



Appeal Decision

Site visit made on 27 February 2025

by **T Burnham BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6th May 2025

Appeal Ref: APP/B2355/W/24/3356090

Land off Fieldfare Way, Bacup OL13 9PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by McDermott Homes against the decision of Rossendale Borough Council.
 - The application Ref is 2022/0543.
 - The development proposed is erection of 71 no. dwellings with associated works including car parking, landscaping, open space and pumping station.
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Decision

1. The appeal is allowed and planning permission is granted for Erection of 71 no. dwellings with associated works including car parking, landscaping, open space and pumping station at Land off Fieldfare Way, Bacup OL13 9PP in accordance with the terms of the application, Ref 2022/0543 subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by McDermott Homes against Rossendale Borough Council. This application is the subject of a separate decision.

Main Issues

3. The first main issue is whether the proposal would have an unacceptable adverse impact on highway safety with particular regard to the access onto Fieldfare Way and any additional vehicle movements from the proposal within the wider highway network. The second main issue is whether any harm to biodiversity on the site arising from loss of habitat would be adequately offset. The third main issue is whether it has been adequately demonstrated that the provision of 30% of the development as affordable housing would render the proposal unviable.

Reasons

4. The appeal site relates to a largely undeveloped parcel of land which sits to the rear of existing residential properties on Pennine Road and Goldcrest Avenue and adjacent to St Marys RC Primary School. The site is covered in a large area of Grassland with some trees. There appeared to be an informal bike track towards the centre of the site and a concrete slab structure set into the ground. The site is located a limited distance from the centre of Bacup.
5. The main access point to the site would be onto Fieldfare Way and would utilise what is currently an area laid to grass on the corner of Fieldfare Way and Goldcrest Avenue.

6. The Rossendale Local Plan (2021) (RLP) identifies the site as a housing allocation.

Highway safety

7. Policy H26 of the RLP specifically requires that vehicular access be taken from Fieldfare Way. The evidence indicates that adequate visibility would be available at the proposed junction with Fieldfare Way, whilst refuse vehicles would be able to safely access, move through and leave the site in forward gear.
8. In terms of the effect of the proposal on the wider road network and updated transport note has been provided¹. Updated traffic counts have been taken at the Douglas Road/Fieldfare Way junction and the A671/Pennine Road junction. The data shows limited increases at those junctions when comparing the 2019 and 2024 traffic counts however those differences appear to be minor within the context of the total AM and PM flows and it is suggested that these variations are below the typical day variations of traffic that occur on the highway network.
9. The note identifies that subsequent modelling indicates that the Fieldfare Way/Proposed Site Access Priority Controlled Junction and Douglas Road/Fieldfare Way Priority Controlled Junction are forecast to operate into the future well within their theoretical capacities.
10. I therefore conclude on this matter that there would be no unacceptable adverse impact on highway safety with particular regard to the access onto Fieldfare Way or with regard to any additional vehicle movements from the proposal within the wider highway network.
11. There would therefore be no conflict with Section 9 of the Framework², which most relevantly at Paragraph 116 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.

Biodiversity

12. The site contains a shelter belt of young trees and shrubs and includes areas of marshy grassland, acid grassland and amenity grassland amongst other features. The proposal would see a large proportion of the site developed, which whilst there would be an overall net gain in hedgerow units of around 10% the proposal would result in an on site net loss of habitat units of approximately 37%.
13. However, the evidence indicates that enhancements can be undertaken off-site on areas of short mown amenity grassland within the appellant's ownership which are located on land off Douglas Road and Fieldfare Way. Overall, that improvement which is secured would see a 9.56% improvement in habitat units and 9.65% improvement in hedgerow units.
14. Ecological enhancement measures are also proposed as part of the development including the incorporation of opportunities for bat roosting within the dwellings, opportunities for bird nesting within the properties and the open space and the preparation and implementation of a landscape and ecological management plan.

¹ PROPOSED RESIDENTIAL DEVELOPMENT, FIELDFARE WAY, BACUP – TECHNICAL NOTE 02 – OCTOBER 2024 (PLANNING REF: 2022/0543) by Eddisons.

² National Planning Policy Framework 2024.

15. Therefore, any harm arising to biodiversity interests on the site resulting from loss of habitat would be adequately offset by the improvement of areas within close proximity to the site and through provision and enhancement features within the development site itself.
16. Subsequently, there would be no conflict with Policy ENV4 of the RLP which amongst other things requires that all development proposals should seek to protect and enhance biodiversity and will be requested to quantify any net gains.

Affordable housing provision and viability

17. Affordable housing is in significant demand within the Bacup area. The proposal would provide 18% of the development as affordable housing, a figure which appears to have increased from the previously offered 15% following confirmation from the County Council that no primary or secondary contributions are required as there are projected to be sufficient school places to accommodate the demand which would arise from this proposal.
18. That in itself points towards the broader and ongoing discussion with regard to the viability of the scheme as a whole, with flexibility being applied where circumstances appeared to have changed. It is clear that the affordable housing provision has been the subject of extensive, detailed and technical negotiation between the main parties for a period of time whilst the Council was considering the application.
19. Despite some apparent disagreement relating to sales values, finance costs and BLV, in correspondence from February 2024, the Council appear to accept, in writing that the then 15% affordable housing provision and proposed mix would be acceptable, describing that arrangement as a 'fair compromise' by both parties. No evidence is presented within the Council statement to counter the position that they appear to have previously arrived at.
20. I am therefore satisfied that it has adequately been demonstrated that the provision of 30% of the development as affordable housing would be likely to render the proposal unviable. Policy HS3 of the LP which whilst requiring 30% on site affordable housing from market housing scheme states that this is subject to site and development considerations, such as financial viability. This suggests that there is some flexibility in that figure, which should be considered on a case by case basis. There would therefore be no conflict with Policy HS3 of the RLP.

Other Matters

21. A completed planning obligation under S106 has been submitted which includes financial contributions towards public open space, a highways contribution for the improvement of sustainable transport links along Tong Lane and a monitoring fee.
22. The obligation would see 18% of dwellings at the site provided as affordable housing, provide for management and maintenance of communal areas, off site biodiversity net gain and a travel plan contribution. It has been confirmed that the education contribution mentioned within the Council statement is no longer required and is not included within the planning obligation.
23. There is a suggestion that the S106 should include an overage clause which would allow the Council to obtain further contributions if viability conditions improve in future through the course of the development. The overage clause is detailed

within the SPD³. However, it is included within a section which relates to circumstances when on site provision cannot be provided. Further, the SPD suggests that the matter of whether such a clause is included should be considered on a case by case basis.

24. There is nothing in the evidence which leads me to believe the proposal would be phased over any substantial period of time. No evidence is therefore before me, to justify the inclusion an overage clause and the parts of the planning obligation under S106 relating to that matter do not meet the relevant tests and should not be taken forward.
25. The evidence indicates that the remainder of the provisions within the planning obligation under S106 are necessary to make the development acceptable in planning terms. They are directly related to the development and fairly and reasonably related in scale and kind to the development. They therefore meet the relevant tests.
26. Whilst in periods of winter weather the location and elevation of the appeal site will inevitably make road travel more challenging, those challenges would be similar to those faced by many other residents within other upland parts of the country.
27. It does appear that the site is used informally for recreation and there would be some loss to the community upon the development of the land. However, a financial contribution would be made to improving public open space within the borough. Further, some open space would also be retained on the site whilst the proposed layout allows for informal access to woodland around the edges of the site. These factors off set the impact of the loss.
28. There is nothing to indicate that water could not be managed both on the site and in relation to its impact on neighbouring sites and there is therefore nothing to indicate any significant risk of flooding at this or other sites and conditions are included with regard to this matter.
29. There would be no significant adverse impacts in terms of biodiversity. There does not appear to be an issue with school capacity within the area and there is nothing to indicate that local services and utilities would be unable to provide for the proposal and its future occupants. I have considered the separation distances between the proposed properties and those existing within the area and consider that they would not result in any significant adverse impact on the living conditions of existing occupiers. I therefore afford these matters limited weight.

Conditions

30. Conditions 1, 2 and 6 are required to define the development. Conditions 3, 4, 15, 16, 30 and 32 are necessary to ensure proper drainage of the site and to minimise flood risk. Conditions 5 and 27 are necessary in the interests of the living conditions of nearby occupiers. Conditions 11 and 21 are necessary in the interests of living conditions of future occupiers. Conditions 7, 8, 9, 10, 17, 18, 19, 20 and 24 are necessary in the interests of highway safety.
31. Conditions 12, 22, 23, 25 and 26 are necessary in the interests of biodiversity. Conditions 13, 14, 28, 29 and 31 are necessary in the interests of the character and appearance of the area. Condition 33 is necessary to encourage the use of

³ Rossendale Borough Council Affordable Housing SPD – November 2024.

more sustainable modes of transport. A condition requiring EV charging points is not required as this is instead covered by building regulations.

Planning Balance and Conclusion

32. The site is included within the RLP as a site for the development of up to 71 dwellings. The benefits of the scheme outweigh any adverse impacts. The proposal accords with the development plan and there are no material considerations including the Framework, which indicate that a decision should be made otherwise than in accordance with it. The appeal should therefore be allowed.

T Burnham

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

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

- Application Form
- Location Plan (WA-LP-01)
- Site Layout (WA-SL.01 REV J)
- The Ashdown (Ash 1.7)
- The Oakhurst (Oak 1.7)
- The Moulton Detached (Stone) Part M4(2) Compliant (Mou M4(2) 1.7)
- The Maidstone (Mai 1.7)
- The Welland (Wel 1.7)
- The Grasmoor Stone (Gra 1.7)
- The Applebury (App 1.7)
- Landscape Proposals Sheet 1 (5944.01 REV C)
- Landscape Proposals Sheet 2 (5944.02 REV C)
- Landscape Proposals Sheet 3 (5944.03 REV B)
- Boundary Treatments (WA-BT-01D)
- Drainage Strategy Drawing 1 of 2 (19037/01/1)
- Drainage Strategy Drawing 2 of 2 (19037/01/2)
- 1.8m Featheredged Boarded Fence F1 (SD-F1 A)
- 1.8m Stone Screen Wall with Featheredged Panels (SW2) (SD-SW2 D)
- Refuse / Fire Vehicle Tracking Plan (VT-01A)
- External Works Sheet 1 (WA-EW-01E)
- External Works Sheet 2 (WA-EW-02D)
- Construction Management and Phasing Plan (CMP-01 B)
- Management Plan (MP-01 C)
- Street Scenes and Sections (SS01 B)
- Materials Layout (WA-ML-01B)
- Preliminary Assessment of Biodiversity Net Gain (May 2023) (ERAP Ref: 2022-326)

- Sustainable Drainage Statement (5th April 2023) (HYD827-FIELDFARE.WAY_SUDS.STATEMENT-KW-MW-02)
- Landscape Management Plan (JW/5944/LMP rev A)
- Adoption Statement (McDermott Homes)
- Energy Reduction Statement (FES Group)
- Transport Statement (J1061/TS)
- Bat and Bird Box Strategy (2022-326)
- Arboricultural Impact Assessment with Arboricultural Method Statement (AIA.13601.01)
- Management Proposal (TRINITY (ESTATES) 16/12/2022)
- Updated Ecological Survey and Assessment (ERAP Ref: 2022-326)
- Flood Risk Assessment and Drainage Management Strategy (HYD407_WOODLAND.GRANGE.PHASE.2_FRA&DMS)
- Surface Water Drainage Design Statement (19037 - REV. A)
- Longitudinal Section 1 of 5 (19037/02/3 REV. B)
- Longitudinal Section 2 of 5 (19037/02/4 REV. C)
- Longitudinal Section 3 of 5 (19037/02/5 REV. D)
- Longitudinal Section 4 of 5 (19037/02/6 REV. B)
- Longitudinal Section 5 of 5 (19037/02/7 REV. A)
- Drawing 8 Surface Water Hydrobrake 1 (19037/06-8 REV. B)
- Drawing 9 Surface Water Hydrobrake 2 (19037/06-9 REV. B)
- Typical Details (19037/02/8)
- SW Area Plan Network 1 (South) (19037/03/1 REV. C)
- SW Area Plan Network 2 (North) (19037/03/2 REV. C)
- Road and Main Drainage Layout 1 of 2 (19037/02/1 REV. H)
- Road and Main Drainage Layout 2 of 2 (19037/02/2 REV. I)

3. No development shall commence in any phase until a detailed, final surface water sustainable drainage strategy for the site has been submitted to, and approved in writing by, the Local Planning Authority. The detailed surface water sustainable drainage strategy shall be based upon the site-specific flood risk assessment and indicative surface water sustainable drainage strategy submitted (Flood Risk Assessment and Drainage Management Strategy, Ref: HYD407_WOODLAND.GRANGE.2_FRA&DMS, Rev 1.0, 13th May 2019, Betts Hydro, as amended by the Sustainable Drainage Statement, Ref: HYD827-FIELDFARE.WAY_SUDS.STATEMENT-KW-MW-02, 5th April 2023, Betts Hydro) and sustainable drainage principles and requirements 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), directly or indirectly. The details of the drainage strategy to be submitted for approval shall include, as a minimum;

a) Sustainable drainage calculations for peak flow control and volume control for the:

- i. 100% (1 in 1-year) annual exceedance probability event;
- ii. 3.3% (1 in 30-year) annual exceedance probability event + 40% climate change allowance, with an allowance for urban creep;
- iii. 1% (1 in 100-year) annual exceedance probability event + 45% climate change allowance, with an allowance for urban creep;

b) Final sustainable drainage plans appropriately labelled to include, as a minimum:

- i. Site plan showing all permeable and impermeable areas that contribute to the drainage network either directly or indirectly, including surface water flows from outside the curtilage as necessary;
- ii. Sustainable drainage system layout showing all pipe and structure references, dimensions and design levels;
- iii. Details of all sustainable drainage components, including landscape drawings showing topography and slope gradient as appropriate;
- iv. Drainage plan showing 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 and connecting cover levels to confirm minimum 150 mm+ difference for FFL;
- 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 delivers suitably clean water to sustainable drainage components;

c) Evidence of an assessment of the existing on-site surface water drainage systems watercourses to be used, to confirm that these systems are in sufficient condition and have sufficient capacity to accept surface water runoff generated from the development;

d) Evidence that a free-flowing outfall can be achieved. If this is not possible, evidence of a surcharged outfall applied to the sustainable drainage calculations will be required.

The sustainable drainage strategy shall be implemented in accordance with the approved details.

4. No development shall commence until a Construction Surface Water Management Plan, detailing how surface water and stormwater will be managed on the site during construction, including demolition and site clearance operations, has been submitted to and approved in writing by the Local Planning Authority.

The details of the plan to be submitted for approval shall include method statements, scaled and dimensioned plans and drawings detailing surface water management proposals to include for each phase, as a minimum:

a) Measures taken to ensure surface water flows are retained on-site during the construction phase(s), including temporary drainage systems, and, if surface water flows are to be discharged, they are done so at a restricted rate that must not exceed the equivalent greenfield runoff rate from the site.

b) Measures taken to prevent siltation and pollutants from the site entering any receiving groundwater and/or surface waters, including watercourses, with reference to published guidance.

The plan shall be implemented and thereafter managed and maintained in accordance with the approved plan for the duration of construction.

5. 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 approved 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 hours.

The approved Construction Management Plan or Construction Method Statement shall be adhered to throughout the construction period for the development.

6. No development shall take place 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 completion sequence that estate streets serving each phase of the development will be completed. The development shall then be carried out in accordance with the approved estate street phasing and completion plan.

7. 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.

8. The new estate road / access between the site and Fieldfare Way shall be constructed in accordance with Lancashire County Council's Specification for Construction of Estate Roads to at least base course level before any development takes place within the site.

9. 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.

10. No part of the development hereby approved shall commence until a scheme for the construction of the site access and the off-site works of highway mitigation has been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include and not be limited to:

- Removal of the speed hump located adjacent to the site access on Fieldfare Way.
- Bus stop titled "BACUP, Sandfield Road Top" (opp) with the Stop ID reference 2500DCL701 and Bus stop titled "BACUP, Sandfield Road (by) with the STOP ID reference 25001336, upgraded to the LCC quality bus stop specification.
- Footpath improvements to Public Footpath FP141445. The works should include removing the disused pedestrian gates along the track; maintaining the vegetation at the side of the track; providing a dropped kerb and removing the bollards adjacent to number 168 Pennine Road; and making surfacing improvements to the track.
- A pedestrian enhancement scheme from Public Footpath 14-1-FP660, when it meets Tong Lane, to St Mary's RC Primary School.

The approved details shall be completed prior to first occupation of the site.

11. Notwithstanding any information submitted with the application, no development shall take place (except for demolition and enabling works agreed in writing with the Local Planning Authority) until an investigation and risk assessment has been submitted to and approved in writing by the Local Planning Authority. The submitted report shall include:

- i) A Preliminary Risk Assessment report (phase 1), including a conceptual model and a site walk over survey;
- ii) Where potential risks are identified by the Preliminary Risk Assessment, a Phase 2 Site Investigation report shall also be submitted to and approved in writing by the Local Planning Authority prior to commencement of development. The investigation shall address the nature, degree and distribution of land contamination on site and shall include an identification and assessment of the risk to receptors focusing primarily on risks to human health, groundwater and the wider environment; and
- iii) Should unacceptable risks be identified the applicant shall also submit and agree with the Local Planning Authority in writing a contaminated land remediation strategy (including verification plan) prior to commencement of development.

The development shall thereafter be carried out in full accordance with the duly approved remediation strategy or such varied remediation strategy as may be agreed in writing with the Local Planning Authority.

12. No development shall take place (including demolition, ground works or vegetation clearance) until a construction environmental management plan (CEMP: biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following:

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of "biodiversity protection zones".
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.

The CEMP (Biodiversity) shall also include consideration of deer, badger, hedgehogs and other mammals using the site. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

13. No development shall take place until physical samples and trade literature of the materials to be used in the construction of the elevations (artificial stone) and roofs (dark grey tiles) of the dwellings, and all proposed hard ground surfacing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details.

14. No development shall commence until all the retained trees within the site as shown on the approved updated Tree Protection Plan, have been protected. Such protection shall be installed in accordance with the specification described in the AIA and AMS document, in the positions as shown on the Tree Protection Plan and shall remain in place until all development is completed. No work, including any form of drainage or storage of materials, earth or topsoil shall take place within the perimeter of such fencing.

15. The occupation of the development shall not take place until a site-specific Operation and Maintenance Manual 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 details of the manual to be submitted for approval shall include, as a minimum:

- a) A timetable for its implementation;

- b) Details of the maintenance, operational and access requirement for all SuDS components and connecting drainage structures, including all watercourses and their ownership;
- c) Pro-forma to allow the recording of each inspection and maintenance activity, as well as allowing any faults to be recorded and actions taken to rectify issues;
- d) The arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme in perpetuity;
- e) Details of financial management including arrangements for the replacement of major components at the end of the manufacturer's recommended design life;
- f) Details of whom to contact if pollution is seen in the system or if it is not working correctly; and
- g) Means of access for maintenance and easements.

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

16. The occupation of the development shall not be permitted until a site-specific verification report, pertaining to the surface water sustainable 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, as a minimum, demonstrate that the surface water sustainable drainage system has been constructed in accordance with the approved drawing(s) (or detail any minor variations) and is fit for purpose. The report shall contain information and evidence, including photographs, of details and locations (including national grid references) of critical drainage infrastructure (including inlets, outlets, and control structures) and full as-built drawings.

The scheme shall thereafter be maintained in perpetuity.

17. No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on McDermott Homes drawing number WA-SL-01 Rev J have been implemented in full.

18. No part of the development hereby approved shall be occupied until all the highway works have been constructed and completed in accordance with a scheme that shall be first be submitted to and approved by the Local Planning Authority in consultation with the Highway Authority.

19. The development hereby permitted shall not be occupied until such time as the off-road internal pedestrian links providing access to Pennine Road and Public Footpath 14-1-FP660 have been built to an adoptable standard.

20. No dwelling shall be occupied until a Travel Plan comprising immediate, continuing and long term measures to promote and encourage alternatives to single-occupancy car use has been prepared, submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall be implemented, monitored and reviewed in

accordance with the agreed Travel Plan Targets to the satisfaction of the Local Planning Authority.

21. Prior to first use or occupation a verification report, which validates that all remedial works undertaken on site were completed in accordance with those agreed with the Local Planning Authority, shall be submitted to and approved in writing by the Local Planning Authority.

22. Prior to occupation of the development, a lighting design strategy for biodiversity for areas to be externally lit shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall:

- a) identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
- b) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances shall any other external lighting be installed without prior consent from the Local Planning Authority.

23. No removal of or works to any hedgerows, trees, shrubs or other vegetation which may be used by breeding birds shall take place during the main bird breeding season (between 1st March and 31st August inclusive), unless a competent ecologist has first undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation shall be submitted to and approved in writing by the Local Planning Authority prior to any such works taking place

24. The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with McDermott Homes drawing number WA-SL-01 Rev J. Thereafter the onsite parking provision shall be so maintained in perpetuity.

25. Prior to first occupation of each phase of the development, all ecological measures pertaining to that phase shall be carried out in full in accordance with the details contained in the letter from ERAP Ltd dated 19th December 2022 (ref 2022-326) as already submitted with the planning application and agreed in principle with the Local Planning Authority prior to determination.

26. All works shall be carried out in accordance with the details contained in Appendix 2 of the Updated Ecological Survey And Assessment by ERAP (Consultant Ecologists) Ltd (reference no. 2022-326) as already submitted with the planning application and agreed in principle with the Local Planning Authority prior to determination.

27. No works which would be audible outside of the site boundaries shall be undertaken outside of the hours of 08:00 – 18:00 Monday to Friday and 08:00 – 13:00 Saturdays. No audible works outside of site boundaries shall be undertaken on Sundays or public holidays.

28. No dwelling shall be occupied until all fences, walls, gates and other means of enclosure shown in the approved details to bound its plot have been erected in conformity with the approved details (as shown on drawing WA-BT-01d). Any 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.

29. The development hereby approved shall be carried out in accordance with the submitted Arboricultural Impact Assessment and Arboricultural Method Statement.

30. Foul and surface water shall be drained on separate systems.

31. The approved scheme of landscaping and planting for each phase of the development shall be carried out in full in the first planting and seeding season following the first occupation of any dwelling within that phase, in full accordance with the approved details. Any trees or plants which within a period of 15 years of being planted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of the same size and species.

32. The development permitted by this planning permission shall be carried out in accordance with the principles set out within the site-specific flood risk assessment (Ref: HYD407_WOODLAND.GRANGE.2_FRA&DMS, Rev 1.0, 13th May 2019, Betts Hydro, as amended by the Sustainable Drainage Statement).

The measures shall be fully implemented prior to occupation of the development 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.

33. Garage wall hanging cycle storage suitable for 2 bicycles shall be provided within each garage prior to their first use. A separate secure cycle storage facility, suitable for two bicycles shall be provided for units without a garage.



Costs Decision

Site visit made on 27 February 2025

by **T Burnham BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6th May 2025

Costs application in relation to Appeal Ref: APP/B2355/W/24/3356090

Land off Fieldfare Way, Bacup, Rossendale OL13 9PP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by McDermott Homes for a partial award of costs against Rossendale Borough Council.
 - The appeal was against the refusal of planning permission for the erection of 71 no. dwellings with associated works including car parking, landscaping, open space and pumping station.
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Decision

1. The costs application is allowed and partial costs are awarded.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application for costs is made on substantive grounds. It is made partially in respect of the evidence of the Council relating to their refusal grounds regarding highways and biodiversity net gain matters.
4. The claimant states that overall, the appeal proposal is clearly in accordance with relevant planning policies in the Rossendale Local Plan (2021) and the Framework and planning permission should have been granted without delay. They state that the refusal of planning permission by the Council has resulted in delay and additional and/or wasted costs for the appellant.
5. The evidence indicates that the decision was made by the Planning Committee against Officer recommendation. There was nothing in principle unreasonable about taking such a course of action.
6. However, whilst I have been supplied with the minutes of the committee meeting, they are very limited in detail and do not provide any significant detail as to how the decision was arrived at.
7. The first reason for refusal concludes that the development would have an unacceptable impact on highway safety, and the cumulative impact of the additional traffic on the road network would be severe. However, the Local Highway Authority had earlier in May 2024 advised the Council that the proposed development would not have a significant impact on highway safety, capacity or amenity in the immediate vicinity of the site subject to conditions.

8. Nothing of substance has been put forward which could reasonably justify a position opposite to that of the Local Highway Authority. Although the evidence indicates that members were relying on their own detailed knowledge of the local area more specific and evidenced reasons for coming to that conclusion would need to have been put forward. This has not happened.
9. The second reason for refusal stated that the development would cause harm to biodiversity on site due to the loss of existing habitats and would fail to provide adequate compensatory provision or an adequate net gain in biodiversity. However, that matter has been addressed by the appellant and the detailed position of the Council has not been clearly substantiated or evidenced either within the minutes or any subsequent evidence of the Council.
10. Unreasonable behaviour with respect to the substance of the matter under appeal is therefore evidenced and a partial award of costs is therefore justified.

Conclusion

11. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the first two grounds of refusal of the Council and a partial award of costs is therefore warranted.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Rossendale Borough Council shall pay to McDermott Homes the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to refusal reasons one and two; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Rossendale Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

T Burnham

INSPECTOR