

Rossendale

BOROUGH COUNCIL

Application Number:	2019/0098	Application Type:	Full
Proposal:	Vehicular Access (Resubmission of refused application no. 2018/0514)	Location:	Land off Hall Street Whitworth Rochdale Lancashire
Report of:	Planning Unit Manager	Status:	For publication
Report to:	Development Control Committee	Date:	22/05/2019
Applicant:	Mr and Mrs N Gordon	Determination Expiry Date:	08/05/2019
Agent:	Mr Paul Anderton		

Contact Officer:	Ian Lunn	Telephone:	01706-252432
Email:	planning@rossendalebc.gov.uk		

REASON FOR REPORTING	
Outside Officer Scheme of Delegation	
Member Call-In Name of Member: Reason for Call-In:	<p>The application has been called to Committee for a decision by Councillor Neal who has concerns about:-</p> <ol style="list-style-type: none"> 1) The loss of, and impact upon, local residents' rights to access their utility services at all times. 2) The impact of the development upon the Green Belt. 3) The impact upon the open countryside. 4) The unlawful creation of a new access/roadway. 5) The impact of the development upon local wildlife habitats. 6) The impact upon local spring water and damage to local watercourses and land drainage systems all of which are in private ownership. 7) Loss of Residential Amenity. 8) Damage to the local environment. 9) The failure of the proposal to comply with Article 8 of the 1998 Human Rights Act. 10) The failure, on the part of the applicants, to demonstrate that they own all of the defined

	application site.
3 or more objections received	Yes
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 Planning Permission be granted subject to the conditions set out in Section 10.

2. SITE

The application site is an irregularly shaped plot of land of approximately 0.14 hectares in area. It is located approximately 260 metres north west of the junction of Hall Fold and Hall Street on land forming part of the Green Belt as identified by the Council's adopted Development Plan. There is a bridleway immediately to the south of the application site.

The land slopes gradually downwards from the north western to the south eastern boundaries but 'drops' by approximately two additional metres on its eastern side adjoining Hall Street. It is largely open but there is currently a green container at the northern end and two timber buildings in the south western corner, one of which appears to be in use as a stable.

3. PROPOSAL

A vehicular access and roadway have been formed to the site from Hall Street but without the necessary planning permission. This application has therefore been submitted with a view to obtaining both retrospective approval for the works that have been carried out to date and approval to complete them. The formation of a vehicular access onto an unclassified road such as this would not normally require formal planning permission. However, approval is required in this instance because of the extent of the engineering works involved.

The applicants also propose to remove the concrete posts that are located along the western boundary of the site and to replace them with a one metre high dry stone wall. However these works do not form part of this application as they may be carried out as 'permitted development'.

4. PLANNING HISTORY

2015/0339 - Demolition of stables and erection of a detached dwelling and associated detached garage – Refused 17/02/16 on green belt policy grounds. Specific mention was made in the refusal of the proposed new driveway to serve the dwelling which was considered to represent a 'further urbanizing feature' that would 'contribute to the

development as a whole failing to respect local context and distinctiveness and failing to maintain the distinction between the adjacent urban area and countryside'. The access was shown as entering Hall Street at a similar point to the access the subject of his application. An appeal against this refusal was dismissed on 09/09/16.

2016/0489 - Demolition of stables and erection of a detached dwelling – Refused 09/12/16 on green belt policy grounds. Specific mention was once again made of the proposed new driveway to serve the dwelling which was also considered to represent a 'further urbanizing feature' that would 'contribute to the development as a whole failing to respect local context and distinctiveness and failing to maintain the distinction between the adjacent urban area and countryside'. The access was again shown as entering Hall Street at a similar point to the access the subject of his application. An appeal against this refusal was dismissed on 03/05/17.

2018/0514 - Formation of vehicular access from Hall Street, entailing changes to ground levels, and boundary wall/gate (Revised Scheme) – Recommended for approval but refused by Planning Committee on 28th February 2019 on the grounds that 'The proposed development is contrary to Policy 24 of the Adopted Rossendale Core Strategy as it would amount to an inappropriate means of enclosure with reference to access to utilities and would cause potential harm to the function of those utilities'. This scheme proposed a similarly designed and positioned access to the one now proposed but also included for the construction of a 1.5 metre high stone wall along the western site boundary.

5. POLICY CONTEXT

National

National Planning Policy Framework (2019)

Section 12 Achieving Well Designed Places

Section 13 Protecting Green Belt Land

Section 15 Conserving and Enhancing the Natural Environment

Development Plan Policies

RBC Core Strategy (2011)

AVP1 Strategy for Whitworth, Facit and Shawforth

Policy 1 General Development Locations and Principles

Policy 17 Rossendale's Green Infrastructure

Policy 18 Biodiversity, Geodiversity and Landscape Conservation

Policy 23 Promoting High Quality Design and Spaces

Policy 24 Planning Application Requirements

Other

National Planning Practice Guidance

RBC Emerging Local Plan

6. CONSULTATION RESPONSES

Whitworth Town Council:- No observations received.

LCC Highways:- No objections subject to conditions.

LCC Rights of Way Officer:- No observations received.

7. NOTIFICATION RESPONSES

The application was advertised by sending individual notification letters to the surrounding properties and by posting a site notice next to the site. These were sent/posted on 18th and 28th March 2019 respectively giving 21 days to comment. The publicity period has now expired and seven letters of objection (including two from the same person) have since been received. The objections are:-

- a) that the proposal is not in accordance with the requirements of the Development Plan. This has previously been held to be, and remains, inappropriate development to locate within the Green Belt.
- b) that the development would appear out of keeping with the surrounding area,
- c) that an approval of this proposal would not be in the best interests of highway safety in the area. The proposed means of accessing the site is considered to be inadequate; the proposal makes inadequate provision for the 'off street' parking of vehicles and has led to the loss of an area used by local residents for parking and to 'blockages' of the highway as a result of cars being parked elsewhere; and the development as a whole would lead to an unacceptable increase in traffic using Hall Street.
- d) that the development would adversely affect the level of privacy currently enjoyed by neighbouring properties,
- e) that the development will generate noise and pollution,
- f) that the site is in an untidy condition and covered in litter,
- g) that the proposal will constitute overdevelopment,
- h) that there is no need for the new access as the land is already served by a suitable access. Furthermore, this is not an agricultural holding.
- i) that insufficient accurate information has been submitted with this application to enable the implications of the proposal to be properly assessed.
- j) that the development of this land would exacerbate problems of flooding currently experienced in the area.
- k) that the site is potentially contaminated.
- l) that the works carried out to date have 'cut across' an adjoining bridleway and have enclosed, and caused damage to, services including septic tanks.
- m) that the development would prevent access to services and would prevent neighbours from satisfactorily developing or maintaining their properties,
- n) that land has been included within the application site that is not in the ownership of the applicants.
- o) that the applicants should not now be allowed to submit any further applications seeking approval for an access as three previous submissions that have included for such development have already been refused.
- p) that the process for seeking the known landowners of the site has not been properly followed by the applicants.
- q) that the application should be reported to the Planning Committee for a decision.
- r) that they generally just dislike the proposal.

The applicants' agent has submitted a Planning Statement in support of the application in which they state:-

- a) that the access is required in order to enable the applicants to access their agricultural holding. They do not have the means to buy a tractor.

b) that the development will be acceptable in visual amenity terms as the access is to be surfaced using a combination of gravel and grass.

8. **ASSESSMENT**

Principle

The application site lies outside of the Urban Boundary, as identified by the Council's adopted development plan, and wholly within the Green Belt. The proposal therefore needs to be considered initially against the provisions of Policy 1 of the Core Strategy and Section 13 of the National Planning Policy Framework. The former seeks to primarily locate development within the defined Urban Boundary but does allow for limited works outside of it provided that the proposal in question meets all other relevant national and local planning policies. The latter primarily seeks to maintain the openness of the Green Belt but also identifies circumstances where development will be viewed as appropriate within it. Since the Council does not currently have any other specific adopted Green Belt policies itself, and since the relevant provisions of Policy 1 are very limited, it is proposed to rely primarily on the contents of Section 13 of the NPPF in determining this application.

Section 13 of the NPPF states that 'the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open' adding that 'the essential characteristics of Green Belts are their openness and their permanence'. The general thrust is that any form of development within the Green Belt is inappropriate and therefore by definition harmful to it unless it represents one of the exceptions identified in paragraphs 145 and 146 of the Framework or 'very special circumstances' can be demonstrated for allowing it.

Paragraph 144 adds that 'when considering any planning application, Local Planning Authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations'.

Paragraphs 145 and 146 identify the nature of development that can normally be viewed as an 'exception' to Green Belt policy and therefore acceptable in principle. This includes 'engineering operations' provided that the works preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Paragraph 134 identifies the five purposes of including land within the Green Belt which are:-

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

It is considered that the works that are the subject of this application can reasonably be described as 'engineering operations'. Furthermore it is contended that once completed they will reasonably preserve the openness of the Green Belt (for reasons outlined in the 'Visual Amenity' Section below) and that they will not conflict with any of the purposes of including land within it (as set out above). In view of this the proposal is considered to be 'in line' with adopted green belt policy, despite concerns to the contrary, and accordingly it is considered

that it will meet the requirements of Policy 1 of the Core Strategy and Section 13 of the National Planning Policy Framework in this regard.

Visual Amenity

The access is to be constructed using geo-web surfaced using gravel and grass, and a dry-stone retaining wall is proposed along part of the southern side. These materials are considered to be acceptable given the semi-rural nature of the surrounding area. The completed development will not, it is contended, appear as an unduly prominent feature in the landscape as the site is largely enclosed by housing and the access is to be 'cut' into the adjoining banking which should further help to reduce its overall prominence. With this in mind, despite concerns to the contrary and provided that a condition is imposed requiring the use of the materials described, it is considered that the development will not significantly impact upon the character and appearance of the surrounding area and to this end will reasonably satisfy the relevant requirements of Policies 1, 23 and 24 of the adopted Core Strategy and Sections 12 and 15 of the NPPF.

In coming to this view, consideration has been given to the fact that three previous applications for the development of this site have been refused at least in part on the grounds that they each included for the creation of a new vehicular access to the land (see 'Planning History'). However, whilst in each case the proposed point of access from Hall Street was similar to that now proposed:-

- a) in two of the cases the associated access driveways were larger and more formal, and in each case they formed part of a larger development for a new dwelling,
- b) in the most recent case the access was more informal and was similar to the one that is now being proposed hence the recommendation for approval at the time that it was reported to Planning Committee. For Members information this application was not refused on grounds of visual amenity.

Neighbour Amenity

The site is largely enclosed by residential properties. However, since the new access is being created by 'cutting into' the banking it is not envisaged that, once completed, it will have any effect upon the level of light that those properties currently receive. Furthermore, given that, on the balance of probability, the access is likely to experience only very limited vehicular and pedestrian use it is not envisaged that the development will adversely affect the level of privacy currently enjoyed by, or generate a level of noise or pollution that would unduly disturb, neighbouring properties despite concerns to the contrary. On this basis it is considered that the proposal will reasonably satisfy the requirements of Policy 24 of the adopted Core Strategy in this regard.

Highway Safety

It is not envisaged, despite concerns to the contrary, that the development will generate any undue highway safety concerns either. It is not envisaged that this access will be regularly used by vehicles and there is room within the main site for them to be parked and satisfactorily turned around. Furthermore, the access point itself is to be onto Hall Street which is an unclassified highway that, on the balance of probability, is unlikely to be currently experiencing significant vehicular use and where vehicles are likely to be travelling at quite low speeds.

The proposal has been assessed by County Highways who consider it to be acceptable subject to conditions. They have requested a condition requiring the applicants to enter into an agreement with anyone else who may own the access road to contribute to its maintenance for the lifetime of the development. However, whilst this requirement can reasonably be attached as an informative it cannot legitimately be imposed as a planning condition under the terms of the current planning legislation.

Local residents are concerned that the development will lead to an unacceptable increase in traffic using Hall Street. However, it is not envisaged that a development of this scale and nature would lead to a significant increase in traffic over and above that which this highway currently experiences. In view of this, and as Highways have not objected to the development for this reason, it is considered that a refusal on these grounds could not reasonably be sustained. It should also be noted that the last planning application (ref: 2018/0514 at this site was not refused on grounds of highway safety.

Other Issues

The concerns raised in respect of the proposal have been fully assessed as part of the consideration of this application. However they are not considered to represent justifiable reasons for refusing it for reasons given earlier in this report and below:-

- a) it is contended that the completed access/driveway will not represent overdevelopment of the land,
- b) a condition can reasonably be imposed to control the discharge of surface water from the development. This should reasonably ensure that it does not lead to any issues of flooding.
- c) it is considered that sufficient information has been submitted with this application to enable the implications of the proposal to be properly assessed.
- d) a planning application cannot legitimately be refused purely because of a general dislike of the proposal.
- e) likewise a planning application cannot legitimately be refused because it may lead to the loss of informal parking.
- f) concerns about land ownership, rights of access and damage cannot currently be taken into consideration as part of the assessment of a planning application as they are not recognized 'planning matters'.
- g) the development does not appear to impinge upon the adjoining bridleway. However, if it is subsequently demonstrated that it does, this can be addressed through separate legislation.
- h) a planning application cannot reasonably be refused purely on the grounds that the land to which it relates is unduly untidy or covered in litter. If needs be this can be addressed through separate enforcement action should the Council consider this to be expedient.
- i) it is not known whether the site is contaminated. However this is not considered relevant to the consideration of a planning application which seeks approval solely to construct an access road.
- j) the site is not currently known to be the habitat of any protected flora or fauna.
- k) there is no requirement for the applicants to demonstrate a need for the access in this instance as the proposal is considered to be in accordance with current Green Belt policy.
- l) the application currently under consideration is slightly different to the previous submission and quite significantly different from the other two proposals (which involved new houses). The Local Planning Authority cannot therefore reasonably refuse to determine it on the grounds that the applicants are constantly submitting the same scheme. The Local Planning Authority also has no power to require the applicants to appeal against the previous planning refusal.
- m) the application is being reported to the Planning Committee for a decision.

For the record the land does not currently appear to be being used as an agricultural holding.

9. RECOMMENDATION

That planning permission be granted subject to the conditions set out in section 10 below.

10. CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following drawings, unless otherwise required by the conditions below:

<u>Drawing Title</u>	<u>Drwg No</u>	<u>Date Rec'd</u>
Location Plan	T18-9-80-02	13/03/19
Proposed Site Layout and Cross Sections	T18-80-01E	13/03/19

Reason: For the avoidance of doubt and to ensure a satisfactory standard of development.

2. Details of the height, design and position of all retaining walls proposed as part of the development shall be submitted to, and approved in writing by, the Local Planning Authority within one month of the date of this approval. These shall be constructed of natural dry stone. The approved retaining walls shall be constructed, and the road surfaced, in the approved positions and using the approved materials within three months of the date of this approval. They shall thereafter be satisfactorily retained at all times.

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

3. Details of the proposed means of draining surface water from the development shall be submitted to, and approved in writing by, the Local Planning Authority within one month of the date of this approval. The approved surface water drainage works shall be completed within three months of the date of this approval and shall thereafter be satisfactorily retained at all times.

Reason: To secure proper drainage, in the interests of highway safety and to manage the risk of flooding/

INFORMATIVES

1. 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

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.

2. A public footpath/bridleway adjoins this site. Please note that it is an offence to obstruct this in any way either before, during or after the completion of the development.
3. County Highways have asked that you enter into an agreement with other owner(s) of the new access road to contribute to its future maintenance.