

**TITLE: APPLICATION NUMBER 14/2002/261
OUTLINE APPLICATION FOR THE ERECTION OF 45 RESIDENTIAL
UNITS AT LAND OFF EASTGATE, WHITWORTH, ROSSENDALE
AT: LAND OFF EASTGATE, WHITWORTH**

TO/ON: DEVELOPMENT CONTROL COMMITTEE / 10th JULY 2006

**BY: DEPUTY CHIEF EXECUTIVE/HEAD OF LEGAL AND DEMOCRATIC
SERVICES**

STATUS: FOR PUBLICATION

APPLICANT: HARRY YEARSLEY SELF ADMIN PENSION FUND

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.

Background

This application was received 20th May 2002. This application was considered by the Development Control Committee on the 21st January 2003 when it was minded to approve the application subject to the provision of a legal agreement. A chronology of key dates is attached at Appendix 1.

This application relates to a former Mill site. The proposal is in outline and seeks consent to develop approximately half of the former Mill site for residential purposes. The application originally sought consent for 85 dwellings but was later reduced by the applicant to 45 dwellings.

The Section 106 agreement as drafted requires the Council to enter into a legal agreement with the developer (to provide open space and contributions towards Quality Bus service). The Head of Legal and Democratic Services informs me that the agreement has been drafted and agreed by both parties, recent changes to the Development Plan detailed below require that the application be reconsidered against prevailing policies in order to determine whether the application is acceptable and in accordance with these new policies.

Members should also note that other similar applications, which have also been considered previously by this committee, appear on this agenda. Although the

various resolutions were passed at different times they were all passed before the adoption of the current Joint Lancashire Structure Plan and the Council's Housing Policy Position Statement. The decision whether or not to grant planning permission must be made in accordance with the Development Plan policies in force at the time unless material considerations indicate otherwise. Members resolved to approve this application at the previous committee in January 2003 but a decision notice has not been issued and planning permission has not been granted as the S 106 agreement has not been completed. There have been significant material changes in the policy position since the resolution to grant planning permission was made. In such a circumstance, the decision to grant planning permission should be reconsidered. Furthermore as the Committee did not delegate anything other than the issuing of the decision notice on completion of a satisfactory S106 agreement it is necessary to refer, the reconsideration of this matter back to Committee. It is not for officers to take the reconsidered decision.

The Development Plan within Rossendale comprises the Rossendale District Local Plan (adopted 12th April 1995), the Joint Lancashire Structure Plan 2001-2016 (adopted 31st March 2005) and RPG 13 (which became RSS and part of the development plan on 28th September 2004). It can be observed that the Local Plan is now over 10 years old whereas the other two elements of the development plan are much more recent in origin. A statement of non-conformity with the Adopted Structure Plan with respect to certain Local Plan policies was issued on 6th July 2005. One of the policies which is considered to be not in conformity with the Structure Plan by the County Council is policy H3 which allocates housing sites.

Given that the application relates to a residential scheme the most relevant changes to the development plan, therefore, relate to the provision of housing. I will discuss the prevailing policy framework below and other relevant material planning considerations in respect of housing which have arisen since Members were minded to approve the application in January 2003. The report does not re-reconsider other aspects of the application which are unaffected by changes to the development plan. The previous committee report is included and a chronology is included at Appendix 1.

Additional Information

The applicant's agent has provided additional information to support this planning application. I have summarised the key material considerations below:

- The chronology does not provide a full picture of attempts made by the applicant to secure the S106 agreement. The appendix does not demonstrate the actions undertaken by the applicant.
- The policies of the draft Structure Plan remain virtually unchanged when adopted. In any event the Council can make grant planning permission notwithstanding the development plan if material planning considerations indicate otherwise.
- With regard to an appeal against non-determination. The applicant only had this power up to a period of 6 months after the 8 week period.
- Appendix 1 appears woefully inadequate.
- Advises of the applicant's options to take further legal action.

Regional Spatial Strategy

Regional Planning Guidance was adopted in March 2003 and following the commencement of the new Planning and Compulsory Purchase Act is now the

Regional Spatial Strategy for the North West (RSS). RSS has formed part of the Development Plan for Rossendale since 28th September 2005.

The overriding aim of RSS is to promote sustainable development. The key objectives of RSS include:

- achieve greater economic competition and growth with associated social progression;
- to secure an urban renaissance in the cities and towns of the north west;
- to ensure active management of the Region's environmental and cultural assets;
- to secure a better image for the Region and high environmental and design quality; and
- to create an accessible Region with an efficient and fully integrated transport system

Policy DP1 requires that development plans adopt the following sequential approach to meet development needs, taking into account local circumstances the characteristics of particular land uses, and the spatial development framework; the effective use of existing buildings and infrastructure within urban areas particularly those which are accessible by public transport, walking or cycling; the use of previously developed land particularly that which is accessible by public transport walking or cycling; and thirdly development of previously undeveloped land that is well related to houses, jobs and so on and can be made accessible by public transport, walking or cycling.

Policy DP2 requires an enhancement in the overall quality of life experience in the Region. It states that the overall aim of sustainable development is the provision of a high quality of life, for this and future generations.

Policy DP4 states that economic growth and competitiveness, with social progress for all is required. Local authorities and others should set out, in their regional strategies and development plan policies, guidance to ensure that development and investment will, to the fullest extent possible, simultaneously and harmoniously:

- help grow the Region's economy in a sustainable way; and
- produce a greater degree of social inclusion

Policy UR4 sets a target for Lancashire of reaching, on average, at least 65% of new housing on previously developed land.

Policy UR6 states that local authorities should develop an understanding of local and sub-regional housing markets in order to adopt a concerted and comprehensive approach to influencing housing supply. It goes on to state that this would be especially important in Rossendale. A comprehensive approach to housing renewal, clearance and urban regeneration, particularly in Regeneration Priority Areas, is required.

Policy UR7 states that Local Planning authorities should monitor and manage the availability of land identified in development plans to achieve the annual average rates of housing provision.

Joint Lancashire Structure Plan 2001-2016

Previous consideration of this application pre-dates the adoption of the Joint Lancashire Structure Plan. I consider that policies 1, 5 and 12 are most relevant in this instance.

Policy 1b (General Policy) requires development to contribute to achieving high accessibility for all by walking, cycling and public transport.

Policy 1f (General Policy) states development proposals should contribute to achieving *“urban regeneration, including priority re-use or conversion of existing buildings and then use brownfield sites”*

Policy 5: Development Outside of Principal Urban Areas, Main Towns and Key Service Centres (Market Towns) states *“Development outside of the principal urban areas, main towns and key service centres (market towns) will be of a scale and nature appropriate to its location and will mostly take place in villages and other settlements identified in local plans/local development frameworks. Development will support rural and urban regeneration by meeting an identified local need for housing”*.

Paragraph 6.1.17 states: *“Most housing development outside of Principal Urban Areas, Main Towns and Key Service Centres (Market Towns) will be affordable housing or accommodation to meet the specific needs of a section of the local community. Districts will determine the necessary amount of affordable housing development based on an assessment of local need. Preference will be given to brownfield sites, infill plots and conversion of redundant buildings.”*

Policy 12 states *“that provision will be made for the construction of 1920 dwellings within the Borough within the plan period (2001-2016) 220 per year between 2001 and 2006 and 80 per year between 2006 and 2016”*.

Paragraph 6.3.13 states *“Where there is a significant oversupply of housing permission, planning applications for further residential development may not be approved unless they make an essential contribution to the supply of affordable or special needs housing or form a key element within a mixed use regeneration project. Any such project should be compatible with, and help achieve, the regeneration objectives of the Local Authority. Districts may identify, through the Local Plan/Local Development Framework process, other circumstances where it may be appropriate to approve residential development in a situation of housing oversupply, such as the conversion benefits of maintaining an existing building worthy of retention.”*

Rosendale District Local Plan

Key policies from the Local Plan against which the proposal was previously assessed but which have now been declared not to be in conformity with the Structure Plan are DC1 and H3.

Policy DC1 (Development Criteria) of the Rosendale District Local Plan states that all applications for planning permission will be considered on the basis of

- a) location and nature of proposed development,
- b) size and intensity of proposed development;
- c) relationship to existing services and community facilities,
- d) relationship to road and public transport network,
- e) likely scale and type of traffic generation,
- f) pollution,

- g) impact upon trees and other natural features,
- h) arrangements for servicing and access,
- i) car parking provision
- j) sun lighting, and day lighting and privacy provided
- k) density layout and relationship between buildings and
- l) visual appearance and relation to surroundings,
- m) landscaping and open space provision,
- n) watercourses and
- o) impact upon man-made or other features of local importance.

Policy H3 (Land for Residential Development) of the Rossendale District Local Plan allocates the site to meet the housing needs of the Borough.

Other Material Planning Considerations

Fairness

As already noted, this application was previously considered by the Development Control Committee in January 2003 when it was minded to approve the application subject to a section 106 agreement. I have attached for members' information a chronology of key dates at appendix 1 in relation to the process of this application and the preparation of the section 106 agreement. I am informed by the Head Legal Democratic Services that the section 106 agreement has been drafted. I would also draw members' attention the chronology and the attempts by the applicant to secure the agreement. However, I take the view that, in the light of the change in circumstances which has occurred since January 2003 and which has not been considered by members, it would not be appropriate for officers simply to issue the decision notice without reference back to members.

The legal position is that the Council must have considered all material considerations affecting the application as at the date when the decision notice is issued. In this case, as I have already explained, significant changes both to the development plan and to other material considerations which bear on housing development in the Borough have occurred since the Development Control Committee considered this application in January 2003. It is necessary now for members to reconsider the application in the light of these changes.

It is in the nature of this case that the application was made and originally considered by the Development Control Committee in different circumstances. To the extent that delay in progressing the completion of the section 106 agreement and thus issuing the decision notice has allowed the opportunity for the subsequent changes to occur, it is right to consider fairness to the applicant before arriving at a decision now. It is not, however, a question of whether it is fair to take the changed circumstances into account. The Council must take them into account and would be in breach of statutory duty were it not to do so. Rather, the question is how fairness to the applicant should weigh in the balance against other material considerations.

I consider that, whilst fairness should certainly be taken into account, it is not a matter which should prove decisive in arriving at a conclusion unless the planning merits are otherwise reasonably equal in respect of whether to grant or refuse. I also consider that, in approaching the issue of fairness to the applicant, it should be borne in mind that it has always lain in the power of the applicant to counteract any delay by appeal to the Secretary of State for non-determination and, if thought appropriate, by submitting a unilateral planning obligation as part of such appeal.

In this case I consider that, given the housing oversupply, the current policy position in relation thereto and the absence here of any of the limited circumstances where further housing may be permitted notwithstanding such oversupply, the planning merits clearly point to refusal. I do not consider that fairness to the applicant should outweigh such a conclusion.

Housing Position Statement

The final version of the Housing Position Statement was issued by Rossendale Borough Council on 17th August 2005. However, it should also be noted that neither the draft nor final version constitutes a statutory document and does not therefore form part of the development plan for Rossendale. However, the document provides interpretation of the reasoned justification of policy 12 of the Structure Plan and should be used as guidance in the assessment of applications for residential development in conjunction with policy 12 of the Structure Plan.

The policy document states that '*applications for residential development in Rossendale will be refused, on housing land supply grounds, in all but the following limited circumstances:*

- a) *In any location where the proposal is a like for like replacement i.e. for replacement of an existing residential dwelling resulting in no net gain in dwelling numbers and which conforms to relevant policies of the development plan and other material considerations; or*
- b) *The proposal will positively contribute to the urban regeneration of the Bacup, Stacksteads and Britannia Housing Market Renewal Initiative area or Rawtenstall Town Centre Masterplan (Area Action Plan); and*
- c) *The proposal will not harm the character of the adjoining areas such as conservation areas; and*
- d) *The proposal will assist the regeneration of the site; and*
- e) *The proposal meets an identified local housing need.'*

In considering this application previously, members were mindful that the site had the benefit of an extant outline planning consent for 85 dwellings on the whole of the former Mill site. As such, at that time, it was considered that the approval of the current applicant would reduce the density of development on the site and formed part of the justification for its recommendation.

The previous approval, 1997/156 has now lapsed and is not included in the audit of housing figures demonstrating oversupply across the Borough. Therefore it cannot be considered as a 'fall back' position. This current proposal would add to the oversupply across the Borough and does not fall within an exception where such increase is allowed.

Moreover, the site is not located in either the Bacup, Stacksteads and Britannia Housing Market Renewal Initiative area or Rawtenstall Town Centre Master Plan area and cannot be considered to be in accordance with parts b - e) of the position statement.

Moreover, the applicant has not demonstrated any other limited circumstances set out in Policy 12 of the Structure Plan that allows for housing permissions in circumstances of oversupply.

Therefore, I do not consider that the proposal accords with any of the limited circumstances identified where housing development would be considered acceptable in positions of housing over supply.

Audit of Housing Figures

Given the changes to the Development Plan an audit of planning permissions granted has been undertaken to clarify the position of oversupply in the Borough. The scope of the audit considered applications for residential development during the period of the Structure Plan and any other extant permissions which were capable of adding to the level of supply.

Following a six week consultation period on the audit the Housing Land Position Monitoring Report was prepared and taken to Cabinet for members' information on the 7th June 2006. The Report includes an estimate of anticipated completions likely to the period 2011, obtained in consultation with developers and agents.

It is also necessary to note the recent appeal decisions within the Borough before the audit of housing figures was undertaken. In considering an outline housing scheme for 6-10 houses on land at Manchester Road and Laneside Road the Inspector considered two main issues. Firstly, the lack of evidence to confirm the position of oversupply and secondly, that the actual housing completion rates prior to 2004 fell below the annual average rate set out on Policy 12. The Inspector stated *"This would suggest that insufficient planning permissions are being implemented to achieve the required housing provision, and casts doubt on the validity of the housing supply figures quoted above. LCC itself has suggested that if insufficient dwellings are completed, additional sites for housing may need to be approved."*

The audit of housing figures now provides the validity and robustness needed to determine applications for residential development in positions of oversupply and is a material consideration in the consideration of this application and any other applications for residential development.

The audit of housing figures confirms that the number of dwellings constructed coupled with the number of extant permissions over the plan period exceeds 1,920 for the Borough as identified in the Structure Plan.

Furthermore, as the annualised completions rate from 2006 onwards has now fallen to 80 dwellings per year, it is expected that completions will be significantly higher than the JLSP annual build rate, resulting in over supply. Taking the actual number of completions since 2001 into account, the residual provision to the end of the plan period is 548. However, anticipated completions (based on existing extant permissions coming forward) are likely to be 832. This represents an over supply of 284. (Anticipated completions were established through discussions with developers and agents and do not take account of any approvals granted subject to S106 Agreement)

There is a need, therefore to refuse further applications for residential development where they would clearly result in an oversupply. Paragraph 6.3.13 of the Structure Plan states *"Where there is a significant oversupply of housing permissions, planning applications for further residential development may not be approved"*

unless they make an essential contribution to the supply of affordable or special needs housing or form a key element within a mixed use regeneration project. Any such project should be compatible with, and help achieve, the regeneration objectives of the Local Authority. Districts may identify, through the Local Plan/Local Development Framework process, other circumstances where it may be appropriate to approve residential development in a situation of housing oversupply, such as the conservation benefits of maintaining an existing building worthy of retention.”

Therefore, it is necessary to assess whether there are any exceptions to the presumption against the development of this site for residential purposes. This site is not located in the Bacup, Stacksteads and Britannia Housing Market Renewal Initiative area or the Rawtenstall Town Centre Masterplan area. The applicant has not provided any evidence to suggest that the development would comply with any of the limited circumstances housing would be appropriate in positions of over supply as defined in the interpretation of Policy 12 of the adopted Structure Plan provided in the Housing Position Statement.

Therefore I do not consider the proposal to be in accordance with the policy 12 of the adopted Structure Plan.

National Planning Guidance

Planning Policy Statement 1 (PPS1) - Delivering Sustainable Development states that sustainable development is the core principle underpinning planning. Planning should facilitate and promote sustainable and inclusive patterns of urban and rural development by: making suitable land available for development in line with economic, social and environmental objectives to improve people's quality of life; contributing to sustainable economic development; protecting and enhancing the natural and historic environment, the quality of the countryside and existing communities; ensuring high quality development; and supporting existing communities and contributing to the creation of safe, liveable and mixed communities with good access to jobs and key services for all. On sustainable economic development, local authorities should recognise that economic development can deliver environmental and social benefits; that they should also recognise the wider sub regional and regional economic benefits and that these should be considered alongside any adverse local impacts.

Paragraph 28 of PPS1 advises that planning decisions should be taken in accordance with the development plan unless other material considerations indicate otherwise.

Paragraph 29 of PPS1 acknowledges that in some circumstances, a planning authority may decide in reaching a decision to give different weight to social, environmental, resource or economic considerations. Where this is the case the reasons for doing so should be explicit and the consequences considered. Adverse environmental, social and economic impacts should be avoided, mitigated or compensated for.

Emerging Policy

Submitted Draft Regional Spatial Strategy (RSS) for the North West (2006)

RSS is currently under review. The Draft RSS ('The North West Plan') was published for its first formal public consultation exercise in January 2006 and will cover the period from 2003 to 2021. Examination will take place later this year.

Draft RSS focuses on the needs of the region as a whole but highlights those areas that need more specific guidance or a different approach. This is intended to improve the coordination and delivery of regional policy and sustainable development

Draft policy L4 Regional Housing Provision identifies a new housing provision of 4000 for Rossendale 2003 – 2021 (net of clearance replacement). The annual average rates of housing provision (net of clearance replacement) is identified as 222. The current annual provision identified in the adopted Structure Plan is 220 between 2001-06 and 80 between 2006-16).

Core Strategy (Preferred Options Report, March 2006)

I consider the following policies to be most relevant.

L1: Housing Development. Provision is made in the Regional Spatial Strategy (RSS) for 4,000 dwellings between 2003 and 2021. Annual planning permissions will be limited to annual completion rate up to 10% above the annual rate for Rossendale in the RSS, less the number of existing commitments for the RSS period. Five yearly reviews of permissions will be undertaken to monitor housing permissions to ensure they do not exceed the overall RSS figure.

Priority will be given to residential developments on previously developed sites. Residential developments will only be permitted on greenfield sites where there is evidence of local need and it can be demonstrated that there are no alternative appropriate previously developed sites. Priority will be given to residential developments in the Key Service Centres and Local Service Centres. Comprehensive regeneration strategies may be developed in areas with significant housing market issues and specific housing needs.

Proposed Policy Response L2: Housing Types. In order to diversify the range of dwelling types within the Borough, in major residential schemes at least 33% of dwellings should be flats and no more than 40% of dwellings should be terraced properties, unless a housing needs assessment provides evidence of the need for an alternative composition of dwellings in any particular area/community.

Proposed Policy Response L4: Affordable Housing. Within all residential developments a minimum of 30% of dwellings should be affordable, of which 20% should be of intermediate tenure. A higher minimum percentage for affordable housing or intermediate tenure may be required in areas of significant housing need based on local evidence of affordable housing needs. A lower percentage of affordable dwellings may be acceptable where it can be demonstrated that this would not be viable due to wider regeneration benefits. A lower percentage may be acceptable in the conversion of vacant residential or non-residential buildings. Types of affordable housing provided should be related to local needs.

Whilst I accept that these emerging policies will have a significant bearing on applications for residential development in the future, I do not consider that sufficient weight can be afforded to them at present to outweigh the adopted development plan.

Conclusion

The audit of housing figures confirms that the Rossendale is in a position of oversupply in that the number of extant permissions and number of dwellings built exceed the provision set in the adopted Joint Lancashire Structure Plan.

In positions of over supply, applications for residential development should not be approved unless the proposal accords with any of the exceptional or limited circumstances where residential development would be considered appropriate. Whilst I am mindful of the previous recommendation it is necessary to consider applications for development in accordance with the development plan policies in force at the time. It is clear that the application no longer accords with the development plan framework in this instance and that there are no other material considerations which outweigh this view.

I recommend therefore, that the committee refuse the proposal for the following reason:

The proposed development would contribute towards an inappropriate excess in housing supply provision, contrary to Policy 12 of the adopted Joint Lancashire Structure Plan and the Rossendale Borough Council Housing Position Statement (August 2005). In this instance the case has not been advanced to warrant an exception to policy being made.

The previous report to Committee is provided for Members' information below.

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Outline – erection of 45 residential units at land off Eastgate, Whitworth, Rossendale.

Applicant: Harry Yearsley

Description

This proposal has been submitted in outline dealing with

Notification Responses

Publicity: The proposal has been advertised by site notices and in the press, with the consultation period expiring on 11 October 2002.

Highways Section:

Environment Director, Lancashire County Council (Highways): Comments that:

Environment Director, Lancashire County Council (Planning): Comment that:

- The mill buildings are of historical interest and the fabric may show details of changes to the structure of the buildings and the re-use of the fabric of the earlier mill buildings in the later structures.
- The mills of the northwest are of great importance in the history of Britain and were central to the social culture of Lancashire. Should the application be approved it is suggested that a record is made of the mill buildings before their alteration.

Environmental Health: Do not wish to restrict the granting of planning permission.

Development Plan Policy

The following policies of the adopted Rossendale District Local Plan are considered relevant to the assessment of this application:

Policy DS.1 (Urban Boundary). This policy seeks to locate most new development within the defined urban boundary as identified on the Local Plan Proposals Map.

Policy DC.1 (Development Criteria). This policy lists criteria against which planning applications will be assessed. It examines, inter alia, the size and intensity of the proposed development and location of proposed development, including its relationship to existing and other proposed land uses.

Policy HP1 (Conservation Area). This policy lists criteria against which development within Conservation Areas will be assessed, including: the townscape feature and roofscapes; views within and out of the Conservation Area, effect upon the character of the Conservation Area, trees of importance to the character of the area.

Policy J.3 (Existing Employment Areas). This policy gives priority to the needs of industry and commerce over housing, specifically in the determination of planning applications.

Other Material Planning Considerations

Planning Policy Guidance Note 15 (Planning and the historic environment)

This PPG offers guidance on the assessment of applications for demolitions in Conservation Area. The PPG advises:

“In exercising conservation area controls, local planning authorities are required to pay special attention to the desirability of preserving or enhancing the character or appearance of the area in question; and, as with listed building controls, should be the prime consideration in determining a consent application”(Para. 4.26)

“The general presumption should be in favour of retaining buildings which make a positive contribution to the character or appearance of a conservation area” (Para. 4.27).

Principal Issues

There are two principal issues:

1. The principle of change of use to the mill building.
2. The amenity impact of the proposal.

This issues will be taken in turn:

The principle of change of use to the mill building.

Recommendation

That planning permission be granted subject to the following permissions:

1. The development permitted shall be begun before the expiration of five years from the date of this permission. Reason: The condition is deemed attached by virtue of Section 91 of the Town and Country Planning Act 1990.
2. No works shall take place on the site until the applicant, or their agent or successors in title, has secured the implementation of a programme of building recording and analysis. This must be carried out in accordance with a written scheme of investigation, which shall first have been submitted to and agreed in writing by the Local Planning Authority. Reason: To ensure and safeguard the recording and inspection of matters of archaeological/historic importance associated with the building/site.

Notes:

Specifications and a list of professionally qualified archaeological/building recording consultants and organisations who could carry out appropriate archaeological works can be obtained from Lancashire Archaeological Service at:

Lancashire County Council
Environment Directorate
Guild House
PO Box 9
Cross Street
Preston
PR1 8RD

Appendix 1

Chronology of application 2002/261

This application was received 20th May 2002.

The application was considered by the Development Control committee on the 21st January 2003 where it was minded to approve the application subject to the provision of a legal agreement.

12 May 2004 – Instruction to legal – Issues regarding land ownership part of terrace 61 / 63 Eastgate and 128 Westgate for road widening purposes.

21st July 2004 – draft agreement sent out

13th August 2004 – reply – issues raised over fees by Mr Yearsley

Letter from Mr Yearsley September 2004

7th February 2005 revised draft sent out

Agreement returned signed 17th February 2005

5th August 2005 applicant informed of the possibility that the application could not be progressed due to recent policy changes and the over supply of housing land

10th November 2005 Letter from applicant

22nd December 2005 – Urban Vision inform applicant and agents of the above

N.B. Please note that any correspondence held on legal files is not available for public inspection.

