



Appeal Decision

Site visit made on 2 November 2021

by M L Milliken BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2021

Appeal Ref: APP/D2320/W/21/3272623

Land to the south of Nell Lane, east of Cuerden Residential Park, Chorley

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Monaco Nell Lane Limited against the decision of Chorley Borough Council.
 - The application Ref 20/00377/FULMAJ, dated 24 April 2020, was refused by notice dated 9 October 2020.
 - The development proposed is full planning permission for 115 dwellings, together with associated parking, landscaping, drainage, pump station, the layout of roads and footways and other associated works.
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Decision

1. The appeal is allowed and planning permission granted for 115 dwellings, together with associated parking, landscaping, drainage, pump station, the layout of roads and footways and other associated works at Land to the south of Nell Lane, east of Cuerden Residential Park, Chorley in accordance with the terms of the application Ref 20/00377/FULMAJ dated 24 April 2020, subject to the Conditions set out in the accompanying Schedule.

Procedural Matters

2. A Unilateral Undertaking (UU) has been submitted by the appellant which provides for affordable housing and open space provision. I am satisfied that the agreement provided in evidence is fit for purpose as a deed and I am therefore proceeding to determine the appeal on that basis. I will address the provisions of the UU later in this decision.
3. The Council and the appellant have had the opportunity to comment on the revised National Planning Policy Framework (the Framework), which was published in July 2021. I am satisfied that the revised Framework has not materially altered the consideration of the issues pertinent to this appeal and I am proceeding on that basis. In the interests of clarity, references to the Framework within this decision relate to the revised version including, where applicable, different paragraph references.

Main Issues

4. The main issues are:
 - (i) The effect of the proposed development, with specific regard to highway works, on the character and appearance of Nell Lane and the surrounding area, including the effect on trees and hedgerows; and

- (ii) the adequacy of the Obligation to provide for affordable housing and open space provision made necessary by the proposed development.

Reasons

Character and Appearance

5. The appeal site is located on land adjacent to Cuerden Residential Park and, together with surrounding land, is allocated for housing and employment use through Policies HS1.31 and EP1.15 of the Chorley Local Plan (CLP) (adopted 2015). In addition, the principle of residential development on the site has further been established through extant planning permission reference 19/00417/FULMAJ.
6. Nell Lane forms the northern boundary of the appeal site and is characterised, in part, by its urban rural fringe location. Although no footpaths exist along its length, the main parties agree that it is particularly well-utilised by pedestrians and cyclists, as also noted during my site visit. A number of trees and hedgerows are located within the appeal site and along Nell Lane, some of which are subject to Tree Protection Orders.
7. The proposed development would involve the creation of a new access point to be taken from Nell Lane, requiring the removal of approximately 60m of hedgerow. I note that, in response to the planning application consultation, the Council advised that none of the trees proposed for removal are of high arboricultural value or provide a high level of visual amenity. Nevertheless, the hedgerow and trees proposed for removal do positively contribute to the character of the appeal site and surrounding area, including the public's enjoyment of it. For this reason, I find that their loss would have a negative impact on character and appearance.
8. Notwithstanding that the proposed development would be visible from outside the site boundary, particularly from the north, I am satisfied that the effect on character and appearance would be tempered through mitigation proposed, in the form of replacement planting and other landscape features to aid in the integration of the site with Nell Lane. Such details could be secured by planning condition. Furthermore, the trees and hedgerows along Nell Lane unaffected by the proposed development would continue to serve to provide screening, albeit to a reduced extent.
9. The proposed works to Nell Lane include introducing a revised speed limit of 30mph, some widening of the carriageway and the creation of priority give-way points, including the use of chicanes, reflective bollards and signage. I find that the introduction of these elements is necessary to ensure highway safety and that the modest scale of the works proposed is appropriate given the urban rural fringe location of the appeal site. Moreover, I am satisfied that the proposed speed reduction and traffic calming measures would help to safeguard the urban rural fringe character of the site and surrounding area in the long term, by reducing the average speed of vehicles in the immediate area.
10. For the reasons set out, including the proposed mitigation measures, I find that the overall effect on the character and appearance of Nell Lane and the surrounding area, including the effect on trees and hedgerows, would be acceptable. I therefore consider that the proposed development would accord

with Policy BNE1 of the CLP (2015), which seeks to, amongst other things, ensure that new developments do not have a detrimental impact on hedgerows. For the same reasons, I also consider that the proposed development would accord with paragraphs 130 and 174 of the Framework.

Affordable Housing and Open Space Provision

11. The appeal scheme would provide for all 115 dwellings for private rent. On the evidence before me and with reference to Policy 7 of the Central Lancashire Core Strategy (CLCS) (adopted 2012) and the Central Lancashire Affordable Housing SPD (adopted 2012), I am satisfied that the need for the affordable housing contribution sought by the Council directly arises from the development and therefore satisfies the three tests contained in Regulation 122(2) of The Community Infrastructure Levy (CIL) Regulations 2010 (the CIL regulations). In addition, the need for affordable housing in this case also accords with paragraph 57 of the Framework, namely that it is necessary to ensure that the development is acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
12. The first obligation within the UU relates to the provision of affordable housing, which is proposed at a rate of 30%, of which 100% of the units would be affordable rent. I note that this is in excess of the requirement outlined within the SPD (2012).
13. I note the Council's outstanding concerns regarding the provision of affordable housing in this case, particularly with regards to the ongoing management of the units and the selection criteria to be applied. Whilst I note the Council's preference is towards a registered provider of social housing, there is nothing before me, either in policy terms or within the UU itself, to lead me to believe that private management of the affordable units would compromise their delivery or management, in the short or long term, and therefore no conflict with the development plan arises in this regard.
14. For this reason, I consider that private management of the affordable units is acceptable and I therefore attribute weight to the provision of affordable housing on that basis. I am therefore satisfied that the proposed development makes satisfactory provision for affordable housing, which would meet the needs arising from the development in accordance with Policy 7 of the CLCS (2012) and the SPD (2012).
15. The second obligation relates to a financial contribution of £183,885 towards the provision and improvement of existing playing pitches in the Council's administrative area. On the evidence before me, it appears that the need for the contribution sought by the Council arises from the development and satisfies the tests of the Regulations.
16. I also note references are made in evidence to a commuted sum sought in relation to bus stops and the delivery of a travel plan, to be delivered via Section 106 of the Planning Act. No such planning obligations are included in the UU before me and the Council has not proposed any conditions to that effect. Further, there is no clear evidence before me to demonstrate the need or otherwise for such provision.

Other matters

17. The appellant has submitted an alternative highway layout for consideration, which details the partial closure of Nell Lane to through traffic. However, as the mechanism for delivering such a road closure, a traffic regulation order, is not yet in place, I cannot give weight to the alternative scheme in the determination of this appeal.
18. Submissions from both parties are noted on the matter of whether the Council can demonstrate a healthy housing land supply position, including a number of appeal and High Court decisions. Whilst the appellant disagrees, they do not seek to challenge the Council's position further and thus based on the evidence before me, I find nothing to doubt that the Council can demonstrate a housing land supply equivalent in excess of five years.
19. Notwithstanding this, even if the appellant's comments regarding housing land supply are correct and paragraph 11d of the Framework is triggered, it is my judgement that, as set out earlier in this decision, I have found the development plan to be consistent with the Framework and thereby consider it to be up-to-date. I have also found the proposed development to be acceptable when judged against the development plan as a whole, including the specific policies as cited, and that the harm I have found in relation to the main issues would be significantly and demonstrably outweighed by the benefits in this case, including a number of dwellings to meet local need, which would contribute positively towards the overarching Government agenda of boosting housing supply.
20. I have had regard to a number of objections raised, including those from the parish council, elected members and the CPRE, where these relate to planning matters for consideration. Such objections include, but are not limited to, the potential effect of the development on ecology, flood risk, traffic generation, access to public transport, highway safety and archaeology, together with representations relating to a lack of local amenities, the presence of alternative sites elsewhere, lack of housing for the elderly and an oversupply of housing.
21. However, I find none have been substantiated in evidence before me, and the Council does not cite any of these reasons as matters of concern. I am satisfied, from what I have seen and read, that the proposed development would have an acceptable effect in relation to the technical issues outlined above and that other matters can be addressed through the imposition of appropriately worded planning conditions.
22. With regards to objections relating to the presence of alternative sites, a lack of local amenities and an oversupply of housing, it is noted that the appeal site is allocated for housing in an up-to-date local plan which would have been subject to a lengthy and detailed consultation process to determine the suitability of the site for housing. Moreover, housing allocation figures should be read as a minimum and as such do not place arbitrary limitations on future development.
23. Whilst I note objections relating to the provision of housing for the elderly, there is insufficient evidence before me to suggest that the proposed development would be unacceptable in this regard. Representations made regarding the current, informal use of the site for dog walking are also noted. However, the site constitutes private land and therefore the current use of the

site for dog walking is an informal arrangement and at the discretion of the landowner.

24. Representations regarding the perceived inadequacy of the consultation undertaken by the appellant, particularly in light of the Covid 19 pandemic, are noted. However, the Council raises no objections or shortcomings in this regard and I have no obvious reason to take a different view. I therefore attribute little weight to such objections in the determination of this appeal.
25. My attention has also been drawn to the fact that Nell Lane is well utilised by pedestrians, cyclists and horse riders. I note that the proposed development includes the provision of a public footpath adjacent to Nell Lane and traffic calming measures, which would constitute a betterment for other highway users, when compared with the current situation, to which I attach moderate weight.

Conditions

26. A schedule of conditions for the proposed development is provided by the Council and I am satisfied that the appellant has had the opportunity to comment in this regard. I have therefore reviewed the conditions and considered them in line with the Framework and PPG. The wording of some conditions has been adjusted where necessary, in the interests of clarity and to ensure compliance with relevant guidance. In the interests of brevity and to avoid repetition, I have also combined some of the highway conditions.
27. Condition 2 defining the approved plans is necessary in the interests of certainty. Condition 3 is necessary to ensure the protection of trees. Condition 4 is necessary in the interests of health and safety, to ensure that the land is safe for habitable use.
28. Conditions 5 and 6 are pre-commencement conditions, necessary to ensure adequate and sustainable drainage and to minimise flood risk. Conditions 7 and 8 are pre-commencement conditions necessary to ensure the protection of residential amenity and to preserve the character and appearance of the area. Condition 9 is a pre-commencement condition necessary in the interests of delivering local employment and skills training opportunities. Condition 10 is a pre-commencement condition necessary in the interests of safeguarding any archaeological findings.
29. Notwithstanding the submitted UU, which makes provision for affordable housing, because matters are yet to be agreed between the parties Condition 11 is a pre-commencement condition necessary to ensure that this matter is resolved prior to the commencement of development.
30. Condition 12 is a pre-commencement condition necessary to manage the effects of construction of the site access on the local highway network and in the interests of protecting residential amenity.
31. Conditions 13, 14, 16 and 17 are pre-commencement conditions necessary to ensure that the site access, estate road and internal roads are constructed to a satisfactory standard, to manage the phasing of the development and in the interests of highway safety, Condition 15 is necessary to ensure adequate parking provision.

32. Condition 18 is necessary to ensure the protection of biodiversity. Condition 19 is necessary to ensure the safe removal and management of invasive species on the site. Conditions 20-22 are necessary to ensure the protection and enhancement of the landscape and biodiversity. Conditions 23 and 24 are necessary to ensure that the environmental impacts of the development are minimised and in the interests of ensuring sustainability.
33. Notwithstanding the schedule of conditions submitted by the Council, the development proposed is a housing scheme of a large scale with implications for transport and travel. As such, there is a requirement for it to accord with local plan policy and the Framework with regards to sustainable transport. I have therefore imposed Condition 25 which requires the need for the planning application document entitled 'Interim Travel Plan' dated 24 April 2020 to be updated accordingly.

Conclusion

34. For the reasons set out, I conclude that the appeal should be allowed.

M L Milliken

INSPECTOR

Schedule of Conditions

- 1) The proposed development shall begin not later than three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Location Plan DLA Design ref. 2018-202/101;
 - Site Layout Plan DLA Design ref. 2018-202-103 Rev D;
 - Boundary Treatment Plan DLA Design ref. 2018-202-104 Rev B;
 - Materials Plan DLA Design ref. 2018-202-105;
 - 2 Bedroom House Type A DLA Design ref. 2018-202/200;
 - 2 Bedroom House Type B DLA Design ref. 2018-202/210;
 - 3 Bedroom House Type A (red Brick) ref. 2018-202/220 Rev A;
 - 3 Bedroom House Type A (dark red Brick) DLA Design ref. 2018-202/224;
 - 3 Bedroom House Type B (red brick) DLA Design ref. 2018-202/230 Rev B;
 - 3 Bedroom House Type B (dark red brick) DLA Design ref. 2018-202/231;
 - 3 Bedroom House Type C (red brick) DLA Design ref. 2018-202/240 Rev A;
 - 3 Bedroom House Type C (dark red brick) DLA Design ref. 2018-202/245;
 - 4 Bedroom House Type A (red brick) DLA Design ref. 2018-202/250 Rev B;
 - 4 Bedroom House Type A (dark red brick) DLA Design ref. 2018-202/254;
 - 4 Bedroom House Type B DLA Design ref. 2018-202/260;
 - Landscape Proposals Richard Eaves ref. 4141-03 ref. 4141-03 Rev A;
 - Tree Constraints Plan Richard Eaves ref. 4141-01 Rev C.
- 3) The development hereby approved shall be carried out in accordance with the details contained in the approved Tree Protection Plan (Drawing No. 4141.02 Rev F). All remaining trees must be fully safeguarded in accordance with BS5837.2012 for the duration of the site works.
- 4) The development hereby permitted shall be carried out in accordance with Section 6 of the Phase II Geo-Environmental Site Assessment report Ref: 12-357-r1 dated March 2018. This comprises a clean cover system in all garden areas in vicinity of the identified made ground, and gas protection measures installed within all relevant plots that shall be fully implemented prior to occupation, or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.
- 5) Before the development hereby permitted is first commenced full details of existing and proposed ground levels and proposed building finished floor levels (all relative to ground levels adjoining the site) shall have been submitted to and approved in writing by the Local Planning Authority,

notwithstanding any such detail shown on previously submitted plan(s). The development shall be carried out in conformity with the approved details.

- 6) No development shall commence until final details of the design, based on sustainable drainage principles, and implementation of an appropriate surface water sustainable drainage scheme have been submitted to and approved in writing by the Local Planning Authority. Those details shall include:
- Final sustainable drainage layout plan appropriately labelled to include all pipe/structure references, dimensions, design levels, finished floor levels in AOD with adjacent ground levels;
 - The drainage scheme should demonstrate that the surface water run-off and volume shall not exceed the pre-development runoff rate (which has been calculated at 20.9 litres per second). The scheme shall subsequently be implemented in accordance with the approved details before the development is completed;
 - Sustainable drainage flow calculations (1 in 1, 1 in 30 and 1 in 100 + climate change), with allowance for urban creep;
 - Plan identifying areas contributing to the drainage network;
 - Measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters, including watercourses;
 - A plan to show overland flow routes and flood water exceedance routes and flood extents;
 - Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltrations rates;
 - Details of an appropriate management and maintenance plan for the sustainable drainage system for the lifetime of the development. This shall include arrangements for adoption by an appropriate public body or statutory undertaker or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable; and
 - Evidence of the agreement between the applicant and third party landowners, referenced in section 6.3.9 of the Flood Risk Assessment and Drainage Strategy.

The scheme shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings, or completion of the development, whichever is the sooner. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

- 7) Prior to the commencement of development samples of all external facing and roofing materials (notwithstanding any details shown on previously submitted plan(s) and specification) shall be submitted to and approved in writing by the Local Planning Authority. All works shall be undertaken strictly in accordance with the details as approved.
- 8) Before the development hereby permitted is first commenced, full details of the alignment, height and appearance of all fences and walls and gates to be

erected (notwithstanding any such detail shown on previously submitted plan(s)) shall have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until all fences and walls shown in the approved details to bound its plot have been erected in conformity with the approved details. Other fences and walls shown in the approved details shall have been erected in conformity with the approved details prior to substantial completion of the development.

- 9) The development shall not commence until an Employment and Skills Plan that is tailored to the development and will set out the employment skills opportunities for the construction phase of the development has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the Employment and Skills Plan.
- 10) No development, site clearance/preparation, or demolition shall take place on the site until the applicant or their agent or successors in title has secured the implementation of a programme of archaeological works. This must be carried out in accordance with a written scheme of investigation which shall first have been submitted to and agreed in writing by the Local Planning Authority. This scheme shall comprise an initial phase of site investigation including trial trenching followed by the production of a formal report. If significant remains are detected then a subsequent phase of mitigation works should be designed and agreed with the Local Planning Authority. This work should be undertaken by an appropriately qualified and experienced professional archaeological contractor to the standards and guidance of the Chartered Institute for Archaeologists. The development shall be carried out in accordance with the agreed details.
- 11) No development shall commence until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided as units for Affordable Private Rent in accordance with the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include the numbers, type, and location on the site of the affordable housing provision to be made and shall consist of not less than 30% of the total housing units provided across the development. The affordable housing shall thereafter be delivered in accordance with the approved scheme and retained as units for Affordable Private Rent in perpetuity unless otherwise agreed in writing with the Local Planning Authority.
- 12) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - The parking of vehicles of site operatives and visitors;
 - Hours of operation (including deliveries) during construction;
 - Loading and unloading of plant and materials;
 - Storage of plant and materials used in constructing the development;

- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - Wheel washing facilities;
 - Measures to control the emission of dust and dirt during construction; and
 - A scheme for recycling/disposing of waste resulting from demolition and construction works.
- 13) No part of the development hereby approved shall commence until a scheme for the construction of the site access/estate road and the off-site works of highway improvement, including details of associated landscaping, has been submitted to and approved by the Local Planning Authority in consultation with the Highway Authority and in accordance with the Lancashire County Council Specification for Construction of Estate Roads. Thereafter, no part of the development hereby approved shall be occupied until the approved scheme has been constructed and completed in accordance with the approved details.
- 14) No development shall be commenced until an Estate Street Phasing and Completion Plan has been submitted to and approved in writing by the Local Planning Authority. The Estate Street Phasing and Completion Plan shall set out the development phases and the standards that estate streets serving each phase of the development will be completed. Thereafter, no dwelling or dwellings shall be occupied until the estate street(s) affording access to those dwelling(s) has been completed in accordance with the approved layout.
- 15) The parking and associated manoeuvring facilities for each dwelling shown on the plans hereby approved shall be surfaced or paved, drained and marked out and made available in accordance with the approved plan prior to the occupation of the dwelling(s) they serve.
- 16) No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and maintenance company has been established.
- 17) No development shall be commenced until full engineering, drainage, street lighting and constructional details of the streets proposed for adoption have been submitted to and approved in writing by the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority.
- 18) No tree felling, vegetation clearance works, or other works that may affect nesting birds shall take place between 1st March and 31st August inclusive, unless surveys by a competent ecologist show that nesting birds would not be affected.

- 19) Prior to the commencement of any earthworks a method statement detailing eradication and/or control and/or avoidance measures for Japanese knotweed, rhododendron, monbretia, cotoneaster and virginia creeper should be supplied to and agreed in writing by the Local Planning Authority. The agreed method statement shall be adhered to and implemented in full unless otherwise agreed in writing by the Local Planning Authority.
- 20) No development shall be permitted above foundation level until a landscape and environmental management plan has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- A description and evaluation of the habitat features to be created and enhanced (to include but not necessarily exclusively ponds, grasslands, tree planting and bird nesting habitat);
 - Aims and objectives of management;
 - Preparation of a work schedule for implementation;
 - Details of the organisations responsible for implementation and management; and
 - A five year monitoring and maintenance plan.

The approved plan will be implemented in accordance with the approved details.

- 21) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of any buildings or the completion of the development, whichever is the earlier, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 22) No development shall be permitted above foundation level until full details of the colour, form and texture of all hard landscaping (ground surfacing materials) (notwithstanding any such detail shown on previously submitted plans and specification) shall have been submitted to and approved in writing by the Local Planning Authority. All works shall be undertaken in accordance with the details as approved, and shall be completed in all respects before the final completion of the development and thereafter retained.
- 23) No development shall be permitted above foundation level until details demonstrating that the development as a whole will achieve a minimum Dwelling Emission Rate of 19% above 2013 Building Regulations are submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be completed in accordance with the approved details.
- 24) Prior to the construction/provision of any services, a strategy to facilitate super-fast broadband for future occupants of the site shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall seek to ensure that upon occupation of a dwelling, either a landline or ducting to facilitate the provision of a super-fast broadband service to that

dwelling from a site-wide network, is in place and provided as part of the initial highway works within the site boundary only.

- 25) Prior to the first occupation of any dwelling, an updated Travel Plan, drawing upon the principles and provisions of the submitted planning application document entitled 'Interim Travel Plan' dated 24 April 2020 shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include a specific schedule of actions and the accompanying programme for completion and implementation.