

<b>Application Number:</b>	2022/0238	<b>Application Type:</b>	S.73 (Variation of Conditions)
<b>Proposal:</b>	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.	<b>Location:</b>	Land at Former Spring Mill, Whitworth Rochdale Lancashire
<b>Report of:</b>	Planning Manager	<b>Status:</b>	For publication
<b>Report to:</b>	Development Control Committee	<b>Date:</b>	17/01/2023
<b>Applicant:</b>	Mr Johnson Mulk (Gleeson Homes)	<b>Determination Expiry Date:</b>	02/08/2022
<b>Agent:</b>	Miss Hannah Caudwell (Pegasus Group)		

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<b>REASON FOR REPORTING</b>	
<b>Outside Officer Scheme of Delegation</b>	No
<b>Member Call-In</b> Name of Member: Reason for Call-In:	No
<b>3 or more objections received</b>	No
<b>Other (please state):</b>	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**

Refuse

## 2. **SITE**

The application site which is the subject of planning permission no. 2018/0318 is an irregularly shaped plot covering a total area of approximately 3.5 hectares. It is located to the immediate west of the junction of Eastgate, Westgate and Wallbank Drive on land located within the Urban Boundary. The site was formerly occupied by Spring Mill but this has since been demolished and the site is now being re-developed for housing.

## 3. **RELEVANT PLANNING HISTORY**

X/2002/261 - Outline - Erection of 45 no residential units including access (amended scheme) (Approved 06/08/07)

2008/0726 - Variation of condition from planning application 2002/261 (Withdrawn 18/12/08)

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 14/10/09)

2010/0433 - Extension of time limit 2002/261 (Approved 01/12/10)

2018/0318 - Erection of 119 no. two-storey (2, 3 and 4 bed) houses, with associated infrastructure and access works (Approved 27/09/19)

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 17/01/20)

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 29/09/20)

2022/0206 - S.73 application: variation of condition 6 (HGV movements / delivery times) pursuant to planning permission 2018/0318 (Refused 16/06/22 because of concern about excessive early morning noise generated by construction vehicles). Appeal lodged 03/08/22 and still pending.

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 (Application still pending).

## 4. **PROPOSAL**

Planning permission was granted on 27<sup>th</sup> September 2019 allowing for the construction of 119 houses on this site (see 2018/0318 in the 'Relevant Planning History' section above). Permission was granted subject to a number of conditions including condition 28 which

sought to control the design and layout of the proposed Local Equipped Area for Play (LEAP) the timing of its construction and its subsequent management and maintenance. In full this condition reads as follows:-

*Within three months of commencement of development on site full details (including detailed construction plans and ongoing management and maintenance arrangements) of the proposed Local Equipped Area for Play (LEAP) shall be submitted to the Local Planning Authority for its approval. The LEAP shall thereafter be completed in accordance with the approved details and made available for use prior to first occupation of the tenth dwelling on site, or prior to substantial completion of the development, whichever is the sooner. The LEAP shall be managed and maintained in strict accordance with the approved details for as long as the development is occupied.*

*Reason: To ensure the provision of satisfactory play / recreation facilities for occupants of the development, and to ensure the ongoing maintenance of such facilities.*

Details of the LEAP were approved under the terms of planning approval number 2020/0059. However the applicant now wishes to alter the timescale for constructing it so that they can temporarily locate the site compound on the same land. The compound is already located in this position without approval and a further application is currently also under consideration which in part seeks approval to formally retain it there (see 2022/0223 above).

Initially the applicant sought to vary the terms of condition 28 solely by removing the requirement for the LEAP to be constructed and made available for use prior to the 'first occupation of the tenth dwelling on site'. This would have left the 'trigger' for it being constructed and made available solely to a point just prior to the substantial completion of the whole development. However, allowing this would have meant that potentially a significant number of occupants of the new housing would have had no access to it for some considerable time.

The applicant has since proposed an alternative 'trigger' point whereby the LEAP would be constructed and made available prior to the occupation of the 90<sup>th</sup> dwelling. In support of this they have stated:

- a) that they would be unable to meet their legal obligations under the terms of the Health and Safety Act and Regulations and the Occupiers Liability Act if they provided the LEAP in this position any earlier.
- b) that providing it any earlier than this would not be in the best interests of the safety of people (especially children) living here as in those circumstances it would be located in the middle of a 'live' construction site.
- c) that locating the site compound on this land for the majority of the development makes more sense removing potential conflict between local residents and construction traffic, allowing the satisfactory circulation of construction traffic within the larger development site, and removing the need for hazardous vehicle maneuvering.
- d) that allowing this proposal would mean that 75% of the development could be constructed with the site compound in its current position. At that point fewer deliveries would be required and a smaller compound would suffice meaning that the compound could then be moved elsewhere within the development site.
- e) that Plot 90 is likely to be completed by August 2024 which is only 19 months from now.

f) that Gleesons are committed to delivering the LEAP.

This is the proposal that is currently before Members to consider.

## **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 Local Plan 2019 to 2036**

- Policy SD1: Presumption in Favour of Sustainable Development
- Policy SD2: Urban Boundary and Green Belt
- Policy SD3: Planning Obligations
- Policy HS1: Meeting Rossendale's Housing Requirement
- Policy HS2: Housing Site Allocations
- Policy HS3: Affordable Housing
- Policy HS4: Housing Density
- Policy HS5: Housing Standards
- Policy HS6: Open Space Requirements in New Housing Developments
- Policy HS7: Playing Pitch Requirements in New Housing Developments
- Policy HS8: Private Outdoor amenity space
- Policy ENV1: High Quality Development in the Borough
- Policy ENV4: Biodiversity, Geodiversity and Ecological Networks
- Policy ENV5 Green Infrastructure 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
- National Planning Practice Guidance

## 6. CONSULTATION RESPONSES

Consultee	Summary of Comments received
LCC Highways	No objections
RBC Environmental Health	No comments to make on the application
RBC Parks Team	No comments received
Whitworth Town Council	Object

## 7. NOTIFICATION RESPONSES

To accord with the requirements of the General Development Procedure Order letters were sent to surrounding neighbours, a site notice was posted outside of the site and an advertisement was inserted in the Rossendale Free Press. These were respectively sent/posted/inserted on 13<sup>th</sup> and 17<sup>th</sup> June 2022. Whilst Whitworth Town Council have subsequently objected to the proposal no further representations have been received as a result of this publicity.

## 8. ASSESSMENT

The main issues to consider in this instance are:

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

### Highway and Pedestrian Safety

The Local Highway Authority (LCC Highways) have raised no objections to the proposed amendments, and consider them to be acceptable from a highway safety perspective.

All other highway related conditions from the previous approval (2018/0318) would remain in the event of this application being approved.

### Neighbour Amenity

The Council's Environmental Health team provides specialist advice to the Local Planning Authority in relation to matters concerning nuisance, disturbance and amenity. They have been consulted on this application and have raised no objections to it on any of these grounds. As such the application is considered acceptable from a neighbour amenity perspective.

### Provision of LEAP

Condition 28 was worded in its current form because it was considered necessary to ensure that residents of the new development had access to adequate outdoor play/recreation space from an early stage in the development. Consideration was given to providing the LEAP towards the end of the development but this was not considered appropriate given that 119 houses could take years to complete.

The proposed amendment to the condition, as set out in the 'Proposal' section above, has been considered. However, approving it would mean that 75% of the development could be occupied before the LEAP was provided. This would mean that for some considerable time, depending on how long it takes to construct and sell 90 dwellings, residents of the

development would have no access to any 'on-site' outdoor play and recreation space. Subsequent discussions have taken place with the agent with a view to making the LEAP available prior to the occupation of the 40th or at worst 50<sup>th</sup> dwelling. However, they have not agreed to this for the reasons outlined in the 'Proposal' section above.

In view of this, given the original reasoning for wording the condition in its current form, it is considered that such an amendment would not be appropriate and should not therefore be supported.

## **9. REASON FOR REFUSAL**

The proposed amendment to condition 28 is not considered acceptable as it is likely to lead to occupiers of the development having no access to adequate 'on site' outdoor play/recreation facilities for a considerable period of time. The proposal is therefore considered to be contrary to the provisions of Section 8 of the National Planning Policy Framework and the requirements of Policies SD3 and HS6 of the Council's adopted Local Plan.

## **10. INFORMATIVE**

1. The proposal would not comply with the development plan and would not improve the economic, social and environmental conditions of the area. Amendments could have been made which could have rendered the proposal acceptable but it has not proved possible to agree these with the applicant/agent and consequently it has not been possible to approve the application. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.