

<b>Application Number:</b>	2021/0451	<b>Application Type:</b>	Full Application
<b>Proposal:</b>	Details in for passing place as previously approved, ref:2021/0057	<b>Location:</b>	Hollin Lane Farm Hollin Lane Constable Lee Rossendale BB4 8TE
<b>Report of:</b>	Planning Manager	<b>Status:</b>	For publication
<b>Report to:</b>	Development Control Committee	<b>Date:</b>	16/11/2021
<b>Applicant:</b>	Mahrnisa Hussain	<b>Determination Expiry Date:</b>	19/11/2021
<b>Agent:</b>	Lee Adams		

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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>	Yes
<b>Other (please state):</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

That Members resolve to grant planning permission subject to the conditions listed in section 10 of this report.

### 2. SITE

The site relates to a small section of Hollin Lane, an adopted a highway leading from Burnley Road (A682) to Hollin Lane Farm. The section of Hollin Lane used to access Hollin Lane Farm is lined by trees and shrubs rooted in raised banks of earth. The application site is located within this section of the adopted highway and is approximately 230m away from Hollin Lane Farm – closely corresponding to the location of the south eastern passing place, approved under planning application ref. 2021/0057, to be constructed as part of planning permission ref. 2018/0064.

The site includes part of the carriageway and the embankment to the south of the highway, which has been partly excavated to make space for the approved passing place. The embankment backs onto the gardens of the properties on Pendleton Avenue and includes several mature Holly trees which form part of a hedgerow running along Hollin Lane.

The site is located within the urban boundary.

### **3. PLANNING HISTORY**

The planning history below relates to Hollin Lane Farm:

#### 2021/0378 – Approved

Approval of Details Reserved by Condition 8 (implementation of a programme of archaeological recording and analysis), pursuant to Planning Approval 2018/0064 for the Conversion and extension of part of barn to form 2no. three-bedroom dwellings including associated access and landscaping works.

#### 2021/0057 – Split Decision

Approval of Details Reserved by Conditions 6 (scheme for the construction of two passing places), 8 (implementation of a programme of archaeological recording and analysis), 9 (two evening emergence / dawn re-entry bat surveys) & 10 (detailed bird nest survey by a suitably experienced & qualified ecologist) pursuant to Planning Approval 2018/0064 for the Conversion and extension of part of barn to form 2no. three-bedroom dwellings including associated access and landscaping works.

#### 2021/0027 – Prior Approval Required and Approved

Prior Notification (Class Q) for the change of use of part of an agricultural building to form 1 no. three-bedroom dwelling, with associated operational development (Re-submission of previous approval ref: 2018/0063).

#### 2018/0559 – Approved with conditions

Change of use of Agricultural Building to single dwelling, associated access, parking and landscaping

#### 2018/0064 – Approved with conditions

Conversion and extension of part of barn to form 2 no. three-bedroom dwellings including associated access and landscaping works.

#### 2018/0063 – Prior Approval Required and Approved

Prior notification for the change of use of part of an agricultural building to form 1 no. three-bedroom dwelling, with associated operational development.

### **4. PROPOSAL**

The applicant seeks part-retrospective planning permission to excavate the embankment within the application site in order to provide a passing place along Hollin Lane. The proposal would result in the loss of three mature Holly trees and new Holly trees would be planted in place of the lost trees. The embankment would be supported by a retaining wall finished in stone.

## 5. **POLICY CONTEXT**

### **National**

#### **National Planning Policy Framework (2021)**

Section 2	Achieving sustainable development
Section 4	Decision-making
Section 9	Promoting sustainable transport
Section 11	Making effective use of land
Section 12	Achieving well-designed places
Section 14	Meeting the challenge of climate change, flooding and coastal change
Section 15	Conserving and enhancing the natural environment

### **Development Plan Policies**

#### **Rossendale Core Strategy DPD (2011)**

AVP 4	Rawtenstall, Crawshawbooth, Loveclough and Goodshaw
Policy 1	General Development Locations and Principles
Policy 8	Transport
Policy 9	Accessibility
Policy 18	Biodiversity, Geodiversity and Landscape Conservation
Policy 23	Promoting High Quality Design & Spaces
Policy 24	Planning Application Requirements

## 6. **CONSULTATION RESPONSES**

<b>Consultee</b>	<b>Summary of Comments received</b>
Greater Manchester Ecology Unit	No objection subject to conditions
LCC Highways	No objection subject to condition
RBC Building Control	No objection
RBC Tree Officer	No objection subject to conditions

## 7. **NOTIFICATION RESPONSES**

To accord with the General Development Procedure Order seventeen neighbouring properties were notified by letter on 25/08/2021 and a site notice was also posted on 26/08/2021.

Eight representations were received from neighbouring properties, raising the following issues:

- Affect (and already affected) local ecology / wildlife, including bats and nesting birds.
- A bat survey and nesting bird assessment should be undertaken.

- Loss of trees and hedgerow along Hollin Lane which is considered to be an ancient wildlife corridor / historic hedgerow.
- The existence of a badger sett needs to be confirmed and protected.
- Contravention of the Hedgerow Regulations 1997 and permission for removal has not been obtained.
- Loss of privacy resulting from tree felling / tree pruning.
- Noise nuisance / loss of buffer from traffic using Hollin Lane.
- Visual impact of the proposed works.
- Risk of soil erosion / vegetation / land slippage / garden subsidence as a result of the development.
- Request for conditions securing appropriate soil erosion protection measures and for the development to be closely supervised by building control in order to minimise risk and provide assurance to residents.
- Close to adjoining properties.
- Inadequate access.
- Increase in traffic and subsequent increase in noise and air pollution.
- Overlooking as a result of trees / hedgerow being lost.
- Design is out of keeping with character of the area, which some consider to be rural.
- Lack of information regarding replacement planting, and replacement planting an unacceptable solution as the existing trees have been in place for well over 30 years and the hedgerow for over 100 years.
- Impact on value of residential property.
- There is no evident provision for responsibility for maintenance in perpetuity, either by Adoption (Confirmation from Highways Authority) or by inclusion in the conveyance at sale of the completed dwellings. The development clearly should not be allowed to go ahead until this is resolved.
- Request for a condition to be included on the decision notice for proper engagement with the adjoining householders on both sides of the Lane to the post-development arboricultural management strategy detail and that any tree/shrub thinning is minimised and in keeping with preserving the hedgerow habitat and provisions of the Hedgerow Regulations 1997.
- Questions raised over the validity of the current application and the lack of details for both passing places

In addition to the above, representations from local residents also raised the following issues or asked questions relating to the issues listed below. The comments from local residents and a response from the case officer is included below:

### Land Ownership

Comments from objectors’:

- Ownership of the application site, including the verge and banking to the side of Hollin Lane is unclear and disputed.
- The Local Planning Authority is inviting the developer to submit an application for work on land not owned by the developer, and without any permission from the landowner. The developer should not be allowed to do this.
- The land is not owned by the developer and there is no permission from any landowner. Therefore, it is contended that any application to carry out work to form the passing place as sited should not have been considered. However, the application was considered and approved.

Case officer's response:

Several residents have questioned who owns the land contained within the application site, with some residents stating the applicant is not the landowner. The planning system entitles anyone to apply for planning permission to develop any plot of land, irrespective of ownership, and therefore the application could be determined even if the matter of landownership was unresolved.

This issue has been raised with the applicant and land ownership Certificate B has since been signed, with notice served to the landowner Lancashire County Council.

### Enforcement

Comments from objectors':

- The applicant has failed to comply with the planning conditions attached to planning permission 2018/0064 and some residents' asked why the LPA has not taken enforcement action?

Case officer's response:

Enforcement complaints have only been submitted in relation to the construction of the proposed passing places relating to the planning permission 2018/0064.

### Alternative Scheme

- Several residents have proposed an alternative scheme for the applicant to consider, which would involve excavating an equal amount of earth from the embankments either side of Hollin Lane. According to the residents, this would be less invasive on the banking and would result in no trees being felled.

Case officer's response:

In response to the alternative scheme the Highway Authority commented as follows:

*"The verges on both sides are highway therefore an amended scheme as you describe is possible.*

*The costs will be higher for the developer and we will have retaining walls on both sides instead of one side which results in additional assets which is an additional burden for future maintenance."*

The applicant has given consideration to the alternative scheme put forward by neighbouring residents, but in light of comments from the Highway Authority has decided to proceed with the proposed scheme as submitted.

## **8. ASSESSMENT**

The main considerations of the application are:

1. Principle
2. Visual Amenity

3. Neighbour Amenity
4. Highway Safety
5. Ecology
6. Arboriculture

### Principle

The site is located within the defined urban boundary where the majority of new development is directed by Policy 1 of the Core Strategy. As such, the development is acceptable in principle.

### Visual Amenity

The application site forms part of an adopted highway bordered by gardens of residential properties. The line of trees and hedges on either side of the highway provide a natural buffer between the carriageway and the residential gardens, however boundary fences, outbuildings, and dwellings in the surrounding area are visible when travelling along the highway, meaning the character of the lane (and the site itself) is, in part, urbanised. Whilst the trees / hedges forming part of the highway make a positive contribution to the visual amenity of the surrounding area, it could not be said that the character of the site and this section of Hollin Lane is rural.

The introduction of a passing place would partly disrupt the hedgerow to the south of Hollin Lane, however it is not considered that the development would adversely affect the visual appearance of the area to an unacceptable degree. The proposed retaining wall would be faced in natural stone whilst the loss of mature Holly trees would be mitigated by the planting of replacement Holly trees, albeit in smaller containers so as not to adversely affect the stability of the retaining wall.

Overall, subject to conditions securing suitable materials and replacement planting, the proposed scheme is considered acceptable in terms of visual amenity.

### Neighbour Amenity

Objectors' comments are noted, however it is not considered that the proposed development would result in any unacceptable impact on the privacy enjoyed by the occupants of any neighbouring residential properties.

Hollin Lane is set considerably lower than the land levels associated to the residential properties either side of the highway, and as such the potential for users of Hollin Lane to overlook into the gardens of nearby properties is significantly restricted. Moreover, the proposed development would include replacement planting which, despite being lower in height, would still provide screening between the highway and the gardens located behind the passing place.

It is not considered that the proposed scheme would reduce the amount of daylight and sunlight enjoyed by local residents, or harm the outlook of neighbouring properties.

Several residents have raised concerns over the development's impact on land stability and for the potential of soil erosion to result in land slippage to the gardens of neighbouring properties. Given the site forms part of the adopted highway, the proposed retaining wall would need to be built to adoptable standards and the applicant would need to enter into a

legal agreement with the Local Highway Authority concerning its design, construction and maintenance.

Having regard to the site's location within the adopted highway, your officers are satisfied that the development would be suitably controlled by the Local Highway Authority to avoid soil erosion and land slippage in the immediate area. Whilst the Council's Building Control department have confirmed the development does not require consent under the building regulations, they have advised they would have no concerns regarding the retaining wall's suitability, on the proviso it is constructed as per the structural engineer's design.

In light of the above, the proposed scheme is considered acceptable in terms of neighbour amenity.

### Highway Safety

The Local Highway Authority has confirmed they have no objection to the provision of a retaining wall to facilitate the creation of the proposed passing place. Given the proposed retaining wall would be located within the highway, the Highway Authority have stated the retaining wall would need to be built to adoptable standards and the applicant would need to enter a legal agreement with Lancashire County Council.

The Highway Authority has also advised they reserve the right to request amendments to the wall design if necessary, should the application be approved. An informative advising the applicant to consult with Lancashire County Council before proceeding with the development, on matters relating to land arrangements, design, assessment, construction and maintenance of the new highway retaining wall included in, or affected by, the proposed scheme is recommended.

As such, the proposed scheme is considered to be acceptable in terms of Highway Safety.

### Ecology

The Council's Ecology Consultant has noted the concerns from local residents relating to the presence of protected species within the site but does not consider ecological surveys or specific ecological measures are required in this instance.

Given the limited number of trees proposed to be felled, the Consultant confirmed the loss of the trees would not have an adverse impact on bats in terms of foraging or commuting and the trees are considered to be too small to have any realistic chance of roosting opportunities.

The Consultant confirmed the banking along Hollin Lane does have the potential to provide opportunities for the creation of badger setts and initially requested the banking to be surveyed for badgers. However, after reviewing the case officer's photos taken on site, the Consultant is satisfied that additional surveys for the presence of badger setts would not be required. This is also the case for surveys of invasive species which the photos showed no evidence of. Informatives reminding the applicant of legislation relevant to offences interfering with badger setts and the planting of invasive species are included in section 11 of this report.

The Consultant has noted the development would result in the loss of bird nesting habitat and a condition restricting works to trees or shrubs has been included in section 10 of this report.

The Framework encourages net gains for biodiversity and the natural environment and the proposed scheme does not demonstrate how a net gain in biodiversity and the natural environment would be achieved. As such, it is considered appropriate to include conditions in relation to ecology in order to comply with Section 15 of the NPPF and Policy 18 of the Core Strategy.

### Arboriculture

Three trees are proposed to be removed to facilitate the construction of the passing place and the Council's Tree Officer has confirmed he is satisfied with the conclusions of the Arboricultural Impact Assessment.

The applicant has proposed to replace the felled trees with Holly trees planted in small containers and the Tree Officer has confirmed this would be acceptable.

Several residents have commented that the trees and shrubs rooted in the embankment along Hollin Lane constitute a hedgerow protected by The Hedgerow Regulations 1997. The Council's Tree Officer has confirmed the trees along the embankment can be considered a hedgerow, but has advised that the hedgerow is not protected owing to its location. Government guidance states:

*“a hedgerow is protected if it's on or next to:*

- *land used for agriculture or forestry*
- *land used for breeding or keeping horses, ponies or donkeys*
- *common land*
- *a village green*
- *a site of special scientific interest*
- *a protected European site such as a special area of conservation or special protection area*
- *a local or national nature reserve*
- *land belonging to the state*

*A hedgerow is not protected if it's in, or marks the boundary of, a private garden.”*

In light of the above, it is not considered that the hedgerow is protected by The Hedgerow Regulations 1997.

## **9. SUMMARY REASON FOR APPROVAL**

The proposed development is considered acceptable in principle and would not unduly detract from visual amenity, neighbour amenity, highway safety or adversely impact ecology/landscaping subject to the use of planning conditions. It is therefore considered that the development is in accordance with the National Planning Policy Framework and Policies AVP4, 1, 8, 9, 18, 23 and 24 of the adopted Core Strategy DPD.

## **10. CONDITIONS**

1. The development shall be carried out in accordance with the following:
  - Planning application forms signed 23 July 2021 and received 26<sup>th</sup> July 2021;
    - Including revised landownership Certificate B, signed 29<sup>th</sup> October 2021.
  - The submitted plans:
    - Location Plan drawing no. 551 received 19<sup>th</sup> August 2021;
    - Retaining wall details drawing no. 51 received 26<sup>th</sup> July 2021;
    - Drawing titled 'Passing Place' showing existing and proposed site plan and elevations, drawing no. 550 B received 02<sup>nd</sup> November 2021.
  - The submitted documents:
    - Arboricultural Impact Assessment with Tree Protection Measures received 24<sup>th</sup> August 2021.

Reason: To define the permission and in the interests of the proper development of the site.

2. No development shall take place until physical samples of the proposed facing materials for the retaining wall hereby approved have been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of visual amenity of the area and ensuring that the appearance of the development is acceptable.

3. No works to trees or shrubs shall occur between the 1st March and 31st August in any year unless a detailed bird nest survey by a suitably experienced ecologist has been carried out immediately prior to clearance and written confirmation provided that no active bird nests are present which has been agreed in writing by the LPA.

Reason: In the interests of protecting any birds nesting within the application site.

4. Prior to substantial completion of the development, six Holly trees (*Ilex aquifolium*) shall be planted on the embankment within the site, to a maximum height of 60 – 90cm (excluding their roots). All planting and staking shall be in accordance with BS 4428 (1989). Provision and spreading of topsoil as necessary to levels behind the proposed wall, in accordance with BS 4428 (1989), and quality of topsoil to be in accordance with BS 3882 (2015).

Reason: In the interests of visual amenity and conserving biodiversity and natural habitats.

5. The proposed development shall be implemented in accordance with the tree protection measures as recommended in the submitted Arboricultural Impact Assessment with Tree Protection Measures document throughout the duration of the development.

Reason: In the interests of visual amenity and conserving biodiversity and natural habitats.

6. Prior to substantial completion of the development, the following shall be permanently affixed to a suitable tree within the application site, above a height of 2.5m from ground level:
  - One bird box (of type 1MR Schwegler Avianex, or 1SP Schwegler Sparrow Terrace)

The above shall be retained and maintained thereafter.

Reason: To ensure that the development provides an adequate net gain for biodiversity.

7. No deliveries, external running of equipment or machinery, or construction works, shall take place on the site other than between the following hours:
  - Monday to Friday 08:00 to 18:00
  - Saturday 08:00 to 13:00

Construction hours shall not be permitted on Sundays or Bank or Public Holidays.

Reason: To ensure that the proposed construction work does not cause undue nuisance and disturbance to neighbouring properties at unreasonable hours and in accordance with policy 24 of the adopted Core Strategy DPD.

## 11. **INFORMATIVES**

1. Before proceeding with the scheme preparation the Developer should consult with Lancashire County Council for detailed requirements relating to land arrangements, design, assessment, construction and maintenance of the new highway retaining wall included in, or affected by, the proposed scheme.
2. The Local Planning Authority has a Core Strategy (adopted in November 2011) and a series of Supplementary Planning Documents, which can be viewed at:

[http://www.rossendale.gov.uk/downloads/download/331/core\\_strategy\\_local\\_plan\\_part\\_1\\_adopted](http://www.rossendale.gov.uk/downloads/download/331/core_strategy_local_plan_part_1_adopted)

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

3. It is an offence under the Wildlife & Countryside Act 1981, as amended to introduce, plant or cause to grow wild any plant listed in Schedule 9 part 2 of the Act. Species such as Japanese knotweed, Himalayan balsam and monbretia are included within this schedule. If any such species will be disturbed as a result of this development a

suitably experienced consultant should be employed to advise on how to avoid an offence.

4. The applicant is reminded that under the Protection of Badgers Act 1992 it is an offence to intentionally or recklessly interfere with a badger sett. If a badger sett is found on or near the developments site work should cease immediately and a suitably experienced ecologist employed to advise on how best to proceed.