



Appeal Decision

Site visit made on 24 May 2022

by Helen Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2022

Appeal Ref: APP/E2340/W/21/3288078

Land south of Brogden Lane, Barnoldswick, Lancashire, BB18 5XF

- 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 Applethwaite Ltd against the decision of Pendle Borough Council.
 - The application Ref 21/0111/FUL, dated 11 February 2021, was refused by notice dated 14 June 2021.
 - The development proposed is the erection of 19 no. age-restricted specialist bungalows for people over 55 with associated landscaping, car parking and access from Brogden Lane.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of 19 no. age restricted specialist bungalows for people over 55 with associated landscaping, car parking and access from Brogden Lane on Land south of Brogden Lane, Barnoldswick, Lancashire BB18 5XF in accordance with the terms of the application, Ref 21/0111/FUL, dated 11 February 2021, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Applethwaite Ltd against Pendle Borough Council. This application is the subject of separate Decision.

Preliminary Matters

3. The address of the appeal site I have stated above comes from the submitted application form. I note that the Council changed this address to land west of Brogden View. Whilst both are appropriate to locate the site, I have retained that stated in the original documentation in the banner heading above.
4. The appeal scheme was refused planning permission by the Council due to highway concerns, that the road network leading to the site was not adequate to safely facilitate the increase in traffic that would be generated by the development. As part of the appeal, the appellant submitted an amended plan showing mitigation measures to improve pedestrian facilities. The appellant consulted the highway authority on this plan as well as local residents before submitting the plan to the Council.
5. The appellant then became aware that a residential development adjacent to the appeal site had commenced. This proposal included the provision of a footway across the frontage of the site which would be available for use by the future occupants of the appeal scheme. The appellant therefore prepared a further revised plan as this element of the pedestrian improvement scheme

would not be required. The appellant has requested that the appeal scheme be considered on the basis of the amended highway mitigation plan.

6. In considering whether to accept this amended plan I have had regard to the 'Wheatcroft Principles'¹. That is to say, if I were to accept the revised drawing, would my doing so deprive those who should have been consulted over the changed development the opportunity of such consultation.
7. Annex M of the Procedural Guide: Planning appeals - England October 2021 in paragraph 2.1 explains that the appeal process should not be used to evolve a scheme. It goes on to say that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
8. I acknowledge that the appellant undertook consultation with local residents and the highway authority so that their views could be taken into account in the appeal process. The application was refused by Committee Members contrary to the advice of Officers. I note that a resubmitted planning application which included the revised pedestrian improvements was due to be considered at the Council's Committee on 1 March 2022, but the application was withdrawn. Accordingly, the Members have not had the opportunity to consider the revised scheme.
9. Given the above, I do not accept the amended mitigation scheme as part of this appeal. In the interests of fairness, I conclude that the appeal should be considered on the basis of the plans on which the Council made its decision.

Main Issue

10. The main issue in this case is the effect of the proposal on highway safety.

Reasons

11. The appeal site is located outside but adjacent to the settlement of Barnoldswick. It forms a sustainable location close to the services and facilities of the settlement and its development complies with Policy LIV1 of the Pendle Local Plan Part 2: Site Allocations and Development Policies.
12. It is proposed to erect 19 age restricted bungalows accessed from Brogden Lane. Brogden Lane is used by both residential and commercial traffic and by walkers, cyclists and horse riders who wish to access the wider countryside. The Transport Assessment submitted by the appellant demonstrates that the road is lightly trafficked with a baseline of around 19 vehicles in the AM peak and 28 vehicles in the PM peak. The development is estimated to generate 7 additional vehicles (two way) at peak times assuming a 50/50 split east / west along Brogden Lane ie. one additional vehicle every 8.5 minutes. In a worst-case scenario, should all vehicles be assigned east towards Gisburn Road, 13 (two way) vehicles would be generated ie one additional car every 4.6 minutes. This represents very low peak hour traffic flows. Given the above, I am satisfied that the development would not result in any significant increase in traffic on Brogden Lane.
13. The Council's main concern relates to the safety of pedestrians. Brogden Lane varies in width from the proposed site access to Gisburn Road to the east. The

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

footpaths along its length are limited and not continuous along one side of the carriageway. I noted on my site visit, the new footpath being put in as part of the adjacent development. This means that pedestrians walking from the appeal site to Gisburn Road would use this new footpath until it terminates and then have to cross the road to walk opposite Honeysuckle Cottage and Cherry Tree Cottage and then cross again to walk along the side of No. 243 Gisburn Road.

14. Notably the 32-metre section of road in front of the two cottages is where the carriageway is at its narrowest and where there is no footway. However, the submitted Transport Assessment demonstrates that this section of road with no footway could simultaneously accommodate a vehicle, cyclist and a pedestrian.
15. Whilst I accept that pedestrians would need to cross the road, there would be a continuous footway for their use. I take account of the low traffic flows and also that there is a visibility of around 112 metres between the proposed development and Brogden Road, so that approaching vehicles would have a clear view of pedestrians, cyclists or horse riders. I am also advised that there have been no recorded safety issues and no recorded accidents on this length of Brogden Road in the last 5 years. In light of the above, I consider that the scheme would be acceptable in terms of highway and pedestrian safety. I note that the highway authority considers the scheme would raise no adverse impact on highway safety, subject to appropriate planning conditions.
16. The proposal would therefore comply with paragraph 110 of the National Planning Policy Framework (the Framework) in that a safe and suitable access can be provided for all users and also paragraph 111 as the development would not have an unacceptable impact on highway safety and the residual cumulative impacts on the road network would not be severe. It would also comply with Policy ENV4 of the adopted Pendle Local Plan Part 1; Core Strategy 2011-2030 which seeks to promote sustainable travel and ensure new development has regard to the potential impacts on the highways network.

Other Matters

17. Several local residents have raised concern about flooding and drainage issues as the site is liable to surface water flooding and Brogden Lane regularly floods in the winter months. It is acknowledged that there are land drains and culverts on the site.
18. The appellant has submitted a Flood Risk Assessment and Drainage Strategy which demonstrates that a technical solution is possible to address flooding and surface water drainage matters. The Lead Local Flood Authority has raised no objection to the scheme subject to a number of conditions relating to flood storage and run off rates.
19. I am therefore satisfied that there is a technical solution available to ensure that the site is appropriately drained.

Planning Obligation

20. In the Statement of Case, the appellant indicated that a Unilateral Undertaking (UU) would be submitted to provide for two planning obligations, one relating to the provision of affordable housing and the second providing a contribution to health services. This was despite their view that these obligations were not

necessary. The appellant has since changed his position and is not proposing to provide a mechanism to meet these obligations.

21. Turning to the matter of affordable housing, Policy LIV4 of the Pendle Local Plan Part 1 Core Strategy sets out the targets and thresholds for development to contribute towards the provision of affordable housing. Schemes of 15 dwellings or more in the West Craven Towns are required to provide 5% affordable housing, which in the appeal case equates to one dwelling. In light of this limited level of provision and the associated management difficulties, an off-site contribution has been agreed with the Council amounting to £117,295.
22. As part of the consideration of the resubmitted duplicate planning application, Ref 21/0848/FUL, the appellant provided a viability assessment which showed that the scheme would not be viable if such a contribution was made. This Assessment is also provided as part of this appeal. I am advised that the Council Officers accepted this position in their report to the Planning Committee. I have no reason to disagree with this conclusion.
23. The contribution of £32,424 to health facilities requested by the NHS Trust is addressed in the Council's Committee report. The Committee were advised not to require such a contribution because it was considered not to meet the tests for planning obligations set out in the Framework or Regulation 122 of the Community Infrastructure Regulations 2010. This was because the evidence to show that the request was directly related to the development and fairly and reasonably related in scale and kind to the development was insufficient.
24. My attention has also been brought to a recent appeal decision² where a similar request for a contribution was made by the same NHS Trust. In that case the Inspector also considered that the obligation did not meet the CIL Regulation tests.
25. Given the above, I concur with these conclusions and find that contributions to affordable housing and health facilities are not justified.

Conditions

26. I have had regard to the conditions suggested by the Council in light of the Framework and Planning Practice Guidance. I have amended the wording of conditions where I consider it to be necessary. In addition to the standard timeframe condition, it is necessary to impose a condition requiring the development to be carried out in accordance with the submitted plans for the avoidance of doubt (conditions 1 and 2)
27. In the interests of protecting the character and appearance of the area, condition 3 is necessary to require the submission of the materials proposed to be used in the development. I impose condition 4, requiring the submission of ground levels to ensure that the development accommodates varying land levels.
28. To protect residential amenity and in the interests of highway safety, condition 5 is necessary to require the submission of a Construction Code of Practice. As the site has potential for contamination, condition 6 requires the submission of a scheme of investigation and if necessary, remediation to safeguard the health of future occupants and prevent contamination of watercourses.

² APP/Z2315/W/21/3286494

29. With regard to drainage matters and to ensure the site is suitably drained with a sustainable urban drainage scheme and appropriately managed thereafter, conditions 7, 8, 9, 10 and 11 are necessary.
30. In the interests of highway safety, I impose conditions 12-18 to ensure a satisfactory access to the site, off site highway improvements, visibility splays, highway maintenance, street lighting, drainage and parking. To promote sustainable travel, conditions 19 and 20 are necessary to require covered cycle storage facilities and electric vehicle charging points. Condition 21 is required to ensure that the proposed garages are kept available for the parking of a vehicle to ensure adequate parking.
31. To safeguard the visual amenity of the area and ensure the development integrates with its surroundings, conditions 22 and 23 are necessary to ensure appropriate window details are provided and that the scheme is suitably landscaped. I also impose conditions 24 and 25 to ensure that trees are protected during the construction and that there is no loss of biodiversity.
32. The Council also suggested a condition requiring the submission of a scheme of affordable housing. This is suggested in the absence of a section 106 agreement or a Unilateral Undertaking. I have found above that the development would not be viable with this requirement. I therefore do not impose this condition.

Conclusion

33. I have found that the proposed development would not cause harm to highway safety and complies with the relevant policies of the local plan. In the absence of material considerations which weigh against the proposal, there is no justification for the decision to be made other than in accordance with the development plan.
34. For the reasons given above and having had regard to all other matters raised, I allow this appeal.

Helen Hockenhull

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan - Drawing No. BARN-LOC-01, Materials Plan - Drawing No. 19-153-MP01, Boundary treatment plan - Drawing number 19-153-BT01 REV B, Site layout plan - Drawing No. 19/153/PL-0001 REV B, Site layout plan (colour) - Drawing No. 19/153/PL-0001C REV B, Plot type A elevations - Drawing No. A-ELE01, Plot type A floor plan - Drawing No. A-PLA01, Plot type B plans and elevations (brick) - Drawing No. B-PE01B, Plot type B plans and elevations (render) - Drawing No. B-PE01R, Plot type C plans and elevations (brick) - Drawing No. C-PE01B, Plot type C plans and elevations (render) - Drawing No. C-PE01R, Proposed garage - Drawing No. GA01, Proposed street scenes - Drawing No. 19-153 SS01 Revision C, Site section - Drawing No. 19-153 SSe01, Landscape strategy plan - Plan 4, Plots and POS planting plan - Drawing No. 106-PP-01, Mitigation Layout - Drawing No. J496 mitigation fig 1.
- 3) Prior to the commencement of development samples of the materials to be used in the construction of the development hereby permitted (notwithstanding any details shown on previously submitted plan(s) and specification) shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in strict accordance with the approved details.
- 4) No part of the development hereby permitted shall be commenced until details of the proposed ground levels have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include a number of sections across the site, which shall indicate existing and proposed ground levels, together with the floor levels of any proposed dwelling/buildings through which the sections run and shall extend beyond the site boundaries to include any surrounding, adjacent properties. The development shall thereafter be implemented in accordance with the approved details.
- 5) No part of the development shall be commenced unless and until a Construction Code-of-Practice (CCP) has been submitted to and approved in writing by the Local Planning Authority. The code shall include details of the measures envisaged during construction to manage and mitigate the main environmental effects of the relevant phase of the development. The submitted details shall include within its scope but not be limited to:
 - a) A programme of works including phasing, hours of operation and measures for the control of traffic to and from the site, and within the site, during construction.
 - b) The areas and methods of loading and unloading of plant and materials.
 - c) The areas for the storage of plant and materials
 - d) Details of wheel-washing facilities including location
 - e) Measures related to construction waste management
 - f) Soil resource management including stock-pile management

- g) Location and details of site compounds
- h) Hoarding details during construction
- i) Parking area(s) for construction traffic and personnel
- j) Routeing of construction vehicles

The Construction Code-of-Practice should be compiled in a coherent and integrated document and should be accessible to the site manager(s), all contractors and sub-contractors working on site. As a single point of reference for site environment management, the CCP should incorporate all agreed method statements, such as the Site Waste Management Plan and Demolition Method Statement. All works agreed as part of the plan shall be implemented during an agreed timescale and where appropriate maintained as such thereafter.

- 6) Prior to the commencement of development, the applicant shall have submitted to and have agreed in writing by the Local Planning Authority, a method statement which sets out in detail the method, standards and timing for the investigation and subsequent remediation of any contamination which may be present on site. The method statement shall detail how:-
 - a) an investigation and assessment to identify the types, nature and extent of land contamination affecting the application site together with the risks to receptors and potential for migration within and beyond the site will be carried out by an appropriately qualified geotechnical professional (in accordance with a methodology for investigations and assessments which shall comply with BS 10175:2001) will be carried out and the method of reporting this to the Local Planning Authority; and
 - b) A comprehensive remediation scheme which shall include an implementation timetable, details of future monitoring and a verification methodology (which shall include a sampling and analysis programme to confirm the adequacy of land decontamination) will be submitted to and approved in writing by the Local Planning Authority.

All agreed remediation measures shall thereafter be carried out in accordance with the approved implementation timetable under the supervision of a geotechnical professional and shall be completed in full accordance with the agreed measures and timings, unless otherwise agreed in writing by the Local Planning Authority. In addition, prior to commencing construction of any building, the developer shall first submit to and obtain written approval from the Local Planning Authority a report to confirm that all the agreed remediation measures have been carried out fully in accordance with the agreed details, providing results of the verification programme of post-remediation sampling and monitoring and including future monitoring proposals for the site.

- 7) The scheme shall provide for separate systems for foul and surface waters and be constructed and completed in accordance with the approved plans before the dwelling is occupied.
- 8) The development permitted by this planning permission shall be carried out in accordance with the principles set out within the submitted flood

risk assessment (reference: 31203/LRD issue 2, by: Sutcliffe, dated: Feb 2021) and indicative surface water drainage strategy (drawing: 31203-SUT-ZZ-XX-DR-C6020-0002 Rev P04, dated: 5 February 2021). The measures shall be fully implemented prior to first occupation of any dwelling and 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 in consultation with the Lead Local Flood Authority.

- 9) No development shall commence until a final, detailed surface water sustainable drainage scheme for the site has been submitted to, and approved in writing by, the Local Planning Authority. The detailed sustainable drainage scheme shall be based upon the site-specific flood risk assessment submitted and the sustainable drainage principles set out in the National Planning Policy Framework, Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems. No surface water shall be allowed to discharge to the public foul sewer(s), either directly or indirectly. The detailed sustainable drainage scheme shall include, as a minimum:
- a) Final sustainable drainage plans appropriately labelled to include:
 - i. A final surface water drainage layout plan showing all pipe and structure references, dimensions and design levels;
 - ii. A plan identifying the areas contributing to the surface water drainage network, including surface water flows from outside the curtilage as necessary;
 - iii. Details of all sustainable drainage components, including landscape drawings showing topography and slope gradient as appropriate;
 - iv. Flood water exceedance routes in accordance with Defra Technical Standards for Sustainable Drainage Systems;
 - v. Finished Floor Levels (FFL) in AOD with adjacent ground levels for all sides of each building;
 - vi. Details of proposals to collect and mitigate surface water runoff from the development boundary;
 - vii. Measures taken to manage the quality of the surface water runoff to prevent pollution, protect groundwater and surface waters, and deliver suitably clean water to sustainable drainage components.
 - b) A full set of sustainable drainage flow calculations for the surface water drainage network. The calculations must show the full network design criteria, pipeline schedules and simulation outputs for the 1 in 1 year, 1 in 30 year and 1 in 100-year return period, plus an additional 40% allowance for climate change and a 10% allowance for urban creep. Surface water run-off must not exceed a maximum rate of 10.6l/s

The scheme shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings.

- 10) No development shall commence until details of how surface water and pollution prevention will be managed during each construction phase have been submitted to and approved in writing by the local planning authority. Those details shall include, as a minimum:
- a) Measures taken to ensure surface water flows are retained on-site during construction phase(s) and, if surface water flows are to be discharged, they are done so at a restricted rate to be agreed with the Lancashire County Council LLFA;
 - b) Measures taken to prevent siltation and pollutants from the site into any receiving groundwater and/or surface waters, including watercourses, with reference to published guidance.

The development shall be constructed in accordance with the approved details.

- 11) No building hereby permitted shall be occupied until a Verification Report and Operation and Maintenance Plan for the lifetime of the development, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved in writing by the Local Planning Authority.

The Verification Report must demonstrate that the sustainable drainage system has been constructed as per the agreed scheme (or detail any minor variations), and contain information and evidence (including photographs) of details and locations (including national grid reference) of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an final 'operation and maintenance manual' for the sustainable drainage scheme as constructed.

Details of appropriate operational, maintenance and access requirements for each sustainable drainage component are to be provided, with reference to published guidance, through an appropriate Operation and Maintenance Plan for the lifetime of the development as constructed. This shall include arrangements for adoption by an appropriate public body or statutory undertaker, and/or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable.

Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

- 12) Prior to the commencement of development, a scheme for the construction traffic access shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved scheme.
- 13) Prior to the commencement of development, a scheme for the site access and off-site highway works shall be submitted to and approved in writing by the Local Planning Authority. The works shall include the following and be implemented prior to the first occupation of any dwelling.
- a) New footway on Brodgen Lane and new pedestrian build out on Gisburn Road to link to Greenberfield Road

- b) Scheme of street lighting on Brogden Lane between Gisburn Road and the site access.
 - c) Upgrade of bus stop on Greenberfield Road
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 there shall not at any time in connection with the development hereby permitted be erected or planted or allowed to remain upon the land hereinafter defined any building, wall, fence, hedge, tree, shrub or other device over 1m above road level. The visibility splay to be the subject of this condition shall be that land in front of a line drawn from a point 2.4 m measured along the centre line of the proposed road from the continuation of the nearer edge of the carriageway of Brogden Lane to points measured 52m along the nearer edge of the carriageway of Brogden Lane in both directions, from the centre line of the access, in accordance with a scheme to be agreed by the Local Planning Authority.
 - 15) Within 3 months of commencement details of the proposed arrangements for future management and maintenance of the proposed roads and footways within the development shall be submitted to and approved in writing by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as a private management and maintenance company has been established.
 - 16) Within 3 months of commencement of development full engineering, drainage, street lighting and constructional details to adoptable standards (LCC specification) of the internal estate roads 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.
 - 17) The internal estate roads shall be constructed in accordance with the approved engineering details and to at least base course level prior to first occupation of any dwelling.
 - 18) Prior to first occupation of any approved dwelling the parking area associated with that dwelling, as shown on the approved plans, shall be constructed, laid out and surfaced in bound porous materials. The parking area shall thereafter always remain available for the parking of domestic vehicles associated with the dwelling.
 - 19) Prior to the first occupation of any approved dwelling, at a ratio of 1 cycle per bedroom, secure covered cycle storage facilities shall be provided in accordance with a scheme to be approved in writing by the Local Planning Authority.
 - 20) Prior to the first occupation of any approved dwelling, an electric vehicle charging point shall be installed. Charge points must have a minimum power rating output of 7kW, be fitted with a universal socket that can charge all types of electric vehicle currently.
 - 21) The garages hereby permitted shall not at any time be used for any purpose which would preclude its use for the parking of a motor car.
 - 22) All windows and doors shall be set back from the external face of the walls by a minimum of 75mm.

- 23) The development hereby permitted shall not be commenced unless and until a detailed landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be submitted at a scale of 1:200 and shall include the following:
- a) the exact location and species of all existing trees and other planting to be retained
 - b) all proposals for new planting and turfing indicating the location, arrangement, species, sizes, specifications, numbers and planting densities
 - c) an outline specification for ground preparation
 - d) all proposed boundary treatments with supporting elevations and construction details
 - e) all proposed hard landscape elements and pavings, including layout, materials and colours;
 - f) the proposed arrangements and specifications for initial establishment maintenance and long-term maintenance of all planted and/or turfed areas

The approved scheme shall be implemented in its entirety approved form within the first planting season following the substantial completion of the development. Any tree or other planting that is lost, felled, removed, uprooted, dead, dying or diseased, or is substantially damaged within a period of five years thereafter shall be replaced with a specimen of similar species and size, during the first available planting season following the date of loss or damage.

- 24) No ground clearance, demolition, changes of level or development or development-related work shall commence until protective fencing, in full accordance with BS 5837 : 2012 has been erected around each tree/tree group or hedge to be preserved on the site or on immediately adjoining land, and no work shall be carried out on the site until the written approval of the Local Planning Authority has been issued confirming that the protective fencing is erected in accordance with this condition. Within the areas so fenced, the existing ground level shall be neither raised nor lowered. Roots with a diameter of more than 25 millimetres shall be left unsevered. There shall be no construction work, development or development-related activity of any description, including the deposit of spoil or the storage of materials within the fenced areas. The protective fencing shall thereafter be maintained during the period of construction.

All works involving excavation of soil, including foundations and the laying of services, within the recommended distance calculated under the BS 5837 (2012) of the trees to be retained on the site, shall be dug by hand and in accordance with a scheme of works which has been submitted to and approved in writing by the Local Planning Authority, prior to the commencement of works.

- 25) The development shall be carried out in full accordance with the mitigation plan set out in the 'Envirotech Preliminary Ecological Appraisal, Land off Brogden Lane, Barnoldswick, August 2020'. Details for the provision of bird and bat boxes and other mitigation and enhancement measures shall be submitted to and agreed in writing by the Local

Planning Authority prior to work commencing on site. The development shall be carried out in accordance with the agreed details.