



Appeal Decision

Site visit made on 7 June 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2022

Appeal Ref: APP/Z2315/W/21/3287521

Butchers Farm, Ormerod Street, Worsthorne, Lancs. BB10 3NU

- 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 Mr Geoff Eccles against the decision of Burnley Borough Council.
 - The application Ref FUL/2020/0321, dated 8 June 2020, was refused by notice dated 17 November 2021.
 - The development proposed is the demolition of farm buildings and redevelopment for residential to create a total of 38 No. dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for 28 no. dwellings following demolition of farm buildings at Butchers Farm, Worsthorne, Lancs. BB10 3NU, in accordance with the terms of application Ref FUL/2020/0321, dated 8 June 2020, subject to the conditions set out in a Schedule attached to this decision and a planning obligation securing units of affordable housing on the site and the improvement of public open space in the vicinity.

Applications for Costs

2. An application for costs was made by Mr Geoff Eccles against Burnley Borough Council. This application is the subject of a separate Decision.

Procedural and Preliminary Matters

3. The description appearing in the banner heading above is taken from the planning application form. During the course of the Council's consideration of the planning application the proposals were revised, and the description was subsequently amended to 'Proposed 28 no. dwellings following demolition of farm buildings'. I have considered the appeal on the basis of the amended proposals and used the revised description in my decision.
4. Since the submission of the appeal the national Building Regulations (the BRs) have been amended and came into force on 15 June 2022. The effect of the new regulations is to require a higher standard of building energy performance than specified in the previous BRs dating from 2013. I have consulted the main parties in this respect and had regard to their comments in coming to my decision.
5. The site lies partly within the Worsthorne Conservation Area (the CA) and includes the non-designated heritage asset (NDHA) of Butcher's Barn. It is also close to other NDHAs in the form of residential cottages and converted former farm buildings about the junction of Ormerod Street with Stoneycroft and Wallhurst Close. There is no dispute between the main parties that the demolition of existing modern farm buildings on the site, or the construction of

the proposed development, would not cause harm to the character and appearance of the CA. Furthermore, the parties agree that the scheme would not directly or indirectly affect the non-designated heritage assets.

6. Pursuant to the duty under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the requirements of the National Planning Policy Framework (the Framework) relating to heritage assets, having considered the proposals and visited the site, I concur with those views.
7. The group value of the non-designated buildings forming the largely enclosed southern extent of the CA would be unaffected. The presence of Butcher's Barn provides a degree of containment and a closing vista to this part of the CA. When viewed from the remainder of the CA to the north, the development would be largely screened by the presence of the barn.
8. The proposed access road would be formalised at its junction with Ormerod Street and require the removal of some existing conifer hedging. This would open-up outward views from this part of the CA. The alignment of the scheme's main spinal road and topography would result in some limited views to parts of the development. It would also provide a rural outlook to the rising land beyond the River Brun. Taking all relevant matters into consideration, I find that this and the removal of the existing modern farming infrastructure and buildings would equate to a neutral effect on the character and appearance of this part of the CA.
9. The effect of the proposed development about the traditional rural barn would cause a change in the building's setting. However, as this would better reveal its significance through providing improved public accessibility about the building and facilitate increased viewing opportunity and better appreciation of this NDHA, I find its significance would be preserved. The effect on the setting of the other NDHAs would be neutral given their context within the village envelope.
10. Accordingly, it is my view that the proposed development would preserve the character and appearance of the CA and NDHAs, and their settings, and I shall make no further reference to these matters.

Main Issue

11. The main issue is whether or not the proposal would achieve a high standard of energy efficiency with particular regard to measures to minimise water and energy consumption and the consideration of opportunities for on-site energy supply from renewable and low-carbon sources.

Reasons

12. Policy SP5 of Burnley's Local Plan [2018] (the BLP) seeks to apply the broad principles of the Framework's aims of achieving sustainable forms of development. This includes moving to low carbon futures to contribute to the mitigation of, and adaption to, climate change. Alongside strategic policies directing new housing to sustainable locations, Policy SP5 seeks high standards of design, construction and sustainability, including site-specific measures aimed at maximising energy efficiency. In this regard, reference is made to minimising energy and water consumption, and seeking opportunities for on-site energy supply from renewable and low carbon energy sources.

13. In planning for climate change, Paragraph 154 of the Framework requires that new development should be planned in ways that can help reduce greenhouse gas emissions, including by design. It states that any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards. The Planning Practice Guidance (PPG) expects local planning authorities, when setting any local requirement for a building's sustainability, to do so in a way consistent with the government's zero carbon buildings policy and adopt nationally described standards.
14. There is no specific standard contained within Policy SP5. An offer from the appellant to increase the standard of development to 20% above the 2013 BRs (from 10% at the time of the Council's decision) has subsequently been overtaken by the new BRs requirements.
15. Amongst other things, Part L of the 2022 BRs require increased levels of building insulation as a step towards the potential Future Building Standard to achieve net-zero carbon buildings. The new regulations require a reduction in carbon emissions in domestic new-builds by some 30% compared to the previous requirements. It leads on a fabric first basis in a manner similar to that advocated by the appellant. As a higher standard of energy efficiency, there is increased likelihood that on-site renewable or low carbon energy generation would be required. However, this is not explicit in the BR standards.
16. In the absence of specific detailing as to what consideration was given to the use of renewable or low-carbon energy generation technologies, there would be some conflict with the requirement at Part 1c) of Policy SP5 of the BLP.
17. Nevertheless, the Council accepts that the revised proposal would deliver a development performing greater than the maximum level of energy efficiency that the Council was entitled to seek had it specified a higher standard in the development plan. There is no dispute between the main parties that the new BR standards would be applicable to the proposed development. The Council has subsequently conceded that the reason for refusing the application would be overcome through compliance with the new Part L of the BRs 2022.
18. With the aim of moving towards the Future Homes Standard anticipated to be imposed in 2025, the appellant has subsequently offered to provide a development which would perform 10% better than the new BRs. However, in the absence of a specified standard in the development plan, such a requirement would fail the tests of necessity and reasonableness as set out in Paragraph 57 of the Framework. Whilst it would be open for the appellant to seek to achieve that standard, there is nothing before me to legitimately require it.
19. For the above reasons, although there would be a minor conflict with the Policy SP5 requirement to demonstrate that opportunities to contribute to local and community-led renewable and low carbon energy initiatives were sought, I find the proposed scheme would deliver buildings with an appropriate standard of energy efficiency. It would therefore align with the requirements of Policy SP5 of the BLP taken as a whole and as it seeks sustainable forms of development through high standards of energy efficiency.

Other Matters

20. Subject to retention of the proposed garages for the parking of vehicles, the scheme would provide parking at the standard required by the development plan and incorporate an access with suitable visibility. In displacing an existing active commercial use, the traffic generated by 28 new dwellings would be partially offset by the substantial removal of HGV and large farm vehicle traffic currently associated with the existing site use. I find the proposed vehicular and pedestrian arrangements would provide for safe access and egress to/from the public highway without severe impacts on the road network. This is a view shared by the Council's highway advisor.
21. Concerns have been raised by third parties in respect of the use of the site by bats and other wildlife. An ecological assessment confirms that the buildings to be removed have low potential to accommodate bat roosts but identify opportunities for nesting birds upon the site. Subject to conditional restrictions and securing compensatory/additional provisions, I am satisfied that existing biodiversity interests on the site could be protected and enhanced. In the absence of substantive evidence to support claims in relation to other forms of wildlife, I am unable to attribute significant weight to those arguments.
22. I acknowledge local concerns in relation to the limitations of local infrastructure and services. In this regard, the requirements of the BLP relating to the provision or enhancement of public open space would be secured through a planning obligation with its basis in Policy HS4 and IC4 of the BLP. The education authority has not sought a contribution for the expansion of its resources. This is on account of availability of school places within the relevant catchments.
23. According to the Council, a request from the health authority based on projected occupier numbers would not accurately reflect any increased burden on the local health service provider/s. In the absence of objectively assessed need and the subsequent reliance on general assumptions, the Council is concerned that such a requirement would be subject to challenge and would fail to meet the legal requirements set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and Paragraph 57 of the Framework. There is little before me to contest that finding and, on the basis of evidence provided, such a requirement would fail the test of necessity to make the proposal acceptable in planning terms. It would not, therefore, be a legitimate requirement.
24. As an allocated site, the proposal would deliver housing in a sustainable location which meets a need identified by the Council. It would include the significant benefit of affordable housing units and provide accommodation suitable for use by the elderly or others with specific accessibility needs. It would support existing services in the village.
25. The proposal would be constructed at a deliverable density accounting for the site constraints and with regard to the character and appearance of surrounding development. The site peripheries adjoining undeveloped land could be landscaped to retain a suitable interface with the open countryside beyond.
26. Any effects from the construction period would be short-term and could be mitigated by careful construction management, which could be conditioned.

27. As a building lying outside of the development site, the condition of Butcher's Barn is not a matter for the appeal. It would not be reasonable to impose requirements for its alteration or improvement within the terms of the proposed scheme.

Conditions and planning obligations

28. I have considered the suggested conditions from the Council and had regard to Paragraph 56 of the Framework and the PPG in terms of the use of planning conditions. In addition to the standard condition limiting the lifespan of the planning permission, I have imposed a condition specifying the relevant drawings as this provides certainty.
29. In the interests of protecting the character and appearance of the locality and designated and non-designated heritage assets, conditions controlling the external materials for use in construction of the buildings, landscaping, waste storage and boundary treatments are necessary and reasonable. A requirement to provide 6 adaptable lifetime homes is necessary to meet the requirements of the BLP.
30. In addition to restrictions on delivery times, conditions requiring a suitable standard and timing for implementation of the road/junction infrastructure, parking areas and restriction on the use of the proposed garages are necessary in the interests of preserving highway safety on and about the site.
31. Conditions to prevent the pollution or degradation of the ecological value of the adjacent tributary of the River Brun or existing biodiversity interests on the site are necessary. This includes requirements in relation to development timing and incorporation of mitigation measures for identified losses.
32. To protect the living conditions of nearby residents and highway safety interests, requirements for the construction phase of the development to be carried out under the terms of a construction management plan (CMP) and only during sociable hours are reasonable and necessary. To ensure a safe form of development, a requirement for further site investigation and remediation of ground contaminants is justified.
33. To prevent flooding and water pollution incidents, conditions requiring the detailed design, implementation, management and maintenance of separate foul and surface water drainage systems to serve the development during all phases are imposed. A requirement for the adoption of appropriate working practices is necessary to protect existing drainage infrastructure on the site.
34. In the interests of encouraging sustainable forms of travel and energy conservation, a condition requiring electric vehicle charging points is reasonable and necessary.
35. A condition duplicating a requirement for wheel cleaning and road sweeping during the construction phase of the development is unnecessary as this can be secured through the CMP. The removal of permitted development rights for extensions or alterations, other than in relation to the proposed garages, is not justified in the particular circumstances of the case.
36. A condition to require buildings to meet the new Part L standard of the Building Regulations 2022 would duplicate another legislative regime and would not therefore pass the test of necessity.

37. A planning obligation under s106 of the Town and Country Planning Act 1990 between the appellant and the Council will secure the development plan requirements in relation to affordable housing and a financial contribution to the improvement of the existing open space at Worsthorne Recreation Ground. This would meet the requirements set out in Regulation 122 of the CIL Regulations 2010 and the Framework.

Conclusion

38. For the reasons given, I conclude that the appeal should be allowed.

R Hitchcock

INSPECTOR

Schedule of Conditions to planning permission Ref FUL/2020/0321

- 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 – 19/68/30C
 - Buildings to be Demolished – 19/68/40A
 - Mayfair House Type Plans – 19/68/40
 - Mayfair House Type Elevations – 19/68/41
 - Regent 2 House Type Plans and Elevations – 19/68/42
 - Regent House Type Plans and Elevations - 19/68/43
 - Berkley House Type Plans - 19/68/44
 - Berkley House Type Elevations – 19/68/45
 - Blenheim House Type Plans - 19/68/46
 - Blenheim House Type Elevations - 19/68/47
 - Grosvenor House Type Plans – 19/68/48
 - Grosvenor House Type Elevations – 19/68/49
 - External Works Examples – 19/68/51
 - Proposed Site Layout 19/68/51H
 - Plot 8 House Type Floor Plans – 19/68/55
 - Plot 8 House Type Elevations – 19/68/56
 - Proposed Single Garages attached to Regent Type House Plots 15 and 16 as Examples – 19/68/57
 - Proposed Single Garages Typical Layout – 19/68/58
 - Proposed Site Layout Indicative Tree Planting – 19/68/59B
 - Proposed Site Layout Bin Store Positions – 19/68/62A
 - Street Scenes Sheet 1 – 19/68/60A
 - Street Scenes Sheet 2 – 19/68/61
- 3) Prior to the commencement of development, details and representative samples of the external materials (natural stone and natural slate) of construction to be used on the walls and roofs of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter only be carried out in accordance with the approved details.
- 4) No development, site clearance, earth moving or demolition shall be commenced or material or machinery brought on site until a method statement to provide measures to protect the minor watercourse adjacent to the site from accidental spillages, dust and debris from site clearance/development, has been submitted to and approved in writing

by the Local Planning Authority. All measures contained within the approved method statement shall be implemented and maintained for the duration of the construction period in accordance with the approved details.

- 5) No development shall be commenced until an assessment and mitigation measures, including a timetable for their implementation, have been submitted to and approved in writing by the Local Planning Authority to demonstrate that the development, by virtue of any disposal of foul water and/or surface water post development, will not lead to negative impacts on the ecological status/potential of the minor watercourse adjacent to the site. The approved measures shall thereafter be implemented in full in accordance with the approved timetable.
- 6) No development shall be commenced (including any earthworks) until details of the means of ensuring the United Utilities assets that are laid within the site boundary are protected from damage as a result of the development have been submitted to and approved in writing by the Local Planning Authority. The details shall include a survey that identifies the exact location of all sewers and water mains, the potential impacts on the sewers and water mains from construction activities (including the construction compound), the impacts post completion of the development on all sewer and water main infrastructure within the site and identify mitigation measures, including a timetable for their implementation, to protect and prevent any damage to both sewers and water mains both during construction and post completion of the development. Any mitigation measures shall be implemented in full prior to the commencement of development in accordance with the approved details and timetable and shall be retained thereafter for the lifetime of the development. In the event that the survey of the sewers and water mains identifies the buildings/plots as within an agreed standoff either side of each asset, the developer shall submit evidence to the Local Planning Authority that a diversion has been agreed with the relevant statutory undertaker and that the approved works have been undertaken prior to the commencement of development.
- 7) Prior to the commencement of development, a scheme of biodiversity enhancement measures to provide nest bricks for swifts and house sparrows within the development shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full and completed prior to either the completion of the development or the first occupation of any approved dwelling, whichever is the sooner.
- 8) Prior to the commencement of development, a scheme of landscaping, to include details of all retained trees and new tree and shrub planting, to include native species on and near to site boundaries and within the development site (noting species, plant sizes/heights on planting and proposed numbers/ densities where appropriate), shall be submitted to and approved in writing by the Local Planning Authority.
- 9) All planting, seeding or turfing comprised in the approved details of landscaping (as approved by Condition 8) shall be carried out in the first planting and seeding seasons following the first occupation of the approved development or the completion of the development, whichever

is the sooner. The landscaping scheme shall thereafter be maintained and retained and any plants which within a period of five 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, unless the Local Planning Authority gives written approval to any variation. In addition, all trees that form part of the approved landscaping scheme shall be retained in perpetuity and if any trees are at any time removed, die or become seriously damaged or diseased then they shall be replaced in the next planting season with species and specifications (including height on planting and precise positioning) to be agreed in writing by the Local Planning Authority.

- 10) The boundary treatment indicated on the approved plans (drawing number 19/68/51H shall be carried out and completed prior to the completion of the development or the occupation of the first dwelling (whichever is the sooner), in accordance with details and specifications of the materials and design which shall be first submitted to and approved in writing by the Local Planning Authority. The approved boundary treatment shall thereafter be retained at all times.
- 11) No demolition, site works or removals of trees or shrubs on the site shall take place during the bird nesting season between the 1st March and 31st August inclusive in any year unless a qualified ecologist has inspected the area no more than 24 hours prior to the works/removal and provides written confirmation to the Local Planning Authority that no nests or breeding birds will be affected by the development.
- 12) Prior to the commencement of development, a scheme for the detailed design of the proposed site access and off-site works of highway improvement to include the following shall be submitted to and approved in writing by the Local Planning Authority:-
 - the lowered kerb along the highway frontage of the barn to be reinstated;
 - the footway across plot 28 to be provided for the full curtilage; and,
 - improvements to bus stop (reference 2500496) in Church Square to provide tactile paving, raised kerbs and road markings.The approved scheme shall thereafter be implemented in its entirety and completed prior to any dwelling being first occupied.
- 13) The approved access junction and estate road shall be constructed in accordance with the Lancashire County Council Specification for Construction of Estate Roads to at least base course level before any development takes place within the site.
- 14) No development shall be commenced until the engineering, drainage, street lighting and constructional details of the proposed estate roads and details of the maintenance and management of all streets, access roads and drives have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed, maintained and managed at all times in accordance with the approved details.

- 15) No dwelling shall be first occupied unless and until all its associated car parking has been constructed, drained, surfaced (in black bitumen macadem or other approved bound material) and is available for use in accordance with the approved plans. The car parking spaces associated with each dwelling shall thereafter be retained for the purposes of car parking at all times.
- 16) The applicant or developer shall only permit delivery vehicles to arrive at or enter or exit the site between the hours of 0930 hours and 1430 hours Monday to Friday inclusive.
- 17) No development shall take place, including any works of demolition or site clearance, until a Construction Management Plan (CMP) or Construction Method Statement (CMS) has been submitted to, and approved in writing by the local planning authority. The plan / statement shall provide:
 - 24 Hour emergency contact number
 - Details of the parking of vehicles of site operatives and visitors
 - Details of loading and unloading of plant and materials
 - Arrangements for turning of vehicles within the site
 - Swept path analysis showing access for the largest vehicles regularly accessing the site and measures to ensure adequate space is available and maintained, including any necessary temporary traffic management measures
 - Measures to protect vulnerable road users (pedestrians and cyclists)
 - The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - Wheel washing facilities
 - Measures to deal with dirt, debris, mud or loose material deposited on the highway as a result of construction
 - Measures to control the emission of dust and dirt during construction
 - Details of a scheme for recycling/disposing of waste resulting from demolition and construction works
 - Construction vehicle routing
 - Delivery and construction working hours

The approved Construction Management Plan or Construction Method Statement shall be adhered to throughout the construction period for the development.
- 18) Unless otherwise approved in writing by the Local Planning Authority, all works and ancillary operations in connection with the construction of the development, including the use of any equipment or deliveries to the site, shall be carried out only between 0800 hours and 1800 hours on Mondays to Fridays and between 0800 hours and 1300 hours on Saturdays and at no time on Sundays, Bank Holidays or Public Holidays. Where permission is sought for works to be carried out outside the hours stated, requests in writing must be made with at least seven days notice to the Local Planning Authority.

- 19) Prior to the commencement of built development, details of the design and implementation of a surface water sustainable drainage scheme, based on sustainable drainage principles and the site-specific flood risk assessment and outline drainage strategy (FRA 20 1210 -October 2020), shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall thereafter be implemented and completed in accordance with the approved details prior to any dwelling of the development being first occupied. The approved drainage scheme shall be retained at all times thereafter.
- 20) The approved development shall not be first occupied until a Verification Report and Operation and Maintenance Plan for the approved surface water drainage system for the lifetime of the development has been submitted to and approved in writing by the Local Planning Authority. The development shall be completed, retained, maintained and managed at all times in accordance with the approved plan.
- 21) Prior to the commencement of any development, details of how surface water and pollution prevention will be managed during the construction process shall be submitted to and approved in writing by the Local Planning Authority. The agreed measures shall be implemented at all times during the construction of the development until its completion.
- 22) Foul and surface water shall be drained on separate systems and a scheme for the disposal of foul water shall be submitted to and agreed in writing by the Local Planning Authority prior to the commencement of built development above ground level. The approved scheme shall be implemented in full and completed prior to any dwelling being first occupied. The foul water drainage scheme shall thereafter be retained at all times in the future.
- 23) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order with or without modification), the garages hereby approved (including integral/attached/detached garages) shall remain available at all times for the parking of a motor vehicle and shall not be altered to provide habitable space.
- 24) No development shall be commenced until a scheme to deal with contamination has been submitted to and approved in writing by the Local Planning Authority. The scheme shall conform to current guidance and best practice as set out in BS10175:2011 Investigation of potentially contaminated sites - code of practice; CLR 11 - Model procedures for the management of land contaminations or other supplementary guidance and include the following phases, unless identified as unnecessary by the preceding stage and agreed in writing by the Local Planning Authority:
 - a) A site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study; and
 - b) A remedial strategy detailing the measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such scheme shall include nomination of a suitably qualified person to oversee the implementation of the works.

No dwelling shall be first occupied until a Verification report (produced by the suitably qualified person) to evidence that all remediation works, as applicable, have been carried out in accordance with the approved remedial strategy, has been submitted to and approved in writing by the Local Planning Authority.

- 25) Electric vehicle charging points which shall be in accordance with the relevant Department for Transport guidance (minimum power rating output of 7kW and fitted with a universal socket) shall be installed externally at each plot prior to its first occupation.
- 26) Prior to the first occupation of any dwelling, refuse bins and recyclable waste containers for each respective dwelling shall be provided within a concealed area of the curtilage in accordance with details on the approved Site Layout. The refuse and recyclable waste storage provision for each dwelling shall thereafter be retained at all times.
- 27) Plots 15, 16, 17, 21, 22 and 25 shall be constructed to comply with the optional technical standards of Part M4(2) of the Building Regulations 2010 to provide adaptable homes and none of these dwellings shall be first occupied until a verification report prepared by a suitably competent surveyor or professional to demonstrate that the standard has been achieved for each dwelling, has been submitted to and approved in writing by the Local Planning Authority.

END.