

Application Number:	2020/0531	Application Type:	Major
Proposal:	Full: Erection of 71 no. dwellings (comprising 39no. 3 beds and 32no. 4 beds) with associated works including car parking, landscaping, open space and pumping station	Location:	Land Off Fieldfare Way, Bacup
Report of:	Planning Manager	Status:	For Publication
Report to:	Development Control Committee	Date:	7 September 2021
Applicant(s):	McDermott Homes	Determination Expiry Date:	10 September 2021
Agent:	N/A		

Contact Officer:	Lauren Ashworth	Telephone:	01706 238637
Email:	planning@rossendalebc.gov.uk		

REASON FOR REPORTING	
Outside Officer Scheme of Delegation	✓ (Major Application)
Member Call-In Name of Member: Reason for Call-In:	
3 or more objections received	✓
Other (please state):	Council 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

Refuse for the reason set out Section 10 of this report.

2. SITE

The site comprises an irregularly shaped parcel of Greenfield land extending to approximately 3.17 hectares located within the urban boundary of Bacup. It is sandwiched between Pennine Road to the west and Goldcrest Avenue to the east. To the north is St Mary's RC Primary School and to the south is Fieldfare Way.

The site is currently designated as Greenlands on the Proposals Map, and is characterised by an open area of grassland within an otherwise suburban environment. No public rights of way cross the site, though it does have some informal paths leading over it in addition to remnants of a BMX track located in the centre including a dirt track, artificial mounds and part of a concrete slab. There is a direct pedestrian link from Pennine Road to the west into the site and from Fieldfare Way to the south east.

The site contains a small number of trees and shrubs however there is a more notable belt of trees immediately to the east (to the rear of properties on Goldcrest Avenue). The trees were planted around 7 years ago by the applicant McDermott Homes as part of planning permission 2004/401.

There is an area of maintained amenity grassland at the south-eastern part of the site where it meets Fieldfare Way and Goldcrest Avenue. The maintained amenity grassland and the belt of trees to the east of the site are protected areas of public open space / incidental open space provided by McDermott Homes as part of permission 2004/401 and secured in a Section 106 Agreement.

Regular walking, dog walking and other recreational activities are present across the site as a whole but appear most pronounced at the southern end. The land slopes from east to west.

The site is approximately 750 meters from Bacup Town Centre. The land is within three ownerships, with the majority owned by Rossendale Borough Council, the proposed site access is owned by the applicant and the northern section is owned by a third party.

The site is allocated for housing in the emerging Local Plan.

3. RELEVANT PLANNING HISTORY

2019/0214 - Full: Erection of 71 no. dwellings (comprising 39no. 3 beds and 32no. 4 beds) with associated works including car parking, landscaping, open space and pumping station. Refused for the following reason:

"The proposed development for 71 dwellings on a greenfield site would give rise to the following adverse impacts:

- *Failure to provide a policy-compliant level of affordable housing*
- *Harm by way of the loss of open space / Greenlands*
- *Harm to the character of the area by reason of the urbanisation of the site*
- *Harmful impact from biodiversity loss*

As a matter of planning judgement, when applying the tilted balance as required by the National Planning Policy Framework (paragraph 11d), the above cumulative adverse impacts of the development would significantly and demonstrably outweigh its cumulative benefits and therefore the proposal conflicts with the presumption in favour of sustainable

development within the Framework, and conflicts with the development plan (Rossendale Core Strategy DPD Policies 1, 2, 4, 17, 18 and 24.”

4. PROPOSAL

Full planning permission is sought for the erection of 71 detached dwellings (39 x 3 beds and 32 x 4 beds) with associated works including access from Fieldfare Way.

To support the application, the applicant has submitted the following documents:

- Open Space Assessment
- Financial Viability Appraisal
- Geo-Environmental Report
- Design and Access Statement
- Ecological Assessment and Ecological Enhancement Letter
- Badger Survey and Method Statement
- Arboricultural Constraints Report
- Flood Risk Assessment and Drainage Strategy
- Planning Statement
- Transport Statement
- Statement of Community Involvement
- Construction Management Plan (including for biodiversity)

5. POLICY CONTEXT

National

National Planning Policy Framework (2021)

- Section 2 Achieving sustainable development
- Section 4 Decision making
- Section 5 Delivering a sufficient supply of homes
- 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
- Section 14 Meeting the challenges of climate change, flooding and coastal change
- Section 15 Conserving and enhancing the natural environment

Development Plan Policies

Rossendale Core Strategy DPD (2011)

- AVP 2 Strategy for Bacup
- Policy 1 General Development Locations and Principles
- Policy 4 Affordable Housing
- Policy 8 Transport
- Policy 9 Accessibility
- Policy 16 Preserving and Enhancing Rossendale's Built Environment
- Policy 17 Rossendale's Green Infrastructure
- Policy 18 Biodiversity and Landscape Conservation
- Policy 19 Climate Change and Low and Zero Carbon sources of Energy
- Policy 21 Supporting the Rural Economy and its Communities
- Policy 22 Planning Contributions
- Policy 23 Promoting High Quality Design & Spaces

Other Material Planning Considerations

National Design Guide
 National Planning Practice Guidance
 RBC Alterations and Extensions to Residential Properties SPD
 LCC Planning Obligations in Lancashire (2008)
 RBC Open Space & Play Equipment Contributions SPD

Emerging Local Plan Policies:

Strategic Policy SS: Spatial Strategy
 Strategic Policy SD1: Presumption in Favour of Sustainable Development
 Strategic Policy SD2: Urban Boundary and Green Belt
 Policy SD3: Planning Obligations
 Strategic Policy HS1: Meeting Rossendale’s Housing Requirement
 Policy HS2: Housing Site Allocations
 Policy HS6: Affordable Housing
 Policy HS7: Housing Density
 Policy HS8: Housing Standards
 Policy HS10: Open Space Requirements in New Housing Developments
 Policy HS11: Playing Pitch Requirements in New Housing Developments
 Policy HS12: Private Outdoor amenity space
 Strategic Policy ENV1: High Quality Development in the Borough
 Policy ENV4: Biodiversity, Geodiversity and Ecological Networks
 Policy ENV6: Environmental Protection
 Policy ENV9: Surface Water Run-Off, Flood Risk, Sustainable Drainage and Water Quality
 Policy ENV10: Trees and Hedgerows
 Policy TR4: Parking

The Post Hearing Letter requires site-specific policies for some of the proposed allocations including the application site, to provide detail on site requirements and mitigation measures where necessary. For this site, it is likely to relate to access, open space, landscaping and ecology. The policy will be consulted upon shortly for 6 weeks as a Main Modification to the emerging Local Plan.

6. CONSULTATION RESPONSES

Consultee	Response	Conditions recommended?
LCC Lead Local Flood Authority	No objection	Yes
LCC Highways	No objection	Yes
Contaminated Land Officer	No objection	Yes
LCC Public Rights of Way	Incorporated into LCC Highways response	Financial contribution required
United Utilities	No objection	Yes
LCC Planning Contributions (education)	No objection (no contribution necessary)	No

Greater Manchester Ecology Unit	No objection	Yes
Lancashire Badger Group	No objection	Yes
RBC Environmental Health	No objection	Yes
Tree Officer	No objection	Yes
East Lancashire NHS Trust	Require financial contribution	No
RBC Strategic Housing	30% affordable housing should be provide on site, with a 50/50 split between social rent and shared ownership	No – to be secured in S106 Agreement

7. **NOTIFICATION RESPONSES**

To accord with the General Development Procedure Order a press notice was published, site notices were posted and letters were sent to neighbours.

100 objections have been received. The key areas of concern are summarised below:

- The current application has not addressed the previous reason for refusal.
- This development will decimate the only useable green space within a mile of the estate where children can safely play. The only other 2 space where children can play are Britannia play area, where there is a small park with 4/5 little play things there, and also a closed area to play football or basketball. This is just short of a mile away from the estate. This has to be accessed via a walk along a busy main road, or going across back roads and again via a busy road. The next are is Stubby Lee park, again just under a mile away via 2 busy roads.
- The land is an active BMX track and public open space which is a safe play space enjoyed by children within the immediate vicinity. Any proposals to develop this area should include provision on site to mitigate the loss of amenity.
- I think this development would put residents living on field fare way in danger with the increased flow of traffic. My children play quite frequently on this land along with other children from the area there is also a lot of wildlife living in this land that would be affected for example foxes and badgers.
- The said land is the only parcel of green space, which has been left to nature, hence the wildlife. Rossendale Borough Council and the people of Bacup own this land. This land provides recreation space for the people of Bacup. There is a childrens BMX cycle track situated on this land. My kids used and the kids on the road still use it. We use this land for walking, leisure, exercising our pet dogs. The kids use it for camping out in summer, for organising local bonfires on November 5th. We have done this for over 30 years as that is how long I have lived here and our children used to do it.
- Traffic is an existing problem on Fieldfare Road already; it would be better if there were two entrances or exists. The estate is already overcrowded, causing concern for the accessibility for emergency services.
- There is no infrastructure in place to cope with all the extra traffic, The traffic now is a accident waiting to happen

- How are schools and doctors going to cope with full capacity already.
- Where is the provision for extra school places for all the additional children there will be when parents already find it hard to get places for their children.
- We don't need any more houses to be built on the remaining bit of greenery we have.
- What's going to happen to all the wildlife on the land Deers, foxes and badgers, hedgehogs, bats etc.
- On the new estates roads are not wide enough for traffic to pass this causes gridlock.
- Snow leads to cars being abandoned causing roadblocks and accidents.
- The BMX track which is used by local children will be lost, this is the only safe area for them to play.
- It is over saturation of the piece of land.
- At the time we purchased our house we were assured by the McDermott sales person at the time (Caroline) that the local authority land to the rear of our property would not be developed.
- 71 houses crams every available bit of space, this is far too many. Why not build 50 houses and create a playground for the children of the area to use. If you take away all the green space there will be more children playing in the street, more danger from vehicles due to idiot drivers and more traffic.
- Pennine Road access would be flatter exit/entry – why is this not being factored in
- A playground was promised would be built on the land at the end of Goldcrest/junction of Fieldfare – 11 years on since we moved in, nothing built. This bit of the land is now this is to become a road junction!
- This is another example of our wonderful countryside being taken away.
- Flooding - the land proposed for this development is very boggy after rain. With the area already having flooding issues such as on Boxing Day 2016 building this development and the loss of the green space is only going to lead to more flooding issues. Potential also affecting other towns further down the valley.
- The applicant has indicated that the payment of any S106 contributions would make the scheme not viable. I note that the applicant argues this on the basis of profitability.
- Concerns over the drainage of the land, creating them homes there will mean the water will run off on to surrounding properties.
- The amount of inconvenience building will cause. It will block access to Fieldfare Way for months meaning our lives would be at risk of losing our jobs for being late.
- The amount of dirt that will go on the roads and will not be cleaned.
- The extra pollution caused by so many cars being on the road, making the breathing air not as fresh for residents.
- The extra stress on water and gas and electricity network.
- The extra noise created by having so many new homes.

8. **ASSESSMENT**

The main considerations of the application are:

Principle

Loss of open space and Greenlands

The site is within the defined urban boundary of Bacup, where Policy 1 of the Core Strategy seeks to locate the majority of new development. The majority of the land is surrounded by existing residential development. However, the site is currently designated as Greenlands – spaces protected by Policy 17 of the Core Strategy for their value in maintaining areas of

open space within otherwise built-up areas, for the benefit of residents, biodiversity and the Borough's Green Infrastructure Network. Ordinarily any application for residential development on a Greenlands designation would need to demonstrate that it would not lead to unacceptable harm to the Borough's wider Greenlands network, and that the current function of the site in question as a Greenlands (in terms of its recreational value, visual amenity value, biodiversity value and function as part of the Borough's Green Infrastructure network) is not sufficiently valuable as to warrant its retention as open space.

The National Planning Policy Framework is a material consideration in the determination of this application. Section 8 of the Framework relates to 'Promoting healthy and safe communities' and more specifically, open space and recreation. Paragraph 99 states:

"Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
- b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quality and quantity in a suitable location; or*
- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use."*

Open space is defined in the Framework as *"All open space of public value including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity."* The site falls within this definition, and, more specifically, is 'amenity greenspace' which provides opportunities for informal recreation close to homes or work or enhances the appearance of residential or other areas. As the site is open space for the purposes of The Framework, an assessment against paragraph 99 is triggered and submitted a statement with the application to demonstrate how they consider the scheme complies with paragraph 99.

An Open Space Assessment was prepared by Pegasus Group on behalf of the applicant within which it considers the availability of amenity greenspace within Irwell ward (the assessment area was agreed with Forward Planning Officers). The assessment refers to the 2015 Fields in Trust *Guidance for Outdoor Sport and Play: Beyond the Six Acre Standard* which sets out benchmark guidelines in terms of the quantity, quality and accessibility of open spaces at *Table 3 Fields in Trust Recommended Benchmark Guidelines – Informal Outdoor Space*. The guidance identifies a minimum requirement of 0.6ha of 'amenity greenspace' per 1,000 population. The assessment finds that Irwell ward has a population of 5,505 (Census 2011), thus has a total minimum requirement of 3.30ha of 'amenity greenspace'. In terms of quantity, the assessment finds that collectively the 'amenity greenspaces' have a combined area of 9.48ha and of this 9.48ha, 5.95ha has been found to be high quality. The report concludes that there is a large surplus within the assessment area and therefore it is demonstrated that the proposed development complies with paragraph 99, part a) of the Framework.

Notwithstanding the above, the Council commissioned Knight Kavanagh & Page Ltd to deliver an Open Space Assessment as a key part of the evidence base for the emerging Local Plan. The application site is referenced as Site ID 479, and categorised as 2.64 hectares of "urban greenspace".

The site is within the Bacup and Stacksteads Analysis Area which currently is sufficient against the quantity standard for urban greenspace. The site rates below the quality

threshold. It is within the catchment of other existing urban greenspaces (Ref 478, 491, 266, 268, 123). However, Ref 491 (H37) and 266/128 (H41) are also identified as allocated sites for housing.

The Assessment finds that the potential combined loss of Ref 479 and Ref 491 would create a quantity shortfall but would not create an accessibility gap in urban greenspace provision. On this basis, the Assessment concludes that the site does not need to be retained as urban greenspace, if quality improvements to the other sites in the area were to be undertaken.

As will be considered later in this report, the application proposes a financial contribution towards the enhancement of facilities at the nearby Hawthorn Road play area. In addition, the proposed development incorporates considerable tree planting and on-site communal landscaping that can be utilised by local residents.

Principle of residential development

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF (paragraph 48) advises that LPAs may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

At the heart of the Framework is a presumption in favour of sustainable development, which means securing net gains across economic, social and environmental objectives.

Starting with the adopted development plan, the site is located in the urban boundary, where new development is directed to via Policy 1 of the Core Strategy. Policy 2 states that previously developed land should be prioritised (the site is greenfield) however unallocated greenfield sites will be permitted where certain criteria apply. This includes the delivery of “...*significant social, economic or environmental benefits.*” Policy 3 directs significant numbers of new housing to Bacup.

Turning to the emerging Local Plan, through Policy HS2, the site is proposed as a housing allocation (ref H29) to be delivered in years 1-5. The Local Plan has been through Examination in Public and the Inspector has issued a post-hearing letter. The Council will consult on the Main Modifications shortly. The Plan is at an advanced stage and when the Main Modifications are published, greater weight can be attached to the policies.

In response to the Inspectors’ query which prompted the Housing Update (May 2021) and which reported to the period up to 31 March 2020, the Council can demonstrate a supply of housing which exceeds a 5 year supply (at 8.2 years). This is based on sites with appropriate consents as well as proposed housing allocations. Now that the Post Hearing Letter has been issued by the Local Plan Inspectors (30 June 2021) the Council is looking to update this, taking account of the Post Hearing Letter as well as an update to 31 March 2021.

However, for the avoidance of doubt, officers have given appropriate regard to Paragraph 11 of the Framework which states:

“c) Approve development proposals that accord with an up to date development plan without delay; or

d) Where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

Until the 5-year supply position is published, paragraph (d) above is triggered. The Framework clarifies that policies that are most important to an application are considered out of date where local authorities cannot demonstrate a five year supply of deliverable housing sites. In this case the policies controlling the supply of housing includes Policy 17 ‘Greenlands’ as it impacts upon the principle of the development.

Paragraph 11(d)(ii) is therefore engaged i.e. planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Conclusion on principle

Having regard to all of the above factors, and policies within both the adopted development plan and the emerging plan, the site is considered to be suitable for residential development in principle.

Sustainable Development

Paragraph 11 of the Framework contains a presumption in favour of sustainable development, and as such a key consideration in this case is whether the proposed scheme represents sustainable development or not. The Framework promotes the integration of development with sustainable modes of transport, and paragraph 110 states that developments should *“give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas”*.

Policy 1 of the Core Strategy requires that developments:

“Maximise access by public transport, walking and cycling in a manner that promotes safe and inclusive communities and promote co-location of services and facilities.”

Policy 9 of the Core Strategy states that the transport user hierarchy will form the basis of consideration of planning applications, in order to promote sustainable travel and better designed places. The hierarchy is as follows, and consideration is given to the impact of the proposal on users higher up the hierarchy first:

- *Pedestrians and mobility impaired users*

- *Cyclists and equestrians*
- *Emergency Vehicles and refuse collection*
- *Public Transport, motorcycles and taxis*
- *Freight movement*
- *Private cars*

Emerging Policy SD1 reiterates the presumption in favour of sustainable development from the NPPF.

The route to Bacup Town Centre from the site (whilst further than would be ideal for encouraging pedestrian journeys) is generally served by continuous footways and is along well-lit streets, and a regular bus service runs along Rochdale Road (located around 280m from the site). The site is within a short walk to the nearest primary school and nearby playgrounds and leisure activities within the open countryside, to enable occupants to participate in a healthy lifestyle.

In addition, the site's sustainability was assessed as part of an appraisal to inform the proposed allocation.

For all of the reasons above, it is considered that the site is sustainably located.

Other considerations

Layout and design

As this is a full planning application, all matters are for approval and as such the application is accompanied by detailed drawings to show the design of each dwelling and the layout of the scheme as a whole. Full boundary treatment details are included, in addition to a full materials palette.

The layout of the development and the design of the dwellings largely reflect the neighbouring development to the east (Goldcrest Avenue, Sisken Avenue etc) which was by the same housebuilder McDermott Homes.

A mix of 3 and 4 bedroom dwellings are proposed comprising 32 x 3 bedrooms and 39 x 4 bedrooms. The submitted layout plan shows that access is proposed from Fieldfare Way and the spine road runs through the approximate centre of the site. The dwellings on the west side of the road face onto the road, and the dwellings to the east side typically face north or south and are arranged around cul-de-sacs. All dwellings are detached, all with private amenity space to the rear and small gardens to the front. All dwellings have driveways and some have garages.

Section 2.1 of the Council's Alterations and Extensions to Residential Properties SPD contains guidance on separation distances between habitable room windows. It specifies that there should be a minimum of 20m between habitable room windows in properties that are directly facing each other. The layout of the development demonstrates compliance with this guidance.

The dwellings are proposed to be constructed from artificial buff stone and concrete roof tiles, white upvc window frames, black upvc garage doors and front doors and black upvc guttering. Ordinarily officers would consider the use of artificial stone and concrete roof tiles to be inappropriate and contrary to policy, however, having regard to the similar materials used on the development to the east, and the low quality materials present on Pennine

Road (pebble dash and red coloured concrete roof tiles), it is considered that even without the use of local, natural materials, the proposed development will not harm the character and quality of the area to a degree that warrants refusal on this matter. With this in mind and on balance, the proposed materials palette is considered acceptable in this instance.

All dwellings are two storey and this is appropriate for this site, having regard to the surrounding residential developments and the site's location and topography. Site sections have been included with the submission, however, it is necessary to attach a planning condition that requires full details of existing and proposed ground levels and finished floor levels across the site, including any retaining walls that may be necessary.

The design of the dwellings themselves is considered to be standard. They are an improvement to the design of dwellings on Pennine Road and are similar to the recently constructed houses to the east.

A number of important changes have been made to the scheme to address objections from officers. As originally submitted there was a shortfall of 39 car parking spaces due to all 39 garages having dimensions lower than the minimum standard meaning they cannot count as parking spaces. The applicant has now increased the dimensions of the garages to 3m x 6m to meet the minimum standard, meaning that all garages (except for 5no) can be counted as parking spaces. Of the 5 that have not been amended, 2 of these have enlarged driveways, meaning that the shortfall has fallen to just 3 spaces. This significantly reduces the likelihood, as far as is reasonably possible, of cars being parked on-street and addresses the LPA's previous concerns in this regard.

Other negotiated changes include the provision of a footpath link from the northern end of the site to meet the existing public footpath FP 660 and the applicant has agreed to provide £69,925 to fund the upgrade of this footpath, as required by LCC Highways. In addition, the development includes the provision of informal access points into the wooded areas to the east and west of the site.

Overall the proposed development is now considered to accord with relevant local and national policy with regards to layout and design.

Neighbour Amenity

The proposed development would not have any unacceptable impact on the daylight, privacy or outlook enjoyed by the occupants of any nearby residential properties, having regard to the proposed siting, orientation and levels of the proposed dwellings.

Given the proximity of nearby residential properties and the scale of the proposed development, it is considered appropriate to include a condition restricting the hours of construction on site.

Subject to the above, the scheme is considered acceptable in terms of neighbour amenity.

Access, Parking and Highway Safety

The application has been assessed by Lancashire County Council's Highway Engineer (LCC Highways) who raised no objection on highway safety grounds subject to conditions.

Landscaping

As the site is greenfield (i.e. not previously developed) and is designated as Greenlands in the development plan (being recognised for its recreational value, visual amenity value, biodiversity value and function as part of the Borough's Green Infrastructure network), how the proposed residential development is intended to be landscaped is fundamental to the overall acceptability of the scheme.

The application is accompanied by the following:

- Arboricultural Constraints Report
- Landscape Proposals 1 and 2
- Ecological Survey and Assessment
- Ecological Enhancements Letter
- Construction Management Plan including biodiversity

The Council's Tree Officer has reviewed the applicant's Arboricultural Constraints Report, in conjunction with the landscaping planting proposal drawings. In terms of existing trees, the report finds only two trees on site to be of category B (trees T25 and T29) and the majority of the rest are of category C. The two category B trees are on adjacent land to the west of the site and therefore outside the applicant's ownership and are to be retained. The large belt of trees to the east are to be retained and enhanced (they are shown in the blue edge on the site location plan) although full details of any enhancement will need to be secured by planning condition.

In terms of proposed landscaping, full details of planting have been submitted and in summary this includes approximately 149 trees which are proposed to be planted throughout the site, but particularly along the spine road, in the area of open space to the north, and along the western boundary behind Pennine Road. In addition to tree planting there will be shrubs, native plant mix, specimen plants and hedging plants. The area of open space to the northern end of the site will include tree planting, native shrub planting, benches, and grassed areas.

The Tree Officer concludes that the proposed development provides for a gain in landscape and green space variety and provision, noting that the schedule of plants is satisfactory as is the specification for ground preparation, cultivation, planting and turfing.

Subject to the use of planning conditions, relating to protective fences, compliance with the submitted landscaping plans, and the use of TPOs where appropriate, the development is acceptable with regards to landscaping.

Ecology

The previous application was originally accompanied by an Ecological Assessment which presents the ecological, biodiversity and nature conservation status of the site. The Council's Ecological advisor Greater Manchester Ecology Unit (GMEU) found that the assessment has been undertaken by a licensed and experienced ecological consultancy whose work is known to them. The ecological consultants appear to have undertaken a detailed survey of the site and carried out an appropriate level of survey. The survey found the site to have some limited ecological value. GMEU has been consulted on this resubmission application and their comments remain the same and are set out below.

Both the Lancashire Badger Group and GMEU have reviewed the submitted Badger Survey and Mitigation Strategy and raise no objection to it subject to a condition that requires the developer to adhere to the recommendations in section 4.3 to ensure that badger are suitably protected.

With regards to bats, none of the trees on site were assessed as being suitable for use by roosting bats, although bats may foraging and commute across the site. GMEU agrees with the Ecological Assessment which recommends that the lighting for the site be designed to limit light pollution and disturbance to bats. This would be secured by planning condition.

With regards to nesting birds, GMEU notes the site supports suitable nesting habitat for birds. As all wild birds, their nest and eggs are protected under the Wildlife and Countryside Act 1981 (as amended) they recommend a condition be attached to any permission that limits works to trees and other vegetation to certain times of the year.

A Construction Management Plan and Ecological Enhancement Letter have been submitted in support of the revised application, following comments from the Council's ecological advisor GMEU. GMEU has commented as follows:

"The additional information on biodiversity enhancement measures at the site is acceptable and we would therefore advise that the following condition be attached to any permission:

All ecological measures shall be carried out in accordance with the details contained in the letter from ERAP Ltd dated 13th January 2021 (ref 2020- 284c) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination."

Subject to the conditions described above, no objections are raised by the GMEU or Lancashire Badger Group and the development is found to be acceptable with regards to ecology and biodiversity.

Flood risk and drainage

The site extends to 3.17 hectares and is located within Flood Zone 1. The application is accompanied by a Flood Risk Assessment and Drainage Management Strategy which have been reviewed by the Lead Local Flood Authority and United Utilities. No objections have been raised subject to a condition requiring the final details of a sustainable drainage scheme, SUDS and SUDS management to be submitted for approval.

Subject to conditions, the scheme is considered acceptable in principle with regards to flood risk and drainage.

Land Contamination

The application is accompanied by a Geo-Environmental Assessment Report which has been reviewed by the Council's Contaminated Land Officer. The officer has identified that gas monitoring has been undertaken however additional consideration and discussion needs to be had in relation to this in order to justify the downgrading of gas protection (from Amber 1 to Green) that is suggested. Secondly, traces of asbestos have been detected in two of the four samples tested. Levels were low and the report advises that the overall risk is low. However, the officer requires further discussion and soil sampling across the site as four samples are in adequate. An updated Geo-Environmental Assessment Report

(October 2019) was submitted in November 2019 which identifies that additional work has been undertaken with regards to the gas monitoring data and asbestos.

Notwithstanding the above, the officer considers the site to be otherwise a relatively low risk but that remedial measures are likely to be required in some form or another and may need to be site wide. As such, the Contaminated Land Officer is satisfied that the proposed residential development is acceptable subject to a planning condition requiring a full site investigation report and details of remedial works to be submitted for approval in advance of any development commencing.

Planning Contributions and Viability

Policy 22 of the Core Strategy relates to planning obligations and states that where developments will create additional need for improvements / provision of services or facilities, contributions will be sought to ensure that the appropriate improvements are made.

Policy 4 requires a minimum of 30% affordable housing to be provided on-site on Greenfield sites over 10 dwellings and affordable provision should comprise an equal mix of affordable housing tenures.

Policy HS6 of the emerging Local Plan similarly requires all new housing developments of 10 or more dwellings to provide “30% on-site affordable housing, subject to site and development considerations.” The affordable housing shall be provided “...in line with identified needs of tenure, size and type as set out in the latest available information on housing needs.”

With reference to the above policies, the development has necessitated the following contributions:

- £69,925 contribution to fund public footpath upgrades; and
- £96,986 towards open space and play provision.

The Council's Strategic Housing Officer provided the following response:

“To be compliant with the current Core Strategy, and meet housing need, 21 affordable homes (30%) should be delivered onsite subsidised by planning obligations, and the following units are required:

*7 x 2 bedroom 4 person Social Rented houses
4 x 3 bedroom 6 person Social Rented houses
3 x 2 bedroom 4 person Shared Ownership houses
7 x 3 bedroom 6 person Shared Ownership house”*

Members will recall that the previous application (ref 2019/0214) offered 9 (13%) affordable houses of shared ownership tenure, and all were to be grant-funded (i.e. funded by the public purse and not the developer). Members refused the application, considering that the development should be providing a policy-complaint level of affordable housing (30%) unless a viability case justifies a reduced level.

In November 2020, the revised application was submitted with a viability case made by the Applicant stating that the site could not afford to deliver affordable housing or other

contributions. However, notwithstanding their own viability concerns, the Applicant was willing to provide 10 shared ownership affordable dwellings (14%) and the POS contribution of £96,986. The affordable houses were to be delivered through the S106 and therefore were not grant-funded. At this stage, the Applicant was not willing to provide the £69,925 for public footpath upgrade works.

In May 2021, the Applicant increased their offer from 10 to 12 affordable houses (shared ownership), along with the POS and PROW contributions. The Applicant suggested an overage clause¹ and their offer was a sale rate hurdle of 10% above £201.06 per sq ft (their recent predicted net values).

The Council sought the services of a viability consultant in assessing the applicant's case from the outset. As required by PPG on Viability, negotiations have been taking place between the applicant, officers and their consultant, and in this case, such negotiations have taken place over 9 months in relation to the current application.

The Council was willing to consider the Applicant's on-site offer plus an overage, subject to a sales rate hurdle at an appropriate level with the aim of reaching a policy-compliant level of affordable housing over time.

Following a review, the £201.06 plus 10% (therefore circa £221) was found to be too high - if this level was accepted, the Council would be unlikely to receive any financial contribution from the overage clause as this is considerably higher than the applicant's current estimated sales values. The Council's advisor also found that if the applicant's current assessment of value was to be accepted, the development could in fact achieve more than 12 affordable houses on the site, thereby securing a greater level upfront, and needing to leave less to the overage clause.

In addition, the figure of £201.06 plus 10% was a net figure, whereas the Council disagreed, considering this should be a gross figure. Other elements of the Applicant's overage offer were also unacceptable to the Council, including that only 50% of the share of the uplift would go to the Council for affordable housing, rather than 100% of it. As set out in the PPG, *"Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project"*.

The Council responded with a revised sales rate hurdle at £193.39 per sq ft which reflects the profit margin, benchmark land value and cost assertions in the Applicant's Financial Appraisal submitted with the application. The total contribution in the overage would amount to £1,012,750 to be spent on delivering a 50/50 split between social rent and shared ownership properties.

As demonstrated above, and as required by Planning Policy Guidance (PPG) on Viability, negotiations have been taking place between the applicant over the last 9 months in relation to the current application. However, by August 2021 the applicant made it clear to the Council that they would not accept the suggested overage and requested the Council determine the application.

Whilst it is positive to see that the Applicant has increased their offer throughout this process, it is disappointing that the details of the overage could not be agreed. The Council

¹ An overage clause can be used within a Section 106 Agreement, where a development offers contributions below the policy requirement to provide flexibility in the early stages of a development. The overage will seek to capture any enhancement in value of the project overtime, which will go towards funding the outstanding affordable housing contribution.

is advised that the Applicant's financial appraisal fails to meet the required tests (in PPG and the NPPF). In doing so, they failed to demonstrate that if further planning policy requirements for affordable housing were met, that the scheme would be undeliverable on viability grounds.

The Rossendale Borough Council Strategic Housing Market Assessment Update, undertaken by Lichfield's, and published March 2019 identifies a need for between 102 and 170 affordable homes a year in Rossendale for the period 2019 to 2034. The Borough is significantly underperforming against its affordable housing target. This study further demonstrates that the majority of affordable housing needs (about 70%) is for rented housing.

With this in mind, it is imperative that housing developments, particularly those proposed to be allocated in the emerging Local Plan, contribute to affordable delivery in line with Core Strategy Policy 4 and emerging Policy HS6, both in regards to tenure and amount. Therefore, whilst the application meets the necessary financial contributions for POS and PROW upgrades, the provision of 17% shared ownership affordable housing, (with a viability case that is not agreed) set against a policy requirement of 30% of which half should be social rent, does not comply with either the development plan or the emerging plan.

The allocation is expected to deliver housing within years 1-5 of the Local Plan. However, under the NPPF para. 68, as the Applicant argues the site is not economically viable now for a fully policy compliant scheme, it could be delivered later on in the Plan (6-15 years) as economic viability improves, as the Council currently has 8 years supply of housing.

Conclusion

S.38(6) of the Planning and Compensation Act 1991 requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise. That remains the starting point for decision-making.

Members refused the previous application (2019/0214) for one reason which encompassed the following issues:

- 1) Failure to provide a policy-compliant level of affordable housing;
- 2) Harm by way of the loss of open space / Greenlands;
- 3) Harm to the character of the area by reason of the urbanisation of the site; and
- 4) Harmful impact from biodiversity loss.

Since the previous application was determined, the emerging Local Plan, which allocates the site for housing, is at an advanced stage. The Council has a 5 year supply of land for housing and a report confirming this position is expected to be published imminently. However, the tilted balance has been applied in the determination of the application.

The application has been found to comply with the relevant housing policies of the adopted Core Strategy and the emerging Local Plan and is acceptable in principle. It is recognised that the delivery of 71 houses is an important contributor to the overall supply of land for housing. The site lies within the urban boundary, in a reasonably sustainable location, and is proposed to be allocated for housing in the emerging plan.

It is inevitable that the development of this greenfield site for housing will have an urbanising effect. However, taking into account the financial contributions towards

upgrading the adjacent public footpath and to the Hawthorn Way play area, coupled with the provision of on-site amenity greenspace and landscaping, officers consider that the applicant has addressed issues 2 and 3 of the previous reason for refusal. In regards to biodiversity, the application has committed to a number of biodiversity enhancement measures, which would be conditioned, and are acceptable to the Council's ecological advisor. With that in mind, officers consider that issue 4 has been addressed.

Moving on to issue 1, with reference to Policy 4 of the Core Strategy and HS6 of the emerging Local Plan, the application fails to provide a policy compliant level of affordable housing in terms of either amount or tenure. The provision of 17% (12 dwellings) affordable housing of a shared ownership tenure, set against a requirement for 30% (21 dwellings) of which 11 should be social rent, the application is not meeting its requirements, and is informed by a viability case that is not agreed.

The Council does not accept that the development cannot viably provide more than 12 shared ownership affordable homes or any social rented properties, either on-site or via an overage agreement. The shortfall from this site alone would harm the delivery of much needed affordable housing in Rossendale.

The application is contrary to the development plan, the emerging plan and the NPPF in this regard. The tilted balance does not affect this conclusion.

9. RECOMMENDATION

Refuse for the reason in Section 10.

10. REASONS FOR REFUSAL

1. The proposed residential development generates a requirement for affordable housing. The development provides for a level of affordable housing that is below that required by Policy 4 of the Rossendale Core Strategy and Policy HS6 of the emerging Local Plan, and a tenure that does not reflect the housing need. The financial viability case advanced by the applicant does not adequately justify the reduced level or tenure, and fails to meet the requirements of the National Planning Policy Framework and National Planning Practice Guidance. The proposal, therefore, conflicts with Policy 4 of the Rossendale Core Strategy, Policy HS6 of the emerging Local Plan and the National Planning Policy Framework.