

Application Number:	2016/0418	Application Type:	Full
Proposal:	Section 73 application to vary condition 10 (Site Layout), attached to planning approval 2014/0355 (which granted permission for the erection of 29 dwellings), to reduce the number of dwellings to 28 and amend the siting of plots 1-9.	Location:	Former Whinberry View Home For The Elderly & 166 Bacup Road Rawtenstall BB4 7PA
Report of:	Planning Manager	Status:	For publication
Report to:	Development Control Committee	Date:	13 th December 2016
Applicant:	B & E Boys Ltd	Determination Expiry Date:	5 January 2016
Agent:	Hourigan Connolly		

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

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 permission be granted subject to the conditions set out in Section 10 and subject to the completion of a deed of variation.

2. **SITE**

The site is located approximately 510m to the east of Rawtenstall Town Centre, on the north side of the mini-roundabout at the junction of Bacup Road with Bocholt Way. It is positioned directly between Co-Operation Street to the west and Lambton Gates to the east. The site has an area of approximately 0.7ha and is currently under construction by B & E Boys Ltd for a housing development of 29 units approved under permission 2014/0355. The majority of the plots are under construction and some are now sold.

The site is largely flat however the land rises steeply towards the rear where there are a number of trees on the steeply sloping embankment, and a woodland is located further to the north outside of the site.

To the other side of Bacup Road to the site is a public car park serving Ashoka Restaurant whilst to the other side of the roundabout at the junction of Bacup Road/Bocholt Way is the former Gasometer site.

The site is located within the Urban Boundary of Rawtenstall. The site is not allocated however a narrow section of the northernmost part of the site, and the rising land beyond this point, which is covered by woodland, is designated as Greenlands.

3. **PROPOSAL**

Existing consent (2014/0355)

Full planning permission was granted on 30 March 2015 (2014/0355) for the following:

“Demolition of all buildings and structures and the erection of 29 no. dwellings and associated works, including provision of off-street parking facilities to rear of 1 - 27 Wheatholme Street”.

14no. planning conditions were attached to the permission and a Section 106 Agreement was signed (dated 25 March 2015). The agreement requires the payment of £136,237 as a commuted sum for the provision of affordable housing within the Borough of Rossendale, in addition to £1,000 (plus agreed disbursements) to progress the revocation of the Hazardous Substance Consent for the storage of Gas at Cloughfold Gasholder site, and £1,200 to fund a Traffic Regulation Order to restrict parking of vehicles at the Bacup Road / Co-Operative Street junction.

Proposed variations

Using Section 73 of the Town and Country Planning Act, permission is sought to vary condition 10 to reduce the number of dwellings to 28, construct a revised retaining structure, and amend the siting / arrangements of plots 1-9. It is necessary to vary Condition 10 as this is the only condition which lists an approved drawing.

Condition 10 states:

“Notwithstanding any indication on the approved plans (including amended Site Layout M2814.PL.20 rev G), in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority:

a) the private drive shown as serving Plots 21-23 shall be provided in a form/to dimensions to enable its adoption by the Highway Authority, and the private drive to serve Plots 24-27 shall be provided in a more regular shape, incorporating a bin collection area/visitor parking spaces.

b) the dwellings without garages shall be provided with a secure cycle store.

c) the triple-garage and double-garage to have their backs to 4 and 8 Lambton Gates shall have a floor level not more than 0.2m higher than the level of the neighbours gardens at the boundary.

Reason : In the interests of neighbour amenity and highway safety, in accordance with Policies 1 / 8 / 24 of the Council's adopted Core Strategy DPD (2011)."

The applicant has requested that the drawing number referred to in the condition is replaced with drawing number M2814.PL.C.500 Rev E.

In addition to the proposed variation of condition, a deed of variation has been submitted which requests a modification to the Section 106 Agreement to remove the requirement to pay £136,237 as a commuted sum for the provision of affordable housing for viability reasons owing to the loss of one unit from the scheme.

4. **RELEVANT PLANNING HISTORY**

2016/0229 - Discharge of Condition 10 (road to adoption, bin stores) from Planning Permission 2014/0355. Approved.

2015/0468 - Discharge of Conditions 11(Facing Materials) & 14 (boundary walls/fences/gates/hard-surfaced external areas) from Planning Permission 2014/0355. Approved.

2015/0400 - Discharge of Conditions 7 (Highway Improvements) 9 (Drainage Details) & 13 (Highway Improvements) from Planning Permission 2014/0355. 7 approved, 9 refused, 13 approved.

2015/0387 - Discharge of Condition 6. Approved.

2015/0284 - Discharge of Condition 4 (Construction Method Statement & Construction Management Plan) pursuant to Planning Permission 2014/0355. Approved.

2014/0355 - "Demolition of all buildings and structures and the erection of 29 no. dwellings and associated works, including provision of off-street parking facilities to rear of 1 - 27 Wheatholme Street". Approved with conditions and S106 Agreement.

5. **POLICY CONTEXT**

National

National Planning Policy Framework (2012)

- Section 4 Promoting sustainable transport
- Section 6 Delivering a wide choice of high quality homes
- Section 7 Requiring good design
- Section 8 Promoting healthy communities
- Section 10 Meeting the challenges of climate change, flooding, etc.
- Section 11 Conserving and enhancing the natural environment

Development Plan Policies

Rossendale Core Strategy DPD (2011)

AVP 4	Strategy for Rawtenstall
Policy 1	General Development Locations and Principles
Policy 4	Affordable and Supported 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, Geodiversity and Landscape Conservation
Policy 19	Climate Change and Low & Zero Carbon Sources of Energy
Policy 22	Planning Contributions
Policy 23	Promoting High Quality Design & Spaces
Policy 24	Planning Application Requirements

Other Material Planning Considerations

National Planning Practice Guidance - Viability
Alterations and Extensions to Residential Properties SPD

6. CONSULTATION RESPONSES

Consultee	Comments	Conditions
Rossendale Civic Trust	Objection	No
Lancashire County Council Highways	No objection	No

7. NOTIFICATION RESPONSES

To accord with the General Development Procedure Order site notices were posted on 11 October 2016 and placed in the Rossendale Free Press on 14 October 2016. 39no. neighbour letters were sent on 7 October 2016.

No responses have been received.

8. ASSESSMENT

The main considerations of the application are:

- 1) whether the proposed variation to the approved site layout and reduction in unit numbers is acceptable having regards to visual and neighbour amenity;
- 2) whether the proposed variation has implications for car parking and cycle storage;
- 3) approval of details of drainage which remain outstanding from the original consent; and
- 4) consideration of the proposed modification of the S106 Agreement having regard to viability.

Background

The application is accompanied by a covering letter from the applicant's agent Hourigan Connolly which explains the reasoning behind the proposed variations to the layout of the scheme and the modification to the S106 Agreement to remove the requirement for a contribution to affordable housing.

The land along the northern boundary of the development site was found to be more unstable than had originally been scoped for. To address the matter, it was found that additional ground works and a re-profiling of the retaining structure was necessary to enable the safe development of this part of the site. The re-profiled retaining structure has also resulted in the loss of 1no. plot from the scheme and revisions to the house types in those plots which back onto the structure. The revised proposed site layout (now M2814.C.500_Rev E) forms part of this Section 73 application.

Visual and neighbour amenity

The previously approved layout included 29 dwellings, with plots 7, 8, 9 and 10 as two pairs of semi-detached units. A long retaining wall was proposed to separate plots 1-9 from the sloping woodland to the north. The proposed amendments to the layout include the loss of one dwelling and the creation of a row of three dwellings which are now plots 7, 8 and 9. The semi-detached garage which separates plots 9 and 28 remains unchanged.

In terms of neighbour amenity, the changes have the potential to affect the occupiers of 6 and 8 Lambton Gates which are located immediately to the east of these plots. Officers have considered the proposed changes and are satisfied that the amendments will result in a change of outlook from numbers 6 and 8 however this is limited and not considered harmful; indeed the outlook from no. 8 is likely to be improved as result.

In terms of visual amenity, the change from semi-detached to a row of three dwellings will not harm the appearance of the development as a whole and is therefore considered acceptable. The proposed change to the retaining structures and levels at plots 1-7 are considered to be an improvement in visual terms and also an improvement for the occupiers of these plots who will have more usable garden space accessed from the living room at the first floor (via French doors) with the woodland beyond. The properties will not now look out onto a significant retaining structure at the rear. The majority of the retaining structure will be within the ground and therefore not visible and this space will be in the form of an underground storage area. The visible retaining structures will be faced in brick to match the dwellings.

The proposed amendments are acceptable having regard to visual and neighbour amenity, subject to a condition controlling materials.

Highways and car parking

In its original form (Rev D) Lancashire County Council's Highway Engineer recommended no objection subject to 3no. amendments. The agent's comments on each of the points are set out below:

1. The driveway at plot 6 should be widened to 3 metres where it is enclosed by a retaining wall.

This has been amended and shown on drawing M2814.PL.C.500 Rev E.

2. The 2 parking bays shown adjacent to the driveway at plot 6 should be allocated to plot 8 and signed accordingly on site.

This has been amended and shown on drawing M2814.PL.C.500 Rev E.

3. Plots 1 – 8 require secure cycle stores.

Secure cycle stores for plots 1-5 are located in the full height void beneath the kitchen area. Plots 7-9 are located in secure sheds (as approved for the extant permission). For Plot 6 the agent cannot adopt the principles of Plots 1-5, due to site levels. We could provide a secure cycle store at the higher level, but this would require cycles to be carried up a flight of stairs for storage which is less than ideal. The second option explored was a secure cycle store to the front of Plot 6, but we feel this would have a detrimental effect on the visual appeal of the development and would be attractive to antisocial behaviour/theft. With this in mind and given the specifics of the site, I would request that the Council agree to the omission of a secure covered lockable bike storage to this plot (Plot 6) only.

The Highway Engineer has confirmed that the omission of a secure bike storage for plot 6 is acceptable in this instance.

The proposed amendments are acceptable in terms of highway safety.

Drainage

Condition 9 attached to the original planning permission required the submission of drainage details across the full site prior to the commencement of development. The condition has not yet been satisfied and therefore, as the layout is proposed to be changed and the development is already under construction, it is important that full drainage details are agreed prior to the determination of this application. The applicant's agent is in the process of having the details prepared and Members will be updated on this within the Update Report.

Proposed modification to S106 Agreement

A Section 106 Agreement is linked to the original permission for this site (dated 25 March 2015). The agreement requires the payment of £136,237 as a commuted sum for the provision of affordable housing within the Borough of Rossendale, in addition to £1,000 (plus agreed disbursements) to progress the revocation of the Hazardous Substance Consent for the storage of Gas at Cloughfold Gasholder site, and £1,200 to fund a Traffic Regulation Order to restrict parking of vehicles at the Bacup Road / Co-Operative Street junction. Payments for the latter two requirements have already been made to the Council.

The S106 Agreement was based on planning permission for 29 dwellings approved under application 2014/0355. The agent's covering letter explains that the cost estimates identified at the original planning application stage have proven to be inaccurate when compared to the actual build cost, and that this is particularly acute in relation to the revised retaining structure proposed to the northern site boundary. As a result, the costs associated with these changes have had a negative effect on the viability of the approved scheme, and the level of profit the developer anticipates to make from has been reduced from that previously agreed with the Local Planning Authority (LPA).

The agent has provided a Viability Position Statement which has been assessed by a Principal Surveyor at the DVS to provide an objective opinion on the information provided by the applicant, in terms of the extent to which the appraisal is fair and reasonable and that the assumptions made are acceptable and can be relied upon to determine the viability of the scheme. The DVS has concluded that including the full Section 106 sums, for a fully market value scheme this gives way to a profit level of 13.7% of Gross Development Value. They have found that this is markedly above the applicant's assessment of 8.27% but remains below what is appropriate for a fully private market housing scheme. On this basis the scheme is not viable. To remove the affordable housing S.106 obligations gives way to a 16.8% profit on value, which reflects a viable scheme. The DVS's conclusion is as follows:

"I conclude that as a result of unforeseen increased build costs the affordable housing Section 106 costs of £136,237 can no longer be supported on this scheme."

In terms of viability, the National Planning Practice Guidance (the Guidance) states that in making decisions, the LPA will need to understand the impact of planning obligations on the proposal. It states that where an applicant is able to demonstrate to the satisfaction of the LPA that the planning obligation would cause the development to be unviable, they should be flexible in seeking planning obligations. It continues to state that this is particularly relevant for affordable housing contributions which are often the largest single item sought on housing developments. It advises that these contributions should not be sought without regard to individual scheme viability, and that the financial viability of the individual scheme should be carefully considered in line with the principles in the guidance. Assessing viability should lead to an understanding of the scale of planning obligations which are appropriate. However, the National Planning Policy Framework is clear that where safeguards are necessary to make a particular development acceptable in planning terms, and these safeguards cannot be secured, planning permission should not be granted for unacceptable development.

Having regard to the Guidance, the evidence provided in the Viability Position Statement, and the independent report from the DVS, officers are satisfied that the proposed modification to the S106 Agreement is necessary to prevent the development from being unviable, and is therefore acceptable.

Other matters

One objection has been received and this is from Rossendale Civic Trust on the following grounds:

- There is a risk of precedent then whenever a site presents claimed unforeseen problems, there will be requests to vary designs and planning conditions on matters that should have been evident from prior site surveys.
- It is unfortunate to build out most of the site before realising there is a need to alter the scheme.

It is unfortunate that this information was not known at an earlier stage however this is not a material planning consideration which could justify refusal of the application. It is acknowledged that circumstances can alter during the lifetime of a development and Section 73 of the Town and Country Planning Act exists as a mechanism for varying and / or removing planning conditions. In addition, the Guidance is clear in relation to viability as set out in Section 8 above. As such in this case the amendments are considered to be justified.

9. RECOMMENDATION

That permission be granted subject to the conditions set out in Section 10 and subject to the completion of a deed of variation.

10. CONDITIONS

1. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) by Betts (ref: FRA237), dated October 2014, and the mitigation measures detailed within the FRA limiting the surface water run-off to 14.9 l/s for the 1 in 1yr storm and maximum of 31.4 l/s for the 1 in 100yr storm so that it will not exceed the run-off from the pre-development site and not increase the risk of flooding off-site. The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason : To reduce the risk of flooding by ensuring the satisfactory storage of/disposal of surface water from the site.

2. Within one month of the date of this decision a scheme for the disposal of foul and surface waters for the entire site shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, surface water must drain separate from the foul and no surface water will be permitted to discharge directly or indirectly into existing foul or combined sewerage systems. Any surface water draining to the public surface water sewer must be restricted to a maximum pass forward flow of 32 l/s. The development shall be completed, maintained and managed in accordance with the approved details.

Reason : To ensure a satisfactory form of development and to prevent an undue increase in surface water run-off and to reduce the risk of flooding.

3. The development hereby approved shall be carried out in accordance with the following approved plans and documents:

- Site Layout M2814.PL.C.500 Rev E
- Floor Plans Plots 1-6 M2814.C.501
- Piled Foundations, Integral Retaining Walls & Piling Layout
- Elevations Plots 7-9 M2814.C.508
- Plans Plots 7-9 M2814.C.502

Notwithstanding any indication on the approved plans the development shall incorporate the following:

- a) the private drive shown as serving Plots 21-23 shall be provided in a form/to dimensions to enable its adoption by the Highway Authority, and the private drive to serve Plots 24-27 shall be provided in a more regular shape, incorporating a bin collection area/visitor parking spaces.
- b) the dwellings without garages shall be provided with a secure cycle store except for Plot 6.
- c) the triple-garage and double-garage to have their backs to 4 and 8 Lambton Gates shall have a floor level not more than 0.2m higher than the level of the neighbours gardens at the boundary.

Reason : In the interests of neighbour amenity and highway safety.

4. Materials to be used in the construction of Plots 1-15 shall be undertaken using the facing materials Grey Marley Modern to the roof and 65mm Cavendish Gold Mixture brick to the elevations. Materials to be used in the construction of Plots 16-26 (and associated garages) shall be Grey Marley Modern to the roof and Edenhall Darlstone Natural Pitched Faced to the elevations.

Reason : In the interests of visual amenity.

5. The dwellings hereby permitted shall be provided with protection from traffic noise that accords with the Recommended Mitigation Measures detailed in the Miller Goodall Environmental Services Noise Assessment (dated 21/10/14), in the case of boundary treatment between Plots 20 & 21 to take the form of a 2m high wall (not a fence).

Reason : To protect the amenities of occupiers of the proposed houses.

6. Prior to first occupation of any house hereby permitted the proposed highway leading to it, including the works of improvement for Co-operation Street and shortening of the central island/provision of a right turn lane on Bacup Road, shall be completed to standards & specifications enabling their adoption by LCC Highways. Furthermore, prior to first occupation of any house its drive, parking & garaging spaces shown shall be constructed, drained, surfaced and delineated in accordance with the submitted details (drives/parking areas to have a hard permeable surface avoiding surface water run-off to the highway), and (notwithstanding the provisions of the Town & Country Planning General Permitted Development Order 2015, or any amendment, revocation & re-enactment of it) thereafter kept available for the parking/manoeuvring of vehicles unless otherwise first agreed in writing by the Local Planning Authority.

Reason : In the interests of pedestrian and highway safety.

7. Within one month of the date of this decision the following shall be submitted to the Local Planning Authority:
 - a) A Remediation Statement shall be submitted to and approved in writing by the Local Planning Authority.
 - b) The remediation scheme in the approved Remediation Statement shall then be carried out and a Site Completion Report detailing the action taken at each stage of the works (including validation works) shall be submitted to and approved in writing by the Local Planning Authority prior to first occupation of any part of the development hereby approved.

Reason : To ensure development of the site proceeds in a safe and satisfactory form, having regard to the findings of the submitted Contaminated Land Phase I and Phase II Reports.

8. Within one month of the date of this decision full details shall be submitted to and approved in writing by the Local Planning Authority in respect of boundary walls/fences/gates/hard-surfaced external areas and external lighting to be provided. All boundary walls/fences/gates/hard-surfaced external areas and external lighting forming part of the approved scheme shall be completed prior to first occupation of any dwelling, or with the timing / phasing arrangements first agreed in writing by the Local Planning Authority. Any planting forming part of the scheme shown on TPM Landscape Drwg No 1799-04-

rev B shall be carried out in the following planting season, and any trees or shrubs removed, dying or becoming seriously damaged or diseased within 5 years of planting shall be replaced by trees or shrubs of a similar size or species, unless otherwise first agreed in writing by the Local Planning Authority.

Reason : To ensure that the development will be of satisfactory appearance.