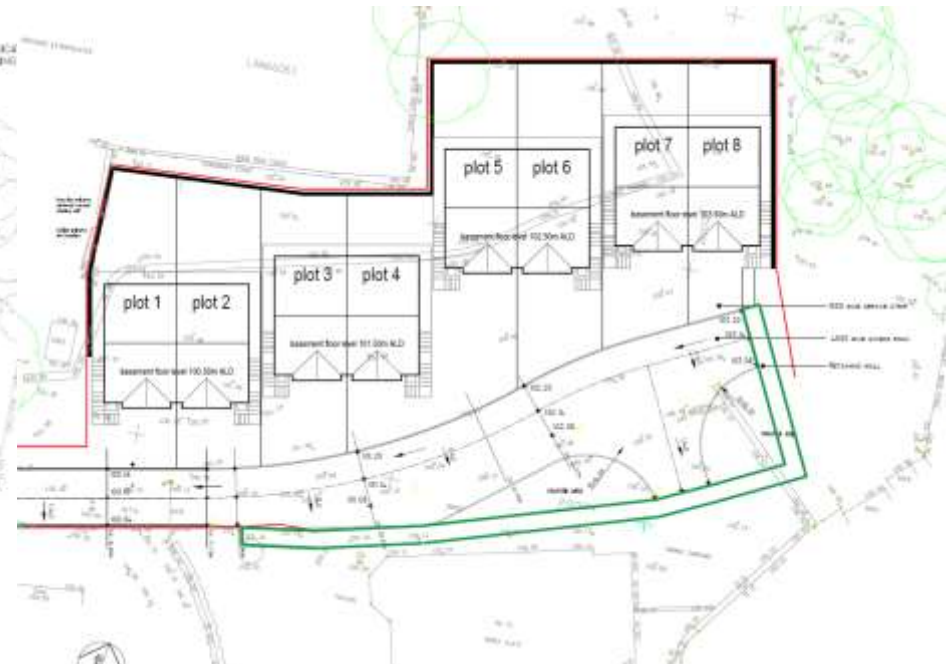
#### **4. PROPOSAL**

As set out above there is extensive planning history at this site with planning permission granted (ref: 2016/0630) for the construction of 8 dwellings on the site, with an associated access road, landscaping and land stabilisation / drainage works. However, the development which has taken place in respect of the retaining wall to the south of the site does not accord with the plans approved under 2016/0630 (in terms of its location and construction) and 2018/0330 (in terms of its construction).

The plans below show the differences in location between the approved scheme under 2016/0630 and the scheme for which permission is currently sought:



*Approved Retaining Wall Location (2016/0630)*



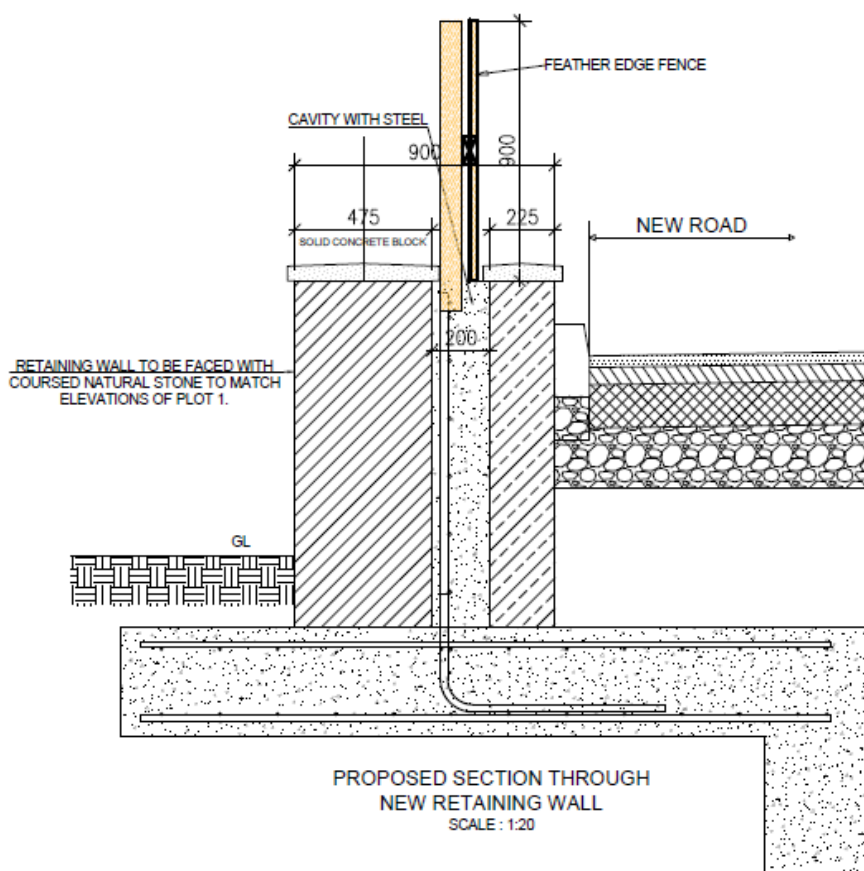
*Proposed Retaining Wall Location*

Rather than following the curve of the southern edge of the access road (as approved under 2016/0630), a retaining wall has been constructed along the southern edge of the site in an almost straight line.

Planning permission was sought for the retaining wall in question (as constructed, and topped with a 0.9m high timber fence) under 2018/0330. The application was approved in August 2018 by the Council's Development Control Committee.

However, it became apparent that the approved plans under 2018/0330 did not reflect the exact form of construction for the wall that the applicant wished to implement. As such, the applicant now seeks planning permission to regularise the wall in its current position and for approval of drawings showing the finalised form of construction that they wish to implement in respect of the wall.

The wall again includes a 0.9m high timber fence on top of the retaining wall. The submitted plans show that the wall will be faced with natural coursed stone on its southern side:



## 5. POLICY CONTEXT

### National

#### National Planning Policy Framework

- Section 2 Achieving Sustainable Development
- Section 4 Decision Making
- 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

**Development Plan Policies**

Rossendale Core Strategy DPD (2011)

Policy AVP4 Rawtenstall, Crawshawbooth, Goodshaw and Loveclough

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 Considerations**

National Planning Practice Guidance

RBC Alterations and Extensions to Residential Properties SPD

**6. CONSULTATION RESPONSES**

RBC Building Control

No objection.

**7. REPRESENTATIONS**

To accord with the General Development Procedure Order the neighbouring property was sent a letter on 16/07/2019 and a site notice was posted on 17/07/2019.

One letter of objection has been received, raising the following points:

- Wall has insufficient foundations as constructed.
- Developer does not own some of the land on which the wall is built.

**8. ASSESSMENT**

Principle

1. The acceptability in principle of developing a retaining wall to serve the development on site has been previously established under planning approval 2016/0630, and subsequently (in its current position) under 2018/0330. The site lies within the designated urban boundary where Policy 1 of the Core Strategy seeks to locate the majority of new development.
2. It is noted that a letter of objection has been received which suggests that inadequate foundations have been constructed beneath the wall on site. However, this application seeks approval for a retaining wall of the form of construction shown on drawing number BAK-WGM-RW REV 03 – which contains a substantial foundation beneath the wall.

3. The Council's Building Control team have been consulted on the proposed retaining wall design and have commented as follows:

*"Further to your email and accompanying details BAK – WGM – RW revision 03 the proposed retaining wall detail is of robust construction and if constructed as per the details and calculations incorporating the structural engineers specification (not included) I would have no concerns regarding its suitability."*

4. If the development is not carried out in due course in accordance with the details of construction shown on drawing number BAK-WGM-RW REV 03, the Council's Planning Enforcement Team would be able to investigate the matter, and would be able to take enforcement action to remedy the situation if it was considered expedient to do so.
5. The aforementioned letter of objection also alleges that the applicant does not own all of the land on which the wall is constructed. However, land ownership matters are not a material planning consideration, and in any case the submitted application form includes a completed Certificate B acknowledging that the applicant is not the sole owner of all of the land within the application site.
6. The proposed scheme is considered acceptable in principle.

#### Visual Amenity

7. The proposed retaining wall would not appear significantly different from that approved under 2018/0330 in terms of its appearance. The submitted drawings indicate that the proposed retaining wall would be clad in stone to match that used in the construction of the dwellings on site.
8. It is considered that the submitted scheme would not therefore have any noticeably greater impact on visual amenity than that approved under 2018/0330.
9. As such the scheme is considered acceptable in terms of visual amenity.

#### Neighbour Amenity

10. Application 2017/0514 (which included 1.1m high iron railings on top of the retaining wall, instead of the 0.9m high fencing that is now proposed) was dismissed on appeal. The Inspector commented as follows on the impact of the scheme on neighbour amenity:
11. *"The north elevation of No 16, a two storey dwelling, faces the appeal site. The dwelling is on a lower ground level than the site. There are four clear glazed windows on the ground floor and one clear glazed window and two obscure glazed window on the first floor. A conservatory is also part of this elevation.*
12. *In total, the wall and railings would extend up to roughly 2.6 metres. The railings would be set further away from the windows and behind the wall. Due to the height of the wall it would not obscure views from the ground floor windows in No 16, while the railings would allow views between the bars. As such, despite its proximity, the development would not create a solid barrier that would prevent sunlight and daylight from being received in habitable rooms that are served by these windows. Furthermore, the interface distance to the dwellings within the site would not change. Hence, the privacy of the occupants in No 16 would not be harmed by the appeal scheme.*

13. *In my view, by using railings instead of the timber fence, this would be suitable insofar as sunlight, daylight, privacy and outlook. Yet, the railings would allow vehicle headlights from within the site to affect the living conditions of the occupants in No 16. While vehicles entering the site would be at an oblique angle to the windows in the north elevation of No 16, their headlights would shine directly into the conservatory. Headlights from vehicles turning around or from plots 5 to 8 would also either pass or directly shine into the windows in the north elevation of No 16. Thus, the occupants of No 16 would not have a good standard of amenity as the railings would not mitigate light pollution.”*
14. The scheme now proposed would include a 0.9m high timber fence in place of the previously proposed metal railings. This arrangement is identical to that approved most recently by the Development Control Committee under 2018/0330.
15. The 0.9m high timber fence was introduced under application 2018/0330 to address the Planning Inspector’s previous concerns about car headlights shining into the adjacent property - and the inclusion of a solid timber fence as part of the scheme now submitted would again address the Inspector’s concerns over car headlights shining directly into that property.
16. However it is acknowledged that the introduction of a solid timber fence would cause a degree of harm to the amenity of the occupant of No. 16 in that it would reduce the amount of daylight to the adjacent windows, and the outlook from them, to a degree.
17. In this case it is necessary (as it was when Committee considered 2018/0330) to balance the negative impacts of the development against the positive considerations. Whilst the introduction of a more solid barrier, in the former of a 0.9m high timber fence, would impact to a degree on daylight received by the windows facing it and the outlook which can be enjoyed from the windows in question, it is important to note that the fence will almost entirely mitigate the light pollution from car headlights which could otherwise shine into the windows of No. 16.
18. Furthermore, the scheme originally approved under 2016/0630 did not include any solid fencing along the boundary with No. 16, and as such if it had been implemented that scheme would also have potentially resulted in some light pollution from car headlights affecting No. 16. It is considered that the scheme now proposed offers a significant advantage over the schemes considered under 2016/0630 and 2017/0514 in this regard.
19. It is important to note that identical 0.9m high solid timber fencing has subsequently been approved under 2018/0330 (atop a retaining wall of the same height in the exact same position, albeit of slightly different construction).
20. On balance, it is considered that the benefit in terms of a reduction in light pollution to the windows of No. 16 which would result from the construction of the fencing now proposed would outweigh the harm caused by the fencing in terms of a degree of reduction in outlook and daylight to the same windows.
21. The scheme is considered acceptable in terms of neighbour amenity.

Access, Parking and Highway Safety

22. It is not considered that the proposed scheme would have any significantly greater impact on highway safety than the previously approved scheme under 2018/0330.



23. The scheme is considered acceptable in terms of access, parking and highway safety.

## 9. Conclusion

The proposed development is appropriate in principle within the urban boundary and would be acceptable in terms of visual amenity, neighbour amenity and highway safety. It is considered that the proposed development accords with Core Strategy Policies AVP4, 1, 8, 9, 18, 23 and 24, and the National Planning Policy Framework.

## 10. CONDITIONS

1. The development shall be carried out in accordance with the following:

- Application Form.
- Site Location Plan (Croft Goode Architects Drawing Number 16-2218-EX001 REV D).
- Proposed Site Layout (Croft Goode Architects Drawing Number 16-2218-PN001 REV A) only in so far as it relates to the position of the retaining wall in question.
- Proposed Retaining Wall Design (BAK Contracts Drawing Number BAK-WGM-RW REV 03).

Reason: For the avoidance of doubt.

2. 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.

3. 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 natural 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.

4. All elements of the retaining wall and associated fencing hereby approved shall be completed in full in accordance with the approved plans prior to first occupation of any of the dwellings on Plots 5-8 of the adjacent development immediately to the north (as approved under application 2016/0630 and proposed under application 2018/0574).

Reason: In the interests of highway safety and neighbour amenity.

## **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\\_adapted](http://www.rossendale.gov.uk/downloads/download/331/core_strategy_local_plan_part_1_adapted)

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. In this case the applicant did not engage in pre-application discussions.

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.