

Application Number:	2022/0238	Application Type:	S.73 (Variation of Conditions)
Proposal:	S. 73 Application: Variation of Condition 28 (construction plans and ongoing management and maintenance arrangements of the proposed Local Equipped Area for Play (LEAP)) Pursuant to Planning Approval 2018/0318.	Location:	Former Spring Mill Market Street Whitworth Rochdale Lancashire
Report of:	Planning Manager	Status:	For publication
Report to:	Development Control Committee	Date:	26/07/2022
Applicant:	Mr Johnson Mulk (Gleeson Homes)	Determination Expiry Date:	02/08/2022
Agent:	Miss Hannah Caudwell (Pegasus Group)		

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

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**

Refusal

2. **SITE**

The application relates to a site of approximately 3.5ha, located to the rear of houses fronting Eastgate and Westgate in Whitworth. The site is accessed off Wallbank Drive.

Formerly occupied by Spring Mill, the site is currently undergoing development for the construction of 119 dwellings, approved under 2018/0318.

3. **RELEVANT PLANNING HISTORY**

X/2002/261 - Outline - Erection of 45 no residential units including access (amended scheme) (Approved)

2008/0726 - Variation of condition from planning application 2002/261 (Withdrawn)

2009/0360 - Application for Reserved Matters Approval pursuant to Outline Permission 2002/261 for Erection of 45 no. Residential Units, and entailing diversion of Public Footpath No. 70 Whitworth (Approved)

2010/0433 - Extension of time limit 2002/261 (Approved)

2018/0318 - Erection of 119 no. two-storey (2, 3 and 4 bed) houses, with associated infrastructure and access works (Approved)

2019/0553 - Discharge of conditions 3 (fences), 4 (materials), 5 (construction method statement), 11 (driveways), 18 (SUDS management plan), 20 (site investigation / remediation) and 22 (Piling) in relation to planning approval 2018/0318 (Refused)

2020/0059 - Approval of details reserved by Conditions 3 (boundary treatment), 4 (materials), 5 (construction method statement), 7 (access, bridleway and off-site highway works), 16 (sustainable drainage scheme), 18 (sustainable drainage management plan), 20 (site investigation / remediation), 28 (details of LEAP) pursuant to planning permission 2018/0318 (Approved)

2022/0206 - S.73 application: variation of condition 6 (HGV movements / delivery times) pursuant to planning permission 2018/0318 (Refused)

2022/0223 - Approval of details reserved by Condition 5 (Construction Environmental Method Statement) to enable amended delivery times / arrangements to site, pursuant to Planning Approval 2018/0318 (Pending)

4. **PROPOSAL**

Following the approval of planning application 2018/0318, the applicant seeks to vary condition 28 pursuant to that planning approval, to remove the requirement regarding the Local Equipped Area for Play (LEAP) being completed and made available for use prior to 'first occupation of the tenth dwelling on site', instead due to an amended proposed location of the site compound the LEAP is now proposed to be made available for use prior to substantial completion of the development as a whole.

The developer of the site is seeking to locate the site compound on the area where the LEAP is proposed. In order to facilitate this, this element of the amendment is seeking to remove the need for the LEAP to be available for use prior to the first occupation of the tenth dwelling on site. Instead, it simplifies the Condition by ensuring delivery by the latter timescale of 'prior to substantial completion of the development'.

5. **POLICY CONTEXT**

National

National Planning Policy Framework

- Section 2 Achieving sustainable development
- Section 4 Decision making
- Section 5 Delivering a sufficient supply of homes
- Section 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 Local Plan

- 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 H21 - Land at Blackwood Road, Stacksteads
- 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 TR1: Strategic Transport
- Policy TR2: Footpaths, Cycleways and Bridleways
- Policy TR3: Road Schemes and Development Access
- Policy TR4: Parking

Other Material Planning Considerations

National Design Guide

6. **CONSULTATION RESPONSES**

Consultee	Summary of Comments received
LCC Highways	No objection
RBC Environmental Health	No comments to make on the application
RBC Parks Team	No comments received

7. **NOTIFICATION RESPONSES**

To accord with the General Development Procedure Order a site notice was posted and letters were sent to neighbours. A notice was also published in the Rossendale Free Press.

No representations were received.

8. **ASSESSMENT**

The main considerations of the application are:

- 1) Highway and Pedestrian Safety
- 2) Neighbour Amenity
- 3) Provision of LEAP

Highway and Pedestrian Safety

The Local Highway Authority (LCC Highways) has raised no objection to the proposed amendments, and considers the proposed amendments to be acceptable from a highway safety perspective.

All other relevant conditions from the previous approval (2018/0318) in relation to highways matters would be carried forward.

Neighbour Amenity

The Council's Environmental Health team has been consulted on the application, and raises no objection to the proposed amendments in relation to amenity matters. The Environmental Health team provides specialist advice to the Local Planning Authority in relation to matters relating to nuisance, disturbance and amenity.

As such, the application is considered acceptable from a neighbour amenity perspective.

Provision of LEAP

The proposed amendments to condition 28 would result in the LEAP not being available until the development on site is complete.

Given that the development is of 119 houses in total, and that there is no guarantee when the development would be complete, there is a considerable risk that a large proportion of the development could be occupied by residents for a considerable period of time before the LEAP is provided.

Furthermore, if the development was for some reason not completed (or took many years to be completed), residents may not be provided with a LEAP for years, if at all.

As proposed by the applicant, the wording of the condition would contain no trigger point requiring the LEAP to be provided prior to occupation of dwellings.

The original Condition 28 was considered necessary to ensure that residents of the development had access to adequate outdoor play / recreation space from an early stage in the development. It was not considered acceptable at the time to deliver the LEAP at the end of the development period, given that the development is of such scale that it may take years to deliver.

Such considerations remain valid today, and as such officers do not support the proposed amendment to the condition wording as this could ultimately result in a situation where the delivery of the LEAP is not guaranteed, or at the very least not guaranteed in the near future – leaving earlier occupants of the development without adequate play / recreation facilities for a considerable period of time.

9. RECOMMENDATION

Refuse for the following reason:

1. The proposed amendment to the condition in question is not considered acceptable as it may result in a situation where occupants of the development are left without adequate play / recreation facilities. The development conflicts with Section 8 of the National Planning Policy Framework and Policies SD3 and HS8 of the Council's Local Plan.

10. INFORMATIVES

1. The proposal would not comply with the development plan and would not improve the economic, social and environmental conditions of the area. There were no amendments to the scheme, or conditions which could reasonably have been imposed, which could have made the development acceptable and it was therefore not possible to approve the application. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.